UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 26, 2024

Atlas Energy Solutions Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-41828**	**93-2154509**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

5918 W. Courtyard Drive, Suite 500 **Austin, Texas** **(Address of principal executive office)**	**78730** **(Zip Code)**

Registrant's telephone number, including area code: (512) 220-1200

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.01 per share	AESI	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01. Entry Into a Material Definitive Agreement.

Acquisition of Hi-Crush Inc.

On February 26, 2024, Atlas Energy Solutions Inc., a Delaware corporation (the "**Company**" or "**Atlas**"), entered into an Agreement and Plan of Merger (the "**Merger Agreement**") by and among the Company, Atlas Sand Company, LLC, a Delaware limited liability company ("**Purchaser**"), Wyatt Merger Sub 1 Inc., a Delaware corporation and direct, wholly-owned Subsidiary of Purchaser ("**Merger Sub 1**"), Wyatt Merger Sub 2, LLC, a Delaware limited liability company and direct, wholly-owned Subsidiary of Purchaser ("**Merger Sub 2**"), Hi-Crush Inc., a Delaware corporation ("**Hi-Crush**"), each stockholder that has executed the Merger Agreement or a joinder thereto (each a "**Hi-Crush Stockholder**" and, collectively, the "**Hi-Crush Stockholders**"), (f) Clearlake Capital Partners V Finance, L.P., solely in its capacity as the Hi-Crush Stockholders' representative (the "**Hi-Crush Stockholders' Representative**") and (g) HC Minerals Inc., a Delaware corporation (collectively, the "**Parties**"), pursuant to which Atlas will acquire substantially all of Hi-Crush's Permian Basin proppant production and logistics businesses and operations (the "**Transaction**").

Prior to the signing of the Merger Agreement, a special committee composed of members of the Company's board of directors (the "**Board**") approved, and recommended that the Board approve, the Merger Agreement and the Transaction. Subsequently, the Board approved the Merger Agreement and the Transaction.

Under the terms and conditions of the Merger Agreement, which has an economic effective time of 11:59 p.m. on February 29, 2024, the aggregate consideration to be paid to

the Hi-Crush Stockholders in the Transaction will consist of (i) cash consideration of $150 million to be paid at the closing of the Transaction (the "**Closing**"), (ii) 9.7 million shares of Atlas's Common Stock, par value $0.01 per share, issued at Closing (the "**Common Stock**," and such issuance, the "**Stock Consideration**"), and (iii) a secured PIK toggle seller note in an initial aggregate principle amount of $125 million with a final maturity date of January 31, 2026, in each case, subject to customary closing adjustments. Upon consummation of the Transaction, the Hi-Crush Stockholders will collectively own approximately 8.8% of the Company's outstanding Common Stock.

Pursuant to the terms of the Merger Agreement, (a) Merger Sub 1 will be merged with and into Hi-Crush, with Hi-Crush surviving the merger as a wholly-owned subsidiary of Purchaser (the "**Surviving Corporation**" and such merger, the "**Initial Merger**") and (b) immediately following the Initial Merger, Merger Sub 2 will be merged with and into the Surviving Corporation, with Merger Sub 2 surviving as a wholly-owned subsidiary of Purchaser.

The completion of the Transaction is subject to the satisfaction or waiver of customary closing conditions, including (a) the accuracy of the representations and warranties of each party (subject to specified materiality standards and customary qualifications), (b) compliance by each party in all material respects with their respective covenants, (c) Hi-Crush's delivery of a written consent approving the Transaction signed by Hi-Crush Stockholders holding at least 95% of the voting power of Hi-Crush's outstanding common stock and (d) Hi-Crush's completion of certain pre-Closing reorganization transactions.

The Parties have made customary representations and warranties in the Merger Agreement. The Merger Agreement also contains customary covenants and agreements, including, among others, covenants and agreements relating to (a) the conduct of each of the Parties' businesses during the period between the execution of the Merger Agreement and Closing, and (b) the efforts of the Parties to cause the Transaction to be completed, including obtaining any required governmental approval.

The Merger Agreement contains certain termination rights for each of the Company and Hi-Crush, including, among other rights, the right to terminate (a) by mutual written consent of the Company and Hi-Crush and (b) by either the Company or Hi-Crush, if (1) the Closing has not occurred on or before April 12, 2024, or (2) the other party breaches any of their respective representations or warranties or if such party fails to perform their respective covenants such that certain conditions to closing cannot be satisfied, and the breach or breaches of such representations or warranties or the failure to perform such covenant, as applicable, is not cured or cannot be cured in accordance with the terms of the Merger Agreement.

In accordance with the terms of the Merger Agreement, at Closing, the Company will enter into a registration rights and lock-up agreement (the "**Registration Rights and Lock-Up Agreement**"), in substantially the form attached as Exhibit G to the Merger Agreement, with certain of the Hi-Crush Stockholders (the **Registration Rights and Lock-Up Parties**") that provides, among other things, that the Company will (a) no later than the later of (1) April 1, 2024, and (2) fifteen business days after the date on which audited carveout financial statements and reserve report are delivered, as defined in such Registration Rights and Lock-Up Agreement, file with the U.S. Securities and Exchange Commission (the "**SEC**") a registration statement registering for resale the Common Stock comprising the Stock Consideration issued in connection with the Transaction and (b) grant the Registration Rights and Lock-Up Parties certain customary demand and piggyback rights with respect to underwritten offerings. Pursuant to the Registration Rights and Lock-Up Agreement, the Registration Rights and Lock-Up Parties will also agree not to lend, offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, or otherwise transfer or dispose of, any of their shares of Common Stock for a period of 90 days following the Closing, subject to certain exceptions. The Company will agree to pay certain expenses of the parties incurred in connection with the exercise of their rights under the Registration Rights and Lock-Up Agreement, and indemnify them for certain securities law matters in connection with any registration statement filed pursuant thereto.

In accordance with the Merger Agreement, Purchaser will issue a secured seller promissory note (the "**Deferred Cash Consideration Note**") in favor of the Hi-Crush Stockholders in the original aggregate principal amount of $125 million, subject to customary purchase price adjustments, and payable in cash or in kind, at the Purchaser's election. The Deferred Cash Consideration Note will mature on January 31, 2026, and will bear interest at a rate of 5.00% per annum if paid in cash, or 7.00% per annum if paid in kind. Interest on the Deferred Cash Consideration Note is payable quarterly in arrears beginning March 29, 2024 through maturity.

The foregoing description of the Merger Agreement and the Transaction does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, a copy of which is filed as Exhibit 2.1 hereto and incorporated herein by reference.

The representations, warranties and covenants contained in the Merger Agreement have been made solely for the benefit of the parties thereto. In addition, such representations, warranties and covenants (a) have been made only for purposes of the Merger Agreement, (b) are subject to materiality qualifications contained in the Merger Agreement which may differ from what may be viewed as material by investors, (c) were made only as of the date of the Merger Agreement or such other date as is specified in the Merger Agreement and (d) have been included in the Merger Agreement for the purpose of allocating risk between the contracting parties rather than establishing matters as fact. Accordingly, the Merger Agreement is included with this filing only to provide investors with information regarding the terms of the Merger Agreement, and not to provide investors with any other factual information regarding the parties thereto or their respective businesses. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties to the Merger Agreement or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

First Amendment to ABL Credit Agreement

On February 26, 2024, Purchaser and certain other subsidiaries of the Company entered into that certain First Amendment to Loan, Security and Guaranty Agreement (the "**ABL Amendment**"), among Purchaser, the subsidiary guarantors party thereto, the lenders party thereto and Bank of America, N.A., as administrative agent (the "**ABL Agent**"). The ABL Amendment amends that certain Loan, Security and Guaranty Agreement dated as of February 22, 2023 (the "**ABL Credit Agreement**"), among Purchaser, the subsidiary guarantors party thereto from time to time, the lenders party thereto from time to time and the ABL Agent.

Among other things, the ABL Amendment (a) will, subject to certain conditions to be satisfied in connection with Closing, increase the revolving credit commitment amount under the ABL Credit Agreement from $75 million to $125 million and extend the maturity date of the ABL Credit Agreement from February 22, 2028 to February 26, 2029 and (b) modified certain other terms of the ABL Credit Agreement.

The foregoing is qualified in its entirety by reference to the ABL Amendment, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K (this "**Current Report**") and is incorporated herein by reference.

First Amendment to Term Loan Credit Agreement

On February 26, 2024, the Company, Purchaser and certain other subsidiaries of the Company entered into that certain First Amendment to Credit Agreement (the "**Term Loan Amendment**"), among Company, Purchaser, the lenders party thereto and Stonebriar Commercial Finance, LLC, a Delaware limited liability company, as administrative agent (the "**Term Agent**"). The Term Loan Amendment amends that certain Credit Agreement dated as of July 31, 2023 (the "**Term Loan Credit Agreement**"), among Purchaser,

the lenders party thereto from time to time and the Term Agent.

Among other things, the Term Loan Amendment (a) provided an incremental delayed draw term loan facility in the aggregate principle amount of up to $150 million at an interest rate expected to be approximately 10.5% and (b) modified certain other terms of the Term Loan Credit Agreement.

The foregoing is qualified in its entirety by reference to the Term Loan Amendment, a copy of which is filed as Exhibit 10.2 to this Current Report and is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report is incorporated by reference in response to this Item 3.02. The issuance of the Stock Consideration to the Hi-Crush Stockholders will be completed in reliance upon the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof and Rule 506 of Regulation D promulgated thereunder as a transaction by an issuer not involving any public offering.

Item 7.01. Regulation FD Disclosure.

On February 27, 2024, the Company issued a press release announcing the Transaction and the signing of the Merger Agreement. Also on February 27, 2024, the Company made available an investor presentation related to the Transaction. Copies of the press release and the investor presentation are attached hereto as Exhibit 99.1 and Exhibit 99.2, respectively, and incorporated into this Item 7.01 by reference.

The information in this Item 7.01, including Exhibit 99.1 and Exhibit 99.2, is being "furnished" pursuant to General Instruction B.2 of Form 8-K and shall not be deemed to be "filed" for purpose of Section 18 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act, except as shall be expressly set forth in such filing.

Forward-Looking Statements

This Current Report contains forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. Statements that are predictive or prospective in nature, that depend upon or refer to future events or conditions or that include the words "may," "assume," "forecast," "position," "strategy," "potential," "continue," "could," "will," "plan," "project," "budget," "predict," "pursue," "target," "seek," "objective," "believe," "expect," "anticipate," "intend," "estimate" and other expressions that are predictions of or indicate future events and trends and that do not relate to historical matters identify forward-looking statements. Examples of forward-looking statements include, but are not limited to, statements about the anticipated financial performance of Atlas following the transaction; the expected synergies and efficiencies to be achieved as a result of the transaction; expected accretion to free cash flow, cash flow per share, Adjusted EBITDA and earnings per share; expected production volumes; expectations regarding the leverage and dividend profile of Atlas following the transaction; expansion and growth of Atlas's business; Atlas's plans to finance the transaction; and the receipt of all necessary approvals to close the transaction and the timing associated therewith; our business strategy, our industry, our future operations and profitability, expected capital expenditures and the impact of such expenditures on our performance, statements about our financial position, production, revenues and losses, our capital programs, management changes, current and potential future long-term contracts and our future business and financial performance.

Although forward-looking statements reflect our good faith beliefs at the time they are made, we caution you that these forward-looking statements are subject to a number of risks and uncertainties, most of which are difficult to predict and many of which are beyond our control. These risks include but are not limited to: the completion of the transaction on anticipated terms and timing or at all, including obtaining any required governmental or regulatory approval and satisfying other conditions to the completion of the transaction; uncertainties as to whether the transaction, if consummated, will achieve its anticipated benefits and projected synergies within the expected time period or at all; Atlas's ability to integrate Hi-Crush's operations in a successful manner and in the expected time period; the occurrence of any event, change, or other circumstance that could give rise to the termination of the transaction; risks that the anticipated tax treatment of the transaction is not obtained; unforeseen or unknown liabilities; unexpected future capital expenditures; potential litigation relating to the transaction; the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events; the effect of the announcement, pendency, or completion of the transaction on the parties' business relationships and business generally; risks that the transaction disrupts current plans and operations of Atlas or Hi-Crush and their respective management teams and potential difficulties in retaining employees as a result of the transaction; the risks related to Atlas's financing of the transaction; potential negative effects of this announcement and the pendency or completion of the transaction on the market price of Atlas's common stock or operating results; commodity price volatility, including volatility stemming from the ongoing armed conflicts between Russia and Ukraine and Israel and Hamas; increasing hostilities and instability in the Middle East; adverse developments affecting the financial services industry; our ability to complete growth projects, including the Dune Express, on time and on budget; the risk that stockholder litigation in connection with our recent corporate reorganization may result in significant costs of defense, indemnification and liability; changes in general economic, business and political conditions, including changes in the financial markets; transaction costs; actions of OPEC+ to set and maintain oil production levels; the level of production of crude oil, natural gas and other hydrocarbons and the resultant market prices of crude oil; inflation; environmental and weather risks; operating risks; regulatory changes; lack of demand; market share growth; the uncertainty inherent in projecting future rates of reserves; production; cash flow; access to capital; the timing of development expenditures; the ability of our customers to meet their obligations to us; our ability to maintain effective internal controls; and other factors discussed or referenced in our filings made from time to time with the SEC, including those discussed under the heading "Risk Factors" in our prospectus, dated September 11, 2023, filed with the SEC pursuant to Rule 424(b) under the Securities Act on September 12, 2023 in connection with our recent corporate reorganization, and any subsequently filed Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law. Atlas's SEC filings are or will be available publicly on the SEC's website at www.sec.gov.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1#	Agreement and Plan of Merger, dated as of February 26, 2024 by and among Atlas Energy Solutions Inc., Atlas Sand Company, LLC, Wyatt Merger Sub 1 Inc., Wyatt Merger Sub 2, LLC, Hi-Crush Inc., Clearlake Capital Partners V Finance, L.P. and HC Minerals Inc.
10.1	First Amendment to Loan, Security and Guaranty Agreement, dated as of February 26, 2024, among Atlas Sand Company, LLC, as Borrower, certain of its subsidiaries, as Guarantors, Bank of America, N.A., as Agent and Bank of America, N.A., as Sole Lead Arranger and Sole Bookrunner.
10.2	First Amendment to Credit Agreement, dated as of February 26, 2024, by and between Atlas Sand Company, LLC, as borrower, and Stonebriar Commercial Finance LLC, as lender.
99.1	Press Release, dated February 27, 2024.
99.2	Investor Presentation, dated February 27, 2024.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

Certain schedules, annexes or exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K, but will be furnished supplementally to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ATLAS ENERGY SOLUTIONS INC.

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

Date: February 27, 2024

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

ATLAS ENERGY SOLUTIONS INC.,

ATLAS SAND COMPANY, LLC,

WYATT MERGER SUB 1 INC.,

WYATT MERGER SUB 2, LLC,

HI-CRUSH INC.,

HC MINERALS INC.,

CERTAIN STOCKHOLDERS OF HI-CRUSH INC.,

AND

CLEARLAKE CAPITAL PARTNERS V FINANCE, L.P., SOLELY IN ITS CAPACITY AS THE STOCKHOLDERS' REPRESENTATIVE,

FEBRUARY 26, 2024

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

Page No.

EXHIBITS

SCHEDULES

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of February 26, 2024 (the "Execution Date"), by and among (a) Atlas Energy Solutions Inc., a Delaware corporation ("Parent"), (b) Atlas Sand Company, LLC, a Delaware limited liability company and indirect, wholly owned Subsidiary of Parent ("Purchaser"), (c) Wyatt Merger Sub 1 Inc, a Delaware corporation and direct, wholly owned Subsidiary of Purchaser ("Merger Sub 1"), (d) Wyatt Merger Sub 2, LLC, a Delaware limited liability company and direct, wholly owned Subsidiary of Purchaser ("Merger Sub 2"), (e) Hi-Crush Inc., a Delaware corporation (the "Company"), (f) each Stockholder that has executed this Agreement or a joinder hereto (each, a "Consenting Stockholder"), (g) Clearlake Capital Partners V Finance, L.P., solely in its capacity as the Stockholders' Representative and (h) HC Minerals Inc., a Delaware corporation ("RemainCo"). Parent, Purchaser, Merger Sub 1, Merger Sub 2, the Company, the Consenting Stockholders, the Stockholders' Representative and RemainCo are, from time to time, referred to individually herein as a "Party" and, collectively, as the "Parties."

RECITALS

WHEREAS, Purchaser desires to acquire the Company by (a) effecting a merger of Merger Sub 1 with and into the Company (the "Initial Merger") in accordance with this Agreement and the Delaware General Corporation Law ("DGCL"), with the Company as the surviving corporation and wholly owned Subsidiary of Purchaser (the "Surviving Corporation") and (b) immediately following the Initial Merger, effecting a merger of the Surviving Corporation with and into Merger Sub 2 (the "Subsequent Merger" and, together with the Initial Merger, the "Mergers") in accordance with this Agreement and the Delaware Limited Liability Company Act (the "DLLCA"), with Merger Sub 2 as the surviving limited liability company and wholly owned Subsidiary of Purchaser (the "Subsequent Survivor");

WHEREAS, for U.S. federal income tax purposes, it is intended that (a) the Mergers, taken together, be treated as a single integrated transaction that qualifies as a "reorganization" within the meaning of Section 368(a) of the Code (the "Intended Tax Treatment") and (b) this Agreement constitutes a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a);

WHEREAS, prior to the date hereof, the Board of Directors of the Company has (a) determined that this Agreement and the transactions contemplated hereby (including the Mergers, the Pre-Closing Reorganization and the transactions contemplated by the Ancillary Transaction Documents, the "Acquisition") are advisable and in the best interests of the Company and its Stockholders; (b) approved this Agreement and (subject to approval of this Agreement by the Stockholders) the Acquisition in accordance with the applicable provisions of the DGCL; and (c) recommended to the Stockholders that this Agreement be approved by the Stockholders;

WHEREAS, Stockholders holding at least 60% of the issued and outstanding shares of Company Stock and entitled to vote on the Initial Merger shall execute and deliver a written consent (such executed written consent, the "Written Consent") authorizing and approving the Acquisition and adopting this Agreement in accordance with Section 6.6(a) of the Stockholders Agreement and Article VI of the Company's Certificate of Incorporation, and terminating any voting, transfer or other arrangements related to the Company Securities, including the Stockholders Agreement, effective upon the Closing;

WHEREAS, the board of directors of Merger Sub 1, and the manager of Merger Sub 2, have deemed it fair and advisable to, and in the best interests of, their respective entities to enter into this Agreement and to consummate the Acquisition;

WHEREAS, Purchaser, as the sole shareholder of Merger Sub 1, and the manager of Merger Sub 2 have approved this Agreement and the Acquisition upon the terms set forth herein; and

WHEREAS, to induce the other Parties to enter into this Agreement and consummate the Acquisition, the Parties desire to make the representations, warranties, covenants and other agreements set forth herein, or otherwise contemplated by this Agreement, to govern the Acquisition.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the meanings ascribed to them in this Section 1.1.

"2023 Tax Amount" means the U.S. federal income taxes paid by the Company prior to the Economic Effective Time with respect to the 2023 taxable year, to the extent in excess of any U.S. federal income taxes otherwise owed by the Company with respect to the 2023 taxable year.

"280G Approval" has the meaning set forth in Section 7.2.

"Accredited Investor" means a person who is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act.

"Acquired Companies" means the Company and each of its Subsidiaries from and after the consummation of the Pre-Closing Reorganization, each of which Acquired Companies is described on Schedule 1.1(h). For the avoidance of doubt, when referring to post-Closing periods, the Surviving Corporation and the Subsequent Survivor shall be deemed to be Acquired Companies.

"Acquired Companies Indebtedness Amount" means the aggregate principal amount of the Acquired Companies' Indebtedness as of the Economic Effective Time.

"Acquired Company Parties" has the meaning set forth in Section 10.1.

"Acquisition" has the meaning set forth in the recitals.

"Adjustment Amount" has the meaning set forth in Section 2.7(d).

"Adjustment Holdback Amount" means $5,338,111.

"Affiliate" shall mean, for any particular Person, any other Person that directly or indirectly controls, is controlling, is controlled by or is under common control with such particular Person. For the purposes of this definition, "controlling," "controlled," and "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, the Acquired Companies are Affiliates of the Stockholders and RemainCo prior to the Closing and Affiliates of Parent and Purchaser from and after the Closing.

"Affiliate Contract" has the meaning set forth in Section 4.21.

"Agents" shall mean with respect to any Person, such Person's directors, managers, officers, employees, partners, members, stockholders or shareholders, agents, investment bankers, attorneys, accountants, consultants, and other advisors or representatives with actual authority.

"Agreement" has the meaning set forth in the preamble.

"Ancillary Transaction Documents" means the Restrictive Covenant Agreements, the Registration Rights and Lock-Up Agreement, Distribution Participation Award Settlement Agreements, Transition Services Agreement, Deferred Cash Consideration Note, Intercreditor Agreement, Deferred Cash Consideration Mortgage, Parent Guaranty and any other document, instrument, filing or record contemplated hereby or thereby.

"Anti-Corruption Laws" has the meaning set forth in Section 4.22.

"Audit Firm" has the meaning set forth in Section 7.5(a).

"Baker Botts" has the meaning set forth in Section 14.15(a).

"Balance Sheet" has the meaning set forth in Section 4.5(a).

"Balance Sheet Date" has the meaning set forth in Section 4.5(a).

"Bankruptcy" means, each, individually, and, collectively, all of the jointly-administered Chapter 11 cases of High-Crush Inc. and its Affiliates filed in the United States Bankruptcy Court for the Southern District of Texas (jointly administered under Case No. 20-33495), including, but not limited to, the jointly administered Chapter 11 case of Hi-Crush Permian Sand LLC (Case No. 20-33505), which was formerly jointly administered in the Bankruptcy Court under Case No. 20-33495, as well as any adversary proceedings relating to any of the foregoing cases.

"Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas.

"Base Merger Consideration" means $450,000,000.00.

"Business" means the business of the Acquired Companies, as currently conducted, including developing, designing, planning, construction, managing, controlling, supervising, overseeing, or pursuing potential acquisition, strategic or disposition opportunities relating to, frac sand mining facilities, frac sand logistics and frac sand well site storage equipment in the Permian Basin, which includes (a) a frac sand reserve located near Kermit, Texas, (b) all OnCore mining assets (including those under development), (c) all Pronghorn assets associated with frac sand last mile services and (d) all NexStage assets.

"Business Day" means any day other than a Saturday or Sunday, or a day on which banking institutions in Austin, Texas are obligated by Law to close.

"Business Employees" has the meaning set forth in Section 4.16(b).

"Business Intellectual Property" has the meaning set forth in Section 4.12(a).

"Cancelled Shares" has the meaning set forth in Section 2.4(b).

"Cash and Cash Equivalents" means, without duplication, the aggregate amount of all currency on hand and (a) money, currency or credit balance in a deposit account at a financial institution, net of checks outstanding as of the time of determination, (b) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, (c) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, (d) commercial paper issued by any bank or any bank holding company owning any bank and (e) certificates of deposit or bankers' acceptances issued by any commercial bank organized under the applicable Laws of the United States of America, in each case held by the Acquired Companies as of the Closing and without taking into account any of the transactions occurring as part of the Closing; *provided* that any such amounts shall be calculated (a) to include the amounts of any third-party checks, drafts, electronic funds transfers and wires deposited in the accounts of any Acquired Company but not cleared as of the Closing (but excluding any such checks, drafts, electronic funds transfers or wires otherwise included as, or taken into account as, current assets in the calculation or determination of Net Working Capital), and (b) to deduct (i) the amount of all outstanding checks, drafts, electronic funds transfers and wires issued by any Acquired Company to third parties as of the Closing that have not yet cleared and (ii) all Restricted Cash.

"Closing" has the meaning set forth in Section 2.1(c).

"Closing Adjusted Merger Consideration" has the meaning set forth in Section 2.6(a).

"Closing Cash Consideration" means an amount in cash equal to the difference of (a) the Closing Adjusted Merger Consideration, *minus* the sum of (b) (i) the principal amount of the Deferred Cash Consideration Note before any adjustment for the Estimated Customer Prepayment Amount, and (ii) the Closing Shares Value.

"Closing Date" has the meaning set forth in Section 2.1(c).

"Closing Price Per Share" means $18.02, which is the volume-weighted average closing price per share of Parent Common Stock, as reported on the New York Stock Exchange for the ten (10) consecutive Trading Days prior to the date of this Agreement, as reported by Bloomberg L.P.

"Closing Shares" means 9,711,432 shares of Parent Common Stock.

"Closing Shares Value" means the product of (a) the number of Closing Shares and (b) the Closing Price Per Share, which is equal to $175,000,005.

"Closing Statements" has the meaning set forth in Section 2.7(a).

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Company" has the meaning set forth in the preamble.

"Company Advisors" means Baker Botts, Moelis, PricewaterhouseCoopers LLP and all other Persons engaged for the purposes of advice to or support of the Company in connection with the Acquisition.

"Company Marks" has the meaning set forth in Section 7.6.

"Company Restricted Share" means a restricted share of Company Stock issued to the holder of a Company stock option award following that individual's exercise of the option right for unvested shares pursuant to an individual award agreement governing the award by and between that individual and the Company.

"Company Securities" means, collectively, all of the Company Stock and Company Restricted Shares.

"Company Stock" means all of the authorized, issued and outstanding shares of common stock of the Company, par value $0.001 per share.

"Company Transaction Expenses" means, without duplication, solely to the extent that any of the following obligations have been incurred prior to or in connection with Closing and remain unpaid immediately prior to the Closing (whether incurred prior to or after the date of this Agreement), the aggregate amount due and payable by the Company or any of its Subsidiaries (whether before, at or after Closing) for (a) third-party out-of-pocket fees, costs or expenses or brokerage, finders' or other similar payments incurred as a result of or in connection with the negotiation, documentation or consummation of the Acquisition, including all of the costs, commissions, fees and expenses of the Company Advisors, (b) any sale, "stay-around," retention, change of control or transaction bonuses, severance payments, commission or other similar bonuses or payments payable by the Acquired Companies to current or former employees, independent contractors, directors or consultants of the Stockholder Group (including any amounts payable by the Company or any Affiliate of the Company in respect of such Persons under any Employee Benefit Plan, which, for the avoidance of doubt, includes any cash amounts payable or accrued in connection with the settlement of the Distribution Participation Awards or the execution of the Distribution Participation Award Settlement Agreements or the vesting of Company Restricted Shares) (i) as a result of or in connection with the Closing (whether occurring solely because of the occurrence of the Closing or in conjunction with other events and circumstances, including a termination of employment after Closing with respect to arrangements entered prior to Closing) or (ii) as a result of any termination of employment occurring prior to the Closing and, in the case of each of the foregoing clauses (i) and (ii), the employer's share of any 401(k) match or similar obligations, employment, social insurance and other similar Taxes related to payments made in respect of any of the foregoing solely to the extent attributable to such amounts, (c) any other fees, costs, expenses or payments resulting from the change of control or merger of the Company or any of its Subsidiaries, including any amounts payable in connection with receipt of any consent or approval in connection with the Acquisition, (d) the employer's obligations for any payroll, employment or other similar Taxes relating to the vesting of any Company Restricted Shares, (e)50% of any Transfer Taxes related to the Mergers and 100% of any Transfer Taxes related to the Pre-Closing Reorganization or the Excluded Assets, and (f) the Stockholder Share RWI Fees. Notwithstanding anything to the contrary contained herein, in no event shall such amount include (A) any amounts to the extent taken into account in the calculation of the Acquired Companies Indebtedness Amount, Leakage Amount or Net Working Capital or (B) any amounts paid (or to be paid) by Parent or Purchaser or any of their respective Affiliates, as contemplated by the Transition Services Agreement.

"Company's Knowledge" means the actual knowledge of any of the individuals set forth on Schedule 1.1(d).

"Confidentiality Agreement" means the Mutual Nondisclosure Agreement, effective as of August 1, 2023, by and between the Company and Parent.

"Consenting Stockholder" has the meaning set forth in the preamble.

"Consideration Statement" has the meaning set forth in Section 2.6(b).

"Consolidated Group" means any affiliated, combined, consolidated, unitary or similar group with respect to any Taxes, including any affiliated group within the meaning of Section 1504 of the Code electing to file consolidated U.S. federal income Tax Returns and any similar group under non-U.S. or U.S. state or local law.

"Contracts" means all contracts, agreements, licenses, indentures, notes, bonds, instruments, leases, mortgages, master service agreements, sales orders, purchase orders, transaction confirmations, arrangements, commitments, obligations and other understandings or undertakings of any nature, in any case whether written or oral, as well as any bids or proposals which, if accepted would result in a binding contract, and all amendments, restatements, supplements or other modifications thereto or waivers thereunder.

"Customer Prepayment Amount" means the aggregate amount of all customer prepayments to or for the benefit of an Acquired Company, where cash has been collected for services still to be performed, in connection with the agreements set forth on Schedule 1.1(f).

"D&O Indemnified Person" has the meaning set forth in Section 12.2(b).

"Data Room" has the meaning set forth in Section 1.2(a).

"Deferred Cash Consideration" means the amount of cash necessary to repay the principal and interest then outstanding on the Deferred Cash Consideration Note.

"Deferred Cash Consideration Mortgage" means the "Mortgage" as defined in the Deferred Cash Consideration Note and in the form of Exhibit I3 hereto.

"Deferred Cash Consideration Note" means the secured promissory note in the form of Exhibit I1 hereto issued by Purchaser, to Agent (as defined therein) on behalf of the Persons designated on Schedule 1 thereto on the Closing Date in the principal amount of (x) $125,000,000 less (y) the Estimated Customer Prepayment Amount and the Estimated Volume Shortfall Adjustment Amount.

"Delayed Transfer Date" has the meaning set forth in Section 8.4(a).

"Designated Contacts" has the meaning set forth in Section 7.3.

"DGCL" has the meaning set forth in the recitals.

"Disclosure Schedules" or "Schedules" has the meaning set forth in Article IV.

"Dissenting Shares" has the meaning set forth in Section 2.4(b).

"Distribution Participation Award Agreement" means the individual letter agreement granting a Distribution Participation Award.

"Distribution Participation Award Holder" means any person who has been granted a Distribution Participation Award.

"Distribution Participation Award Settlement Agreement" means those certain Distribution Participation Award Settlement Agreements, substantially in the form attached hereto as Exhibit B, dated the date of this Agreement, and by and among the Company and each Distribution Participation Award Holder.

"Distribution Participation Awards" means the phantom equity-based awards, evidenced by a Distribution Participation Award Agreement, representing the opportunity to receive a cash payment.

"DLLCA" has the meaning set forth in the recitals.

"DSL CCAA" means the Candidate Conservation Agreement with Assurances for the dunes sagebrush lizard.

"Economic Effective Time" means 11:59 p.m. Central Time on February 29, 2024.

"Effect" has the meaning set forth in the definition of Material Adverse Effect.

"Employee Benefit Plan" means any (a) material "employee benefit plan" (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), including each "employee pension benefit plan" (within the meaning of Section 3(2) of ERISA), and each "employee welfare benefit plan" (within the meaning of Section 3(1) of ERISA) and (b) other material employment, individual independent contractor, consulting, pension, defined contribution, retirement, deferred compensation, supplemental retirement, bonus, incentive compensation, equity-based compensation, tuition, vacation, medical, post-termination or retiree health or welfare, vision, dental, disability or other health plans, life insurance, paid time off, fringe benefit, profit sharing, severance, termination pay, and retention or change in control agreement, plan, policy, practice or program, and each other benefit or compensation plan or arrangement, in each case of the foregoing clauses (a) and (b), that is maintained, sponsored by or contributed to by an Acquired Company for the benefit of current or former directors, employees, independent contractors or other service providers of such Acquired Company, or to which an Acquired Company has or may have any Liability, contingent or otherwise.

"End Date" has the meaning set forth in Section 13.1(b)(i).

"Environmental Claim" means any arbitration, action, cause of action, charge, claim, demand, hearing, lawsuit, notice of violation, notice of potential or probable violation, notice of liability, notice of potentially responsible party status, or Legal Proceeding, relating to any Environmental Law or relating to an actual or alleged Release of, or human exposure to, any Hazardous Materials.

"Environmental Laws" means all Laws relating to pollution, the protection of the environment or natural resources (including those relating to threatened or endangered species), or relating to the processing, distribution, use, treatment, storage, Release, exposure of any person to, transport or handling of Hazardous Materials.

"Environmental Liabilities" means any and all obligations and Liabilities arising under or relating to Environmental Laws.

"Environmental Reports" means all written reports of environmental investigations, studies, audits and tests in the possession, control or custody of the Company

relating to compliance with or liability under Environmental Laws, the Release or threatened Release of Hazardous Materials as a result of the operation of the Business.

"Equity Holders" means all Stockholders and all other holders of Equity Interests of the Company.

"Equity Interests" means any share, capital stock, partnership interest, membership interest or similar equity interest or equity-like interest in any Person, in each case issued, granted, entered into, agreed to or authorized by such Person.

"ERISA" means the Employee Retirement Income Security Act of 1974, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any organization which is a member of a controlled group of organizations with an Acquired Company within the meaning of Section 414 of the Code.

"Estimated Acquired Companies Indebtedness Amount" means the Acquired Companies Indebtedness Amount estimated as of the Economic Effective Time, without giving effect to the transactions contemplated by this Agreement.

"Estimated Bankruptcy Assessment Amount" means $405,000.00.

"Estimated Cash and Cash Equivalents Amount" means the aggregate amount of Cash and Cash Equivalents estimated as of the Economic Effective Time.

"Estimated Company Transaction Expenses Amount" means the aggregate amount of the Company Transaction Expenses estimated as of the Closing.

"Estimated Customer Prepayment Amount" means the amount of the Customer Prepayment Amount estimated as of the Economic Effective Time.

"Estimated Leakage Amount" means the Leakage Amount estimated as of the Closing.

"Estimated Net Working Capital Adjustment" means (a) the amount by which the Estimated Net Working Capital Amount exceeds the Target Net Working Capital Amount or (b) the amount by which the Estimated Net Working Capital Amount is less than the Target Net Working Capital Amount; *provided* that any amount which is calculated pursuant to clause (a) above shall be deemed to be a positive number and any amount which is calculated pursuant to clause (b) above shall be deemed a negative number.

"Estimated Net Working Capital Amount" means the amount of Net Working Capital estimated as of the Economic Effective Time.

"Estimated Volume Shortfall Adjustment Amount" means the amount of Volume Shortfall Adjustment Amount estimated as of the Economic Effective Time, which shall equal $0.

"Excluded Assets" means, collectively, the following Persons (the "Excluded Companies") and those assets specifically excluded as assets of the Acquired Companies as a result of consummating the Pre-Closing Reorganization, including those businesses owned exclusively by Hi-Crush Whitehall LLC, PDQ Properties LLC, Hi-Crush Augusta LLC, Hi-Crush Wyeville Operating LLC, D & I Silica, LLC, Hi-Crush Canada LLC, Hi-Crush Canada Distribution Corp., FB Industries Inc., Hi-Crush Proppants LLC, Hi-Crush Holdings LLC and Hi-Crush Services LLC, together with various frac sand mining facilities in the State of Wisconsin.

"Excluded Employee" has the meaning set forth in Section 8.4(a).

"Excluded Liabilities" means, collectively, all of the Liabilities arising out of, resulting from or related in any way to (i) the Excluded Assets or the Pre-Closing Reorganization, including (a) the Specified Environmental Liabilities, (b) any Tax Liabilities arising from or attributable to the Excluded Assets or the Pre-Closing Reorganization (including the U.S. Tax Election as defined in the Pre-Closing Reorganization Agreements) and (c) the matters listed on Schedule 1.1(e), and (ii) Taxes of or with respect to any Stockholder, RemainCo or any of their Affiliates (other than an Acquired Company); *provided, however*, that Excluded Liabilities shall not include any Transfer Taxes for which Purchaser is responsible pursuant to this Agreement.

"Execution Date" has the meaning set forth in the preamble.

"Export Control and Economic Sanctions" has the meaning set forth in Section 4.23.

"FCPA" has the meaning set forth in Section 4.22.

"Final Closing Adjusted Merger Consideration" has the meaning set forth in Section 2.7(c).

"Final Determination" has the meaning set forth in Section 11.4.

"Final Loss Amount" has the meaning set forth in Section 11.4.

"Financial Statements" has the meaning set forth in Section 4.5(a).

"FIRPTA Documentation" has the meaning set forth in Section 3.1(a)(iii).

"Fraud" means actual and intentional fraud under Delaware common law with respect to the making of any representation or warranty in Article IV, Article V or Article VI of this Agreement, as applicable, or in any certificate delivered at Closing by Party.

"Fully Diluted Share Amount" means, in the aggregate, the number of shares of Company Stock (other than the Cancelled Shares) issued and outstanding, including any Company Restricted Shares that have or will have vested as of immediately prior to the Initial Effective Time, and the number of Equity Interests of the Company otherwise issued and outstanding or convertible into by right or Contract, in each case, as of immediately prior to the Initial Effective Time.

"GAAP" means United States generally accepted accounting principles.

"Governing Documents" means any corporate, limited liability company, partnership or limited partnership organizational documents, including certificates of incorporation, formation, organization, conversion, or otherwise, as well as any governing document of any such Person, including articles of incorporation, formation, organization, conversion or otherwise, bylaws, stockholders or shareholders agreements, operating agreements (including limited liability company agreements), certificates of limited partnership, partnership or limited agreements, or any other similar documents, certificates, articles or agreements, each as amended from time to time.

"Governmental Authority" means any transnational, domestic, or foreign federal, state, or local governmental, regulatory or administrative authority, bureau, board, commission, department, court, agency or official or arbitrator (including any court, tribunal or arbitral body or authority) and any political, legislative or executive subdivision thereof.

"Hazardous Materials" means (a) any petrochemical, petroleum, or petroleum products, radioactive materials, asbestos in any form, silica in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, per- and polyfluoroalkyl substances, and radon gas, (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants" or "pollutants" or words of similar meaning and regulatory effect or (c) any other chemical, mineral, metal, material or substance, exposure to which is prohibited, limited or regulated as hazardous or potentially hazardous to human health or safety or the environment by any applicable Environmental Law.

"Hire Date" has the meaning set forth in Section 8.4(a).

"Holdings" has the meaning set forth in Section 6.13(a).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Indebtedness" means of any Person, without duplication, (a) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, (b) indebtedness evidenced by any note, bond, debenture, mortgage or other debt instrument or debt security, (c) obligations under any performance bond or letter of credit, but only to the extent drawn or called, (d) obligations for the deferred purchase price of property or services, (e) obligations due and owing under any interest rate, currency swap or other hedging agreement or arrangement, (f) obligations under leases that are required to be capitalized in accordance with GAAP with respect to which such Person is the lessee (but excluding, for the avoidance of doubt, finance and operating leases capitalized as right of use assets), (g) intercompany indebtedness between the Acquired Companies and RemainCo, (h) guarantees with respect to any indebtedness of any other Person of a type described in clauses (a) through (f) above (other than the Philadelphia Surety Bonds), (i) for clauses (a) through (h) above, all accrued and unpaid interest thereon, if any, and any termination fees, prepayment penalties, "breakage" costs or similar payments associated with the repayment of Indebtedness to be repaid on the Closing Date, (j) any accrued dividends (provided that, for the avoidance of doubt, any accrued dividends that are paid to Stockholders prior to or in connection with the Closing shall not constitute Indebtedness unless the offsetting cash amount for such payment is included as Cash and Cash Equivalents in the Estimated Cash and Cash Equivalents Amount, and provided further that the dividend in respect of the Pre-Closing Reorganization shall not constitute Indebtedness), and (k) all current Tax Liabilities of the Acquired Companies that are (x) attributable to the Excluded Assets or the Pre-Closing Reorganization or (y) income Tax Liabilities, in each case, net of any current Tax assets of the Acquired Companies solely to the extent such Tax assets are not included in Net Working Capital and are available to offset, under applicable Tax Law, the foregoing Tax Liabilities included in Indebtedness. For the avoidance of doubt, Indebtedness shall not include (i) accrued trade payable amounts (including sales tax payables), (ii) any obligations under any performance bond or letter of credit to the extent undrawn or uncalled as of the relevant time of determination, (iii) any intercompany Indebtedness solely between or among any of the Acquired Companies, (iv) any Indebtedness incurred by Purchaser and its Affiliates on or after the Closing Date, (v) any endorsement of negotiable instruments for collection in the Ordinary Course of Business, (vi) any Indebtedness between an Acquired Company or any of its Affiliates, on the one hand, and Purchaser or any of its Affiliates, on the other hand, that is related to the consummation of the Acquisition, (vii) any insurance premium financing, (viii) any liabilities otherwise included in the determination of Net Working Capital, (ix) the Company Transaction Expenses Amount, (x) the Estimated Bankruptcy Assessment Amount, or (xi) the Customer Prepayment Amount.

"Indemnified Party" has the meaning set forth in Section 11.3(a).

"Indemnified Tax Contest" has the meaning set forth in Section 12.1(b)(ii).

"Indemnifying Party" has the meaning set forth in Section 11.3(a).

"Independent Accountant" has the meaning set forth in has the meaning set forth in Section 2.7(c).

"Initial Certificate of Merger" has the meaning set forth in Section 2.1(c).

"Initial Closing Statement" has the meaning set forth in Section 2.6(a).

"Initial Effective Time" has the meaning set forth in Section 2.1(c).

"Initial Merger" has the meaning set forth in the recitals.

"Insurance Policies" has the meaning set forth in Section 4.18.

"Intellectual Property" means any and all proprietary, industrial and intellectual property rights, under the law of any jurisdiction or rights under international treaties, both statutory and common law rights, including: (a) utility models, supplementary protection certificates, patents and applications for same, and extensions, divisionals, continuations, continuations-in-part, reexaminations, and reissues thereof; (b) trademarks, service marks, trade names, slogans, domain names, logos, trade dress and other identifiers of source, and registrations and applications for registrations thereof (including all goodwill associated with the foregoing); (c) copyrights, moral rights, database rights, other rights in works of authorship and registrations and applications for registration of the foregoing; and (d) trade secrets, know-how, and rights in confidential information, including designs, formulations, concepts, ideas, compilations of information, methods, techniques, procedures, and processes, whether or not patentable.

"Intended Tax Treatment" has the meaning set forth in the recitals.

"Intercreditor Agreement" means the Intercreditor Agreement in the form of Exhibit I2 hereto.

"Inventory" means all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories, including frac sand.

"IT Systems" means (a) all computing systems, communications systems and equipment, including any internet, intranet, extranet, e-mail, or voice mail systems and the hardware associated with such systems, used to process, store, maintain, and operate data, information and functions used in the operation of the Business of the Acquired Companies; (b) all Software, the tangible media on which it is recorded (in any form) and all supporting documentation, data and databases; and (c) all peripheral equipment related to the foregoing, including printers, scanners, servers, switches, routers, network equipment, and removable media.

"Labor Laws" has the meaning set forth in Section 4.16(c).

"Law" means any domestic or foreign, federal, state, provincial, or local law (including common law), statute, regulation, rule, code, Orders, ordinance, statutory guidance, or other legally enforceable action or requirement enacted, adopted, or promulgated or enforced by any Governmental Authority having competent jurisdiction over a given matter.

"Leakage Amount" means the aggregate amount of the following (without duplication): (a) to the extent made, incurred or paid by an Acquired Company during the period from (but excluding) the Economic Effective Time until the Closing and, with respect to clause (i) and (ii), other than pursuant to the Pre-Closing Reorganization: (i) the amount of any dividend or distribution by an Acquired Company to any Stockholders or other Equity Holders or any of their respective Affiliates (provided that, for the avoidance of doubt, any accrued dividends that are paid to Stockholders prior to or in connection with the Closing shall not constitute Leakage unless the offsetting cash amount for such payment is included as Cash and Cash Equivalents in the Estimated Cash and Cash Equivalents Amount); (ii) the amount of any payments made by an Acquired Company to any Stockholders or any of their respective Affiliates in respect of any Equity Interests in the Acquired Companies being redeemed or repurchased; (iii) the amount of any payments made by an Acquired Company to any Person that would constitute a Company Transaction Expense if such amount had remained unpaid as of immediately prior to the Closing; (iv) the amount of any payments made or Liability incurred by an Acquired Company to any Excluded Company (or any of its Affiliates) or to a third party on behalf of, or for the benefit of, any Excluded Company (or any of its Affiliates) or any other Excluded Assets; (v) the amount of any payments by an Acquired Company to satisfy any Excluded Liability or any other liability for which Stockholders would have had an indemnification obligation to any Purchaser Indemnitee(s) under this Agreement had such obligation been outstanding as of or after the Closing; (vi) the amount affirmatively waived or released in with respect to any sum, obligation or Liability due to any Acquired Company; provided to the extent the Company has received Parent's prior written approval for such wavier or release than the same shall not constitute Leakage; (vii) the amount of any forgiveness or affirmative waiver of any debt or obligation of, or claim outstanding against, a third party (other than any of Acquired Company), provided to the extent the Company has received Parent's prior written approval for such forgiveness or waiver than the same shall not constitute Leakage; and (viii) any Taxes paid, incurred or accrued after the Economic Effective Time, by any Acquired Company as a result of any of the matters described in the foregoing clauses (i) through (vii) or that are otherwise Taxes of, or attributable to, the Excluded Assets or the Pre-Closing Reorganization; (b) any and all revenues attributable to the Business of the Acquired Companies earned during the period from (but excluding) the Economic Effective Time until the Closing but which were received by any Stockholders(s), any of their respective Affiliates or any Excluded Company (and not remitted to an Acquired Company prior to the Closing); (c) all salaries, wages and other compensation, and the cost of all benefits paid or payable to employees or service providers of the Acquired Companies other than the Business Employees but including the Excluded Employees, in each case for services performed during the period from (but excluding) the Economic Effective Time until the Closing; and (d) any amounts resulting from an agreement by an Acquired Company to do any of the foregoing. Notwithstanding anything to the contrary contained herein, in no event shall such amount include any amounts to the extent taken into account in the calculation of the Acquired Companies Indebtedness Amount, Net Working Capital or the Estimated Bankruptcy Assessment Amount.

"Leased Real Property" means the real property and buildings, structures, and facilities leased, subleased, or licensed to an Acquired Company or which any Acquired Company otherwise has a right or option to use or occupy.

"Leases" means all leases, subleases, royalty agreements, licenses, easements, rights of way or similar agreements, including all amendments, extensions, renewals, and guaranties with respect thereto, pursuant to which an Acquired Company uses or occupies any Leased Real Property.

"Leave Employee" has the meaning set forth in Section 8.4(a).

"Leave Period" has the meaning set forth in Section 8.4(a).

"Legal Proceeding" means any suit, action, cause of action, litigation, hearing, inquiry, examination, demand, proceeding, controversy, grievance, complaint, appeal, notice of violation, citation, summons, subpoena, arbitration, mediation, dispute, claim, charge, allegation, investigation or audit of any nature whether civil, criminal, quasi criminal, indictment, administrative, regulatory or otherwise and whether at law or in equity.

"Letter of Transmittal" has the meaning set forth in Section 2.8(a).

"Liabilities" means any and all debts (including Indebtedness), Losses, liabilities, obligations of any nature, kind, character or description (including those arising out of any demand, assessment, settlement, judgment or compromise relating to any actual or threatened Legal Proceeding), Taxes, costs and expenses (including any reasonable attorneys' fees and expenses incurred in investigating, preparing or defending any Legal Proceeding), whether matured or unmatured, whether known or unknown, whether due or to become due, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, determined or undetermined in amount, and including any of the foregoing arising under, out of or in connection with any Legal Proceeding, Law, Contract, right or other undertaking and regardless of whether any such debts, Losses, liabilities, obligations, duties, guarantees or liabilities would be required to be disclosed on a balance sheet prepared in accordance with GAAP.

"Lien" means any mortgage, pledge, lien, encumbrance, charge, deed of trust, hypothecation, reservation, assignment, claim, condition, equitable interest, preemptive right, lease, tenancy or possessory interest, option, right of first refusal, right of first offer, purchase option, option to lease, easement, right of way, encroachment, proxy, voting trust or agreement, transfer restriction, assessment, covenant, burden, security interest, or other similar encumbrance, whether arising by Contract or under any applicable Law and whether or not filed, recorded, or otherwise perfected or effective under any applicable Law, or any preference, priority or preferential arrangement of any kind or nature whatsoever including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

"Lookback Date" has the meaning set forth in Section 4.1(a).

"Loss" means, with respect to any Person, any direct or indirect damage, liability, obligation, indebtedness, diminution in value, demand, claim, action, cause of action, cost, damage, deficiency, penalty, Tax, responsibility, fine or other loss or expense, of whatever kind or nature, whether or not arising out of a Third-Party Claim,

whether fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, covered or uncovered, known or unknown, absolute or contingent or otherwise, including all interest, penalties, reasonable attorneys' fees and expenses and all amounts paid or incurred in connection with any Legal Proceeding against or affecting such Person or which, if determined adversely to such Person, would give rise to, evidence the existence of, or relate to, any other Loss and the investigation, defense or settlement of any of the foregoing; *provided* that in no event shall Losses include (a) punitive or exemplary damages, (b) special, incidental or consequential damages, or (c) damages based on lost profits or diminution in value or a multiple method of valuation, unless and solely to the extent such Losses are (x) reasonably foreseeable (in the case of clauses (b) and (c) only) or (y) owed by a Party in respect of a Third-Party Claim as to which such Party is entitled to indemnification hereunder. For clarity, this definition is not intended and shall not be used in relation to or in respect of any breach of a representation or warranty in this Agreement.

"Material Adverse Effect" means, with respect to any Person, a change, event, condition, circumstance, fact, effect, occurrence or development (any such item, an "Effect"), the effect of which, individually or in the aggregate, is materially adverse to the results of operations or financial condition of such Person (and its Subsidiaries, if applicable, taken as a whole); *provided*, *however*, that Material Adverse Effect shall not include any change, event, or development resulting from, relating to, or arising out of: (a) general business or economic conditions, including changes in (i) financial or credit market conditions anywhere in the world or (ii) interest rates or currency exchange rates; (b) conditions generally affecting any of the industries in which any Acquired Company operates; (c) acts of God or other calamities, natural disasters, earthquakes, hurricanes, floods, tornadoes, typhoons, storms, adverse weather conditions, fires, epidemics, disease outbreak, or pandemics (including, for the avoidance of doubt, any Effect arising in connection with or resulting from, directly or indirectly, the COVID-19 virus or SARS-CoV-2 virus (or any mutation or variation thereof or related health condition)), public health emergencies, widespread occurrences of infectious diseases, or other acts of nature, calamities, or any other extraordinary or unusual event that is outside of the control of such Person or any of its Affiliates, national or international political or social actions or conditions, including the outcome of any election or the engagement by any country or foreign organization in hostilities (or the escalation thereof), whether commenced before or after the date hereof, and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) changes in Law or accounting rules (including GAAP) or interpretations thereof; (e) failure to meet sales, earnings, budgets, plans, forecasts, or other financial or non-financial projections or estimates, *provided* that (if not otherwise excluded) the underlying cause of the failure to meet such forecasts or projections can be considered in determining if a Material Adverse Effect has occurred; (f) the execution, announcement, performance, or pendency of, or the taking of any action contemplated by, or other third-party awareness of, this Agreement or the agreements or the Acquisition, including any communication by Purchaser or any of its Affiliates regarding its plans or intentions with respect to the Acquired Companies; (g) any adverse change that is fully covered by insurance, *provided* that any adverse change that is not fully covered by insurance shall be excluded only to the extent actually covered and paid for by insurance; (h) any action taken (or omitted to be taken) by Purchaser or its Subsidiaries pursuant to this Agreement; or (i) any event, occurrence, or development related to any matter described on the Disclosure Schedules; except in the case of clauses (a), (b), (c), and (d) to the extent such Person is materially and disproportionately adversely affected thereby as compared to other companies in the industries in which such Person operates.

"Material Contracts" has the meaning set forth in Section 4.13(a).

"Material Permits" has the meaning set forth in Section 4.8.

"Merger Consideration Adjustments" has the meaning set forth in Section 2.5(f).

"Merger Sub 1" has the meaning set forth in the preamble.

"Merger Sub 2" has the meaning set forth in the preamble.

"Mergers" has the meaning set forth in the recitals.

"Moelis" has the meaning set forth in Section 1.2(a).

"Multiemployer Plan" has the meaning set forth in ERISA § 4001(a)(3).

"Net Working Capital" means with respect to the Acquired Companies: (a) the combined current assets of the Acquired Companies, including accounts receivable, inventory, prepaid expenses and other current assets *minus* (b) the combined current liabilities of the Acquired Companies, including accounts payable and accrued and other current liabilities; *provided*, *however*, the calculation thereof shall (i) exclude all (A) Cash and Cash Equivalents, (B) Acquired Companies Indebtedness Amount, (C) capital expenditures in accounts payable and accrued expenses, (D) employee bonuses and paid time off accruals incurred in the Ordinary Course of Business, (E) Estimated Bankruptcy Assessment Amount (or any accruals in respect thereto), (F) Tax assets (except and solely to the extent of any non-income Tax assets that are not attributable to the Excluded Assets and available to offset, under applicable Tax Law, Tax Liabilities included in Net Working Capital; provided that in no event shall any deferred Tax asset be taken into account), (G) deferred Tax Liabilities, (H) any Customer Prepayment Amount, and unpaid or accrued Company Transaction Expenses and (ii) be determined as of the Economic Effective Time in conformity with GAAP. Schedule 1.1(a) sets forth a sample calculation of Net Working Capital as of the date set forth on such Schedule.

"Objection Period" has the meaning set forth in Section 2.7(b).

"Offer Employees" has the meaning set forth in Section 8.4(a).

"Ongoing Claims" has the meaning set forth in Section 4.18.

"Open Source Software" has the meaning set forth in Section 4.12(d).

"Order" means, whether preliminary or final, any order, determination, judgment, injunction, award, ruling, stipulation, decree, or writ adopted or imposed by, including any consent decree, arbitration award, settlement agreement, or similar written agreement with, any Governmental Authority.

"Ordinary Course of Business" means in the ordinary course of business.

"Outstanding Bankruptcy Claim" has the meaning ascribed thereto in Schedule 1.1(k).

"Owned Real Property" means all real property owned by any Acquired Company, together with all structures, facilities, fixtures, systems, improvements and items of property previously or hereafter located thereon, or attached or appurtenant thereto, and all easements, rights and appurtenances relating to the foregoing.

"Parent" has the meaning set forth in the preamble above.

"Parent Common Stock" means the common stock, par value $0.01 per share, of Parent.

"Parent Guaranty" means that certain Parent Guaranty Agreement in the form of Exhibit I4 hereto to be executed by Parent in favor of Agent (as defined therein) for the benefit of the Noteholders (as defined therein) on the Closing Date.

"Parent SEC Documents" has the meaning set forth in Section 6.5(a).

"Party" or "Parties" has the meaning set forth in the preamble.

"Paying Agent" means Equiniti Trust Company, LLC, a New York limited liability trust company.

"Paying Agent Agreement" has the meaning set forth in Section 3.1(a)(xiii).

"Payoff Documentation" means, collectively, the Payoff Letters and all termination and release documentation necessary or reasonably requested by Purchaser to provide for the repayment of all Indebtedness for borrowed money of the Acquired Companies as of the Closing, the termination of any related commitments to extend credit, the termination (or novation) of any related hedging arrangements and the release of all Liens securing the Indebtedness of the Acquired Companies as of the Closing, which shall be in form and substance reasonably satisfactory to Purchaser, including UCC termination statements, deed of trust and mortgage releases, intellectual property terminations, account control agreement terminations and any other termination statements or notices.

"Payoff Letters" means the payoff letters executed by the applicable lenders or other obligees (or their agent) of the outstanding Indebtedness for borrowed money of the Acquired Companies as of the Closing, which payoff letters shall, (i) indicate the payoff amount for such Indebtedness along with any applicable per diem to be paid at the Closing, (ii) provide wire instructions for payment of the applicable Indebtedness, (iii) upon payment of a specified amount or cancellation thereof, and, if applicable, the cash collateralization, novation, backstopping or other satisfaction of letters of credit or other contingent amounts, provide for the full and automatic release and termination of all Liens securing all obligations (other than contingent obligations as to which no claim has been asserted) of the Acquired Companies with respect to such Indebtedness and of all guarantees and security interests supporting such Indebtedness and the authorization of the Acquired Companies or their designee to file all applicable UCC termination statements and other release documents necessary or advisable to evidence such release and termination, and (iv) otherwise be in form and substance reasonably satisfactory to Purchaser.

"Per Share Adjustment Distribution" shall be determined by *dividing* (a) an amount equal to (i) the amount of any portion of the Adjustment Holdback Amount, if any, *plus* (ii) the amount of the Adjustment Amount, if any, in each case, distributed to the Paying Agent for further payment to the Stockholders in accordance with Section 2.7(d) *by* (b) the Fully Diluted Share Amount.

"Per Share Closing Adjusted Merger Consideration" shall be determined by *dividing* (a) an amount equal to the Closing Adjusted Merger Consideration *by* (b) the Fully Diluted Share Amount.

"Per Share Stockholders' Representative Expense Fund" shall be determined by *dividing* (a) an amount equal to the aggregate remaining Stockholders' Representative Expense Fund to be distributed to the Stockholders under Section 14.16(c) *by* (b) the Fully Diluted Share Amount.

"Per Share Total Consideration" has the meaning set forth in Section 2.4(a).

"Permitted Liens" means each of the following: (a) Liens incurred or deposits made in the Ordinary Course of Business that are for workers' compensation, unemployment insurance, and other types of social security or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government Contracts, performance and return of money bonds, and similar obligations and, in each case, for which adequate reserves have been established in accordance with GAAP; (b) mechanics', carriers', workers', repairers', materialmen's, warehousemen's, and other similar Liens which have arisen in the Ordinary Course of Business to the extent securing amounts not yet delinquent or the amount of which is being contested in good faith and which contests are set forth on Schedule 1.1(b) and, in each case, for which adequate reserves have been established in accordance with GAAP; (c) Liens approved by Purchaser in its sole discretion; (d) Liens for (i) Taxes not yet delinquent or (ii) Taxes that are being contested in good faith and which such contests are set forth on Schedule 1.1(b) and for which adequate reserves have been established on the Financial Statements in accordance with GAAP; (e) requirements and restrictions of zoning, building, rights of way and other Laws, rules, and regulations that do not, individually or in the aggregate, have a Material Adverse Effect on the value of the property to which they relate or the ability of the Acquired Company to conduct business thereon as currently conducted; (f) statutory or contractual liens of landlords for amounts not yet delinquent and, in each case, for which adequate reserves have been established in accordance with GAAP; and (g) Liens arising under conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business and, in each case, for which adequate reserves have been established in accordance with GAAP.

"Person" means an individual, a sole proprietorship, a partnership, including a limited partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, estate, trust, any other entity, or any Governmental Authority.

"Personal Information" means, in addition to any definition for any similar term (*e.g.*, "personally identifiable information" or "PII") provided by applicable Law, all information that is reasonably capable of, directly or indirectly, identifying an individual person or household.

"Personal Property Assets" has the meaning set forth in Section 4.11.

"Philadelphia Surety Bond" means Commercial Collateral Receipt and Agreement, dated October 4, 2021, among Hi-Crush Inc., Hi-Crush Wyeville Operating LLC, Hi-Crush Augusta LLC and Hi-Crush Blair LLC, in favor Philadelphia Insurance Company and/or Philadelphia Indemnity Insurance Company, along with the accompanying General Indemnity Agreement Commercial Surety.

"Pre-Closing Period" has the meaning set forth in Section 7.1(a).

"Pre-Closing Reorganization" has the meaning set forth in Section 2.1(a).

"Pre-Closing Reorganization Agreements" has the meaning set forth in Section 2.1(a).

"Pro Rata Share" means, for any particular Stockholder, the fraction having a numerator equal to the aggregate number of shares of Company Stock, including any Company Restricted Shares that have or will have vested as of immediately prior to the Initial Effective Time, and the number of Equity Interests of the Company otherwise

issued and outstanding or convertible into by right or Contract, in each case, held by such Stockholder immediately prior to the Initial Effective Time, and having a denominator equal to the Fully Diluted Share Amount.

"Purchaser" has the meaning set forth in the preamble.

"Purchaser Closing Statement" has the meaning set forth in Section 2.7(a).

"Purchaser Indemnitee" has the meaning set forth in Section 11.2(a).

"Real Property" means, collectively, the Leased Real Property, the Owned Real Property, and any easement, right-of-way, license, or other similar interests in real property currently owned by the Company or any Acquired Company.

"Records Period" has the meaning set forth in Section 7.5(b).

"Registration Rights and Lock-Up Agreement" has the meaning set forth in Section 3.1(a)(x).

"Release" means any release, spill, emission, leaking, pumping, emitting, depositing, discharging, injecting, escaping, leaching, dispersing, dumping, pouring, migrating or disposing into, onto or through the environment.

"RemainCo" has the meaning set forth in the preamble.

"Reorganization Tax Contest" has the meaning set forth in Section 12.1(b)(ii).

"Required Parent Financial Statements" has the meaning set forth in Section 7.5(b)(i).

"Restricted Cash" means all cash and cash equivalents (a) not freely usable because it is subject to restrictions or limitations on use or distribution by any Acquired Company by any Laws or Contract (including any cash on deposit with Persons other than an Acquired Company) or (b) consisting of cash collateral supporting performance or surety bonds issued for the account of any Acquired Company or undrawn direct pay letters of credit and bankers' acceptances or standby letters of credit.

"Restrictive Covenant Agreements" means those certain Restrictive Covenant Agreements, in the form of Exhibit C, dated the date of this Agreement by and among Purchaser and each of persons set forth on Schedule 1.1(c).

"Review Period" has the meaning set forth in Section 2.7(a).

"Revised Closing Adjusted Merger Consideration" has the meaning set forth in Section 2.7(b).

"RWI Fees" has the meaning set forth in Section 8.2.

"RWI Policy" has the meaning set forth in Section 8.2.

"Scheduled Intellectual Property" has the meaning set forth in Section 4.12(a).

"Securities Act" has the meaning set forth in Section 5.9(a).

"Software" means all computer programs, applications, middleware, firmware, or other computer software (in object code, bytecode or source code format) and related documentation and materials.

"Specified Environmental Liabilities" means those Environmental Liabilities of the Acquired Companies, whether arising before, on, or after the Closing Date, relating to or arising from the matters set forth on Schedule 1.1(i).

"Stockholder" or "Stockholders" means each record holder of Company Stock as of the date of this Agreement, and including any holder Company Restricted Shares that have or will have vested as of immediately prior to the Initial Effective Time.

"Stockholder Group" means the Acquired Companies (prior to the Closing), the Stockholders and any of their respective Affiliates, and any of their respective Agents, successors, and assigns.

"Stockholder Indemnitee" has the meaning set forth in Section 11.2(c).

"Stockholder Member" has the meaning set forth in Section 14.15(a).

"Stockholder Parties" has the meaning set forth in Section 10.1.

"Stockholder Share RWI Fees" has the meaning set forth in Section 8.2.

"Stockholder's Closing Adjusted Consideration" has the meaning set forth in Section 2.6(b).

"Stockholders Agreement" means that certain agreement, dated as of October 9, 2020, by and among the Company and the various stockholders who are parties thereto and to which it otherwise applies.

"Stockholders' Representative" means Clearlake Capital Partners V Finance, L.P., or, if applicable, any successor thereto appointed in accordance with Section 14.16.

"Stockholders' Representative Expense Account" means the account maintained by the Stockholders' Representative into which the Stockholders' Representative Expense Fund shall be deposited as described in Section 14.16(c).

"Stockholders' Representative Expense Fund" means $50,000.

"Straddle Tax Period" means any Tax period beginning at or before and ending after the Economic Effective Time.

"Subsequent Certificate of Merger" has the meaning set forth in Section 2.1(c).

"Subsequent Effective Time" has the meaning set forth in Section 2.1(c).

"Subsequent Merger" has the meaning set forth in the recitals.

"Subsequent Survivor" has the meaning set forth in the recitals.

"Subsidiary" means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at any time directly or indirectly owned by such Person.

"Surviving Corporation" has the meaning set forth in the recitals.

"Target Net Working Capital Amount" means $53,381,105.

"Tax" means (a) any taxes, assessments or other similar governmental charges in the nature of a tax imposed by any Governmental Authority, including all income, profits, gross receipts, net proceeds, alternative or add on minimum, ad valorem, value added, turnover, sales, use, property, personal property (tangible and intangible), environmental, stamp, leasing, lease, user, excise, duty, franchise, capital stock, transfer, registration, license, withholding, social security (or similar), unemployment, disability, payroll, employment, social contributions, fuel, excess profits, occupational, premium, windfall profit, severance, estimated, or other taxes of any kind whatsoever, including, to the extent imposed by a Governmental Authority, any interest, penalty, or addition thereto or in respect of the filing or failure to file a Tax Return, in each case whether disputed or not; (b) any liability for the payment of any amounts of the type described in clause (a) as a result of being a member of an affiliated, combined, consolidated, unitary or similar group for any period; and (c) any liability for the payment of any amounts of the type described in clause (a) or (b) as a result of the operation of Law or any express or implied obligation to indemnify any other Person.

"Tax Proceeding" has the meaning set forth in Section 12.1(b)(i).

"Tax Return" means any return, declaration, report, claim for refund, statement or other information return or statement filed or required to be filed with any Taxing Authority with respect to Taxes (and including, for the avoidance of doubt, a Report of Foreign Bank and Financial Accounts, FinCen Form 114), including any schedule or attachment thereto and any amendment thereof.

"Taxing Authority" means any agency or political subdivision of any non-U.S., federal, state, local, or municipal Governmental Authority responsible for the administration, imposition or collection of any Tax.

"Third-Party Claim" has the meaning set forth in Section 11.3(a).

"Top Customers" has the meaning set forth in Section 4.26(b).

"Top Suppliers" has the meaning set forth in Section 4.26(a).

"Trading Day" means a day on which New York Stock Exchange is open for trading.

"Transfer Date" has the meaning set forth in Section 8.4(a).

"Transfer Period" has the meaning set forth in Section 8.4(a).

"Transfer Taxes" has the meaning set forth in Section 12.1(a).

"Transferred Employee" has the meaning set forth in Section 8.4(a).

"Transition Services Agreement" has the meaning set forth in Section 3.1(a)(xi).

"Treasury Regulations" means the final or temporary regulations promulgated by the United States Department of Treasury under the Code.

"Unaudited Financial Statements" has the meaning set forth in Section 4.5(a).

"Volume Shortfall Adjustment Amount" shall have the meaning set forth on Schedule 1.1(j).

"Voting Security Holders" has the meaning set forth in Section 7.2.

"Waived 280G Benefits" has the meaning set forth in Section 7.2.

"Written Consent" has the meaning set forth in the recitals.

1.2 Interpretation.

(a) Unless otherwise expressly provided or unless the context requires otherwise: (i) all references in this Agreement to Articles, Annexes, Sections, Schedules, and Exhibits shall mean and refer to Articles, Sections, Schedules, and Exhibits of this Agreement; (ii) all references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations; (iii) words using the singular or plural number also shall include the plural or singular

number, respectively; (iv) references to "hereof," "herein," "hereby," and similar terms shall refer to this entire Agreement (including the Schedules, Annexes and Exhibits hereto); (v) references to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of a Governmental Authority, Persons succeeding to the relevant functions of such Person); (vi) the term "including," "includes," "included," and words of similar import shall be deemed to mean "including, without limitation;" (vii) words of any gender shall include each other gender; (viii) whenever this Agreement refers to a number of days, such number shall refer to calendar days, unless such reference is specifically to "Business Days;" (ix) if any day on which a period specified in this Agreement would otherwise terminate falls on a weekend or a federal holiday, such time period shall automatically be extended to the next Business Day; (x) the terms "year" and "years" mean and refer to calendar year(s); (xi) the term "dollars" and all uses of "$" shall mean United States dollars, and references in this Agreement to dollar amount thresholds or baskets shall not be deemed to be evidence of materiality; (xii) references to the Acquired Companies as of a particular date shall include only the Company and such Acquired Companies that were owned by the Company (directly or indirectly) as of such date; (xiii) the term "or" has the inclusive meaning represented by the phrase "and/or"; and (xiv) the words "made available to Purchaser," "furnished to Purchaser," or "supplied to Purchaser" (or any phrase of similar import) shall mean uploaded to the online data sites set forth on Schedule 1.1(g). When calculating the period of time prior to which, within which or after which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(b) The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement. The Parties agree that this Agreement is the product of negotiations and mutual drafting efforts among the Parties, each of which was represented by competent legal counsel, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement or any of its provisions under any circumstances and are expressly, intentionally and irrevocably waived by each Party. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

ARTICLE II

THE MERGERS

2.1 Pre-Closing Reorganization; The Mergers.

(a) Promptly after the date hereof (and in any event no later than two (2) Business Days prior to Closing), the Company shall cause the transactions described in Exhibit A in the form of Contribution and Distribution Agreement attached as Exhibit A (collectively, the "Pre-Closing Reorganization") to be consummated by the preparation, execution, delivery and, where appropriate, filing of such agreements and documents attached as Exhibit A or as are necessary to complete the Pre-Closing Reorganization (such documents, the "Pre-Closing Reorganization Agreements").

(b) Subject to the satisfaction of the terms and conditions set forth in this Agreement and the applicable provisions of the DGCL and the DLLCA, as applicable, (i) at the Initial Effective Time, Merger Sub 1 shall be merged with and into the Company, whereby the separate corporate existence of Merger Sub 1 shall cease and the Company shall continue as the Surviving Corporation and wholly owned Subsidiary of Purchaser, and (ii) at the Subsequent Effective Time, the Surviving Corporation shall be merged with and into Merger Sub 2, whereby the separate corporate existence of the Surviving Corporation shall cease and Merger Sub 2 shall continue as the Subsequent Survivor and wholly owned Subsidiary of Purchaser. At the Initial Effective Time, all of the rights, privileges and powers of the Company (for clarity, after consummation of the Pre-Closing Reorganization) will vest in, and, subject to the terms of this Agreement, all of the debts, liabilities, and duties of the Company will become the debts, liabilities and duties of, the Surviving Corporation, as provided for under the DGCL, and at the Subsequent Effective Time, all of the rights, privileges and powers of the Surviving Corporation will vest in, and all of the debts, liabilities, and duties of the Surviving Corporation will become the debts, liabilities and duties of, the Subsequent Survivor, as provided for under the DGCL and the DLLCA.

(c) The closing of the Mergers (the "Closing") shall take place remotely by exchange of documents and signatures (or their electronic counterparts) at 10:00 a.m. Central Standard Time on March 5, 2024; *provided* that if all conditions set forth in Article IX have not been satisfied or waived by the applicable Party as of such time, then the Closing shall occur on the date thereafter that is two Business Days following the satisfaction or waiver of all of the conditions set forth in Article IX, or at such other time or date as Parent and the Company may mutually agree. Subject to the provisions of this Agreement, as soon as reasonably practicable on the Closing Date, (i) a certificate of merger to effect the Initial Merger and satisfying the applicable requirements of the DGCL, in the form set forth on Exhibit J (the "Initial Certificate of Merger") shall be duly executed by the Company and filed with the Secretary of State of the State of Delaware and shall become effective upon the date and time of the filing of the Initial Certificate of Merger with the Secretary of State of the State of Delaware or such later date and time as may be specified therein (the "Initial Effective Time"), and (ii) immediately thereafter, a certificate of merger to effect the Subsequent Merger and satisfying the applicable requirements of the DGCL and the DLLCA (the "Subsequent Certificate of Merger") shall be duly executed by Merger Sub 2 and filed with the Secretary of State of the State of Delaware and shall become effective upon the date and time of the filing of the Subsequent Certificate of Merger with the Secretary of State of the State of Delaware or such later date and time as may be specified therein (the "Subsequent Effective Time"). The date upon which the Closing occurs is referred to herein as the "Closing Date".

2.2 Certificate of Formation and Limited Liability Company Agreement of the Surviving Corporation and Subsequent Survivor. At the Initial Effective Time, by virtue of the Initial Merger and without any action on the part of Purchaser or Merger Sub 1, (i) the certificate of incorporation of the Company, as amended and restated at the Initial Effective Time to read in its entirety as set forth on Exhibit K, attached hereto, shall be the certificate of incorporation of the Surviving Corporation, until duly amended or repealed as provided therein and by applicable Law and (ii) the bylaws of the Company, as amended and restated at the Initial Effective Time to read in their entirety as set forth on Exhibit L, attached hereto, shall be the bylaws of the Surviving Corporation, until duly amended or repealed in accordance with the provisions of the certificate of incorporation of the Surviving Corporation and by applicable Law. At the Subsequent Effective Time, (a) the certificate of formation of Merger Sub 2, as in effect immediately prior to the Subsequent Effective Time, shall be the certificate of formation of the Subsequent Survivor until duly amended or repealed as provided therein and by applicable Law and (b) the limited liability company agreement of Merger Sub 2, as in effect immediately prior to the Subsequent Effective Time, shall be the limited liability company agreement of the Subsequent Survivor until duly amended or terminated as provided therein and by applicable Law.

2.3 Directors, Managers and Officers of the Surviving Corporation and Subsequent Survivor. The directors of Merger Sub 1, from and after the Initial Effective Time, shall be as elected by Purchaser upon the consummation of the Initial Merger until their successors are duly elected and qualified or until their earlier death, resignation or removal in accordance with the DGCL and the Governing Documents of the Surviving Corporation. There shall be no officers of the Surviving Corporation from and after the Initial Effective Time until any officers are appointed in accordance with the DGCL and the Governing Documents of the Surviving Corporation. The managing member and the officers of the Subsequent Survivor, from and after the Subsequent Effective Time, shall be as set forth in the Governing Documents of the Subsequent Survivor until their successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the DLLCA and of the Governing Documents of the Subsequent Survivor.

2.4 Treatment of Company Stock; Company Restricted Shares.

(a) At the Initial Effective Time, each share of Company Stock outstanding immediately prior to the Initial Effective Time (excluding Cancelled Shares and Dissenting Shares) shall be cancelled and converted into the right to receive (subject to the terms hereof) each of the (i) Per Share Closing Adjusted Merger Consideration, *plus* (ii) the Per Share Adjustment Distribution, if any, *plus* (iii) the Per Share Stockholders' Representative Expense Fund, if any (together, the "Per Share Total Consideration").

(b) At the Initial Effective Time, each share of Company Stock that is owned by the Company ("Cancelled Shares") shall be cancelled and retired and shall cease to exist and no portion of the Closing Adjusted Merger Consideration or any other consideration shall be delivered in exchange therefor.

(c) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Stock outstanding immediately prior to the Initial Effective Time and with respect to which the holder (including beneficial owners and record holders) thereof has properly demanded appraisal rights in accordance with Section 262 of the DGCL, and who has not effectively withdrawn or lost such holder's appraisal rights under the DGCL (collectively, the "Dissenting Shares"), shall not be converted into or represent a right to receive the Per Share Total Consideration allocable to such shares of Company Stock, but instead shall only be entitled to such rights as are provided by the DGCL. Notwithstanding the foregoing, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under the DGCL, then, as of the later of the Initial Effective Time and the occurrence of such event, such Stockholder's shares shall automatically be converted into and represent only the right to receive upon the terms set forth in this Section 2.4(c) and throughout this Agreement (including the indemnification provisions of this Agreement), the consideration for Company Stock set forth in Section 2.4(a), without interest thereon.

(d) Any Company Restricted Shares that have vested prior to the Initial Effective Time or will become vested in connection with the Closing, in each case, shall be treated as unrestricted Company Stock at the Initial Effective Time and such holders shall be treated as Stockholders for all purposes of this Agreement and shall receive the Per Share Total Consideration allocable to such Company Restricted Share as set forth on Exhibit E attached hereto. Any Company Restricted Shares that remain unvested as of the Initial Effective Time shall, as of the Initial Effective Time, be forfeited automatically, without any further action on the part of any holder thereof, for no consideration.

2.5 Merger Consideration

. Subject to the terms and conditions of this Agreement, the aggregate merger consideration to be paid by Purchaser as set forth in Section 3.1(c) shall be an amount equal to the Base Merger Consideration, adjusted as follows:

(a) *plus* the Estimated Cash and Cash Equivalents Amount;

(b) *minus* the Estimated Acquired Companies Indebtedness Amount;

(c) *plus* the Estimated Net Working Capital Adjustment;

(d) *minus* the Estimated Company Transaction Expenses Amount;

(e) *minus* the Estimated Leakage Amount (the amounts described in clauses (a) through (e), the "Merger Consideration Adjustments");

(f) *plus* any amounts paid by the Company prior to Closing in connection with the purchase of any "tail" policies pursuant to Section 12.2(b);

(g) *minus* the Estimated Bankruptcy Assessment Amount;

(h) *minus* the Adjustment Holdback Amount; and

(i) *minus* the Stockholders' Representative's Expense Fund (the Base Merger Consideration so adjusted by the foregoing calculations, the "Closing Adjusted Merger Consideration").

For clarity, each of the Estimated Cash and Cash Equivalents Amount, Estimated Net Working Capital Adjustment, and Estimated Acquired Companies Indebtedness Amount (and the corresponding calculations thereof pursuant to Section 2.7) shall be calculated based only on those items in such defined terms attributable to the Acquired Companies after giving effect to the Pre-Closing Reorganization.

2.6 Closing Statement and Consideration Statement.

(a) At least two (2) Business Days prior to the Closing Date, the Stockholders' Representative shall deliver to Purchaser for its review and comment the statement, the form of which is attached to this Agreement as Exhibit E, setting forth a good faith estimate of the Closing Adjusted Merger Consideration and the calculation thereof (including reasonable detail of the calculation of the Merger Consideration Adjustments), the Estimated Customer Prepayment Amount, the Estimated Volume Shortfall Adjustment Amount and, in the case of the calculation of Net Working Capital, using the same line items in, and using the same accounting methodology as, the example calculation set forth on Schedule 1.1(a) (the "Initial Closing Statement").

(b) At least two Business Days prior to the Closing Date, the Stockholders' Representative shall deliver to Purchaser and the Paying Agent, in each case for review and comment, a statement in the form attached to this Agreement as Exhibit E setting forth (i) the name and mailing address of each Stockholder; (ii) the number and class of the Company Stock held or owned by each Stockholder, in each case as of immediately prior to the Closing; (iii) the number of Company Restricted Shares held or owned by each holder thereof that have vested or will vest at the Closing; (iv) the Fully Diluted Share Amount; (v) each Stockholder's Pro Rata Share; (vi) the calculation of the Per Share Closing Adjusted Merger Consideration; (vii) the amount of the Closing Adjusted Merger Consideration payable to each Stockholder, determined by *multiplying* (x) the Closing Adjusted Merger Consideration by (y) the Pro Rata Share for such Stockholder (with respect to each Stockholder, a "Stockholder's Closing Adjusted Consideration"); and (viii) for each Stockholder, the amount of the Stockholder's Closing Adjusted Consideration to be satisfied by (A) payment of the Closing Cash Consideration, (B) allocation of the principal amount of the Deferred Cash Consideration Note and (C) the issuance of the Closing Shares (including the number of Closing Shares), (such statement setting forth (i) through (viii), the "Consideration Statement"). The Consideration Statement shall also set forth the number of Closing Shares to be issued to each Distribution Participation Award Holder in connection with the settlement of the Distribution Participation Awards. Purchaser, the Paying Agent and, following the Closing, the Company shall be entitled to rely on the Consideration Statement. The Paying Agent shall be responsible for the distribution of all amounts delivered by Purchaser to the Paying Agent in accordance with the Consideration Statement.

2.7 Merger Consideration Adjustments.

(a) Parent shall, no later than 5:00 p.m. Central Standard Time on the date that is the later of: (i) 75 days after Closing and (ii) 30 days after the date that the Required Parent Financial Statements have been provided to Parent (the "Review Period"), prepare a revised closing statement setting forth a good faith estimate of the Closing Adjusted Merger Consideration and the calculation thereof, including reasonable detail of the calculation of the Merger Consideration Adjustments and the Customer Prepayment Amount and Volume Shortfall Adjustment Amount, and in the case of the calculation of Net Working Capital, using the same line items in, and using the same accounting methodology as applied by the Acquired Companies on a historical basis, the example calculation set forth on Schedule 1.1(a) (the "Purchaser Closing Statement" and together with the Initial Closing Statement, the "Closing Statements") and deliver such Purchaser Closing Statement to the Stockholders' Representative.

(b) If the Purchaser Closing Statement delivered by Purchaser to the Stockholders' Representative in accordance withSection 2.7(a) contains any adjustments to the Closing Adjusted Merger Consideration, and any adjustment to the Customer Prepayment Amount or the Volume Shortfall Adjustment Amount, then Purchaser and the Stockholders' Representative shall use their commercially reasonable efforts to agree on the calculation of the Closing Adjusted Merger Consideration (as may be revised by mutual agreement, the "Revised Closing Adjusted Merger Consideration") and Customer Prepayment Amount (as may be revised by mutual agreement, the "Revised Customer Prepayment Amount") and the Volume Shortfall Adjustment Amount (as may be revised by mutual agreement, the "Revised Volume Shortfall Adjustment Amount"), within forty-five (45) days following receipt by the Stockholders' Representative of the Purchaser Closing Statement (the "Objection Period"). Any such discussions between the Stockholders' Representative and Purchaser shall not be communicated to the Independent Accountant by either such Person, shall be subject to Federal Rule of Evidence 408 and shall be deemed not discoverable by any Person in any Legal Proceeding.

(c) If Purchaser and the Stockholders' Representative are unable to reach an agreement as to such amounts and adjustments within such Objection Period, then at any time thereafter, either Purchaser or the Stockholders' Representative may submit all such unagreed matters (by providing written notice thereof to the other) to Grant Thornton LLP or if Grant Thornton LLP is unwilling or unable to serve in such capacity, to such other independent accounting firm agreed to by Purchaser and the Stockholders' Representative (such accounting firm, the "Independent Accountant"), who shall, as an expert and not as an arbitrator, resolve the matters still in dispute by adjusting the Closing Adjusted Merger Consideration and the components of such calculation contained in the Closing Statements (such amount as adjusted by the Independent Accountant, the "Final Closing Adjusted Merger Consideration") or the Customer Prepayment Amount (such amount as adjusted by the Independent Accountant, the "Final Customer Prepayment Amount") or the Volume Shortfall Adjustment Amount (such amount as adjusted by the Independent Accountant, the "Final Volume Shortfall Adjustment Amount"), to reflect such resolution; *provided*, *however*, that the Independent Accountant may not make any adjustments thereto that are larger or smaller in magnitude than those requested by Purchaser or the Stockholders' Representative. The Parties shall use commercially reasonable efforts to cause the Independent Accountant to make such determination within forty-five (45) days following the submission of the matter to the Independent Accountant for resolution, and such determination shall, absent manifest clerical error or fraud, be final and binding upon the Parties and may be entered and enforced in any court having competent jurisdiction. Each Party agrees that it shall not have any right to, and shall not, institute a Legal Proceeding of any kind challenging such determination or with respect to the matters that are the subject of this Section 2.7(c), except that the foregoing shall not preclude a Legal Proceeding to enforce such determination. If any dispute is submitted to the Independent Accountant as provided in this Section 2.7(c), the fees, costs, charges and expenses of the Independent Accountant shall be paid one-half by Purchaser and one-half by the Stockholders' Representative (with the latter payment to come from the Stockholders' Representative's Expense Fund).

(d) The extent to which the Revised Closing Adjusted Merger Consideration or the Final Closing Adjusted Merger Consideration, as applicable, is greater (a positive difference) or less than (a negative difference) the Closing Adjusted Merger Consideration shall be the "Adjustment Amount" and such amount shall be settled in cash.

(i) If the Adjustment Amount is a negative difference and less in absolute value than the Adjustment Holdback Amount, within five Business Days after the determination of the Adjustment Amount, Purchaser shall, by wire transfer of immediately available funds, pay to the Paying Agent, for further payment to the Stockholders, an amount equal to the difference between (A) the Adjustment Holdback Amount *minus* (B) the Adjustment Amount, if such resulting amount is greater than zero, to be allocated based on each Stockholder's Pro Rata Share set forth in the Consideration Statement. For clarity, if this subsection applies, Purchaser shall be entitled to retain any portion of the Adjustment Holdback Amount in excess of the Adjustment Amount (if any) and no Stockholder shall have any right therefor or in respect thereof.

(ii) If the Adjustment Amount is a negative difference and greater in absolute value than the Adjustment Holdback Amount, then Purchaser shall be entitled to retain the entire Adjustment Holdback Amount and, within five Business Days after the determination of the Adjustment Amount, RemainCo shall, by wire transfer of immediately available funds, pay to Purchaser (to an account designated by Purchaser in writing to the Stockholders' Representative) an amount equal to the difference between (A) the Adjustment Amount *minus* (B) the Adjustment Holdback Amount.

(iii) If the Adjustment Amount is a positive difference, then within five (5) Business Days after the determination of the Adjustment Amount, Purchaser shall, by wire transfer of immediately available funds, pay to the Paying Agent, for further payment to the Stockholders, an amount equal to the *sum of* (A) the Adjustment Amount and (B) the Adjustment Holdback Amount, to be allocated based on each Stockholder's Pro Rata Share set forth in the Consideration Statement.

(iv) If the Adjustment Amount is equal to zero, Purchaser shall, by wire transfer of immediately available funds, pay to the Paying Agent, for further payment to the Stockholders, an amount equal to the Adjustment Holdback Amount, to be allocated based on each Stockholder's Pro Rata Share set forth in the Consideration Statement.

(e) Notwithstanding anything to the contrary in this Agreement, the Parties agree that any Adjustment Amount shall, to the maximum extent permitted by applicable Law, be treated as an adjustment to the Closing Adjusted Merger Consideration for all U.S. federal income and applicable state, local and non-U.S. Tax purposes.

(f) Notwithstanding the foregoing, in lieu of the cash settlement described above, any difference between (i) the Estimated Customer Prepayment Amount and the Revised Customer Prepayment Amount or Final Customer Prepayment Amount, as applicable, or (ii) the Estimated Volume Shortfall Adjustment Amount and the Revised Volume Shortfall Adjustment Amount or the Final Volume Shortfall Adjustment Amount, as applicable, in each case as finally determined pursuant to this Section 2.7, shall be settled by adjustment to the principal amount under the Deferred Cash Consideration Note in accordance with the terms thereof and without further action of the Stockholders, the Stockholders' Representative or Purchaser.

2.8 Exchange Procedures.

(a) Within three Business Days after the Execution Date, the Company shall deliver, or cause the Paying Agent to deliver, to each Stockholder, (i) a letter of transmittal in the form attached hereto as Exhibit F1 (a "Letter of Transmittal"), (ii) a questionnaire regarding such Stockholders' status as an Accredited Investor in the form attached hereto as Exhibit F2 (the "Accredited Investor Questionnaire") and (iii) instructions for effecting the surrender of each share of Company Stock in exchange for the rights to receive the Per Share Total Consideration.

(b) With respect to any Stockholder failing to deliver a Letter of Transmittal, or any other reasonably required accompanying documentation to the Paying Agent at or prior to the Closing, the Paying Agent shall hold in a segregated account any amounts that would have been payable to such Stockholder as set forth in the Consideration Statement and upon delivery to the Paying Agent of such Letter of Transmittal and all other reasonably required accompanying documentation after the Closing, the Paying Agent shall deliver to such Stockholder such amounts. No interest shall be paid or accrued on the amounts payable upon the delivery of the Letters of Transmittal or any other reasonably required accompanying documentation. Until the respective Letter of Transmittal and all other reasonably required accompanying documentation is delivered with respect to any share of Company Stock, any such share of Company Stock shall represent for all purposes only the right to receive payment of the amounts specified in the Consideration Statement in respect of such share of Company Stock.

(c) At the Initial Effective Time, the equity transfer books of the Company shall be closed and there shall be no further registration of transfers on the Surviving Corporation's equity transfer books of any share of Company Stock that was outstanding immediately prior to the Initial Effective Time.

ARTICLE III

CLOSING

3.1 Closing Deliverables.

(a) Closing Deliverables of the Company. At the Closing, the Company shall, and shall cause the Stockholders to, as applicable, deliver to Purchaser:

(i) duly executed copies of all of the Pre-Closing Reorganization Agreements;

(ii) a certificate, duly executed by an authorized representative of the Company in his or her capacity as such, certifying that the conditions specified in Section 9.2(a) and Section 9.2(b) have been satisfied;

(iii) a properly completed and duly executed certificate, meeting the requirements of Treasury Regulations Sections 1.897-2(h)(1) and 1.1445-2(c)(3) and dated as of the Closing Date, to the effect that the Company is not, and has not been during the applicable time period set forth in Section 897(c)(1)(A)(ii) of the Code, a "United States real property holding corporation" and, accordingly, the Equity Interests of the Company are not "United States real property interests," in each case within the meaning of Section 897 of the Code, together with a properly completed and duly executed notice to the IRS that corresponds to such certificate pursuant to Treasury Regulations Section 1.897-2(h)(2) (which shall be filed by Purchaser with the IRS following the Closing) (such certificate and notice, together, the "FIRPTA Documentation");

(iv) a certificate issued by the Company, in form and substance reasonably acceptable to Purchaser, duly executed by the secretary (or equivalent officer) of the Company and dated as of the Closing Date, certifying that: (A) the Governing Documents of the Acquired Companies (copies of which shall be attached to the certificate) are true, complete and accurate in all respects and remain unamended and in full force and effect; and (B) the resolutions of the Company's Board of Directors (a copy of which shall be attached to the certificate) authorizing the execution, delivery of this Agreement and Ancillary Transaction Documents and the consummation of the Acquisition and the termination of any voting, transfer or other arrangements related to the Company Securities (including the Stockholders Agreement) upon the Closing, are true, complete and accurate in all respects and remain unamended and in full force and effect; and (C) the Written Consent (a copy of which shall be attached to the certificate) is true, complete and accurate in all respects and remains unamended and in full force and effective;

(v) a copy of the D&O insurance policy obtained pursuant to Section 12.2(b);

(vi) letters of resignation of each of the officers and directors of each of the Acquired Companies from their officer and director positions, which resignations shall be effective at or prior to the Closing and shall (A) acknowledge that all salaries, fees, bonuses, and other payment, benefit, perquisite, and reimbursement obligations of the applicable Acquired Company to such director or officer (or any of his or her Affiliates) have been satisfied through the Closing, and (B) waive any and all claims such director or officer has or may have against Parent, Purchaser, the Acquired Companies and their respective Affiliates;

(vii) the Initial Certificate of Merger, duly executed by the Company;

(viii) a Distribution Participation Award Settlement Agreement in the form attached hereto as Exhibit B, duly executed by each Distribution Participation Award Holder, memorializing the settlement of the Distribution Participation Award held by such Distribution Participation Award Holder;

(ix) each of the Restrictive Covenant Agreements duly executed by the party thereto (other than Purchaser);

(x) the Registration Rights and Lock-Up Agreement in the form attached hereto as Exhibit G (the "Registration Rights and Lock-Up Agreement"), duly executed by each recipient of Closing Shares that has executed this Agreement or a joinder thereto and intends to be a party to the Registration Rights and Lock-Up Agreement;

(xi) the Transition Services Agreement in the form attached hereto as Exhibit H (the "Transition Services Agreement"), duly executed by RemainCo;

(xii) evidence (on terms reasonably satisfactory to Purchaser) that all third-party consents set forth in Schedule 3.1(a)(xii) have been obtained in writing;

(xiii) a paying agent agreement in a form acceptable to Purchaser and the Stockholders' Representative (the "Paying Agent Agreement");

(xiv) the Written Consent;

(xv) true and correct copies of each executed and completed Letter of Transmittal or Accredited Investor Questionnaire delivered by a

Stockholder prior to the Closing along with the certificate(s) representing the Company Stock held by such Stockholder (or if any certificate representing such Company Stock has been lost, stolen or destroyed, a true and correct copy of a customary affidavit of that fact by the Stockholder claiming such certificate to be lost, stolen or destroyed), which Stockholders delivering both a Letter of Transmittal and an Accredited Investor Questionnaire shall represent at least 98% of the issued and outstanding Company Stock immediately prior to the Initial Effective Time;

(xvi) a certificate of good standing of each Acquired Company, issued not earlier than five (5) Business Days before the Closing Date by the Secretary of State of the applicable state of organization and each state where such Acquired Company is qualified to do business; and

(xvii) at least two (2) Business Days prior to the Closing Date, the Stockholders' Representative shall have delivered to Purchaser (A) executed copies of each Payoff Letter, and (B) all other Payoff Documentation necessary to evidence the release and termination of all Liens, security interests, pledges, financing statements and mortgages securing the Indebtedness for borrowed money of the Acquired Companies as of the Closing, in each case of the foregoing clauses (A) and (B), in form and substance reasonably satisfactory to Purchaser.

(b) Closing Deliverables of Purchaser. At the Closing, Purchaser shall deliver to the Stockholders' Representative:

(i) a copy of the resolutions of the Board of Directors (or its equivalent) of Purchaser, certified by its secretary (or equivalent officer) as having been duly and validly adopted and as being in full force and effect, authorizing execution and delivery of this Agreement and performance by Purchaser of the Acquisition;

(ii) a certificate, duly executed by an authorized representative of Purchaser in his or her capacity as such, certifying that the conditions specified in Section 9.3(a) and Section 9.3(b) have been satisfied;

(iii) the Deferred Cash Consideration Note duly executed by Purchaser;

(iv) the Registration Rights and Lock-Up Agreement, duly executed by Parent;

(v) the Transition Services Agreement, duly executed by Purchaser;

(vi) each of the Restrictive Covenant Agreements duly executed by Purchaser;

(vii) the Paying Agent Agreement, duly executed by Purchaser; and

(viii) the Parent Guaranty, duly executed by Parent.

(c) Satisfaction of Closing Adjusted Merger Consideration and Closing Cash Payments. At the Closing, in full satisfaction of the Closing Adjusted Merger Consideration, Parent or Purchaser, as applicable, shall:

(i) issue the Deferred Cash Consideration Note to the Agent on behalf of each Stockholder in the proportions set forth in the Consideration Statement adjacent to each Stockholder's name (*provided*, that each Stockholder must provide a countersignature to the Deferred Cash Consideration Note or authorization of the Agent with respect thereto in order to be entitled to its share of the Deferred Cash Consideration Note);

(ii) issue, or cause Parent's transfer agent to issue (in book-entry format), to each Stockholder and Distribution Participation Award Holder the number of Closing Shares set forth in the Consideration Statement adjacent to such Stockholder's or Distribution Participation Award Holder's name;

(iii) pay, or cause to be paid, to the Paying Agent (by wire transfer of immediately available funds to the account designated by the Paying Agent in writing to Purchaser at least two (2) Business Days prior to the Closing), for further distribution to the Stockholders (in accordance with the Consideration Statement), the Closing Cash Consideration payable to the Stockholders;

(iv) pay, or cause to be paid, to each applicable Person who is owed any Company Transaction Expenses, on behalf of the Company, the Estimated Company Transaction Expenses Amount owed to such Person as set forth in the Initial Closing Statement to such accounts as directed in writing by such Person;

(v) to the Stockholders' Representative, the Stockholders' Representative's Expense Fund; and

(vi) to each holder of outstanding Indebtedness of the Acquired Companies as of the Closing, on behalf of the applicable Acquired Company, the amounts set forth in the applicable Payoff Letters delivered by the Stockholders' Representative pursuant to Section 3.1(a)(xvii) by wire transfer of immediately available funds in accordance with the applicable Payoff Letters.

3.2 Paying Agent. Each Consenting Stockholder hereby releases and discharges Purchaser and all of its Affiliates from and against any Loss arising out of, in connection with or relating to the Paying Agent's failure to distribute any amounts received on behalf of the Stockholders to the Stockholders in accordance with the terms of this Agreement.

3.3 Withholding. Purchaser and its Affiliates shall be entitled to deduct and withhold from any amounts otherwise payable or deliverable pursuant to this Agreement such amounts as may be required to be deducted or withheld therefrom under applicable Law; *provided*, *however*, that, if Purchaser or any of its Affiliates determines that any such deduction or withholding is required, except in the case of any deduction or withholding required with respect to any compensatory payments or as a result of the Company's failure to deliver the FIRPTA Documentation in accordance with Section 3.1(a), then Purchaser shall use commercially reasonable efforts to (i) notify the Stockholders' Representative that such deduction or withholding is intended at least five (5) Business Days prior to the applicable payment date and (ii) cooperate with the Stockholders' Representative to obtain any available exemption from, or reduction in the amount of, such deduction or withholding. Any amounts so deducted or withheld and paid over to the appropriate Taxing Authority shall be treated for all purposes of this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid absent such deduction or withholding.

3.4 Joinder. Until the date that is 60 days after the Closing, a Stockholder who does not execute this Agreement on the date hereof may execute a joinder to this Agreement in the form attached hereto as Exhibit M ("**Joinder**"), in which case such Stockholder shall be deemed a Consenting Stockholder under the terms of this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES CONCERNING THE ACQUIRED COMPANIES

Contemporaneously with the execution and delivery of this Agreement, the Company is delivering to Purchaser a disclosure schedule with numbered sections corresponding to the relevant sections in this Agreement (the "Disclosure Schedules"). Except as disclosed in the Disclosure Schedules, the Company represents and warrants to Purchaser as follows (provided that in the case of Fraud, the following representations and warranties shall be deemed made by RemainCo):

4.1 Organization, Qualification, Power and Authority.

(a) Each Acquired Company is duly formed and organized, validly existing and in good standing under the Laws of its jurisdiction of organization. Other than as set forth on Schedule 4.1, none of the Acquired Companies has any Subsidiaries. Each Acquired Company is duly qualified to conduct business and in good standing under the Laws of each jurisdiction where such qualification is required (except where the lack of such qualification or the failure to be in good standing would not materially and adversely affect the Acquired Companies) and all such jurisdictions are set forth by Acquired Company on Schedule 4.1. Since October 9, 2020 (or, if less, for the duration of the existence for the applicable Person) (the "Lookback Date"), no Acquired Company has conducted business under or otherwise used, for any purpose or in any jurisdiction, any legal, fictitious, assumed or trade name other than the names set forth on Schedule 4.1. Each Acquired Company has the requisite power and authority to carry on the businesses in which it is engaged and to own, lease, operate and use the properties and assets owned, operated, leased and used by it, except as would not materially and adversely affect the Acquired Companies. Except as set forth on Schedule 4.1, no Acquired Company is the surviving entity of any merger, consolidation or similar transaction. None of the Acquired Companies are party to any joint ventures other than as set forth in Schedule 4.1. Accurate and complete copies of each of the Governing Documents of each of the Acquired Companies have been made available to Purchaser.

(b) RemainCo is duly formed and organized, validly existing and in good standing under the Laws of its jurisdiction of organization. As of the Closing, the Pre-Closing Reorganization has been consummated in its entirety by the preparation, execution, delivery and, where appropriate, filing of the Pre-Closing Reorganization Agreements.

4.2 Authorization; Enforceability.

(a) Each Acquired Company and RemainCo has all the requisite limited liability, corporate or other power and authority to execute and deliver this Agreement and each other Ancillary Transaction Document to which such Acquired Company or RemainCo is a party and to perform its obligations hereunder and thereunder (including consummation of the Acquisition). The execution and delivery of this Agreement by the Company and RemainCo has been duly authorized by all necessary limited liability company, corporate or other entity-level action. This Agreement has been duly executed and delivered by each Acquired Company and RemainCo and, assuming the due authorization, execution and delivery by the other parties to such documents, constitutes the valid and legally binding obligation of such Acquired Company and RemainCo, enforceable in accordance with its terms and conditions, subject to the Laws of general application relating to public policy, bankruptcy, insolvency and the relief of debtors and rules of Law governing specific performance, injunctive relief and other equitable remedies.

(b) The execution and delivery of the Ancillary Transaction Documents by each Acquired Company and RemainCo to which such Acquired Company or RemainCo will be a party and the consummation by each Acquired Company and RemainCo of the Acquisition will at Closing have been duly authorized by all necessary limited liability company, corporate or other entity-level action. The Ancillary Transaction Documents to which such Acquired Company or RemainCo is or will be a party will at Closing have been, duly executed and delivered by each Acquired Company and RemainCo and, assuming the due authorization, execution and delivery by the other parties to such documents, constitute the valid and legally binding obligation of such Acquired Company and RemainCo, enforceable in accordance with its terms and conditions, subject to the Laws of general application relating to public policy, bankruptcy, insolvency and the relief of debtors and rules of Law governing specific performance, injunctive relief and other equitable remedies.

4.3 Capitalization.

(a) Schedule 4.3(a) sets forth for the Company, the classes and amounts of its authorized ownership interests, the amount of its issued or outstanding Equity Interests of each class, and the record and beneficial owners of all of its issued and outstanding Equity Interests and there are no other shares of capital stock or other Equity Interests in the Company issued, reserved for issuance, or outstanding, in each case as of immediately prior to the Closing. All of the Company Stock is duly authorized, validly issued, fully paid and non-assessable, and none of the Company Stock is subject to or were issued in violation of any preemptive right, subscription right, or any similar right under any provision of the Governing Documents of the Company or any Contract to which the Company is a party or by which the Company or its assets are bound. As of immediately prior to the Closing, all of the Company Stock is held of record and beneficially owned by the Stockholders free and clear of any Lien other than as set forth in the Governing Documents of the Company.

(b) Schedule 4.3(b) sets forth for each Subsidiary of the Company, where applicable, the classes and amounts of its authorized ownership interests of each class, the amount of its issued or outstanding Equity Interests, and the record and beneficial owners of its issued and outstanding Equity Interests and there are no other Equity Interests of any Subsidiary of the Companies issued, reserved for issuance or outstanding. All of the issued and outstanding Equity Interests of the Company's Subsidiaries are duly authorized, validly issued, fully paid and non-assessable, and none of the outstanding Equity Interests of the Company's Subsidiaries are subject to or were issued in violation of any applicable securities Laws, purchase option, call option, conversion right, right of first refusal, preemptive right, subscription right, or any similar right under any provision of applicable Law or the Governing Documents of the applicable Subsidiary of the Company or any Contract to which the applicable Subsidiary of the Company is a party or is bound. Except as set forth on Schedule 4.3(b), the Company or another Acquired Company holds all outstanding Equity Interests in each Acquired Company free and clear of all Liens other than as set forth in the Governing Documents of the applicable Acquired Company.

(c) There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights or other contracts or commitments that could require any Acquired Company to issue, sell, or otherwise cause to become outstanding any Equity Interest in such Acquired Company. Other than the Distribution Participation Awards, there are no outstanding or authorized equity appreciation, phantom stock, profit participation, or similar rights with respect to any Acquired Company.

4.4 Non-contravention.

(a) Neither the execution, delivery or performance of this Agreement or any other Ancillary Transaction Document by the Company or RemainCo (as applicable), nor the consummation of the Acquisition or compliance with the terms of this Agreement or the Ancillary Transaction Documents (as applicable), will (a) violate, contravene or conflict with any Law or Order to which any Acquired Company or RemainCo is subject; (b) violate, contravene or conflict with any provision of the Governing Documents or any board, manager or member (or equivalent) resolution of any Acquired Company or RemainCo; or (c) except as set forth on Schedule 4.4, conflict with, result

in a breach or violation of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, require any notice or consent under, or result in the imposition of any Lien (i) on any of the Company Stock or (ii) (other than Permitted Liens) upon any of the assets of any Acquired Company or RemainCo under any agreement, Contract, lease, license, instrument, or other arrangement to which any Acquired Company or RemainCo, as applicable, is a party, except in each case of the foregoing clauses (a) or (c)(ii) where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice or obtain consent, or Lien would not materially and adversely affect the Acquired Companies or RemainCo.

(b) The Company is not required to provide any notice to, make any filing with or obtain any authorization, consent, or approval from any Governmental Authority in order for the Parties to consummate the Acquisition other than (i) the pre-transaction notification requirements of the HSR Act and any other applicable Antitrust Law filings, (ii) the filing of the Initial Certificate of Merger with the Secretary of State of the State of Delaware and (iii) the filing of the Subsequent Certificate of Merger with the Secretary of State of the State of Delaware.

4.5 Financial Statements.

(a) True, correct and complete copies of the unaudited consolidated financial statements of the Business consisting of the balance sheets of the Acquired Companies as of December 31 in each of the years 2022 and 2023 and the related statements of operations, changes in equity, and cash flow for the years then ended (the "Unaudited Financial Statements"), and unaudited financial statements of the Business consisting of the balance sheet of the Acquired Companies as of January 31, 2024 and the related statements of operations, changes in equity and cash flow for the year then ended (collectively with the Unaudited Financial Statements, the "Financial Statements") have been made available to Purchaser and are set forth on Schedule 4.5(a). The Financial Statements (i) were derived from the books and records of the Company (which books and records are accurate and complete in all material respects) and (ii) have been prepared in good faith and in accordance with GAAP and without modification of the accounting principles used in the preparation thereof throughout the periods involved, except as modifications (which modifications do not materially deviate from GAAP) were made in good faith through the periods prior to the effective date of the plan of reorganization, pursuant to D.I. 452 in Case No. 20-33495 (Bankr. S.D. Tex.) in connection with the Bankruptcy and such modifications affect the preparation of the Financial Statements in the periods involved. The Financial Statements fairly and accurately present in all material respects the financial condition and position, results of operations, stockholders equity and cash flows of the Business. The balance sheet of the Business as of January 31, 2024 is referred to herein as the "Balance Sheet" and the date thereof as the "Balance Sheet Date." The Company maintains a system of internal controls and procedures over financial reporting that is designed to provide reasonable assurance (A) that transactions are recorded as necessary in order to permit preparation of Financial Statements in accordance with GAAP, (B) that pertains to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company and (C) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company that could have a material effect on the Financial Statements. Since the Lookback Date, there have been no instances of fraud or corporate misappropriation that involve any employee or member of management of the Company.

(b) The Acquired Companies, together and individually, have no Liabilities (regardless of whether such Liabilities would be required to be accrued or otherwise reflected pursuant to GAAP) except for Liabilities (i) which are reflected or reserved against in the Financial Statements in accordance with GAAP and the accounting principles used in the preparation thereof (and for which adequate accruals or reserves have been established on such Financial Statements) or (ii) arising under any Contract to which an Acquired Company is a party or incurred in the Ordinary Course of Business in each case of this clause (ii) since the Balance Sheet Date (other than, in the case of this clause (ii), Liabilities arising from any breach of any such Contract, breach of warranty, tort or infringement).

4.6 Subsequent Events. Since the Balance Sheet Date, and except as required pursuant to the Pre-Closing Reorganization or set forth on Schedule 4.6, (a) there has not been any Effect that has or would reasonably be expected to be, individually or in the aggregate, a Material Adverse Effect on the Acquired Companies, (b) the Business has been conducted in all material respects in the Ordinary Course of Business (other than with respect to the Acquisition) and (c) none of the Acquired Companies has taken any action, or failed to take any action, in respect of the Business that, if taken or failed to be taken after the date hereof, would require the consent of Purchaser pursuant to Section 7.1(b).

4.7 Inventory. All Inventory consists of a quality and quantity usable and salable in the Ordinary Course of Business, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All Inventory is owned by an Acquired Company free and clear of all Liens (other than Permitted Liens). No Inventory is held on excluded consignment basis and all Inventory was acquired in the Ordinary Course of Business. The quantities of each item of Inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Acquired Companies.

4.8 Legal Compliance. Since the Lookback Date (a) each Acquired Company holds and has held all material permits, licenses, approvals, certificates, and other authorizations of and from all Governmental Authorities necessary for the lawful conduct of its business (the "Material Permits") and each Acquired Company is and has been in compliance with the Material Permits and no condition exists that without notice or lapse of time or both would constitute non-compliance with any Material Permit, (b) all Material Permits are and have been in full force and effect, (c) no Legal Proceeding to revoke, limit or modify any of the Material Permits has been served upon any of the Acquired Companies, or is pending or, to the Company's Knowledge, threatened, and (d) each Acquired Company and each of their respective current or former officers, directors, managers, members, employees or service providers, but solely in their capacity as such and to the extent in connection with their ownership or operation of, employment or engagement by, as applicable, the Business are, and have at all times been, in material compliance with all Laws. No investigation, request for information, written notice, demand letter, administrative inquiry or formal or informal complaint or claim by or from any Governmental Authority with respect to the Business or any of the Acquired Companies or any of their respective current or former officers, directors, managers, members, employees or service providers (but solely in their capacity as such and to the extent in connection with their ownership or operation of, employment or engagement by, as applicable, the Business) has been received, is pending, nor, to the Company's Knowledge, is any of the foregoing threatened or has any Governmental Authority indicated an intention to conduct or deliver the same, except for those the outcome of which would not reasonably be expected, individually or in the aggregate, materially and adversely affect the Business or any Acquired Company.

4.9 Tax Matters. Except as set forth on Schedule 4.9:

(a) All material Tax Returns that were required to be filed by or with respect to each Acquired Company have been timely filed (taking into account applicable extensions), and all such Tax Returns are true, complete and accurate in all material respects.

(b) All material Taxes that have become due and payable by each Acquired Company or for which any Acquired Company may otherwise be liable

(whether or not shown on any Tax Return) have been timely paid in full. No Acquired Company will have any material liability for unpaid Taxes for any Tax period (or portion thereof) ending on or prior to the Closing Date, other than those liabilities for Taxes (i) reflected in the Balance Sheet, as adjusted for operations and transactions in the Ordinary Course of Business of the Acquired Companies from the Balance Sheet Date to, and including, the Closing Date, consistent with past custom and practice of the Acquired Companies, or (ii) arising as a result of the Pre-Closing Reorganization, the vesting of Company Restricted Shares pursuant to this Agreement or any other transactions contemplated by this Agreement.

(c) All material Taxes required to be deducted or withheld by any Acquired Company have been deducted and withheld and, to the extent required by applicable Law, have been timely paid in full to the proper Taxing Authority. Each Acquired Company has complied in all material respects with all information reporting requirements applicable to such Acquired Company. Each Acquired Company has been in material compliance with respect to the proper employment Tax classification of those individuals performing services for such Acquired Company as employees, leased employees, independent contractors or agents in all material respects.

(d) Each Acquired Company (A) has properly collected and remitted all material amounts of sales, use, value added and similar Taxes required to be collected and remitted by such Acquired Company with respect to sales or leases made, or services provided, to its customers, and (B) except as the amount of sales, use, value added or similar Taxes that would otherwise be due would not be material, has properly received and retained in all material respects any appropriate Tax exemption certificates and other documentation required to be received and retained by such Acquired Company for all services provided and sales and leases made to its customers, without charging or remitting sales, use, value added, and similar Taxes that qualify such sales, leases and services as exempt from sales, use, value added, and similar Taxes. Since the Lookback Date, no claim has been made against, and there has not been an audit of, an Acquired Company by any Taxing Authority with respect to sales, use, value added or similar Taxes. No Acquired Company has received any ruling or other guidance from, or entered into any agreement with, any Taxing Authority with respect to sales, use, value added or similar Taxes.

(e) No Acquired Company has any material Liability for the Taxes of any other Person (other than any Acquired Company) pursuant to Treasury Regulations Section 1.1502-6 (or any corresponding or similar provision of U.S. state or local or non-U.S. Law), as a transferee or successor, by Contract or otherwise, other than, in each case, (x) with respect to any Consolidated Group of which the Company was the parent or (y) pursuant to any Contract, agreement or arrangement entered into in the Ordinary Course of Business and the principal purpose of which does not relate to Taxes. No Acquired Company has ever been a member of a Consolidated Group filing for U.S. federal, and applicable state and local, income Tax purposes (other than a Consolidated Group of which the Company was the parent).

(f) No Acquired Company has entered into any material agreement or arrangement with any Taxing Authority that requires any Acquired Company to take or refrain from taking any action. No Acquired Company is a party to any material agreement with any Taxing Authority that would be terminated or adversely affected as a result of the transactions contemplated by this Agreement.

(g) No Acquired Company (i) is a party to or bound by any Tax allocation, sharing, indemnity or similar agreement (other than Contracts or other agreements or arrangements entered into in the Ordinary Course of Business and the principal purpose of which does not relate to Taxes), or (ii) has executed any agreements with any Taxing Authority extending or waiving the statutory period of limitations applicable to the period for the collection, assessment or reassessment of any Taxes, which period remains open, and no request by any Taxing Authority for any such waiver or extension is currently pending.

(h) There are (i) no claims against any of the Acquired Companies for Taxes, (ii) no deficiencies, adjustments or assessments of Taxes asserted, proposed or, to the Company's Knowledge, threatened by any Taxing Authority against any Acquired Company that remain unpaid, and (iii) no ongoing audits or examinations of any Taxes or Tax Returns of any Acquired Company.

(i) Since the Lookback Date, no claim has been made by any Taxing Authority in any jurisdiction in which an Acquired Company does not file Tax Returns that any Tax Return is required to be filed or any Taxes are required to be paid in such jurisdiction by such Acquired Company. No Acquired Company is subject to Tax in any country other than its country of incorporation, organization or formation by virtue of having employees, a permanent establishment or other place of business in that country.

(j) No Acquired Company will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) beginning after the Economic Effective Time as a result of: (i) an adjustment under either Section 481(a) or Section 482 of the Code (or any corresponding or similar provision of U.S. state or local or non-U.S. Tax law) by reason of a change in method of accounting prior to the Closing for a taxable period ending on or prior to the Closing Date, (ii) a "closing agreement" described in Section 7121 of the Code (or any corresponding or similar provision of U.S. state or local or non-U.S. Tax law) executed prior to the Closing, (iii) an intercompany transaction or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of U.S. state or local or non-U.S. Tax law) entered into or created prior to the Closing, (iv) an installment sale or open transaction disposition made prior to the Closing, (v) the cash method of accounting or long-term contract method of accounting utilized prior to the Closing, or (vi) a prepaid amount received prior to the Closing, other than any Customer Prepayment Amount.

(k) No Acquired Company has any outstanding liability for Taxes pursuant to Section 965 of the Code, including as a result of making an election pursuant to Section 965(h) of the Code.

(l) No Acquired Company has been a "controlled corporation" or a "distributing corporation" in any distribution that was purported or intended to be governed by Section 355 of the Code (or any corresponding or similar provision of U.S. state or local or non-U.S. Law) occurring during the two-year period ending on the date hereof or in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the transactions contemplated by this Agreement.

(m) No Acquired Company owns, directly, indirectly or constructively, any interest in a "controlled foreign corporation" as defined under Section 957 of the Code (other than any interest in Hi-Crush Canada Distribution Corp. or FB Industries Inc.) or a "passive foreign investment company" as defined under Section 1297 of the Code.

(n) All related party transactions involving any Acquired Company have been conducted, in all material respects, at arm's length in compliance with Section 482 of the Code and the Treasury Regulations promulgated thereunder (or any corresponding or similar provision of applicable U.S. state or local or non-U.S. Tax law).

(o) The Company is not and has not been during the past five (5) years, a "United States real property holding corporation" as defined in Section 897(c)(2) of the Code and the applicable Treasury Regulations promulgated thereunder.

(p) There are no Liens for Taxes upon any property or assets of any Acquired Company, except for Permitted Liens.

(q) None of the assets of the Acquired Companies is subject to any tax partnership agreement or is otherwise treated, or required to be treated, as held in an arrangement requiring a partnership income Tax Return to be filed or otherwise treated as a partnership under Subchapter K of Chapter 1 of Subtitle A of the Code or any corresponding or similar state or local Tax law.

(r) No Acquired Company has entered into any power of attorney with respect to Taxes that is currently in effect.

(s) No Acquired Company has been a party to a transaction that is a "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2), or any other transaction requiring disclosure under corresponding or similar provisions of U.S. state or local Tax Law.

(t) There is no material property or obligation of any Acquired Company, including uncashed checks to vendors, customers, or employees, non-refunded overpayments, or unclaimed subscription balances, that is escheatable or reportable as unclaimed property to any state or municipality under any applicable escheatment or unclaimed property laws.

(u) The material property of each Acquired Company that is subject to property Tax has been properly listed and described on the property tax rolls of the appropriate taxing jurisdiction for all Tax periods (or any portion thereof) ending on or prior to Closing and no material portion of any Acquired Company's property constitutes omitted property for property tax purposes.

(v) For U.S. federal income Tax purposes, and all applicable state and local Tax purposes: (i) the Company was, prior to its conversion to a corporation on May 31, 2019, a partnership for U.S. federal income tax purposes and (ii) each of the Acquired Companies (other than the Company) is, and has been since its formation (or, in the case of (i) the predecessor of NexStage LLC, from the date of its conversion to a limited liability company on May 23, 2023, (ii) in the case of Pronghorn Logistics Holdings, LLC, from May 7, 2019, (iii) in the case of BulkTracer Holdings LLC, from January 18, 2019, (iv) in the case of FB Logistics, LLC, from June 2, 2023, the effective date of its election to be treated as a disregarded entity, and (v) in the case of the predecessor of Hi-Crush Investments LLC, from the date of its conversion to a limited liability company on June 6, 2023), an entity disregarded as separate from the Company.

4.10 Real Property.

(a) Schedule 4.10(a) sets forth a true and complete list of all Owned Real Property, including the address of each facility and a description of the operations conducted thereon. The Company or another Acquired Company (i) has good and marketable title in fee simple to each parcel of Owned Real Property free and clear of all Liens, except Permitted Liens, (ii) has not leased any parcel or any portion of any parcel of the Owned Real Property to any other Person, and (iii) has made available to Purchaser copies of each vesting deed for each parcel of Owned Real Property and all title insurance policies and surveys relating to the Owned Real Property, in each case to the extent in its possession or control.

(b) Schedule 4.10(b) sets forth the addresses of all Leased Real Property and a list of all Leases (including the parties thereto) together with a description of the Company's operations thereon. The Company has made available to Purchaser a true and complete copy of each such Lease. With respect to each Lease:

(i) such Lease is in full force and effect and is the valid and binding obligation of the applicable Acquired Company, enforceable in accordance with its terms subject to proper authorization and execution of such Lease by the other party thereto and the Laws of general application relating to public policy, bankruptcy, insolvency and the relief of debtors, and rules of Law governing specific performance, injunctive relief, and other equitable remedies;

(ii) neither the applicable Acquired Company nor, to the Company's Knowledge, any other party to such Lease is in default under such Lease, and there does not exist any event, condition or omission that to the Company's Knowledge would constitute a default or breach with notice, the passing of time or both;

(iii) the rental set forth in each Lease is the actual rental being paid, and there are no separate agreements or understandings with respect to the same;

(iv) each Lease grants the tenant or lessee under such Lease the exclusive right to use and occupy the demised premises thereunder, subject to Permitted Liens and the terms of such Lease;

(v) except as set forth on Schedule 4.10(b)(v), no Acquired Company has received any written notice that the fee owner of such Leased Real Property has made, and to the Company's Knowledge no fee owner of such Leased Real Property has made, any assignment, mortgage, or pledge of such Leased Real Property or the rents or use fees due thereunder, unless in connection with such assignment, mortgage, pledge or hypothecation the Company has received from the applicable assignee, mortgagee or pledgee an appropriate non-disturbance agreement with respect to the applicable Lease;

(vi) the leasehold or easement interests relating to the Leases are free and clear of all Liens, other than Permitted Liens; and

(vii) no consent is required under such Lease in connection with the Acquisition.

(c) The Real Property constitutes all of the real property owned, used, leased, subleased or otherwise occupied in connection with, and is sufficient in all material respects for, the conduct of the business of the Acquired Companies as currently conducted. Other than the Real Property, the Acquired Companies do not have any rights or options to own, lease, occupy, or otherwise use any real property. Use of the Real Property for the purposes for which it is presently used by the applicable Acquired Company is permitted as of right under all applicable zoning Laws. All of the improvements on the Real Property are (i) in compliance with all applicable Laws, including those pertaining to zoning, building and the disabled, (ii) in compliance with matters of record, including development agreements, covenants, conditions, restrictions, and declarations, and (iii) in good repair and in good working condition, ordinary wear and tear excepted. No part of any of the improvements on the Real Property encroaches on the real property of any other Person, and no buildings, structures, fixtures or other improvements primarily situated on adjoining property encroach on any part of the Real Property. Each of the improvements on the Real Property abuts on, and has direct vehicular access to, a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the Real Property and comprising a part of the Real Property. Each parcel of improved Real Property is supplied with public or quasi-public utilities and other services appropriate for the operations of the Company or any Acquired Company located on such Real Property. To the Company's Knowledge, no part of the Real Property is located within any flood plain or area subject to wetlands regulation or any similar restriction. There are no facts or conditions affecting the improvements on the Real Property that would reasonably be expected to interfere with the current use, occupancy or operation thereof.

(d) To the Company's Knowledge, there is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that would result in the taking of all or any part of any Real Property or that would prevent or hinder the continued use of any Real Property.

4.11 Personal Property. Except as disclosed on Schedule 4.11, each Acquired Company has good and marketable title to, or a valid leasehold interest in all of its tangible personal property (the "Personal Property Assets"), free and clear of any Liens, other than Permitted Liens. All of the Personal Property Assets, together with the real property, are all of the assets necessary, and are sufficient for, the Business to operate in the Ordinary Course of Business. No Acquired Company is in possession of any assets that are not owned by such Acquired Company or another Acquired Company on a consignment or similar basis and the assets purported to be owned by the Acquired Companies are located at the facilities of the Acquired Companies listed on either Schedule 4.10(a) or 4.10(b). All material tangible personal property used by any Acquired Company in the operation of the Business are (a) in the physical possession of the Acquired Companies, (b) in good condition and repair (ordinary wear and tear and routine maintenance excepted) and (c) free from latent and patent defects. Schedule 4.11 sets forth the rated capacity of the dryers at the Company's Kermit facility.

4.12 Intellectual Property.

(a) Schedule 4.12(a) sets forth a list of all registered or applied for Intellectual Property that is owned or purported to be owned by any of the Acquired Companies ("Scheduled Intellectual Property"). Each item of Scheduled Intellectual Property listed on Schedule 4.12(a) is subsisting, and to the Company's Knowledge, valid and enforceable. The Acquired Companies exclusively own the Scheduled Intellectual Property and material Intellectual Property that is not registered and owned by an Acquired Company, in each case, free and clear of Liens other than Permitted Liens. The Acquired Companies own or have the right or license to use all of the Intellectual Property used in the Business as currently conducted (the "Business Intellectual Property") free and clear of all Liens other than Permitted Liens. The consummation of the Acquisition will not affect, diminish, or terminate the ownership or use of the Business Intellectual Property owned by the applicable Acquired Company or each Acquired Company's right to use Intellectual Property licensed to such Acquired Company on the same basis as prior to the consummation of the Acquisition.

(b) Neither the Acquired Companies nor the Business as currently or previously conducted in the last six (6) years has infringed, violated or misappropriated, or is now infringing, violating or misappropriating, the Intellectual Property rights of any third party. There is no claim pending or threatened in writing against an Acquired Company with respect to the alleged infringement, violation or misappropriation by an Acquired Company of any Intellectual Property rights of any third party. There is no currently pending claim by any Acquired Company against a third party with respect to the alleged infringement, violation, or misappropriation of any Intellectual Property owned or purported to be owned by, or exclusively licensed to, any of the Acquired Companies. To the Company's Knowledge, no Person is engaging in any activity or business that infringes upon, violates, or misappropriates any Intellectual Property owned or purported to be owned by any of the Acquired Companies or misappropriates the trade secrets or confidential information of an Acquired Company.

(c) Each Acquired Company has taken reasonable measures to protect and preserve the confidentiality of the trade secrets and confidential information of the business conducted by such Acquired Company. All employees, contractors and agents of the Acquired Companies involved in the conception, development, authoring, creation or reduction to practice of any material Intellectual Property for an Acquired Company have executed agreements that assign or obligate such employees, contractors, and agents to assign such Intellectual Property to an Acquired Company and confidentiality agreements.

(d) To the Company's Knowledge, Software developed, made available, or distributed by the Acquired Companies does not contain, and is not distributed with, any Software that is licensed pursuant to an open source, copyleft or community source code (including any libraries or code, software, technologies or other materials that are licensed or distributed under any General Public License, Lesser General Public License, MIT License, Apache License or similar license arrangement or other distribution model) (such Software collectively referred to as "Open Source Software") in any manner that would restrict the ability of the Acquired Companies to protect their proprietary interests in any such Software, product or service, including protecting any owned Intellectual Property therein, or in any manner that requires, or purports to require: (i) any Intellectual Property owned by the Acquired Companies (other than the Open Source Software itself) be disclosed or distributed in source code form or be licensed for the purpose of making derivative works; (ii) any restriction on the consideration to be charged for the distribution of any Intellectual Property owned by the Acquired Companies; (iii) the creation of any obligation for an Acquired Company with respect to Intellectual Property owned by the Acquired Companies, or the grant to any third party of any rights or immunities under Intellectual Property owned by the Acquired Companies; or (iv) any other limitation, restriction or condition on the right of the Acquired Companies with respect to its use or distribution of any Intellectual Property owned by the Acquired Companies.

(e) The Acquired Companies own, lease or license IT Systems of a sufficient quantity and size to operate the Business as currently conducted and as proposed to be conducted. The Acquired Companies have taken commercially reasonable steps to provide for the backup and recovery of data and information, has commercially reasonable disaster recovery plans, procedures and facilities, and, as applicable, have taken commercially reasonable steps to implement such plans and procedures. To the Company's Knowledge, the IT Systems do not contain any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" (as these terms are commonly used in the information security industry), or other software routines or hardware components intentionally designed to permit (i) unauthorized access to a computer, system, or network, (ii) unauthorized disablement or erasure of software, hardware or data, or (iii) any other similar type of unauthorized activities. Since the Lookback Date, there has been no failure, material substandard performance, or breach of any computer systems of the Acquired Companies or their contractors that has caused any material disruption to the Business or resulted in any unauthorized disclosure of or access to any data owned, collected or controlled by the Acquired Companies. The Acquired Companies have taken reasonable technical, administrative, and physical measures to protect the integrity and security of the IT Systems and the data stored thereon from unauthorized use, access, or modification by third parties.

(f) Each Acquired Company is and has been in material compliance with its privacy policies, contractual obligations and any Laws relating to the collection, processing, use, storage, sharing or transfer of Personal Information. Each Acquired Company has reasonable safeguards in place designed to protect Personal Information that it processes against loss, theft, or unauthorized disclosure or alteration. Since the Lookback Date, there have been no breaches involving Personal Information collected by or on behalf of any Acquired Company. No Acquired Company has received any written notice of any claims of, or been charged with, or been required to provide notice to any other Person with respect to, the violation of any Laws concerning the collection, processing, use, storage, sharing, and transfer of Personal Information.

4.13 Contracts.

(a) Except as listed or described on Schedule 4.13(a), no Acquired Company is a party to any material Contract, including any Contract of a type described below (all such Contracts, as amended, modified, supplemented or restated from time to time, "Material Contracts"):

(i) Contracts requiring the purchase, sale or supply of frac sand to any Person;

(ii) Contracts requiring the provision of sand supply logistics or wellsite storage services to any Person;

(iii) Contracts that require the construction, expansion or build-out of facilities by an Acquired Company in order to provide services thereunder

where such construction, expansion or build-out is not yet complete and the value of such construction, expansion or build-out to be completed is in excess of $500,000;

(iv) other than the Governing Documents, Contracts for indemnification, advancement of expenses or similar obligations with any officer, manager, advisor or director of any Acquired Company;

(v) Contracts (other than the Governing Documents) for joint ventures or partnerships or limited liability companies or other similar Contracts involving sharing of profits, losses, costs or other Liabilities by any Acquired Company with any other Person;

(vi) Contracts for the purchase, sale, lease or any other rights or interests relating to real property;

(vii) Contracts for the purchase, sale, lease or any other rights or interests relating to personal property with an individual value in excess of $250,000;

(viii) Contracts relating to Acquired Companies' Indebtedness where the annual obligations under such agreement are more than $1,000,000;

(ix) Contracts between or among any of the Acquired Companies, other than the Governing Documents, and the consideration paid exceeded $100,000;

(x) Contracts between any Acquired Company and a vendor or supplier involving consideration more than $1,000,000 on an annual or committed basis;

(xi) Contracts that provide for or require (A) an increased payment or benefit or accelerated vesting upon the Closing or in connection with the Acquisition, including any severance, retention, change in control or other similar payments or benefits or (B) a payment that otherwise would not be due and owed but for the Acquisition;

(xii) any Contract (other than an Employee Benefit Plan) pursuant to which an Acquired Company is required to make aggregate payments in excess of $250,000 in any fiscal year and $500,000 in the aggregate during the term thereof;

(xiii) any collective bargaining agreement, collective agreement, works council agreement, memorandum of understanding or other Contract with any labor union, trade union, work council, or other employee representative;

(xiv) any Contract for capital expenditures or the acquisition or construction of fixed assets in excess of $250,000;

(xv) any Contract relating to the guaranty of another Person's borrowing of money or other obligation, including all notes, mortgages, indentures, and other obligations, guarantees of performance, agreements, and instruments for or relating to any lending or borrowing (other than advances to employees for expenses in the Ordinary Course of Business or transactions with customers on credit in the Ordinary Course of Business), where the annual payment due as a result of such underlying obligation guaranteed by the applicable Acquired Company is in excess of $500,000;

(xvi) any Contract under which an Acquired Company has granted or received a material license or sublicense or under which it is obligated to pay or has the right to receive an annual royalty, license fee, or similar payment in an amount in excess of $70,000, other than (A) "off the shelf" Software licenses pursuant to which Intellectual Property is made available through regular commercial distribution channels on standard terms and conditions and (B) agreements entered into in the Ordinary Course of Business pursuant to which Intellectual Property is non-exclusively licensed to customers, distributors, suppliers, or other commercial relationships of such Acquired Company;

(xvii) any Contract under which an Acquired Company has granted or received an exclusive license to Intellectual Property and the consideration paid (or to be paid during the applicable term) exceeded or will exceed $100,000;

(xviii) any Contract containing a covenant of an Acquired Company not to compete in any line of business or with any Person in any geographical area;

(xix) any Contract containing a covenant of an Acquired Company not to solicit any employees, contractors, clients, customers, suppliers, or other third parties; or

(xx) Contracts with an obligation of the Company or one of its Subsidiaries to sell, transfer, or otherwise grant an interest to another Person in any material asset of the Company or such Subsidiary, including any "right of first refusal," "right of first offer," "put or call right", or other preferential purchase or sale right.

(b) The Acquired Companies have made available to Purchaser a true, correct and complete copy of all Material Contracts, including all amendments, modifications, supplements and restatements thereto. Each Material Contract is a legal, valid and binding obligation of the applicable Acquired Company party thereto and, to the Company's Knowledge, each such other party thereto, in accordance with its terms, and is subject, in each case, to any limitations on enforcement and other remedies imposed by or arising under or in connection with applicable Laws relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance, preferential transfer and similar Laws relating to or affecting creditors' rights generally from time to time in effect and general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity) and the exercise of equitable powers by a court of competent jurisdiction. Neither the applicable Acquired Company nor, to the Company's Knowledge, any other party to such Material Contract is in breach or default under such Material Contract, and no event, condition or omission has occurred which, with the passage of time or the giving of notice or both, would constitute a default or breach under any Material Contract, in each case, except for such breaches and defaults that would not reasonably be expected to, individually or in the aggregate, materially and adversely affect the Business. The Company has not received written or, to the Company's Knowledge, oral notice of any material default or material breach of, or any intention to cancel, terminate, breach, accelerate or delay the maturity of performance of any Material Contract from any party to any Material Contract. No Acquired Company is currently renegotiating any of the Material Contracts other than in the Ordinary Course of Business or paying liquidated damages in lieu of performance thereof.

(c) No shortfalls or deficiencies (or similar concepts) in respect of any minimum purchase, sale, delivery or acceptance of product have arisen under any Material Contract for which there has not been a final economic settlement of amongst the parties to such Material Contract.

4.14 Litigation. Except as set forth on Schedule 4.14, there are no material Legal Proceedings pending or, to the Company's Knowledge, threatened

against any Acquired Company or any Acquired Company's officers, directors, managers, members, employees, consultants or independent contractors, or any other current or former employees, officers, directors, managers, members, consultants or independent contractors who provide or provided services to any such Acquired Company (but, in each case, solely in their respective capacity as such), or any of its assets, to the extent such Legal Proceeding involves, or would reasonably be expected to involve, any Acquired Company or services provided thereto or any individual who has provided services thereto, and since the Lookback Date, none of the foregoing have been initiated or, to the Company's Knowledge, threatened. There is no outstanding Order, pending or, to Company's Knowledge, threatened investigation by, any Governmental Authority relating to any Acquired Company or any Acquired Company's officers, directors, managers, members, employees, consultants or independent contractors, or any other current or former employees, officers, directors, managers, members, consultants or independent contractors, in each case who provide or provided services to an Acquired Company (but, in each case, solely in their respective capacity as such) or the Acquired Company's ownership or operation of its business or assets or the Acquisition. Except as set forth on Schedule 4.14, there is no Legal Proceeding by any Acquired Company pending, or which any Acquired Company has commenced preparations to initiate, against any other Person in connection with the Business. There are no Legal Proceedings pending or, to the Company's Knowledge, threatened that are reasonably likely to prohibit or restrain the ability of any Acquired Company or RemainCo to consummate the Acquisition by entering into this Agreement and the other applicable Ancillary Transaction Documents. Schedule 4.14 sets forth a correct and complete list of all unsatisfied Orders by which any Acquired Company is bound, together with the Governmental Authority who issued the same and the subject matter thereof. Each Acquired Company has been in compliance, in all material respects, with any such Order applicable to it at all times since the Lookback Date.

4.15 Employee Benefits.

(a) Schedule 4.15(a) lists each Employee Benefit Plan.

(b) Each Employee Benefit Plan is maintained, funded, and administered in material compliance with the terms of such Employee Benefit Plan and the requirements of applicable Law, including ERISA and the Code.

(c) Each Employee Benefit Plan that is intended to meet the requirements of a "qualified plan" under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is in the form of a pre-approval plan that is the subject of a favorable opinion letter from the Internal Revenue Service, and no event has occurred that would reasonably be expected to result in disqualification of any such Employee Benefit Plan.

(d) Neither the Acquired Companies nor any ERISA Affiliate has now or at any time within the previous six (6) years contributed to, sponsored, or maintained any (i) Employee Benefit Plan subject to Title IV of ERISA, (ii) Multiemployer Plan, (iii) "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA or (iv) a "multiple employer plan" within the meaning of Section 413(c) of the Code.

(e) No Employee Benefit Plan is subject to Title IV of ERISA or Code Sections 412 and 413 or is a Multiemployer Plan or provides for post-employment or retiree health benefits other than as required by Law. No Acquired Company has any actual or contingent Liability with respect to any plan subject to Title IV of ERISA or any Multiemployer Plan.

(f) The Acquired Companies have made available to Purchaser copies of the following, as applicable, with respect to the Employee Benefit Plans: (i) current plan documents and the most recent summary plan description provided to participants; (ii) the most recent determination or opinion letter received from the Internal Revenue Service; and (iii) the most recent annual report (Form 5500).

(g) All contributions (including all employer contributions and employee salary reduction contributions) required to have been made under any of the Employee Benefit Plans to any funds or trusts established thereunder or in connection therewith have been made by the due date thereof (including any valid extension).

(h) Each Employee Benefit Plan that is subject to Section 409A of the Code has been administered in material compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings, and proposed and final regulations) thereunder. Neither the Company nor any other Acquired Company has any obligation to gross up, indemnify, or otherwise reimburse any individual for any excise taxes, interest, or penalties incurred under Section 409A of the Code.

(i) No actions, claims (other than routine benefit claims), or lawsuits are pending against any Employee Benefit Plan or related trust, sponsor, administrator, or fiduciary with respect to any Employee Benefit Plans.

(j) Except as otherwise set forth on Schedule 4.15(j), neither the execution and delivery of this Agreement nor the consummation of the Acquisition, either alone or in connection with any other event, will (i) entitle any current or former director, manager, officer, employee or consultant of any Acquired Company to any material compensatory payment or benefit; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) give rise to payments or benefits that would, individually or in combination with any other payment, be nondeductible to the payor under Section 280G of the Code or that would result in an excise Tax on any recipient under Section 4999 of the Code, or provide for an indemnification, "gross up" or similar payment in respect of any Taxes that may become payable under Section 409A or Section 4999 of the Code.

4.16 Labor Matters.

(a) No Acquired Company or any other Affiliate of the Company (including any Excluded Company) is or has ever been party to or bound by any collective bargaining agreement, collective agreement, works council agreement, memorandum of understanding or other Contract with a labor union, trade union, works council, or similar such representative of any Acquired Company employee or any employee of any other Affiliate of the Company (including any Excluded Company) whose employment involves or involved providing services with respect to an Acquired Company, and there is no, and no Acquired Company nor any other Affiliate of the Company (including any Excluded Company) has experienced, any strike, picketing, boycott, lockout, work stoppage or other such material labor dispute, or to the Company's Knowledge any union or other labor organizing activity by any Acquired Company's employees or other individual whose employment involves providing services to any Acquired Company, nor, to the Company's Knowledge, is any such action or activity threatened against any Acquired Company or other Affiliate of the Company (including any Excluded Company) with respect to any employee of any Acquired Company or other individual whose employment involves or involved providing services to any Acquired Company. No Business Employee is represented by a labor union or similar representative with respect to such individual's employment with, or services provided to, any Acquired Company or its Affiliate.

(b) Schedule 4.16(b)(i) sets forth, for each employee of any Acquired Company or any employee of any other Affiliate of the Company (including any Excluded Company) whose employment involves providing services with respect to an Acquired Company (collectively, the "Business Employees"): (A) name and employing entity; (B) job title; (C) base salary or hourly rate of pay; (D) status as exempt or non-exempt under the Fair Labor Standards Act; (E) hire date and, if different, service date; (F) leave status (including expected duration of any leave); and (G) whether such person is on a work visa or subject to any other work permit. Schedule 4.16(b)(ii) sets forth

each individual who provides (either directly or through an entity he or she controls) material services to any Acquired Company as an independent contractor, including details and location(s) of the services provided, compensation terms, and description of any Contract applicable to such arrangement. The individuals set forth on Schedules 4.16(b)(i) and 4.16(b)(ii) constitute the entirety of the employees and contractors of the Company or any of its Affiliates whose employment or engagement involves providing services with respect to the Acquired Companies.

(c) The Company and each of its Affiliates, including the Acquired Companies are, and since at least Lookback Date have been, in compliance in all material respects with all Laws with respect to labor and employment (including all such Laws regarding wages and hours, overtime pay, classification of employees and contractors (as both exempt and non-exempt and as employees or contractors), meal and rest breaks, employee training, anti-discrimination, anti-retaliation, anti-harassment, employee notices, expense reimbursement, recordkeeping, employee leave, immigration and occupational health and safety, such Laws together, "Labor Laws") applicable to any current or former employee or other service provider whose employment or engagement involves or has involved providing services with respect to the Acquired Companies, and as of the Closing Date, each then-present and former employee of any Acquired Company or its Affiliate and any other individual who has provided services with respect to the Acquired Companies will have been paid all wages, bonuses, compensation and other sums owed to such employees and former employees and other individuals as of such date. No Acquired Company is a federal, state, or local government contractor or subcontractor or subject to the requirements of Executive Order 11246. There is no material Legal Proceeding pending or, to the Company's Knowledge, threatened against any Acquired Company or with respect to any individual whose employment or engagement has involved providing services with respect to an Acquired Company by with respect to any Labor Laws.

4.17 Environmental Matters. Except as disclosed on Schedule 4.17:

(a) The Acquired Companies are, and since the Lookback Date have been, in compliance with all applicable Environmental Laws in all material respects, and such compliance includes obtaining, maintaining, renewing, and complying with the terms of all permits required pursuant to applicable Environmental Laws for the operation of the Acquired Companies and their respective assets as currently conducted, no such permits are currently subject to revocation, termination, or adverse modification, and to the Company's Knowledge, no unbudgeted material capital or operating expenditures are required to maintain such compliance with Environmental Laws.

(b) The Company is currently a party in good standing to, and has operated the Business in material compliance with, as applicable the terms of the DSL CCAA, and has received no written notice of claim from, nor, to the Company's Knowledge, is any notice or claim threatened, from any Person, regarding the DSL CCAA or any of the Acquired Companies' participation in the DSL CCAA.

(c) There is no Environmental Claim pending or, to the Company's Knowledge, threatened against any Acquired Company, and no Acquired Company is currently subject to any Order issued pursuant to Environmental Laws.

(d) There has been no material Release of Hazardous Materials by the Acquired Companies, at any of the properties that are currently, or to the Company's Knowledge, formerly, owned or leased by any Acquired Company, in each case, that would reasonably be expected to result in a material Environmental Liability.

(e) No Acquired Company has assumed any material Environmental Liability of any other Person (including of any Excluded Company).

(f) No Acquired Company has received any notice asserting an alleged material liability or obligation under any Environmental Law with respect to any remedial actions at any properties where any Acquired Company transported or arranged for the transport or disposal of any Hazardous Materials, and there are no facts, circumstances, or conditions that could reasonably be expected to result in the receipt of such notice.

(g) The Company has made available to Purchaser true and complete copies of all material Environmental Reports.

4.18 Insurance Policies. The Company has, on or prior to the date hereof, made available true and correct copies of the insurance policies maintained by or covering the Acquired Companies which are accurately listed on Schedule 4.18 (the "Insurance Policies"). With respect to each such Insurance Policy: (a) the policy (or extensions, renewals or replacements thereof with comparable policies) is legal, valid, binding, enforceable and in full force and effect in all material respects in accordance with its terms and all premiums due and payable therefor have been duly paid; (b) no Acquired Company is, and to the Company's Knowledge no other party to the policy is, in material breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred that, with notice or the lapse of time, would constitute such a material breach or default or permit termination, modification or acceleration under the policy; and (c) no party to the policy has repudiated any material provision thereof. No Acquired Company has received any written communication regarding any (i) cancellation, invalidation or nonrenewal or any such Insurance Policy or (ii) disclaimer, refusal or denial of any material coverage, reservation of rights or rejection of any material claim under any such Insurance Policy. Each Acquired Company maintains and has at all times maintained since the Lookback Date, in respect of the Business, insurance against Liabilities, claims, and risks of a nature and in such amount as are normal and customary for comparable businesses in its industry, and each Acquired Company has been in compliance with all insurance requirements under applicable Laws and any Contracts related to the Business. Schedule 4.18 contains an accurate list of all claims pending or open under any insurance policy issued to or for the benefit of any Acquired Company related to the Business (the "Ongoing Claims"), and no insurer has denied or disputed coverage for such claims. Except as set forth on Schedule 4.18, there are currently no claims pending or open under any insurance policy issued to or for the benefit of any Acquired Company related to the Business, and, if applicable, all claims and reportable incidents under any such insurance policy have been timely and properly reported and asserted pursuant to the terms of the applicable insurance policy. Based on reasonable estimates of the maximum amount of the Ongoing Claims, the Ongoing Claims will not, individually or in the aggregate, exhaust or fully deplete coverage under any of the applicable insurance policies.

4.19 Brokers' Fees. Other than to Moelis, no Acquired Company has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the Acquisition.

4.20 Indebtedness.

(a) The Company has no Indebtedness as of the Balance Sheet Date other than as set forth on Schedule 4.20.

(b) The capital expenditure obligations required under any Contracts that require the construction, expansion or build-out of facilities, or other capital expenditure, by an Acquired Company where such construction, expansion or build-out is not yet complete, including the aggregate amount of such obligations and associated

timeframe for completion, are set forth on Schedule 4.20(b).

(c) The execution, delivery and performance of this Agreement and the consummation of the Acquisition, or compliance by each Acquired Company with any provision hereof, do not and will not give rise to any event of default, right of termination, acceleration, cancellation or modification of any material obligation or to loss of a benefit under, or give rise to any obligation of any Acquired Company to make any material payment under any guaranty for Liability or Indebtedness thereof.

4.21 Affiliate Contracts. Except for Affiliate Contracts set forth on Schedule 4.21, no Acquired Company is a party to any Affiliate Contract. As used herein, "Affiliate Contract" means any Contract between an Acquired Company, on the one hand, and either a Stockholder, RemainCo or any of their respective Affiliates (including the Excluded Companies) (except for any Acquired Company), on the other hand. Other than as set forth on Schedule 4.21, none of the officers of the Company, nor any Stockholder (together with its Affiliates) holding at least 10% of the Company Stock nor any of their respective Affiliates owns or has owned, directly or indirectly, any equity or other financial or voting interest in any supplier, licensor, lessor, distributor, independent contractor or customer of any Acquired Company.

4.22 Anti-Corruption. During the past five (5) years, none of the Acquired Companies nor any of their respective directors, managers, officers, employees, or to the knowledge (as defined in the FCPA) of the Acquired Companies, their agents, representatives, or any other person working on behalf of the foregoing has violated the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), or any other laws of any jurisdiction applicable to the Acquired Companies relating to domestic or foreign bribery, corruption, or campaign finance (the "Anti-Corruption Laws"). To the knowledge (as defined in the FCPA) of the Acquired Companies, no proceeding or investigation by or before any Governmental Authority involving the Acquired Companies nor their respective directors, officers, employees, agents, or representatives relating to the FCPA or any other applicable Anti-Corruption Laws is pending or threatened.

4.23 Export Controls and Economic Sanctions. None of the Acquired Companies nor any of their respective owners, directors, managers, officers, employees, nor, to the Company's Knowledge, any other Person working on behalf of the Acquired Companies (i) has directly or indirectly during the past five (5) years violated any applicable Laws relating to export, reexport, import, customs, antiboycott, or economic sanctions ("Export Control and Economic Sanctions Laws"); (ii) is targeted, blocked, or otherwise the subject of blocking sanctions under any applicable Export Control and Economic Sanctions Laws (including but not limited to being, or being owned 50% or more by, a specially designated national); (iii) is located, organized, or resident in any country or territory that is the subject of a comprehensive trade embargo under applicable Export Control and Sanctions Laws (currently, Cuba, Iran, North Korea, Syria, and the Crimea, so-called Donetsk People's Republic, and so-called Luhansk People's Republic regions of Ukraine); or (iv) to the knowledge of the Acquired Companies, has during the past five (5) years been the subject or target of any investigation, enforcement, administrative, civil, or criminal action, or disclosure relating to applicable Export Control and Economic Sanctions Laws.

4.24 Books and Records. The record books of the Acquired Companies have been maintained substantially in accordance with applicable Laws and accurately record all limited liability, corporate or other similar action taken by their respective governing body (including their respective, as applicable, boards of directors, board of managers and managing members and, if applicable, any committees thereof) or by the stockholders or other equity owners thereof in accordance with such entity's Governing Documents, and true and complete copies of such records have been made available to Purchaser.

4.25 Anti-Harassment. No Acquired Company is party to a settlement agreement with a current or former officer, director, manager or employee of any Acquired Company resolving allegations of sexual harassment or misconduct by either (i) an officer, director, manager or executive of any Acquired Company, or (ii) an employee of any Acquired Company. There are no and there have not been any Legal Proceedings pending or, to the Company's Knowledge, threatened against any Acquired Company that involve allegations of sexual harassment or misconduct by an employee of any Acquired Company.

4.26 Suppliers and Customers.

(a) Schedule 4.26(a) sets forth a true, complete and accurate list of the names of the fifteen largest suppliers or vendors of the Business for each division thereof (being the lines of business known as Kermit, OnCore and Pronghorn (the "Top Suppliers")) measured by dollar value of purchases by the Stockholder Group since January 1, 2022 through November 30, 2023. None of the Top Suppliers have notified any of the Acquired Companies in writing or, to the Company's Knowledge, orally that it is (i) canceling or terminating its relationship with the Acquired Companies or (ii) materially and adversely modifying its relationship with the Acquired Companies, including by decreasing its rate of business with the Acquired Companies with respect to the Business or with respect to the terms of any Contract between any Acquired Company and such Top Supplier.

(b) Schedule 4.26(b) sets forth a true, complete and accurate list of the names of the fifteen largest customers of the Business (the "Top Customers") measured by dollar value of amount paid to the Acquired Companies by its customers since January 1, 2021 through November 30, 2023. None of the Top Customers has notified the Company in writing or, to the Company's Knowledge, orally that it is (i) canceling or terminating its relationship with the Acquired Companies or (ii) materially and adversely modifying its relationship with any Acquired Company, including by decreasing its rate of business with the Acquired Companies with respect to the Business or with respect to the terms of any Contract between any Acquired Company and such Top Customer.

4.27 Product and Service Warranty.

(a) Each product leased, delivered, installed, manufactured or sold or service performed by any Acquired Company prior to the Closing has complied in all material respects with and conformed in all material respects to all applicable Laws, contractual commitments and all applicable warranties of the applicable Acquired Company.

(b) Schedule 4.27(b) identifies any warranty claim asserted since the Lookback Date from which any Acquired Company has incurred costs and lists all claims, whether in contract or tort, for defective or allegedly defective products or workmanship pending or, to the Company's Knowledge, threatened against any Acquired Company.

4.28 Accounts Receivable. All accounts receivable of the Acquired Companies reflected on the Financial Statements represent actual and bona fide obligations arising from sales actually made or services actually performed, or obligations relating to pre-payments incurred, in the Ordinary Course of Business, and were recorded in good faith in accordance with GAAP. The Company has properly provided reserves for such accounts receivable in its books and records and on the Financial Statements in accordance with GAAP, which reserves were determined in good faith in a manner that is consistent with past practices and methodologies. Subject to such reserves, there is no pending or, to the Company's Knowledge, threatened contest, claim, counterclaim, defense or right of recoupment or set-off under any Contract or otherwise with any obligor of any account receivable of the Company or relating to the amount or validity of such account receivable. Except as otherwise reflected or reserved for in the Financial Statements, such accounts receivable are, to the Company's Knowledge, collectable in the Ordinary Course of Business.

4.29 Accounts Payable. All accounts payable of the Acquired Companies reflected on the Financial Statements represent actual and bona fide obligations arising from purchases actually made or services actually received, or obligations relating to goods or services not yet received but reasonably expected to be received, in the

Ordinary Course of Business, and were recorded in good faith in accordance with GAAP.

4.30 Credit Support Obligations. Schedule 4.30 is a complete and accurate list of all cash deposits, guarantees, letters of credit, treasury securities, surety bonds and other forms of credit assurances or credit support provided by or on behalf of any Acquired Company in support of the obligations of any Acquired Company to any Governmental Authority, contract counterparty or other Person. No Excluded Company has or is required to provide or maintain any cash deposits, guarantees, letters of credit, treasury securities, surety bonds and other forms of credit assurances or credit support in respect of the Business or the Acquired Companies.

4.31 Bank Accounts; Powers of Attorney; Directors and Officers. Schedule 4.31 sets forth an accurate and complete list of (i) all banks or other financial institutions with which any Acquired Company has an account, safe deposit box or lock box, showing the type and account number of each such account, as applicable, and the names of the Persons authorized as signatories thereon or to act or deal in connection therewith, (ii) all valid powers of attorney related to the Business issued by any Acquired Company that remain in effect and (iii) all officers and directors and, in the case of limited liability companies, all managers and managing members, of each Acquired Company.

4.32 No Other Business. Other than the Business (and, in the case of the Company, the operation and management of the Excluded Assets), the Acquired Companies do not conduct, and have not since the Lookback Date, conducted any other business, operation or activity.

4.33 Investment Company Status. The Company is not an "investment company" within the meaning of Section 368(a)(2)(F) of the Code.

4.34 No Other Representations and Warranties. Except for the representations and warranties contained in this Article IV and Article V as qualified by the disclosure schedules, in the certificates delivered at Closing and any representations and warranties in the ancillary transaction documents, (A) the Company does not make any express or implied representations or warranties regarding any Acquired Company or the Acquisition, and (B) each Stockholder hereby disclaims any such representation or warranty with respect to the execution and delivery of this agreement and the consummation of the Acquisition. Purchaser shall acquire the Business and the Acquired Companies without any representation or warranty as to merchantability or fitness for any particular purpose, in an "as is" condition and on a "where is" basis, except as otherwise expressly represented or warranted in this Article IV or in Article V (or in the certificates delivered at Closing), as qualified by the Disclosure Schedules, any representations and warranties in the ancillary transaction documents, and without limiting any express remedy provided for in this Agreement or any Ancillary Transaction Documents. Except for the representations and warranties contained in this Article IV and Article V as qualified by the disclosure schedules, in the certificates delivered at Closing and any representations and warranties in the ancillary transaction documents, no Person shall be deemed to make or have made any representation or warranty with respect to (1) any projections, estimates, or budgets heretofore delivered to or made available to Purchaser or its counsel, accountants, or advisors of future revenues, expenses, or expenditures or future results of operations of any Acquired Company or (2) any other information or documents (financial or otherwise) made available to Purchaser or its counsel, accountants, or advisors with respect to any Acquired Company or the Acquisition.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Except as disclosed in the Disclosure Schedules, each Consenting Stockholder, severally and not jointly, as to itself, represents and warrants to Purchaser as follows (provided that a Stockholder shall only be deemed to have made the representations and warranties in Sections 5.6 through 5.10 if such Stockholder receives Closing Shares):

5.1 Organization; Authorization; Enforceability. If such Stockholder is not an individual, such Stockholder is duly formed and organized, validly existing and in good standing under the Laws of the State of its organization and has all the requisite limited liability company, corporate or other power and authority to execute and deliver this Agreement and each other Ancillary Transaction Document to which such Stockholder is a party and to perform its obligations hereunder and thereunder (and to consummate the Acquisition). If such Stockholder is not an individual, the execution, delivery of, and performance of its obligations under this Agreement by such Stockholder and the Ancillary Transaction Documents to which such Stockholder is a party and the consummation by such Stockholder of the Acquisition have been duly authorized by all necessary limited liability company, corporate and other actions. This Agreement has been duly executed and delivered by such Stockholder and, assuming the due authorization, execution, and delivery by the other Parties, constitutes the valid and legally binding obligation of such Stockholder, enforceable in accordance with its terms and conditions, subject to Laws of general application relating to public policy, bankruptcy, insolvency and the relief of debtors, and rules of Law governing specific performance, injunctive relief, and other equitable remedies, except as would not be material to the Business. If such Stockholder is an individual, such Stockholder has the requisite legal capacity to execute and deliver this Agreement and each other Ancillary Transaction Document to which such Stockholder is a party and to perform its obligations hereunder and thereunder (and to consummate the Acquisition).

5.2 Non-contravention. Neither the execution and delivery of this Agreement or any other Ancillary Transaction Document to which any Stockholder is a party, nor the consummation of the Acquisition, will (a) violate any Law to which such Stockholder is subject; (b) violate any provision of the Governing Documents of such Stockholder (if such Stockholder is not an individual); or (c) conflict with, result in a breach or violation of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, require any notice or consent under, or result in the imposition of any Lien (other than Permitted Liens) upon any of the assets of such Stockholder under any agreement, Contract, lease, license, instrument, or other arrangement to which such Stockholder is a party, except in each case of clause (a) or (c) where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice or obtain consent, or Lien would not materially delay or otherwise affect such Stockholder's performance under this Agreement or the consummation of the Acquisition.

5.3 Ownership and Transfer. Such Stockholder is the record and beneficial owner of all of the Company Securities set forth opposite such Stockholder's name on Schedule 5.3. Such Stockholder has all the necessary power, authority and legal capacity to sell, transfer, assign, and deliver, as applicable, the Company Securities owned by such Stockholder, as provided in this Agreement, and such delivery will convey good and marketable title to such Company Securities, free and clear of any and all Liens.

5.4 Brokers' Fees. Other than to Moelis, such Stockholder has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the Acquisition.

5.5 Litigation. There are no actions, suits, claims, or other Legal Proceedings pending against, or threatened against, such Stockholder or any of its Affiliates that would (individually or in the aggregate) be material to such Stockholder's ownership of Company Securities.

5.6 Restricted Securities. Such Stockholder understands that the shares of Parent Common Stock to be issued pursuant to this Agreement have not been registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Stockholder's representations as expressed herein. Such Stockholder understands that the shares of Parent Common Stock to be issued pursuant to this Agreement, will, upon acquisition by such Stockholder (or, if appliable, its transferees) be "restricted securities" under applicable U.S. federal and state securities laws and may not be sold, transferred, offered for sale, pledged, hypothecated, or otherwise disposed of, except pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act, and in compliance with applicable U.S. federal and state securities laws. Such Stockholder acknowledges that, if an exemption from registration or qualification is available, it may be conditioned on various requirements including the time and manner of sale, the holding period for the Parent Common Stock and on requirements relating to Parent which are outside of such Stockholder's control, and which Parent is under no obligation, and may not be able, to satisfy.

5.7 Accredited Investor. Such Stockholder is either (i) an Accredited Investor or (ii) capable of making each of the representations and warranties contained in Section 5.8.

5.8 Investment Experience. Such Stockholder acknowledges that such Stockholder can bear the economic risk of its investment in the Parent Common Stock for an indefinite period of time, and has such knowledge and experience in financial and business matters that such Stockholder is capable of evaluating (and has evaluated) the merits and risks of the investment in the Parent Common Stock.

5.9 Legends. Such Stockholder understands that the Parent Common Stock acquired hereunder and any securities issued in respect of or exchange therefor may bear any one or more of the following legends, substantially in the form as set forth below:

(a) "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED OR SOLD UNLESS THEY HAVE BEEN REGISTERED UNDER THE SECURITIES ACT, AN EXEMPTION FROM REGISTRATION IS AVAILABLE (AND, IN SUCH CASE, AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO PARENT SHALL HAVE BEEN DELIVERED TO PARENT TO THE EFFECT THAT SUCH OFFER OR SALE IS NOT REQUIRED TO BE REGISTERED UNDER THE SECURITIES ACT) OR RULE 144 UNDER THE SECURITIES ACT HAS BEEN COMPLIED WITH";

(b) THE SECURITIES REPRESENTED HEREBY ARE ALSO SUBJECT TO THE ADDITIONAL RESTRICTIONS ON TRANSFER SET FORTH IN THE REGISTRATION RIGHTS AGREEMENT BY AND AMONG PARENT AND EACH OF THE OTHER PARTIES LISTED ON THE SIGNATURE PAGES THERETO, DATED AS OF THE CLOSING DATE;

(c) any legend required by the securities laws of any state to the extent such laws are applicable to the Parent Common Stock represented by the certificate so legended.

5.10 Information; Investment Purpose. Such Stockholder has reviewed and considered all of the publicly available information of the Parent that such Stockholder deems necessary, appropriate or relevant as a prudent and knowledgeable investor in evaluating the investment in Parent Common Stock. Such Stockholder further represents that it has had an opportunity to ask questions of an receive answers from Parent regarding the terms and conditions of the offering of shares of Parent Common Stock and the business, prospects and conditions of Parent necessary to verify the accuracy of any information furnished to such Stockholder or to which such Stockholder had access. Such Stockholder is acquiring the shares of Parent Common Stock pursuant to this Agreement for such Stockholder's own account for investment purposes only and with no present intention of distributing any Parent Common Stock, and no arrangement or understanding exists with any other persons regarding the distribution of Parent Common Stock.

5.11 No Other Representations and Warranties. Except for the representations and warranties contained in this Article V, as qualified by the disclosure schedules, in the certificates delivered at Closing and any representations and warranties in the Ancillary Transaction Documents, (A) no Stockholder makes any express or implied representations or warranties, and (B) each Stockholder hereby disclaims any such representation or warranty with respect to the execution and delivery of this Agreement and the consummation of the Acquisition.

5.12 No Reliance. Such Stockholder (on behalf of itself and its respective Affiliates) acknowledges and agrees that in entering into this agreement, it has relied solely upon its own investigation and analysis and the terms of this Agreement, and acknowledges that none of the Parent, Purchaser or Merger Subs (or any Affiliate thereof) has made or makes any representation or warranty, either express or implied, and such Stockholder (on behalf of itself and its respective Affiliates) has not relied upon, any representation or warranty, whether express or implied, except for those representations or warranties set forth in Article VI, in the certificates delivered at the Closing and any representations and warranties in the Ancillary Transaction Documents.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES CONCERNING PARENT, PURCHASER AND MERGER SUBS

Each of Parent, Purchaser, Merger Sub 1 and Merger Sub 2, as applicable, represents and warrants to the Company, RemainCo and each of the Stockholders as follows:

6.1 Organization. Each of Parent and Merger Sub 1 is a corporation, validly existing and in good standing under the Laws of the State of Delaware, and each of Purchaser and Merger Sub 2 is a limited liability company, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub 1 and Merger Sub 2 were formed solely for the purpose of effecting the Mergers and have not engaged in any business activities or conducted any operations other than in connection with the Mergers and the Acquisition. Neither of Merger Sub 1 or Merger Sub 2 has or will have at any time prior to the Initial Effective Time (in the case of Merger Sub 1) or the Subsequent Effective Time (in the case of Merger Sub 2), except as contemplated by this Agreement, any assets, liabilities or obligations of any kind or nature whatsoever other than those incident to their formation.

6.2 Authorization; Enforceability. Each of Parent, Purchaser, Merger Sub 1 and Merger Sub 2 has the requisite power and authority to execute and deliver this Agreement and the Ancillary Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by each of Parent, Purchaser, Merger Sub 1 and Merger Sub 2 of this Agreement and each Ancillary Transaction Document to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action, and no other proceedings, approvals, or votes are necessary to authorize this Agreement or the Ancillary Transaction Documents or to consummate the Acquisition. This Agreement has been duly executed and delivered by each of Parent, Purchaser Merger Sub 1 and Merger Sub 2 and, assuming the due authorization, execution, and delivery by the other Parties, constitutes the valid and legally binding obligation of Parent,

Purchaser, Merger Sub 1 and Merger Sub 2, enforceable in accordance with its terms and conditions, subject to Laws of general application relating to public policy, bankruptcy, insolvency and the relief of debtors, and rules of Law governing specific performance, injunctive relief and other equitable remedies.

6.3 Capitalization.

(a) As of December 31, 2023 (the "Parent Capitalization Time"), the authorized Parent Common Stock consists of: (i) 1,500,000,000 shares of Parent Common Stock, of which 100,025,584 shares are issued and outstanding (net of shares held in treasury); and (ii) 500,000,000 shares of preferred stock, par value $0.01 per share, of which no shares were issued and outstanding. All outstanding shares of Parent Common Stock have been duly authorized and validly issued and are fully paid and nonassessable, and were issued in compliance with all applicable U.S. federal and state securities laws in all material respects.

(b) As of the Parent Capitalization Time, all outstanding shares of Parent Common Stock, equity-based compensation awards (whether payable in equity, cash or otherwise) and other securities of Parent and its Affiliates have been issued and granted in compliance in all material respects with all Laws and requirements set forth in any applicable Contract or benefit plans of Parent.

(c) As of the Parent Capitalization Time, except as set forth above inSection 6.3(a), no shares of capital stock of Parent are outstanding and Parent does not have outstanding any securities convertible into or exchangeable for any shares of capital stock of Parent, any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls or commitments requiring the issuance of, any capital stock of Parent, or any stock or securities convertible into or exchangeable for any capital stock of Parent; and Parent is not subject to any obligation to repurchase or otherwise acquire or retire any shares of capital stock of Parent. As of the Parent Capitalization Time, Parent does not have outstanding any bonds, debentures, notes or other debt obligations the holders of which have the right to vote (or are convertible into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter. Except as set forth above in Section 6.3(a), there are no outstanding stock options, restricted stock units, restricted stock, stock appreciation rights, "phantom" stock rights, performance units, or other compensatory rights or awards (in each case, issued by Parent or any of its Subsidiaries), that are convertible into or exercisable for a share of Parent Common Stock on a deferred basis or otherwise or other rights that are linked to, or based upon, the value of Parent Common Stock.

(d) As of the Parent Capitalization Time, there is no shareholder rights plan (or similar plan commonly referred to as a "poison pill") under which Parent or any of its Affiliates is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities.

(e) As of the date hereof, Purchaser is, and will be as of the Initial Effective Time and Subsequent Effective Time (as applicable), the direct or indirect holder of all Equity Interests of Merger Sub 1 and Merger Sub 2.

6.4 Non-contravention.

(a) Neither the execution and delivery of this Agreement or any Ancillary Transaction Document to which Parent, Purchaser, Merger Sub 1 or Merger Sub 2 is a party, nor the consummation of the Acquisition, will (i) violate any Laws to which Parent, Purchaser, Merger Sub 1 or Merger Sub 2 is subject; (ii) violate any provision of the Governing Documents of Parent, Purchaser, Merger Sub 1 or Merger Sub 2, or any member or stockholder resolution of Parent, Purchaser, Merger Sub 1 or Merger Sub 2; or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice or consent under, or result in the imposition of any Lien (other than Permitted Liens) upon any of the assets of Parent, Purchaser, Merger Sub 1 or Merger Sub 2 under, any agreement, contract, lease, license, instrument, or other arrangement to which Parent, Purchaser, Merger Sub 1 or Merger Sub 2 (as applicable) is a party or by which it is bound or to which any of its assets is subject, except in each case of clause (i) or (iii) where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice or obtain consent, or Lien would not materially delay or otherwise affect the performance under or pursuant to this Agreement, or the consummation of the Acquisition, by Parent, Purchaser, Merger Sub 1 or Merger Sub 2.

(b) None of Parent, Purchaser, Merger Sub 1 or Merger Sub 2 are required to provide any notice to, make any filing with, or obtain any authorization, consent, or approval from any Governmental Authority (other than customary filings with the SEC by Parent required by the Exchange Act) in order for the Parties to consummate the Acquisition other than (i) the pre-transaction notification requirements of the HSR Act and any other applicable Antitrust Law filings, (ii) the filing of the Initial Certificate of Merger with the Secretary of State of the State of Delaware and (iii) the filing of the Subsequent Certificate of Merger with the Secretary of State of the State of Delaware.

6.5 Parent SEC Filings; Financial Statements.

(a) Parent has timely filed or furnished with the SEC all reports, schedules, forms, statements, prospectuses, registration statements, certifications and other documents (including all exhibits, supplements and amendments thereto) required to be filed or furnished by Parent under the Securities Act or the Exchange Act for the one (1)-year period preceding the Closing Date (or such shorter period as Parent was required by Law to file such material) (the foregoing materials being collectively referred to herein as the "Parent SEC Documents"). As of their respective dates, each of the Parent SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder, each as in effect at the time of such filing or furnishment. The Parent SEC Documents, at the time filed or furnished, did not (i) in the case of any registration statement contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) in the case of Parent SEC Documents other than registration statements, include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) As of their respective dates, the financial statements included in the Parent SEC Documents (i) comply in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (ii) were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, subject to normal year-end audit adjustments that are not material), and (iii) fairly present (subject in the case of unaudited statements to normal, recurring and year-end audit adjustments that are not material) in all material respects the consolidated financial position of Parent and its Subsidiaries as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended.

(c) Parent does not have any liabilities of any nature, whether or not accrued, contingent, absolute or otherwise, that would be required to be set forth or reserved for on a balance sheet of Parent prepared in accordance with GAAP, except for liabilities (i) as and to the extent specifically disclosed, reflected or reserved against in Parent's consolidated balance sheet (or the notes thereto) as of the Balance Sheet Date included in the Parent SEC Documents filed or furnished prior to the Closing Date, (ii) incurred in the Ordinary Course of Business since the Balance Sheet Date, (iii) incurred as a result of this Agreement and the Acquisition and (iv) are immaterial to Parent, taken as a whole.

(d) Except as contemplated by the consummation of the Acquisition, since the Balance Sheet Date, there has not been any change, event, occurrence,

effect, circumstance, development or condition, actual or threatened, that is or could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Parent.

6.6 Issuance of Stock Consideration. The issuance of the Closing Shares contemplated pursuant to this Agreement has been duly authorized and upon consummation of the Acquisition, the Closing Shares will be validly issued, fully paid, non-assessable, issued without application of preemptive rights, will have the rights, preferences and privileges specified in Parent's Governing Documents, and will be free and clear of all Liens and restrictions, other than the restrictions imposed by applicable federal and state securities Laws. The Closing Shares will not be issued in violation of and will not be subject to any preemptive rights, resale rights, rights of first refusal or similar rights. Assuming the accuracy of the representations and warranties of Stockholders contained in this Agreement, the sale and issuance of the Closing Shares pursuant to this Agreement are exempt from the registration requirements of the Securities Act.

6.7 NYSE Listing. The Parent Common Stock is listed on the NYSE, and Parent has not received any notice of delisting. No judgment, order, ruling, decree, injunction or award of any securities commission or similar securities regulatory authority or any other Governmental Authority, or of the NYSE, preventing or suspending trading in any securities of Parent has been issued, and no Legal Proceedings for such purpose are to the knowledge of Parent, pending, contemplated, or threatened. Subject only to official notice of issuance, the issuance and sale of the Closing Shares in the manner contemplated by this Agreement (and, for avoidance of doubt, without approval of the stockholders of Parent) does not contravene NYSE rules and regulations and have been approved for listing on the NYSE.

6.8 Internal Controls and Procedures.

(a) Parent maintains "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) that has been designed by, or under the supervision of, its principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and that include those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent; (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in accordance with GAAP and that receipts and expenditures of Parent are being made only in accordance with the authorizations of management and the directors of Parent; (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of Parent's assets that could be material to Parent's financial statements; and (iv) provide reasonable assurance that the interactive data in eXtensible Business Reporting Language incorporated by reference in Parent SEC Documents fairly presents the required information in all material respects and has been prepared in accordance with the SEC's rules and guidelines applicable thereto.

(b) Parent maintains "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that are designed to ensure that information required to be disclosed by Parent in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to Parent's management as appropriate to allow timely decisions regarding required disclosure. Parent and its management have carried out evaluations of the effectiveness of its disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act and such disclosure controls and procedures were effective as of the end of Parent's most recently completed fiscal quarter.

6.9 Investment Company. Each of Parent, Purchaser. Merger Sub 1 and Merger Sub 2 is not (a) an investment company or a company controlled by an investment company within the meaning of the Investment Company Act of 1940, as amended (or the rules and regulations promulgated thereunder), or (b) subject in any respect to the provisions of that act.

6.10 No Stockholder Approval. The Acquisition does not require any vote of the stockholders of Parent under applicable Law, the rules and regulations of the NYSE (or other national securities exchange on which the Parent Common Stock is then listed) or the Governing Documents of Parent.

6.11 No Broker's Fees. Other than to Piper Sandler & Co., none of Parent,Purchaser, Merger Sub 1 and Merger Sub 2, nor any of their respective Affiliates, has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the Acquisition or the issuance of the Closing Shares as contemplated by this Agreement.

6.12 Reorganization Qualification.

(a) For U.S. federal income Tax purposes, and all applicable state and local Tax purposes, Purchaser is classified as an entity disregarded as separate from AESI Holdings Inc., a Delaware corporation ("Holdings"), and no election has been filed or made to change such classification.

(b) Holdings is a direct, wholly owned Subsidiary of Parent, is classified as an association taxable as a corporation for U.S. federal income tax purposes (and applicable state and local Tax purposes), and no election has been filed or made (and no other action has been taken) to change such classification.

(c) Merger Sub 1 is a direct, wholly owned Subsidiary of Purchaser, is classified as an association taxable as a corporation for U.S. federal income tax purposes (and applicable state and local Tax purposes), and no election has been filed or made (and no other action has been taken) to change such classification.

(d) Merger Sub 2 is a direct, wholly owned Subsidiary of Purchaser, is classified as an entity disregarded as separate from Holdings for U.S. federal income tax purposes (and applicable state and local Tax purposes), and no election has been filed or made (and no other action has been taken) to change such classification.

(e) Neither Parent nor Holdings is an "investment company" within the meaning of Section 368(a)(2)(F) of the Code.

6.13 No Reliance. Each of Parent, Purchaser, Merger Sub 1 and Merger Sub 2 (on behalf of itself and its respective Affiliates) acknowledges and agrees that in entering into this agreement, each of them has relied solely upon its own investigation and analysis and the terms of this agreement, and each of them acknowledges that none of the Stockholders, the Company or the Acquired Companies (or any Affiliate thereof) has made or makes any representation or warranty, either express or implied, and each of Parent, Purchaser, Merger Sub 1 and Merger Sub 2 (on behalf of itself and its respective Affiliates) have not relied upon, any representation or warranty, whether express or implied, except for those representations or warranties set forth in Article IV or Article V as qualified by the disclosure schedules, in the certificates delivered at the Closing and any representations and warranties in the Ancillary Transaction Documents.

6.14 No Other Representations and Warranties. Except for the representations and warranties contained in this Article VI, in the certificates delivered at Closing and any representations and warranties in the ancillary transaction documents, (A) none of Parent, Purchaser, Merger Sub 1 or Merger Sub 2 makes any express or implied representations or warranties regarding Parent, Purchaser, Merger Sub 1 or Merger Sub 2 or the Acquisition, and (B) each of Parent, Purchaser, Merger Sub 1 and Merger Sub 2 hereby disclaims any such representation or warranty with respect to the execution and delivery of this Agreement and the consummation of the Acquisition.

ARTICLE VII

COVENANTS OF THE COMPANY & THE STOCKHOLDERS

7.1 Interim Conduct of Business.

(a) Except (i) as set forth on Schedule 7.1 or (ii) as otherwise consented to in writing by Purchaser, from the date hereof through the Closing or the earlier termination of this Agreement pursuant to Article XIII (the "Pre-Closing Period"), the Company shall, and shall cause the other Acquired Companies to, use commercially reasonable efforts to conduct their respective businesses in all material respects in the Ordinary Course of Business and preserve intact in all material respects the Business's assets and the Acquired Companies' relationships with customers, suppliers, vendors, capital providers and other relevant stakeholders (other than with respect to the Acquisition). Notwithstanding anything to the contrary in this Agreement, nothing contained in this Agreement is intended to give Purchaser, directly or indirectly, the right to control or direct operations of any Acquired Company prior to the Closing. Prior to the Closing but subject to the terms of this Agreement, the Acquired Companies shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over their respective operations.

(b)Except (i) as set forth on Schedule 7.1, (ii) as reasonably required pursuant to the Pre-Closing Reorganization, or (iii) as otherwise consented to in writing by Purchaser, from the date hereof until the Closing or the earlier termination of this Agreement pursuant to Article XIII, each Acquired Company shall not, and each Acquired Company shall not permit any of its Affiliates (with respect to the Business), and each Acquired Company shall cause the Acquired Companies and its Affiliates (with respect to the Business) not to:

(i) amend, modify, supplement or restate the Governing Documents of any Acquired Company in any material respect;

(ii) adjust, split, combine, amend the terms of or reclassify the Equity Interests of any other Acquired Company;

(iii) declare, set aside or pay any dividend or distribution on any of Equity Interests of the Acquired Companies, except for any dividend or distribution (A) payable solely in cash prior to the Economic Effective Time, (B) required to be paid pursuant to the Governing Documents of any Acquired Company, or (C) that is payable by any Acquired Company to any other Acquired Company;

(iv) merge or consolidate any Acquired Company with any other Person or restructure, reorganize, recapitalize or completely or partially liquidate (or adopt a plan of liquidation), acquire all or substantially all of the assets of any other Person, enter into any joint venture, limited liability company, partnership or similar venture with any other Person;

(v) form any Subsidiary or acquire (including by merger or consolidation) any Equity Interest in any other Person;

(vi) sell, transfer, lease, sublease, license or otherwise dispose of, except in the Ordinary Course of Business or to the extent required by the terms of any Material Contract (as in effect on the date of this Agreement), any material asset related to the Business;

(vii) issue or reserve for issuance, sell, pledge, transfer, grant, redeem, reprice, repurchase or otherwise dispose of or acquire any Equity Interests in any Acquired Company or any other securities or obligations convertible into or exchangeable for any Equity Interests in any Acquired Company, or granted any options, warrants, convertible securities or other similar rights or commitments relating to Equity Interests in any Acquired Company or obligating any Acquired Company to issue, transfer or sell any equity or other interests in such Acquired Company to any Person, other than to and from another Acquired Company or in connection with equity capital contributions made by Stockholders to the capital of such Acquired Company;

(viii) except in the Ordinary Course of Business or as may be required by applicable Law or pursuant to a now-existing Employee Benefit Plan or as expressly provided for by this Agreement, (A) grant any increases in the compensation, incentives or benefits payable or to become payable to any Business Employee or other individual whose employment or engagement involves providing services to any Acquired Company, (B) enter into any new, or amend any existing, material employment, severance or termination agreement or other Employee Benefit Plan with or applicable to any employee or contractor of any Acquired Company, or with any other individual whose employment or engagement involves providing services to any Acquired Company, (C) establish or become obligated under any collective bargaining agreement or other Contract with a labor union, works council, trade union, or representative of any Business Employees, (D) take any action to accelerate the vesting, funding or payment of any compensation or benefits under any Employee Benefit Plan (or any award thereunder), (E) hire any new employees who would be a Business Employee or engage any new individuals in the capacity of an independent contractor who provides services with respect to any Acquired Company or (F) transfer or terminate the employment or engagement of any Business Employee or other individual whose employment or engagement involves providing services to any Acquired Company other than any such termination for cause;

(ix) (A) enter into any Contract that would be a Material Contract if entered into prior to the date hereof, or (B) take any action or fail to take any action constituting a default under any Material Contract or amend or modify in any respect that is materially adverse to any Acquired Company, or assign, transfer or voluntarily terminate, any Material Contract that would be material to the Company;

(x) (A) make (outside of the Ordinary Course of Business) or change or revoke any material Tax election, (B) except as otherwise required by applicable Law, change any material annual Tax accounting period, (C) except as otherwise required by applicable Law, adopt (outside of the Ordinary Course of Business) or change any material method of Tax accounting, (D) except as otherwise required by applicable Law, file any Tax Return prepared in a manner materially inconsistent with the past practice of the relevant Acquired Company, (E) file any material amended Tax Return, (F) enter into any material closing agreement with respect to Taxes, (G) settle any material claim or assessment with respect to Taxes, (H) surrender any right to claim a material refund with respect to Taxes or (I) consent to any extension or waiver of the limitations period applicable to any material Tax claim or assessment;

(xi) make a loan or advance to any third party, or cancel any Indebtedness owed to it by a third party, for a single amount in excess of $1,000,000 or an aggregate amount in excess of $5,000,000 (other than to, or in respect of the Liabilities of, another Acquired Company), other than for the avoidance of doubt any actions done in the Ordinary Course of Business that reflect changes to the accounts receivable of the Company;

(xii) except in the Ordinary Course of Business, incur any material Lien on any material asset (whether tangible or intangible) that is held or used by any Acquired Company, except for Permitted Liens;

(xiii) cease to operate any material portion of the Business, considered as a whole, or enter into any new line of business;

(xiv) liquidate, dissolve, reorganize or otherwise wind up the Business or fail to maintain its existence;

(xv) make a voluntary assignment for the benefit of creditors of the Acquired Companies, or file a voluntary petition of bankruptcy or insolvency or otherwise institute insolvency proceedings of any type;

(xvi) amend, modify, or terminate any of the Leases;

(xvii) other than in the Ordinary Course of Business, acquire any real estate or enter into any leases, licenses, occupancy agreements for real property or enter into any agreement for the purchase or right to purchase any interest in real estate;

(xviii) except as required by GAAP or applicable Law, change any of the accounting methods, principles or practices used by an Acquired Company;

(xix) make capital expenditures or commitments therefor that exceed, in the aggregate, $500,000;

(xx) initiate, settle or cancel any Legal Proceeding involving any Acquired Company, other than settlements or compromises involving solely money damages not in excess of $250,000; or

(xxi) enter into a Contract to take any of the actions described in this Section 7.1(b).

(c) With respect to any Acquired Company, such Acquired Company and its Affiliates may take commercially reasonable actions that would otherwise be prohibited pursuant to Section 7.1(b) in order to prevent the occurrence of or mitigate the existence of an emergency situation involving endangerment of life, human health, safety or the environment or the protection of equipment or other assets; *provided* that such Acquired Company shall provide Purchaser with prompt written notice of such emergency situation and any such action taken by such Acquired Company or its Affiliates as soon as practicable.

7.2 280G. Prior to the Closing, to the extent that any "disqualified individual" (within the meaning of Section 280G) has the right to receive or retain any payments or benefits in connection with the transactions contemplated by this Agreement that reasonably would be expected to constitute "parachute payments" (within the meaning of Section 280G), the Company will (a) solicit and use reasonable best efforts to obtain, from each such person whom the Company reasonably believes is a "disqualified individual," a waiver of all or a portion of such disqualified individual's rights or potential rights to any such payments or benefits (the "Waived 280G Benefits"), such that none of the remaining payments or benefits applicable to such disqualified individual would be deemed to be "excess parachute payments" pursuant to Section 280G, and (b) thereafter, with respect to each disqualified individual who executes the waiver described in clause (a), submit for approval the right of any such disqualified individual to receive or retain the Waived 280G Benefits to a vote of the holders of the applicable voting securities of the Company entitled to vote on such matters (the "Voting Security Holders"), in the manner intended to satisfy the requirements under Section 280G(b)(5) of the Code and the regulations and guidance promulgated thereunder. Prior to soliciting the waivers of the Waived 280G Benefits, the Company shall provide to Purchaser copies of the calculations and drafts of the waivers, disclosure and other approval materials for Purchaser's review and comment. To the extent that any Contract, agreement, plan or arrangement is planned to be entered into by, or at the direction of, the Company or any of its Affiliates and a disqualified individual at or prior to Closing, the Company shall provide a copy of such draft Contract, agreement, plan or arrangement to Purchaser at least five (5) Business Days before the Closing Date for review and comment, and such Parties will cooperate in good faith in order to agree on such terms, if applicable. To the extent applicable, at Closing, the Company will deliver to Purchaser evidence reasonably satisfactory to Purchaser that a vote of the applicable Voting Security Holders was solicited in accordance with the foregoing provisions of this Section 7.2 and that either (i) the requisite number of votes of the Voting Security Holders was obtained with respect to the Waived 280G Benefits (the "280G Approval") or (ii) the 280G Approval was not obtained.

7.3 Access. From the date hereof until the Closing Date, the Acquired Companies will permit, or procure that a member of the Stockholder Group permits, Purchaser and its representatives (including legal counsel and accountants) to have, upon reasonable prior written notice, reasonable access during normal business hours and under reasonable circumstances, and in a manner so as not to interfere with the normal business operations of any Acquired Company, to the executive officers, premises, properties, books, records (including Tax records and financial information), Contracts and documents of or pertaining to any Acquired Company, and for discussions with any employee, customer, supplier, landlord, lender or other material business relation of any Acquired Company. All requests for such access shall be directed to such Persons as the Acquired Companies respectively may designate in writing from time to time (collectively, the "Designated Contacts"). Other than the Designated Contacts or as otherwise expressly permitted in this Agreement or any Ancillary Transaction Document, neither Purchaser nor any of its Affiliates or any of their respective Agents shall contact any employee, customer, supplier, landlord, lender or other material business relation of any Acquired Company without the prior written consent of a Designated Contact; *provided*, *however*, that the Stockholders, the Acquired Companies and their respective Affiliates shall not unreasonably withhold, condition or delay access to the foregoing Persons, and shall also cause their Affiliates not to do so. Purchaser shall comply with, and shall cause its Agents to comply with, all of their obligations under the Confidentiality Agreement, which shall continue in full force and effect prior to the Closing, with respect to the information disclosed pursuant to this Section 7.3, which Confidentiality Agreement will terminate at Closing pursuant to Section 14.3(c). Purchaser and its representatives shall comply with the policies and procedures of the Acquired Companies while on the premises of any Acquired Company, and Purchaser shall indemnify RemainCo and the Stockholders for any Losses incurred as a result of Purchaser's access pursuant to this Section 7.3, except to the extent such Loss results from or is attributable to the gross negligence or willful misconduct of the Acquired Companies, the Stockholders or any of their respective Affiliates or personnel.

7.4 Publicity. The Stockholders' Representative shall consult with Purchaser and such Parties shall mutually agree upon any press release or other public statements made by Stockholders' Representative, RemainCo or any of the Stockholder (or its Affiliates) who is a Consenting Stockholder as of the date of this Agreement, with respect to the Acquisition and no such press release or public statement shall be issued by any such Party without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), other than any press release or public statement made at or after the Closing and consisting solely of information contained in or otherwise not inconsistent with any press release issued by Purchaser or its Affiliate with respect to the Acquisition.

7.5 Financial Statement Cooperation.

(a) RemainCo shall use reasonable best efforts to provide to Parent (i) on or prior to the date that is sixty (60) days following the Closing Date, the audited carve-out financial statements for the assets to be owned by the Acquired Companies as of the Closing, consisting of the balance sheets of the Acquired Companies as

of December 31, 2023 and 2022 and the related statements of operations, changes in equity, and cash flow for the years then ended, including the notes and schedules thereto, accompanied by the report thereon of the Acquired Companies' independent auditors for the years then ended, together with quarterly financial statements for each calendar quarter of 2023 that have been reviewed by the independent accountants of RemainCo (the "Audit Firm"), (ii) on or prior to April 30, 2024, the unaudited carve-out financial statements for the assets to be owned by the Acquired Companies as of the Closing, consisting of the balance sheets of the Acquired Companies as of the Closing Date and the comparable prior period, and the related statements of operations, changes in equity, and cash flow for the period from January 1, 2024, through the Closing Date and the comparable prior period, in each case prepared in accordance with GAAP, reviewed by the Acquired Companies' independent auditors under applicable review standards for interim financial statements under the guidelines of the American Institute of Certified Public Accountants, and (iii) on or prior to the date that is sixty (60) days following the Closing Date, a reserve report compliant with the requirements of Regulation S-K Subpart 1300 relating to the assets to be owned by the Acquired Companies as of the Closing as of December 31, 2023 prepared or audited by an independent reserve engineer.

(b) Following Closing and until the financial statements required to be filed by Parent in connection with the Acquisition pursuant to Regulation S-X Article 11 are no longer required (and, in no event shall any such obligations pursuant to this provision extend beyond March 31, 2025) (the "Records Period"), RemainCo shall use commercially reasonable efforts to, and shall cause its respective officers, directors and employees to use commercially reasonable efforts to, cooperate and provide (in each case at Purchaser's sole expense):

(i) all assistance reasonably requested by Parent that is necessary for Parent to prepare and file any historical or pro forma financial statements or other information reasonably required in any filing with the SEC or in connection with Parent's or its Affiliates' debt or equity securities offerings or filings, including, for the avoidance of doubt, preparation of historical unaudited financial statements (including quarterly financial statements) of the Acquired Companies (the "Required Parent Financial Statements"), including by providing any and all records of the Acquired Companies to the extent in RemainCo's possession or control and to which RemainCo's personnel have reasonable access, and by using its commercially reasonable efforts to cause its Audit Firm to provide reasonable assistance to Parent;

(ii) all assistance reasonably requested by Parent and its independent reserve engineer that is necessary for Parent and its independent reserve engineer to prepare and file a reserve report of as of December 31, 2024 with the SEC; and

(iii) cause its accountants, counsel, agents and other Persons to cooperate with Parent and its Agents in connection with the preparation by Parent of the Required Parent Financial Statements that are required to be included in any filing by Parent or its Affiliates with the SEC, including to use their commercially reasonable efforts to cause the Audit Firm and its independent reserve engineer to (i) provide its consent to be named as an expert in (A) any filings that may be made by Parent under the Securities Act or required by the SEC under securities laws applicable to Parent or any report required to be filed by Parent under the Exchange Act or (B) any prospectus or offering memorandum or (ii) to provide customary "comfort letters" to any underwriter or initial purchaser in connection with any debt or equity securities offering during the Records Period. If reasonably requested by Parent, RemainCo shall use commercially reasonable efforts to execute and deliver, or shall use commercially reasonable efforts to cause its Affiliates to execute and deliver, to the Audit Firm such representation letters, in form and substance customary for representation letters provided to external audit firms by management of the company whose financial statements are the subject of an audit, as may be reasonably requested by the Audit Firm, with respect to the Required Parent Financial Statements, including, as requested, representations regarding internal accounting controls and disclosure controls.

(c) RemainCo's obligations under this Section 7.5 are subject to the condition that Parent shall, during the Records Period: (i) use commercially reasonable efforts to, and cause its respective officers, directors and employees to use commercially reasonable efforts to, cooperate and provide (in each case at Purchaser's sole expense) all assistance reasonably requested by RemainCo for RemainCo to prepare the financial statements or other information reasonably required in connection with RemainCo's obligations under this Section 7.5, including by providing any and all records of the Acquired Companies to the extent in Parent's possession or control and to which Parent's personnel have reasonable access, and by using its commercially reasonable efforts to cause its independent accountants to provide reasonable assistance to RemainCo, and (ii) cause its accountants, counsel, agents and other Persons to cooperate with RemainCo and its Agents in connection with RemainCo's obligations under this Section 7.5.

7.6 Use of Name. Within ninety (90) days following the Closing Date, the Stockholders shall, and shall cause their Affiliates, including RemainCo and all of its Subsidiaries (including the Excluded Companies), to cease using the terms "Hi-Crush" and any other word, expression or identifier of source confusingly similar thereto or constituting an abbreviation, derivation or extension thereof (the "Company Marks") in connection with any product or service, or other public communication, including removing, or causing to be removed, all such names, marks or logos from wherever they may appear on Stockholders', their Affiliates', RemainCo's and its Subsidiaries' (including the Excluded Companies) assets, and thereafter, the Stockholders shall not, and shall cause their respective Affiliates, including RemainCo and its Subsidiaries (including the Excluded Companies), not to, use the Company Marks or any other logos, trademarks, or trade names similar thereto; *provided* that the use of the name HC Minerals Inc. is permitted. Notwithstanding the foregoing, the Stockholders may use the Company Marks, and retain such assets, solely to refer to the Stockholders' historical ownership of the Acquired Companies in a factual manner. Each of the Stockholders agree to cause, as applicable, itself and any Affiliate, including RemainCo and its Subsidiaries (including the Excluded Companies), whose name includes the name "Hi-Crush" to, promptly following the Closing, and in any event within twenty Business Days after the Closing Date, change its name such that its name does not include the name "Hi-Crush" or any other word, expression or identifier confusingly similar thereto or constituting an abbreviation, derivation or extension thereof; provided, that Stockholders may, with written consent of Purchaser, which shall not be unreasonably withheld, including to permit use of any such name for such longer period as is reasonably required or advisable in light of applicable regulatory requirements, or to facilitate the orderly transition of employees of the Business or licenses held by an Excluded Company. Each of the Stockholders acknowledges that, after the Closing, it and its Affiliates, including RemainCo and its Subsidiaries (including the Excluded Companies), have no rights whatsoever to the Intellectual Property included in the Business. Notwithstanding the foregoing, Stockholders and RemainCo shall be permitted to use the term "Hi-Crush" in respect of its or their historical ownership thereof in connection with governmental public reporting and disclosure if required under applicable Law. Nothing in this Section 7.6 shall require RemainCo to change its name or restrict use of the phrase "HC Minerals" by RemainCo, Stockholders or their respective Affiliates.

7.7 RemainCo's Operations. RemainCo agrees that for a period of three years following Closing, it will not intentionally and voluntarily (i) wind-down, liquidate or otherwise dissolve RemainCo's legal existence, or (ii) reorganize or otherwise restructure RemainCo's asset or liability structures, including, as applicable, by sale or other transfer of all or substantially all of RemainCo's assets (except where the surviving Person or transferee of such restructuring, sale or transfer (x) succeeds to or acquires all or substantially all of the assets of RemainCo as of the Closing Date and (y) assumes the indemnification obligations of RemainCo under this Agreement). Nothing in the immediately preceding sentence is intended to, nor shall it, restrict or prevent RemainCo from carrying out business decisions in the Ordinary Course of Business regarding any of RemainCo's asset or liability structures or from taking any action that, if not taken, could reasonably be likely to be inconsistent with the fiduciary duties of RemainCo's officers and directors to RemainCo's stockholders under applicable Law.

7.8 Surety Bond & Liens. If the Company has not been released as an obligor under the Philadelphia Surety Bond as of the Closing Date, then RemainCo shall use its commercially reasonable efforts following Closing to cause the Company to be so released within 30 days after Closing. If any Acquired Company has not obtained documentary release of all of the Liens set forth on Schedule 1.1(b) in accordance with the obligations set forth in such schedule, then RemainCo shall use its best efforts to obtain customary documentary release of these Liens within 30 days after Closing.

7.9 Exclusivity.

(a) The Company and the Stockholders' Representative agree that from the Execution Date until the earlier of the Closing and the termination of this Agreement pursuant to Section 13.1, neither the Company nor the Stockholders' Representative shall, and each shall take all commercially reasonable actions necessary to ensure that none of the Acquired Companies or any of their Affiliates or any of their respective officers, managers, directors, employees, financial advisors or other representatives, directly or indirectly:

(i) solicit, initiate, consider, encourage or accept any other proposals or offers from any Person (other than the Purchaser, Merger Sub 1, Merger Sub 2 and their respective Agents) relating to any direct or indirect acquisition or purchase of all or a significant portion of the assets of the Business or Equity Interests of the Company (or any other Acquired Company), whether effected by sale of assets, sale of stock, merger or otherwise, other than sales made in the Ordinary Course of Business; or

(ii) participate in any discussions, conversations, negotiations or other communications regarding, or furnish to any other Person any information with respect to, or otherwise cooperate in any way, assist or participate in, facilitate or encourage any effort or attempt by any other Person to seek to do any of the foregoing. The Company immediately shall cease and cause to be terminated all existing discussions, conversations, negotiations and other communications with any Persons conducted heretofore with respect to any of the foregoing (other than with respect to the Stockholders' Representative, the Purchaser and Merger Sub 1 in connection with communications related to the Acquisition).

(b) The Company shall notify the Purchaser promptly, but in any event within two Business Days, in writing if any *bona fide* proposal or offer with respect to a transaction described in this Section 7.9, or any inquiry or other contact with any Person with respect thereto, is made. Any such notice to Parent shall indicate in reasonable detail the identity of the Person making such proposal, offer, inquiry or other contact and the terms and conditions of such proposal, offer, inquiry or other contact. The Company shall not release any Person from, or waive any provision of, any confidentiality agreement to which the Company is a party, without the prior written consent of Purchaser.

7.10 Company Benefit Plans. Prior to the Closing, and subject to the terms of any such Employee Benefit Plan and applicable Law, for each Employee Benefit Plan that is listed on Schedule 7.10, the Company shall either (i) terminate such Employee Benefit Plan or (ii) transfer such Employee Benefit Plan to be maintained or sponsored by an Excluded Company.

ARTICLE VIII

COVENANTS OF PURCHASER

8.1 Publicity. Purchaser will provide a copy of any press release or other public statements to be made by Parent or its Affiliates with respect to the Acquisition to the Stockholders' Representative in advance of public dissemination thereof to provide Stockholders' Representative a reasonable opportunity to comment thereon, and Purchaser shall accept any comments that are verifiable factual corrections with respect to the Stockholders, RemainCo or their respective Affiliates.

8.2 RWI Policy. Purchaser shall obtain a conditionally bound representations and warranty insurance policy in respect of the representations and warranties contained in this Agreement or any certificate delivered in connection with this Agreement (the "RWI Policy") and use reasonable best efforts to ensure that the conditions in the binder of such RWI Policy are met such that the RWI Policy will remain effective from and after Closing. The fees, costs, and expenses, including the premium, underwriting costs, brokerage fees, and commissions to obtain the RWI Policy (the "RWI Fees") shall be borne equally by the Stockholders, on the one hand, and Parent, on the other hand; *provided* that the Stockholders shall bear 100% of all such fees, costs and expenses attributable to any excess fundamental coverage policy procured by Purchaser as part of the RWI Policy (the aggregate RWI Fees to be borne by Stockholders, the "Stockholder Share RWI Fees"). Purchaser has provided the Stockholders with a reasonable opportunity to review and provide comments to the RWI Policy prior to binding coverage. Purchaser shall ensure that the RWI Policy contains a waiver by the insurer of the insurer's rights to bring any claim against any Stockholder and any of their respective Affiliates, and its and their respective directors, managers, officers, and employees by way of subrogation, claim for contribution, or otherwise (other than in the case of Fraud), and that such Persons shall be third-party beneficiaries of such waiver. No insured party under the RWI Policy will waive, amend, modify, or otherwise revise such subrogation provision in any manner that is prejudicial in any material respect to such Person, or allow such provision to be waived, amended, modified, or otherwise revised without the prior written consent of the Stockholders' Representative. From and after the date of this Agreement until the Closing, the Company shall use commercially reasonable efforts to cooperate with Purchaser, and shall take such other actions as Purchaser may reasonably request and which are customary for a buyer-side transaction risk insurance policy (in each case, to the extent within the control of the Company), in order to assist Purchaser in obtaining and maintaining the RWI Policy, and following the Closing, RemainCo shall use commercially reasonable efforts to cooperate as requested by Purchaser in connection with any claim under the RWI Policy. Notwithstanding anything to the contrary in this Agreement, neither RemainCo nor any Stockholder nor any of their respective Affiliates nor any of their respective past, present or future Agents shall be entitled to any proceeds from the RWI Policy without the prior written consent of Purchaser. Within five (5) Business Days after the Closing Date, RemainCo shall deliver or cause to be delivered to Purchaser (or its designee) a true and correct copy of the contents of the Data Room on a USB drive or other means reasonably acceptable to Purchaser.

8.3 Employee Matters.

(a) Immediately following the Closing and for a period of sixty (60) days thereafter (such period, the "Transfer Period"), RemainCo or its Affiliate shall make each Business Employee, other than those Business Employees set forth on Schedule 8.3(a) (each such Business Employee set forth on Schedule 8.3(a), an "Excluded Employee"), available to Purchaser or its Affiliate (including for the avoidance of doubt any Acquired Company following the Closing) in order to discuss potential employment. No later than ten (10) days prior to the final day of the Transfer Period (such final day of the Transfer Period, the "Transfer Date"), Purchaser may, or may cause one of its Affiliates, to make offers of employment to any Business Employees of its choosing, other than the Excluded Employees, which offers may be contingent upon the applicable Business Employee's successful completion of Purchaser's or its Affiliate's applicable pre-hire drug screening and background check processes and shall be for employment as of the time immediately following the Transfer Date. Those Business Employees who receive offers from Purchaser or its Affiliate are referred to herein as the "Offer Employees". No later than two (2) days prior to Transfer Date, Purchaser shall inform RemainCo which Offer Employees have received and accepted employment offers with Purchaser or its Affiliate. With respect to those Offer Employees who are on a leave of absence as of the Transfer Date (a "Leave Employee"), RemainCo or its Affiliate shall retain the employment of each Leave Employee during the Leave Period (as defined below) unless such Leave Employee resigns from employment or has his or her

employment terminated in the ordinary course (and as may be permitted by the Transition Services Agreement) prior to the end of the Leave Period. Employment with Purchaser or its Affiliate for a Leave Employee will commence on the date such Leave Employee is released to return to active employment provided he or she returns to active employment within six (6) months following the Transfer Date or such later date, if any, required by Law (the "Delayed Transfer Date," and the period following the Transfer Date through the Delayed Transferred Date with respect to a Leave Employee, his or her "Leave Period"). Each Offer Employee who accepts Purchaser's or its Affiliate's offer of employment, successfully completes Purchaser's or its Affiliate's standard drug screening and background check processes that may be required for him or her, if any, and actually commences employment with Purchaser or its Affiliate is referred to herein as a "Transferred Employee". An Offer Employee who accepts Purchaser's or its Affiliate's offer of employment, but who does not successfully complete Purchaser's standard drug screening and background check processes required for him or her, if any, or does not actually commence employment with Purchaser or its Affiliate, shall not be a Transferred Employee. RemainCo shall not, and RemainCo shall ensure that its Affiliates do not, take any action (or omit to take any action) that has the intent or effect of discouraging or preventing any Offer Employee from accepting an offer of employment with Purchaser or its Affiliate. With respect to each Transferred Employee, RemainCo or their applicable Affiliates shall waive any confidentiality, non-competition, non-solicitation, non-disclosure or other restrictions that would prevent or limit such Transferred Employee's ability to accept an offer of employment with Purchaser or its Affiliate or perform any services with respect to Purchaser or any of its Affiliates, including the Acquired Companies following the Closing. The date that a Transferred Employee begins employment with Purchaser or its Affiliate is referred to as such Transferred Employee's "Hire Date."

(b) For purposes of clarity, all short-term bonuses or similar cash incentive-based compensation payments accrued prior to the Closing Date, but remaining unpaid as of the Closing Date, shall be a Company Transaction Expense. With respect to any individual that becomes a Transferred Employee, such individuals will be eligible to participate in the 2024 short-term bonus programs of Purchaser or an applicable Affiliate, subject to the terms and conditions of such applicable plans of Purchaser or an applicable Affiliate.

ARTICLE IX

CONDITIONS PRECEDENT TO THE CLOSING

9.1 Conditions Precedent to Each Party's Obligations. The respective obligations of each Party to consummate the Acquisition shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing at the sole option of the Party whose obligation to consummate the Acquisition is subject thereto:

(a) No Legal Prohibition. No statute, rule, regulation, consent, or Order shall be enacted, promulgated, entered, or enforced by any court or other Governmental Authority which prohibits the consummation by such Party of the Acquisition, and no such statute, rule, regulation, consent, or Order shall be in effect.

9.2 Conditions Precedent to Obligations of Parent and Purchaser. The obligations of Purchaser and its Affiliates under this Agreement to consummate the Acquisition shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing at the option of Purchaser:

(a) Accuracy of Representations and Warranties. (i) Each of the representations and warranties concerning the Acquired Companies contained in Sections 4.1 (Organization, Qualification, Power and Authority), 4.2 (Authorization; Enforceability), 4.3(a) (Capitalization), 4.4 (Non-Contravention) and 4.19 (Brokers' Fees) and each of the representations and warranties of the Stockholders contained in Sections 5.1 (Organization; Authorization; Enforceability), 5.2 (*Non-Contravention*) , 5.3 (*Ownership and Transfer of Acquired Interests*) and 5.4 (*Brokers' Fees*) shall be true and correct in all respects (other than *de minimis* inaccuracies) in each case as of the Closing with the same force and effect as though made on and as of the Closing Date (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need be accurate only as of such date or with respect to such period); and (ii) each of the representations and warranties concerning the Acquired Companies contained in Article IV and of the Stockholders in Article V of this Agreement other than those listed in clause (i) of this Section 9.2(a) (without giving effect to any "materiality" or Material Adverse Effect qualification or exception contained therein) shall be true and correct in all respects, in each case as of the Closing with the same force and effect as though made on and as of the Closing Date (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need be accurate only as of such date or with respect to such period), except, in the case of clause (ii) of this Section 9.2(a), where the failure of such representations and warranties to be so true and correct does not have a Material Adverse Effect on or with respect to the Acquired Companies.

(b) Performance of Covenants. The Acquired Companies, the Stockholders and RemainCo shall have performed and complied with, in all material respects, all covenants and agreements required by this Agreement to be performed or complied with by the Acquired Companies, the Stockholders or RemainCo on or prior to the Closing.

(c) Written Consent. Without limiting the generality of Section 9.2(g), the Company shall have delivered, or caused to be delivered to Purchaser, the Written Consent, duly executed by Stockholders holding at least 95% of the issued and outstanding Company Stock and entitled to vote on the Initial Merger.

(d) Letters of Transmittal. Without limiting the generality of Section 9.2(g), the Company shall have delivered, or caused to be delivered to the Paying Agent the Letters of Transmittal as contemplated by Section 3.1(a)(xv) and Purchaser shall have received confirmation of such delivery.

(e) No Material Adverse Effect. Since the date of this Agreement, there shall have been no Effect that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on or with respect to the Acquired Companies.

(f) Pre-Closing Reorganization. The Pre-Closing Reorganization shall have been consummated as described in Exhibit A.

(g) Closing Deliverables. The Company and the Stockholders shall have executed and delivered, or provided, as applicable, the Closing deliverables set forth under Section 3.1(a).

9.3 Conditions Precedent to Obligations of the Company. The obligations of the Company under this Agreement to consummate the Mergers shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in writing at the option of the Company:

(a) Accuracy of Representations and Warranties. The representations and warranties of Parent, Purchaser, Merger Sub 1 and Merger Sub 2, as applicable, contained in Article VI of this Agreement shall be true and correct in all material respects as of the Closing with the same force and effect as though made on and as of the Closing Date (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which need be accurate only as of such date or with respect to such period).

(b) Performance of Covenants. Purchaser shall have performed and complied with, in all material respects, all covenants and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing.

(c) Closing Deliverables. Purchaser and Parent, as applicable, shall have executed and delivered, or provided, as applicable, the Closing deliverables set forth under Section 3.1(b).

(d) No Material Adverse Effect. Since the date of this Agreement, there shall have been no Effect that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on or with respect to Parent.

ARTICLE X

RELEASE

10.1 Release. At and effective as of the Closing, each Stockholder, on its own behalf and on behalf of its respective Affiliates, and any of their respective current or former Agents, successors or assigns (collectively, the "Stockholder Parties") hereby irrevocably and unconditionally releases and forever discharges each of the Acquired Companies, and each of their respective current or former Agents, successors or assigns (collectively, the "Acquired Company Parties") of and from any and all actions, causes of action, suits, proceedings, executions, judgments, duties, debts, dues, accounts, bonds, contracts, covenants (whether express or implied), and claims and demands whatsoever whether in law or in equity that any Stockholder Party(ies) may have against any of the Acquired Company Parties, now or in the future, in each case, relating to any cause or matter or event occurring or arising prior to the Closing and out of or in connection with the Stockholder Parties' ownership and operation of the Business, other than for obligations and liabilities, if any, under this Agreement or the Ancillary Transaction Documents. At and effective as of the Closing, each Acquired Company Party hereby irrevocably and unconditionally releases and forever discharges each Stockholder Party, including all directors, managers and officers of the Acquired Companies holding such position at any time prior to the Closing, and solely in their capacity as such, from any and all actions, causes of action, suits, proceedings, executions, judgments, duties, debts, dues, accounts, bonds, contracts, covenants (whether express or implied), and claims and demands whatsoever whether in law or in equity that any Acquired Company Party may have against any Stockholder Party, now or in the future, in each case, relating to any cause, matter or event occurring or arising prior to the Closing and out of or in connection with the Stockholder Parties' ownership and operation of the Business, other than for obligations and liabilities, if any, under this Agreement or the Ancillary Transaction Documents. THE STOCKHOLDERS ON THEIR OWN BEHALF AND ON BEHALF OF EACH OF THEIR RESPECTIVE STOCKHOLDER PARTIES, AND THE ACQUIRED COMPANIES ON THEIR OWN BEHALF AND ON BEHALF OF EACH OTHER ACQUIRED COMPANY PARTY, EXPRESSLY AND IRREVOCABLY WAIVE ALL RIGHTS AFFORDED BY ANY STATUTE OR COMMON LAW PRINCIPLES THAT LIMIT THE EFFECT OF A RELEASE WITH RESPECT TO UNKNOWN CLAIMS RELATING TO ANY CAUSE, MATTER OR EVENT OCCURRING OR ARISING PRIOR TO CLOSING. THE STOCKHOLDERS ON THEIR OWN BEHALF AND ON BEHALF OF EACH OTHER STOCKHOLDER PARTY, AND THE ACQUIRED COMPANIES ON THEIR OWN BEHALF AND ON BEHALF OF EACH OTHER ACQUIRED COMPANY PARTY, ACKNOWLEDGE THAT THEY UNDERSTAND THE SIGNIFICANCE OF THIS RELEASE OF UNKNOWN CLAIMS AND WAIVER OF ANY STATUTORY PROTECTION AGAINST A RELEASE OF UNKNOWN CLAIMS. THE STOCKHOLDERS ON THEIR OWN BEHALF AND ON BEHALF OF EACH OTHER STOCKHOLDER PARTY, AND THE ACQUIRED COMPANIES ON THEIR OWN BEHALF AND ON BEHALF OF EACH OTHER ACQUIRED COMPANY PARTY, ACKNOWLEDGE AND AGREE THAT THIS IS AN ESSENTIAL AND MATERIAL TERM OF THIS AGREEMENT.

10.2 Third-Party Beneficiaries. The Parties agree that the Stockholder Parties and Acquired Company Parties are express third-party beneficiaries of this Article X. Notwithstanding anything to the contrary in this Agreement, any Ancillary Transaction Document or any other agreement or instrument contemplated hereby or thereby, nothing contained in this Article X shall limit, negate or otherwise impede in any manner any rights of any Stockholder Parties or Acquired Company Party under this Agreement, any Ancillary Transaction Document or any other agreement or instrument contemplated hereby or thereby or any claims or recovery for Fraud.

ARTICLE XI

SURVIVAL AND INDEMNIFICATION

11.1 Survival. Except in the case of Fraud (in respect of which claims shall survive indefinitely), none of the representations, or warranties of the Company or any Stockholder contained in Article IV and Article V or in the certificate delivered pursuant to Section 3.1(a)(ii) will survive beyond the Closing such that no claim for breach of any such representation or warranty, detrimental reliance, or other right or remedy (whether in contract, in tort, or at law or in equity) may be brought after the Closing with respect thereto (and there will be no liability in respect thereof, whether such liability has accrued prior to, on, or after the Closing). The representations and warranties of Parent, Purchaser, Merger Sub 1 and Merger Sub 2 contained in Article VI (other than the representations and warranties set forth in Section 6.13), shall survive the Closing until the date that is two years after the Closing Date. All representations and warranties set forth in this Agreement are contractual in nature only and subject to the sole and exclusive remedies set forth herein except in the case of Fraud. Notwithstanding anything in this Agreement to the contrary (including any survival periods, limitations on remedies, disclaimers of reliance or omissions or any similar limitations or disclaimers), nothing in this Agreement (or elsewhere) shall limit or restrict, or be used as a defense against, any of the Parties' rights or abilities to maintain or recover any amounts in connection with any claim based upon or arising from Fraud. This Section 11.1 does not limit Purchaser or its Affiliates' ability to make a claim or recover under the RWI Policy. All covenants and agreements in this Agreement that by their terms are to be performed (A) prior to the Closing, shall survive the Closing for a period of six months or (B) following the Closing shall in respect of performance after Closing survive until they are fully performed in accordance with the terms of this Agreement or for the period explicitly specified therein.

11.2 Indemnification Obligations.

(a) From and after the Closing and subject to the remainder of this Article XI, each Consenting Stockholder shall, severally and not jointly (and in the case of subsection (i) below, in accordance with each such Consenting Stockholder's Pro Rata Share) indemnify, defend and hold harmless Purchaser, the Acquired Companies and their respective Affiliates, Agents, successors and assigns (each, a "Purchaser Indemnitee"), from and against, and shall reimburse each Purchaser Indemnitee for, any and all Losses which any Purchaser Indemnitee sustains, incurs, is required to pay or becomes subject to, without duplication, resulting from, arising out of or relating to:

(i) any breach or nonfulfillment by the Stockholders' Representative of any covenant or agreement contained in this Agreement to the extent such covenant or agreement; and

(ii) any breach or nonfulfillment by such Consenting Stockholder of any covenant or agreement contained in this Agreement.

(b) From and after the Closing, RemainCo shall indemnify, defend and hold harmless each Purchaser Indemnitee from and against, and shall reimburse each Purchaser Indemnitee for, any and all Losses which any Purchaser Indemnitee sustains, incurs, is required to pay or becomes subject to, without duplication, resulting from, arising out of or relating to:

(i) any Excluded Liability or any claim made by any Person relating to any of the Excluded Assets, Excluded Companies, or Excluded Liabilities, including any claim made by any Person arising in, arising from or relating in any way to the Pre-Closing Reorganization (and for clarity no release made by any Acquired Company in the Pre-Closing Reorganization Agreements shall limit the indemnity in this Section 11.2(b)(i));

(ii) the Outstanding Bankruptcy Claim, to the extent any such Loss exceeds the Estimated Bankruptcy Assessment Amount;

(iii) any claim made by or on behalf of any Stockholder or any of their respective Affiliates relating to such Person's rights with respect to the determination of such Stockholder's Pro Rata Share of the Closing Adjusted Merger Consideration hereunder (including pursuant to Sections 2.7 and 3.1(c) or pursuant to the Deferred Cash Consideration Note);

(iv) the subject matter of the litigation described on Schedule 11.2 solely to the extent set forth therein; and

(v) any breach or nonfulfillment by the Company of any covenant or agreement contained in this Agreement to the extent such covenant or agreement is to be performed prior to or at the Closing or any breach or nonfulfillment by RemainCo of any covenant or agreement contained in this Agreement.

(c) From and after the Closing and subject to the remainder of this Article XI, Purchaser shall indemnify, defend and hold harmless the Stockholders and their respective Affiliates, Agents, successor and assigns (each, a "Stockholder Indemnitee"), from and against, and shall compensate and reimburse each Stockholder Indemnitee for, any and all Losses which any Stockholder Indemnitee sustains, incurs, is required to pay or becomes subject to, without duplication, resulting from, arising out of or relating to:

(i) any breach or nonfulfillment by Purchaser of any covenant or agreement contained in this Agreement.

(d) Any amount payable in respect of any Losses pursuant to this Article XI shall be decreased (i) to the extent that such Losses were actually taken into account as a liability, reserve, accrual or other similar item in the determination of the Revised Closing Adjusted Merger Consideration or Final Closing Adjusted Merger Consideration, as applicable, pursuant to the procedures set forth in Article II, (ii) to the extent any insurance proceeds are actually received in cash in respect thereof (net of any costs or expenses, including Taxes, incurred in obtaining such proceeds). No Indemnified Party shall be entitled to recover from an Indemnifying Party more than once for any particular Loss, nor shall any Indemnifying Party be liable for or otherwise obligated to indemnify any Indemnified Party for the same Loss more than once.

(e) The aggregate amount of all Losses for which RemainCo shall be liable pursuant to this Article XI shall not exceed the Deferred Cash Consideration; *provided* that the foregoing limitation shall not apply to the indemnification obligations of RemainCo in Section 11.2(b)(i). The aggregate amount of all Losses for which a Stockholder shall be liable pursuant to this Article XI shall not exceed such Stockholder's Pro Rata Share of the Deferred Cash Consideration.

11.3 Indemnification Procedures for Third-Party Claims.

(a) Any Party making a claim for indemnification under this Article XI (the "Indemnified Party") in respect of any Legal Proceeding or other claim brought by a third party ("Third-Party Claim"), shall notify the indemnifying party (the "Indemnifying Party") of the claim in writing promptly after receiving written notice of such Third-Party Claim, describing in reasonable detail the claim, the amount thereof (if known and quantifiable) and the basis thereof; *provided*, that the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that such Indemnifying Party is actually prejudiced thereby.

(b) With respect to any Third-Party Claim, the Indemnifying Party shall be entitled to assume the defense of such Third-Party Claim giving rise to the Indemnified Party's claim for indemnification at its expense and, at its option (subject to the limitations set forth below), shall be entitled to appoint lead counsel of such defense from reputable counsel acceptable to the Indemnified Party (acting reasonably); *provided*, *however*, that:

(i) the Indemnifying Party shall give written notice to the Indemnified Party that it wishes to participate in the defense of such Third-Party Claim within thirty (30) days of receipt after written notice from the Indemnified Party of the Third-Party Claim pursuant to Section 11.3(a);

(ii) the Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, and the reasonable fees and expenses of such separate counsel shall be borne by the Indemnified Party (except that the reasonable fees and expenses of such separate counsel incurred prior to the date the Indemnifying Party gives notice that it is seeking to assume control of such defense shall be borne by the Indemnifying Party);

(iii) the Indemnifying Party shall not be entitled to assume control of such defense and shall pay the reasonable fees and expenses of counsel retained by the Indemnified Party if the claim for indemnification (A) involves a claim that the Indemnified Party reasonably believes could have a Material Adverse Effect on the Indemnified Party's business or involves a dispute with any customer of any Acquired Company, (B) seeks non-monetary relief (except where non-monetary relief is merely incidental to a primary claim or claims for monetary damages), (C) involves criminal allegations, (D) is one in which the Indemnifying Party is also a party and, after consultation with legal counsel (which may include internal counsel), there is a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot reasonably be waived, or (E) involves a claim that, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to actively prosecute or defend; and

(iv) if the Indemnifying Party assumes control of the defense of any such claim, the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of a claim, consenting to the entry of any judgment or ceasing to defend such claim.

(c) All of the Parties shall reasonably cooperate in the defense or prosecution of any Third-Party Claim in respect of which indemnity may be sought hereunder. The Indemnified Party shall not consent to the entry of any judgment or enter into any settlement with respect to a Third-Party Claim without the consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(d) As of the Closing Date, (i) Purchaser shall be deemed to have submitted a notice of a Third-Party Claim for indemnification pursuant to this Section 11.3 with respect to the Outstanding Bankruptcy Claim and, notwithstanding anything to the contrary inSections 11.3(b) or 12.1(b)(ii), RemainCo shall control the defense thereof, and (ii) with regard to the litigation set forth on Schedule 11.2, Parent shall be deemed to have submitted a notice of a Third-Party Claim for indemnification pursuant to this Section 11.3 with respect to such litigation and, notwithstanding anything to the contrary in thisSection 11.3, RemainCo and Purchaser shall jointly control the defense, settlement and resolution of such litigation.

11.4 Satisfaction of Indemnification Claims. An Indemnifying Party shall be liable for and required to pay undisputed Losses owed under this Section 11.4 to the applicable Indemnified Party within ten Business Days the Indemnified Party and the Indemnifying Party agreeing such amount is due or upon final adjudication determined by a court of competent jurisdiction that such amount is due (either, a "Final Determination" and the amount of such Loss as so determined, a "Final Loss Amount"). Following a Final Determination for a Final Loss Amount that relates to a claim for indemnification for which the Stockholders or RemainCo are liable pursuant to Section 11.2(a) or 11.2(b), as applicable, if the Deferred Cash Consideration Note remains outstanding at such time, then any Final Loss Amount due to the applicable Purchaser Indemnitee shall be paid and satisfied by a reduction in the principal amount then outstanding of the Deferred Cash Consideration Note, which reduction shall be effected in accordance with Section 3.3(a) of the Deferred Cash Consideration Note; otherwise, any payment of a Final Loss Amount shall be made in full in cash, *provided however* that any Final Loss Amount that relates to a claim for indemnification pursuant toSection 11.2(b)(iv) shall be paid and satisfied solely by a reduction in the principal amount then outstanding of the Deferred Cash Consideration Note. Notwithstanding the foregoing, Purchaser shall, in accordance with, and to the extent provided in, Section 3.3(b) of the Deferred Cash Consideration Note, have at all times the right to withhold from amounts otherwise payable pursuant to the Deferred Cash Consideration Note, the aggregate amount, without duplication, of monetary damages sought in connection with any outstanding claims for indemnification by the Purchaser Indemnitees under this Agreement as of the date of such payment until, on a claim by claim basis, a Final Determination has been made in respect of such claim. If any Final Loss Amount is paid and satisfied by reduction in the principal amount of the Deferred Cash Consideration Note in accordance with this Section 11.4 then the aggregate amount of all interest paid on a portion of the principal equal to any such Final Loss Amount prior to the time of such indemnification payment shall be applied against and reduce the interest payable on the Deferred Cash Consideration Note in future periods in such a manner so as to reduce interest payments to the maximum extent possible as soon as possible.

11.5 Waiver of Contribution. Each Stockholder, RemainCo, on its behalf and on behalf of each of its Subsidiaries, including the Excluded Companies, hereby irrevocably waives and releases any right of contribution, subrogation or any similar right against any Purchaser Indemnitee in respect of all claims for indemnification hereunder.

11.6 Tax Treatment of Payments. All indemnification payments made pursuant to this Agreement shall be treated by the Parties, to the extent permitted by Law, as an adjustment to the Closing Adjusted Merger Consideration for U.S. federal income and applicable state, local and non-U.S. Tax purposes (or, if applicable, to the Revised Closing Adjusted Merger Consideration or the Final Closing Adjusted Merger Consideration, as applicable).

11.7 Sole and Exclusive Remedy. From and after the Closing, except as set forth insection 14.14 (specific performance), the sole and exclusive remedy of any Party to this Agreement or its Affiliates with respect to This Agreement (other than with respect to representation and warranties in Article VI), the events giving rise to this Agreement and the transactions contemplated by this Agreement shall be limited to the indemnification provisions set forth in this Article XI. In furtherance of the foregoing, each Party, on behalf of itself and of its Affiliates, hereby waives, releases and discharges, to the fullest extent permitted by applicable Law Agreement (other than with respect to representation and warranties in Article VI), the other Parties to this Agreement and their respective Affiliates, from any and all Losses other than to the extent subject to indemnification under this Agreement, as the case may be, whether foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued or based on any law or right of action. Notwithstanding the foregoing sentences or anything else in this Agreement to the contrary, (I) in the case of Losses arising from or relating to Fraud, the Indemnified Parties shall have all remedies available under this Agreement or otherwise at law or equity without giving effect to any of the limitations or waivers contained herein (II) nothing in this Agreement shall limit any Party's right to seek and obtain equitable remedies with respect to any covenant or agreement contained in this Agreement in accordance with Section 14.14 and (III) the foregoing shall not limit any remedies available pursuant to any Ancillary Transaction Document.

ARTICLE XII

CERTAIN AGREEMENTS

12.1 Tax Matters.

(a) Transfer Taxes. All federal, state, local, non-U.S., and other transfer, sales, use, registration, conveyance, real property transfer, registration, documentary, stamp, value added or similar Taxes ("Transfer Taxes") applicable to, imposed upon or arising out of the Mergers shall be borne 50% by RemainCo and 50% by Purchaser; *provided, however*, that any Transfer Taxes related to the Pre-Closing Reorganization or the Excluded Assets shall be solely borne by RemainCo. The Party responsible under applicable Law for filing any Tax Return with respect to any such Transfer Taxes shall prepare and timely file such Tax Return, and promptly provide a copy of such Tax Return to the other Party. RemainCo and Purchaser shall, and shall cause their respective Affiliates to, cooperate in good faith to minimize, to the extent permissible under applicable Law, the amount of any such Transfer Taxes and timely prepare and file any Tax Returns or other filings relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any such Transfer Taxes.

(b) Tax Cooperation.

(i) The Parties shall, and shall cause their respective Affiliates to, use commercially reasonable efforts to cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any audit, litigation or other Legal Proceeding with respect to Taxes (each a " Tax Proceeding") imposed on or with respect to the Intended Tax Treatment, the Pre-Closing Reorganization (including any withholding that may be required in connection therewith), the Acquired Companies or the Excluded Assets. Subject to Section 14.2, such cooperation shall include the retention and (upon the other Party's request) the provision of records and information that are relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any Tax materials provided under this Agreement.

(ii) Notwithstanding anything to the contrary in this Agreement, Parent shall be entitled to control any Tax Proceeding with respect to the Acquired Companies or any of their Affiliates following the Closing; *provided* that: (A) to the extent that any such Tax Proceeding could reasonably be expected to result in the Stockholders or RemainCo being obligated to make an indemnification payment with respect to Taxes included in the matters described in Section 11.2(b)(i), (ii), (iv) or (v) (an "Indemnified Tax Contest") (1) Parent shall notify RemainCo in writing reasonably promptly after receiving written notice from a Taxing Authority of any such Tax Proceeding that indicates such Tax Proceeding is an Indemnified Tax Contest (which notice shall include a copy of the relevant portion of any correspondence received from the relevant Taxing Authority), *provided* that the failure to so notify RemainCo shall not relieve the Stockholders or RemainCo of their obligations hereunder, except to the extent they are actually prejudiced thereby, (2) RemainCo shall be entitled (but not obligated) to control, at RemainCo's expense, such Indemnified Tax Contest upon reasonably prompt notice to Parent following receipt of Parent's notice as described in the foregoing clause (1), (3) Parent shall be entitled (but not obligated) to participate, at Parent's expense, in such Indemnified Tax Contest (including in meetings with any Taxing Authority), (4) RemainCo shall keep Parent reasonably informed regarding the

progress and substantive aspects of such Indemnified Tax Contest and (5) RemainCo shall not settle or compromise such Indemnified Tax Contest without Parent's consent (not to be unreasonably withheld, conditioned or delayed); and (B) to the extent that any Tax Proceeding with respect to the Acquired Companies or any of their Affiliates could reasonably be expected to affect the treatment of the Mergers consistent with the Intended Tax Treatment, to the extent required to be so reported by Parent, the Acquired Companies or any of their Affiliates in accordance with Section 12.1(d)(ii) (a "Reorganization Tax Contest"), (1) Parent shall notify RemainCo in writing reasonably promptly after receiving written notice from a Taxing Authority of any such Tax Proceeding that indicates such Tax Proceeding is a Reorganization Tax Contest (which notice shall include a copy of the relevant portion of any correspondence received from the relevant Taxing Authority), (2) RemainCo shall be entitled (but not obligated) to participate, at RemainCo's expense, in such Reorganization Tax Contest (including in meetings with any Taxing Authority), (3) Parent shall keep RemainCo reasonably informed regarding the progress and substantive aspects of such Reorganization Tax Contest and (4) Parent shall not settle or compromise such Reorganization Tax Contest without RemainCo's consent (not to be unreasonably withheld, conditioned or delayed). Notwithstanding anything in this Agreement to the contrary (except for Section 11.3(d)(i)), to the extent the procedures in this Section 12.1(b)(ii) conflict with those in Section 11.3, the procedures in this Section 12.1(b)(ii) shall control.

(iii) Following the Closing, Parent shall prepare or cause to be prepared all Tax Returns for the Acquired Companies (x) for Tax periods that include the date(s) on which the Pre-Closing Reorganization is consummated and/or the Closing Date or (y) that include Excluded Liabilities consistent with the past practice of the Acquired Companies, except as otherwise required by applicable Law. Reasonably in advance of (which, in the case of any Tax Returns with respect to income, franchise or similar Taxes, shall be at least thirty (30) days prior to) the due date (including extensions) for any such Tax Return, Parent shall deliver to the Stockholders' Representative a draft of such Tax Return, together with reasonably detailed supporting documentation and workpapers, for the Stockholders' Representative's review and comment. Parent shall revise, or cause to be revised, such Tax Return to take into account any reasonable comments received from the Stockholders' Representative sufficiently in advance of the due date (including extensions) for filing such Tax Return, so as to allow a reasonable time for Parent to review such comments and make any necessary revisions, and shall timely file, or cause to be filed, such Tax Return (as revised to reflect any such reasonable comments) with the appropriate Taxing Authority and, without limiting Parent's rights to indemnification under Section 11.2(a) or Section 11.2(b), shall timely pay to the appropriate Taxing Authority all Taxes required to be paid with respect thereto.

(iv) RemainCo shall be entitled to all Tax refunds and credits attributable to Taxes included in Excluded Liabilities, the Outstanding Bankruptcy Claim or the subject matter of the litigation, proceedings and other matters described on Schedule 11.2(b)(iv) and the Stockholders shall be entitled to all Tax refunds and credits attributable to the 2023 Tax Amount (including, in each case, any interest received from a Taxing Authority thereon, but net of any reasonable and documented out-of-pocket costs and expenses and any Taxes of Parent (or its Affiliates as of after the Closing), including the Acquired Companies, incurred in connection with obtaining such refund or credit) to the extent that such Taxes are effectively borne by RemainCo (or its Affiliates as of the Closing) or the Stockholders (including, for the avoidance of doubt, as a result of any reduction in the Revised Closing Adjusted Merger Consideration or Final Closing Adjusted Merger Consideration, as applicable, or the principal amount of the Deferred Cash Consideration Note), and excluding, in each case, refunds or credits to the extent such refunds or credits: (x) are taken into account (or result from Tax assets that are taken into account) in the final determination of the Revised Closing Adjusted Merger Consideration or Final Closing Adjusted Merger Consideration, as applicable; (y) result from the carryback of any Tax attribute or payment of Taxes (including estimated Taxes) in respect of the Acquired Companies that does not relate to the Excluded Assets or Taxes included in Excluded Liabilities, the Outstanding Bankruptcy Claim or the subject matter of the litigation, proceedings and other matters described on Schedule 11.2(b)(iv); or (z) are required to be paid to a third-party pursuant to the RWI Policy or any Contract to which any of the Acquired Companies is a party and that is in place as of the Closing. If Parent or any of its Affiliates receives a refund or credit to which RemainCo or the Stockholders are entitled pursuant to this Section 12.1(b)(iv), (A) if the Deferred Cash Consideration Note remains outstanding at such time, then any amount to which RemainCo or the Stockholders are entitled pursuant to this Section 12.1(b)(iv) shall be paid and satisfied by an increase in the principal amount then outstanding of the Deferred Cash Consideration Note equal to such amount to which RemainCo or the Stockholders are entitled, which increase shall be effected in accordance with Section 3.3(c) of the Deferred Cash Consideration Note, or (B) otherwise, such amount shall be paid in cash to RemainCo or the Stockholders' Representative, as applicable, within 15 days after such refund is received or such credit is used to reduce cash Taxes otherwise payable by Parent or its Affiliates. Notwithstanding the foregoing, to the extent any such refunds or credits are subsequently disallowed by the applicable Taxing Authority, (x) if the Deferred Cash Consideration Note remains outstanding at such time, then the principal amount then outstanding of the Deferred Cash Consideration Note shall be decreased by an amount equal to the amount by which the principal amount of the Deferred Cash Consideration Note was previously increased in respect of such refunds or credits, together with any interest or other additional amounts imposed by such Taxing Authority with respect to such disallowance, or (y) otherwise, RemainCo shall promptly repay the amount received in respect of such refunds or credits, together with any interest or other additional amounts imposed by such Taxing Authority with respect to such disallowance, to Parent. Parent shall, and shall cause its Affiliates to, use commercially reasonable efforts to cooperate with RemainCo or the Stockholders' Representative, as applicable, to obtain any refunds or credits with respect to any Excluded Liabilities, the Outstanding Bankruptcy Claim, the subject matter of the litigation, proceedings and other matters described on Schedule 11.2(b)(iv) or the 2023 Tax Amount (and request a refund in lieu of a credit to the extent permitted by applicable Law).

(v) For the avoidance of doubt, the Parties agree that nothing in this Agreement shall limit the provisions of Section 5.5 of the Contribution and Distribution Agreement regarding the making of a U.S. Tax Election.

(c) Allocation of Tax Liability for Straddle Tax Periods. For purposes of computing Net Working Capital and the Acquired Companies Indebtedness Amount, in the case of Taxes that are payable with respect to any Straddle Tax Period, the portion of any such Taxes that is attributable to the portion of such Straddle Tax Period ending at and including the Economic Effective Time shall be:

(i) in the case of Taxes that are either (A) based upon or related to income or receipts, (B) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible) or (C) not described in clause (ii) below, deemed equal to the amount that would be payable if the Straddle Tax Period ended with (and included) the Economic Effective Time; *provided* that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the portion of the Straddle Tax Period ending on and including the date on which the Economic Effective Time occurs and the portion of the Straddle Tax Period beginning after the date on which the Economic Effective Time occurs in proportion to the number of days in each such portion of the Straddle Tax Period; and

(ii) in the case of ad valorem, property or other Taxes that are imposed on a periodic basis, deemed to be the amount of such Taxes for the entire Straddle Tax Period, multiplied by a fraction the numerator of which is the number of calendar days in the portion of the Straddle Tax Period ending on and including the date on which the Economic Effective Time occurs and the denominator of which is the number of calendar days in the entire Straddle Tax Period.

(d) Intended Tax Treatment. Each of the Parties acknowledges and agrees that, for U.S. federal (and applicable state and local) income Tax purposes, the Mergers are intended to be treated consistent with the Intended Tax Treatment. This Agreement is intended to constitute, and the Parties adopt this Agreement as, a "plan of reorganization" for purposes of Sections 354 and 361 of the Code and within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a). Each of the Parties shall

(and shall cause their Subsidiaries and Affiliates to): (i) reasonably cooperate with each other and their respective representatives to document and support the Intended Tax Treatment (including the preparation by the Stockholders' Representative of documentation, reasonably satisfactory to Purchaser, of the analysis and facts supporting the Intended Tax Treatment); (ii) file their applicable Tax Returns (including the statement required by Treasury Regulations Section 1.368-3(a)) consistent with, and take no position for Tax purposes (whether in Tax Proceedings, on Tax Returns or otherwise) inconsistent with, the Intended Tax Treatment, unless (A) such Party reasonably determines, acting in good faith, that it is not permitted under applicable Law, or in the case of Parent and its Affiliates, has not timely received the documentation described in the parenthetical of clause (i), to file such Tax Returns consistent with the Intended Tax Treatment or (B) a contrary position is required by a "determination" within the meaning of Section 1313(a) of the Code; and (iii) not take any action, or fail to take any action, which action or failure to act would prevent or impede the Mergers from qualifying (or reasonably would be expected to cause the Mergers to fail to qualify) for the Intended Tax Treatment, except to the extent such action or failure to take action is required by Law (as reasonably determined by such Party, acting in good faith) or required or contemplated by this Agreement, including the Schedules and Exhibits hereto, the Ancillary Transaction Documents, or any of the other documents referred to herein or therein (including that, for the avoidance of doubt, in no event shall this Section 12.1(d) be interpreted as requiring any adjustment to the type or amount of any consideration payable by Parent or any of its Affiliates hereunder).

12.2 Director and Officer Liability and Indemnification.

(a) For a period of six (6) years after the Closing, Purchaser shall not, and shall ensure that the Acquired Companies do not, amend, alter, repeal or modify any provision in the Governing Documents of such Acquired Company governing the exculpation or indemnification of any officers, managers, and directors in any way that diminishes or adversely affects the indemnification or exculpation provided therein (unless required by Law), it being the intent of the Parties that the officers, managers and directors of the Acquired Companies who were officers, managers and directors at any time prior to the Closing shall continue to be entitled to such exculpation and indemnification with respect to all acts or omissions by them in their capacities as such at any time prior to the Closing to the fullest extent provided for under applicable Law and the Governing Documents of such Acquired Company as of immediately prior to the Closing.

(b) At or prior to the Closing, the Company shall, or shall cause each Acquired Company to, at Purchaser's sole expense, obtain, maintain, and fully pay for irrevocable "tail" directors' and officers' liability insurance policies covering claims against officers, managers and directors of each Acquired Company who were officers, managers or directors at any time prior to the Closing (each, a "D&O Indemnified Person"), with a claims period of at least six (6) years from the Closing Date, from an insurance carrier with the same or better credit rating as such Acquired Company's current insurance carrier with respect to errors and omissions insurance and directors' and officers' liability insurance and in an amount and scope at least as favorable as such Acquired Company's existing policies, with respect to matters existing, occurring, or arising at or prior to the Closing Date; *provided* that Purchaser shall not be required to pay annual premiums for any such "tail" directors' and officers' liability insurance policy that are in excess of 175% of the total of the annual premiums paid by the Company prior to the Execution Date in respect of the directors' and officers' liability insurance in effect as of the Execution Date that are maintained by the Company with respect to matters arising on or before the Execution Date. Purchaser shall not, and shall cause the Acquired Companies not to, cancel or change such insurance policies in any respect for a period of six (6) years.

(c) If Purchaser, any Acquired Company, or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or Surviving Corporation or entity in such consolidation or merger, or (ii) transfers all or substantially all of its assets to any Person, then and in either such case proper provision shall be made so that the successors and assigns of Purchaser or such Acquired Company, as the case may be, shall assume obligations that are, in the aggregate, no less favorable to the D&O Indemnified Persons than those set forth in this Section 12.2.

(d) The provisions of this Section 12.2 shall survive the consummation of the Acquisition and are expressly intended to benefit each of the D&O Indemnified Persons. The Parties agree that the D&O Indemnified Persons are express third-party beneficiaries of this Section 12.2. The rights set forth in this Section 12.2 are in addition to, and not in substitution of, any other rights to indemnification or contribution that any D&O Indemnified Person may have.

ARTICLE XIII

TERMINATION

13.1 Termination of Agreement. Certain of the Parties may terminate this Agreement as provided below:

(a) Purchaser and the Company may terminate this Agreement by mutual written consent at any time prior to the Closing.

(b) Purchaser alone or the Company alone may terminate this Agreement by written notice to the other Party(ies) prior to the Closing, if:

(i) the Acquisition has not been consummated on or before April 12, 2024 (the "End Date"); *provided*, *however*, that (A) Purchaser shall not be entitled to terminate this Agreement pursuant to this Section 13.1(b)(i) if Purchaser's, Parent's, Merger Sub 1's or Merger Sub 2's willful breach of this Agreement has hindered the consummation of the Acquisition by the End Date and (B) the Company shall not be entitled to terminate this Agreement pursuant to this Section 13.1(b)(i) if the Company's, any Stockholder's or RemainCo's willful breach of this Agreement has hindered the consummation of the Acquisition by the End Date; or

(ii) (A) there shall be any Law that shall make illegal the consummation of the Acquisition or (B) a Governmental Authority shall have enacted, issued, promulgated, or entered an Order prohibiting, enjoining, or restraining the Acquisition and such Order shall have become final and non-appealable.

(c) Purchaser may terminate this Agreement by giving written notice to the Company at any time prior to the Closing if (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Acquired Companies, RemainCo or the Stockholders set forth in this Agreement shall have occurred that causes or would reasonably be expected to cause any of the conditions set forth in Section 9.1 or Section 9.2 not to be satisfied at Closing and (ii) such breach is incapable of being cured or, if curable, is not cured by the Acquired Companies, RemainCo or the Stockholders by the earlier of (A) the End Date and (B) within 20 Business Days after giving the Stockholders' Representative written notice of such breach or failure; provided that, at the time of such termination, none of Parent, Purchaser, Merger Sub 1 or Merger Sub 2 shall be in breach of this Agreement so as to cause a condition to Closing set forth in Section 9.1 or Section 9.3 to fail to be satisfied.

(d) The Company may terminate this Agreement by giving written notice to Purchaser at any time prior to the Closing if (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Parent, Purchaser, Merger Sub 1 or Merger Sub 2 set forth in this Agreement shall have occurred that causes or would reasonably be expected to cause any of the conditions set forth in Section 9.1 or Section 9.3 not to be satisfied at Closing and (ii) such breach is incapable of being cured or, if curable, is not cured by Purchaser by the earlier of (A) the End Date and (B) within 20 Business Days after giving Purchaser written notice of such breach or failure; provided that, at the time of such termination, none of the Stockholders, RemainCo or the Acquired Companies shall be in breach of this Agreement so as to cause a condition to Closing set forth in Section 9.1 or Section 9.2 to fail to be satisfied.

13.2 Effect of Termination. In the event of the termination of this Agreement by either Purchaser or the Company in accordance with Section 13.1, the

provisions of this Agreement will immediately become void and of no further force or effect (other than this Section 13.2 and Article XIV (and Article I to the extent necessary to interpret the foregoing surviving provisions) which shall survive the termination of this Agreement in accordance with their terms); *provided*, *however*, that there will be no Liability on the part of any of any Party to one another Party, except for any willful breach of the covenants or agreements contained in this Agreement (including the failure of a Party to consummate the Acquisition in accordance herewith) prior to the time of such termination. Subject to Section 14.14, nothing in this Article XIII will be deemed to impair the right of any Party to compel specific performance or other equitable remedies by another Party of its obligations under this Agreement pursuant to Section 14.14. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL ANY PARTY BE LIABLE IN CONNECTION WITH OR UPON A TERMINATION OF THIS AGREEMENT FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING LOST PROFITS (TO THE EXTENT NOT CONSTITUTING DIRECT DAMAGES), DIMINUTION OF VALUE, OR ANY LOSS OF GOODWILL OR POSSIBLE BUSINESS, WHETHER ACTUAL OR PROSPECTIVE.

ARTICLE XIV

MISCELLANEOUS

14.1 Wrong Pockets. If Purchaser or the Acquired Companies (or any Affiliate thereof) receives after the Closing any payment or assets from any third party that are properly payable or deliverable to either (x) the Stockholders or any of their respective Affiliates and arising from the period prior to the Economic Effective Time or (y) RemainCo or any of its Affiliates, then such Person receiving such funds or assets agrees to promptly remit or deliver (or cause to be promptly remitted or delivered) such funds or assets to the Stockholder, RemainCo or their respective Affiliate thereof, as the case may be, that is entitled to such funds or assets. If any Stockholder (or any Affiliate thereof) or RemainCo or any of its Affiliates receives after the Closing any payment or asset from any third party that is properly payable or deliverable to Purchaser or any of its Affiliates (including the Acquired Companies) arising from the period after the Economic Effective Time, then such Person receiving such funds or assets agrees to promptly remit or deliver (or cause to be promptly remitted or delivered) such funds or assets to Purchaser or its Affiliate that is entitled to such funds or assets.

14.2 Access to Information. Until the later of (x) the date which is seven (7) years following the Closing and (y) any applicable statute of limitations, Purchaser shall, and shall cause the Companies to, provide the Stockholders and their respective representatives with access, during normal business hours and upon reasonable notice, to the books and records of the Acquired Companies with respect to periods or occurrences prior to or on the Closing Date; *provided* that all such access of the Stockholders shall be subject to the provisions of Section 14.3. Unless otherwise consented to in writing by the Stockholders' Representative, Purchaser shall not, and shall not permit the Acquired Companies to, for a period of seven (7) years following the Closing Date, destroy, alter or otherwise dispose of any of the books and records of the Acquired Companies for any period prior to the Closing Date without first giving reasonable prior written notice to the Stockholders' Representative and offering to surrender to the Stockholders' Representative such books and records or any portion thereof which Purchaser or the Company may intend to destroy, alter or dispose of. If at any time after the Closing any Stockholder or Affiliate of Stockholder is in possession of any books and records of or relating to the Acquired Companies, Purchaser or its successors or assigns shall be permitted to request or retrieve from the Stockholders or their applicable Affiliate, subject to applicable Law, any such books or records and the Stockholders shall or shall cause the delivery and transfer of any such books and records to Purchaser or its successor, assign or designee.

14.3 Confidentiality.

(a) For a period of two (2) years from and after the Closing, and except as otherwise expressly permitted by this Agreement, each Stockholder shall, and shall cause its Affiliates to (and, if relevant, shall require any future acquiror of all or any portion of its business or assets to), hold, and shall use its commercially reasonable efforts to cause its or their respective Agents to hold, in confidence any and all confidential or proprietary information in the possession of such Stockholder, its Affiliates and their respective Agents concerning the Acquired Companies, the Business or this Agreement, except to the extent that such information (i) is generally available to and known by the public other than as a result of a breach of this Section 14.3(a), (ii) is lawfully acquired by such Stockholder, its Affiliates or their respective Agents from and after the Closing from sources reasonably believed not to be prohibited from disclosing such information by a legal, contractual or fiduciary obligation or (iii) is required to be disclosed pursuant to applicable Law or any judicial or administrative process. If any Stockholder, its Affiliates or their respective Agents are required to disclose any information by judicial or administrative process or by other requirements of Law, to the extent reasonably practicable, such Stockholder (or its applicable Affiliate or Agent) shall promptly notify Purchaser in writing and shall disclose only that portion of such information which such Stockholder (or its applicable Affiliate or Agent) is advised by its legal counsel (which may include internal counsel) is legally required to be disclosed; *provided* that such Stockholder (or its applicable Affiliate or Agent) shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded to such information. The provisions of this Section 14.3(a) shall not restrict any Stockholder's rights to (x) enforce this Agreement; (y) disclose any confidential or proprietary information in connection with the preparation and filing of any Tax Return, compliance with any applicable Tax Law or conduct of any Tax Proceeding; or (z) disclose any confidential or proprietary information to such Person's shareholders, members, partners, outside investment, financial and legal advisors or other representatives in the Ordinary Course of Business in connection with such Person's investment in the Acquired Companies or as required by such Person's Governing Documents.

(b) For a period of two (2) years from and after the Closing, and except as otherwise expressly permitted by this Agreement, Purchaser shall, and shall cause its Affiliates to (and, if relevant, shall require any future acquiror of all or any portion of its business or assets to), hold, and shall use its commercially reasonable efforts to cause its or their respective Agents to hold, in confidence any and all confidential or proprietary information in the possession of Purchaser, its Affiliates and their respective Agents concerning the Excluded Assets, except to the extent that such information (i) is generally available to and known by the public other than as a result of a breach of this Section 14.3(b), (ii) is lawfully acquired by Purchaser, its Affiliates or their respective Agents from and after the Closing from sources reasonably believed not to be prohibited from disclosing such information by a legal, contractual or fiduciary obligation or (iii) is required to be disclosed pursuant to applicable Law or any judicial or administrative process. If Purchaser, its Affiliates or their respective Agents are required to disclose any information by judicial or administrative process or by other requirements of Law, to the extent reasonably practicable, Purchaser shall notify RemainCo in writing and shall disclose only that portion of such information which Purchaser is advised by its legal counsel (which may include internal counsel) is legally required to be disclosed; *provided* that Purchaser shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded to such information. The provisions of this Section 14.3(b) shall not restrict Purchaser's rights to enforce this Agreement.

(c) The Confidentiality Agreement shall terminate automatically upon the consummation of the Closing without further action of any Party (or any party thereto) and be of no further force and effect, and no Stockholder shall have any right or entitlement to enforce or seek enforcement of any obligations thereunder, whether at law (including at common law or by statute) or in equity.

14.4 Further Assurances. At any time or from time to time following the Closing, each of the Parties shall, at the request of another Party and at such requesting Party's expense, execute and deliver any further instruments or documents and take all other further actions as are reasonably requested of it in order to consummate and make effective the Acquisition or to vest, perfect or confirm of record or otherwise in Purchaser or any of its Subsidiaries any and all right, title and interest in, to and under any of the assets of the Business as a result of or in connection with the Acquisition.

14.5 Expenses. Except as otherwise expressly provided in this Agreement, each of Purchaser, the Acquired Companies (prior to or at the consummation of the Acquisition), RemainCo, and the Stockholders will bear its own costs, fees and expenses (including legal costs, fees and expenses) incurred in connection with this Agreement and the Acquisition, whether or not the Acquisition is consummated.

14.6 No Third-Party Beneficiaries. Except as otherwise set forth in Article X (with respect to certain releases of claims), Article XI (with respect to Purchaser Indemnitees and Stockholder Indemnitees) and Section 12.2 (with respect to the D&O Indemnified Persons), this Agreement and its provisions are for the sole benefit of the Parties and their respective successors and permitted assigns. Other than as set forth in the immediately preceding sentence, nothing in this Agreement, express or implied, is intended to confer on any Person any rights, remedies, obligations or Liabilities by reason of this Agreement.

14.7 Entire Agreement. This Agreement, including the Schedules and Exhibits hereto, the Ancillary Transaction Documents, and the other documents referred to herein and therein, constitute the entire agreement among the Parties and supersede any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

14.8 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of Purchaser (in the case of any assignment by a Stockholder, RemainCo or the Stockholders' Representative) or the Stockholders' Representative (in the case of any assignment by Purchaser or after the Closing, the Subsequent Survivor), *provided* that, from and after Closing, Purchaser and the Subsequent Survivor may assign this Agreement and any of their respective rights and obligations hereunder to any of their respective Affiliates without the prior written approval of RemainCo, the Stockholders or the Stockholders' Representative. No assignment of any obligations hereunder shall relieve any Parties of any such obligations.

14.9 Counterparts. This Agreement may be executed and delivered in counterparts (including by means of facsimile or electronic transmission), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

14.10 Notices. All notices, requests, demands, claims, and other communications related to this Agreement shall be in writing. Any notice, request, demand, claim, or other communication related to this Agreement shall be deemed duly given (a) when delivered personally to the recipient, (b) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (c) if sent by electronic mail, when received if received before 5:00 p.m. local time of the recipient on a Business Day, and otherwise on the next following Business Day, in each case addressed to the intended recipient as set forth below:

(a) If to Parent, Purchaser, or, after the Closing, any other Acquired Company, addressed to it at:

Atlas Energy Solutions Inc.
5918 W. Courtyard Drive, Suite 500
Austin, Texas 78730
Email: ***
Attention: John Turner, President and Chief Financial Officer

With a copy to (which shall not constitute notice):

Vinson & Elkins L.L.P.
845 Texas Avenue, Suite 4700
Houston, Texas 77002
Email: ***
***
Attention: Danielle Patterson
Alexander Baker

(b) If to the Stockholders, addressed to the Stockholders' Representative at:

c/o Clearlake Capital Group, L.P.
233 Wilshire Blvd, Suite 800
Santa Monica, CA 90401
Email: ***
Attention: Fred Ebrahemi

With copies to (which shall not constitute notice):

Baker Botts L.L.P.
910 Louisiana St
Houston, Texas 77002
Email: ***
Attention: James Marshall

(c) If to RemainCo, addressed to RemainCo at:

2777 Allen Parkway, Suite 600
Houston, TX 77019
Email: ***
Attention: Dirk Hallen

With copies to (which shall not constitute notice):

Baker Botts L.L.P.
910 Louisiana St
Houston, Texas 77002
Email: ***
Attention: James Marshall

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 14.10.

14.11 Governing Law; Waiver of Jury Trial.

(a) This Agreement and any controversy, dispute, or claim arising hereunder or related hereto (whether by contract, statute, tort or otherwise) shall be governed by and construed in accordance with the domestic Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

(b) EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING OR COUNTERCLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER AGREEMENTS CONTEMPLATED HEREBY OR THE ACQUISITION. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF A LEGAL PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 14.11.

(c) Subject to Section 2.7, the Parties submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or if such court lacks subject matter jurisdiction, then of the federal courts of the United States of America located in the State of Delaware in respect of the interpretation and enforcement of the provisions of this Agreement and any related agreement, certificate or other document delivered in connection herewith and by this Agreement waive, and agree not to assert, any defense in any action for the interpretation or enforcement of this Agreement and any related agreement, certificate or other document delivered in connection herewith that they are not subject to such jurisdiction or that such action may not be brought or is not maintainable in such courts or that this Agreement or the applicable related agreement, certificate or other document delivered in connection herewith may not be enforced in or by such courts, that the action is brought in an inconvenient forum, or that the venue of the action is improper.

(d) Each Party agrees that service in person or by certified or by nationally recognized overnight courier to its address set forth in Section 14.10 shall constitute valid *in personam* service upon such Party and its successors and assigns in any proceeding commenced pursuant to this Section 14.11. Each Party hereby acknowledges that this is a commercial transaction, that the foregoing provisions for service of process and waiver of jury trial have been read, understood, and voluntarily agreed to by such Party and that by agreeing to such provisions such Party is waiving important legal rights.

14.12 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Parent and the Stockholders' Representative. No waiver by any Party of any provision of, or right, power, privilege or remedy under, this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any such prior or subsequent occurrence.

14.13 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable Law by which this Agreement is governed, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement; *provided* that such provision shall be construed to give effect to the Parties' intent regarding such provision to the maximum extent permitted by applicable Law.

14.14 Specific Performance.

(a) The Parties agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms on a timely basis or were otherwise breached, due to the nature of the Company and its Subsidiaries, including the unique nature of the customer relationships and other facts and circumstances, irreparable damage would occur, no adequate remedy at law would exist (even if damages would be available) and damages would be difficult to determine, and that, unless this Agreement has been terminated in accordance with its terms, the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement, to enforce specifically the terms and provisions of this Agreement and to compel performance by the Parties of their respective obligations set forth in this Agreement, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or in equity.

(b) Accordingly, in the event of any such breach of a Party's obligation to consummate the Closing, provided that all of the conditions to Closing set forth in this Agreement have been satisfied or waived by the Party seeking to enforce this Agreement (other than the covenants in Section 3.1, which the Party seeking enforcement would be otherwise prepared to satisfy), then the Parties acknowledge and agree that the Party seeking to enforce this Agreement shall be entitled, at its election, to specifically enforce the performance of the other Party's obligation to consummate the Closing as required hereunder, including by seeking injunctive relief.

(c) Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance or other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is an adequate remedy (or remedies) at law or (ii) an award of specific performance is not an appropriate remedy for any reason in equity or at law, other than on the basis that such remedy is not expressly available pursuant to the terms of this Agreement, including if one of the conditions to Closing set forth in this Agreement has not been satisfied or waived by the Party seeking to enforce this Agreement (other than the covenants in Section 3.1, which the Party seeking enforcement would be otherwise prepared to satisfy). Any Party seeking an injunction or injunctions to prevent breaches or threatened breaches of this Agreement when expressly available pursuant to the terms of this Agreement and to enforce specifically the terms and provisions of this Agreement when expressly available pursuant to the terms of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction. Without limiting the generality of the foregoing, the Parties hereto hereby irrevocably waive any right of rescission they may otherwise have or to which they may become entitled.

14.15 Legal Representation.

(a) Purchaser and the Company agree that, from and after the Closing, notwithstanding any current or prior representation of the Company by Baker Botts L.L.P. ("Baker Botts"), Baker Botts shall be permitted to represent the Stockholder Representative, RemainCo, any of the Stockholders or any Affiliates thereof (any of the foregoing, a "Stockholder Member") in any matters and disputes, including in any matter or dispute adverse to Purchaser, the Subsequent Survivor or their respective Subsidiaries that either is existing on the date hereof or that arises in the future and, in each case, relates to this Agreement or the Acquisition. Each of Purchaser and the Company hereby (a) waives any claim that either of them have or may have that Baker Botts has a conflict of interest or is otherwise prohibited from accepting or carrying out any such representation and (b) agrees that, in the event a dispute arises after the Closing between Purchaser, the Subsequent Survivor or their respective Subsidiaries, on the one hand, and any Stockholder Member on the other hand, Baker Botts may represent (and none of Purchaser, the Subsequent Survivor or their respective Subsidiaries or representatives will seek to disqualify or otherwise prevent Baker Botts from representing) any or all of the Stockholder Members in such dispute even though the interests of any such Stockholder Member may be directly adverse to Purchaser, the Subsequent Survivor or their respective Subsidiaries and even though Baker Botts may have represented the Company in a matter substantially related to such dispute, or may be handling ongoing matters for the Subsequent Survivor.

(b) Purchaser and the Company each agree that any and all documents in Baker Botts' files relating to this Agreement, the Acquisition (including the Pre-Closing Reorganization), any offers or indications of interest relating to the Company or its assets or otherwise relating to legal services provided in connection with such matters for periods prior to the Closing shall be the property of and shall be retained by Baker Botts and shall not be delivered or required to be delivered to Purchaser, the Subsequent Survivor or their respective Affiliates. Furthermore, each of the Parties irrevocably acknowledges and agrees that, from and after the Closing, any attorney-client privilege arising from communications prior to the Closing between Baker Botts, on the one hand, and representatives of the Company, on the other hand, whether related to this Agreement, the Acquisition (including the Pre-Closing Reorganization) or otherwise, shall be excluded from the property, rights, privileges, powers, franchises and other interests that are possessed by or vested in the Surviving Corporation as of the Closing or are held by the Company under applicable Law, that such attorney-client privilege shall be deemed held solely by the Stockholder Representative, for the benefit and on behalf of each representative of the Company, and that neither Purchaser nor the Subsequent Survivor shall have any right to assert, waive or otherwise alter any such attorney-client privilege at any time after the Closing. All communications involving attorney-client confidences between a representatives of the Company and the Company, on the one hand, and Baker Botts, on the other hand, relating to the negotiation, documentation and consummation of the Acquisition (including the Pre-Closing Reorganization) shall be deemed to be attorney-client confidences that belong solely to the Stockholder Representative for the benefit and on behalf of a representative of the Company (and not the Subsequent Survivor or Purchaser). Accordingly, the Subsequent Survivor and Purchaser from and after the Closing shall not have access to any such communications or to the files of Baker Botts relating to such engagement. Further, to the extent that files of Baker Botts in respect of such engagement constitute property of its client as determined in accordance with this Section 14.15, only the Stockholders' Representative for the benefit and on behalf of a representative of the Company (and not the Subsequent Survivor or Purchaser) shall hold such property rights and Baker Botts shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to the Subsequent Survivor or Purchaser from and after the Closing by reason of any attorney-client relationship between Baker Botts and the Subsequent Survivor.

(c) This Section 14.15 shall be irrevocable, and no term of this Section 14.15 may be amended, waived or modified, without the prior written consent of Baker Botts.

(d) This Section 14.15 shall not be construed as waiving or limiting any exception to the attorney-client privilege that a Party may otherwise be able to assert in any matter or dispute.

14.16 Stockholders' Representative.

(a) By virtue of the adoption of this Agreement, the Stockholders' Representative is hereby authorized, directed and appointed to act as sole and exclusive agent, attorney-in-fact and representative of the Stockholders, with full power of substitution and authority with respect to all matters under this Agreement, including (i) to negotiate, execute and deliver all ancillary agreements, certificates, approvals, waivers, amendments and other documents required or permitted to be given in connection with this Agreement; (ii) to give and receive all notices and communications to be given or received under this Agreement; (iii) to calculate the Closing Adjusted Merger Consideration and other amounts in the Initial Closing Statement and the Consideration Statement and to dispute or agree to any final determination of any of the foregoing pursuant to Section 2.7; (iv) to defend, agree to, object to, negotiate, resolve, enter into settlements and compromises of, demand litigation of, and comply with orders of courts with respect to any claims under this Agreement or the Acquisition; (v) to appoint one or more successor Stockholders' Representatives; (vi) to perform the duties expressly assigned to the Stockholders' Representative under this Agreement; (vii) to engage and employ agents and representatives (including accounting, legal and other professional advisors) on behalf of and at the expense of the Stockholders; (viii) to exercise or refrain from exercising remedies available under this Agreement or any other ancillary agreement and to sign any release or other document with respect to such dispute or remedy, as the Stockholders' Representative, in its reasonable discretion, determines to be necessary or desirable; (ix) to execute and deliver amendments, waivers and consents in connection with this Agreement as the Stockholders' Representative, in his reasonable discretion, determines to be necessary or desirable; (x) to incur such other expenses as the Stockholders' Representative shall reasonably deem necessary or prudent in connection with the foregoing; and (xi) to take all other actions to be taken by or on behalf of the Stockholders in connection with this Agreement. Each Stockholder agrees to be bound by all agreements and determinations made by and documents executed and delivered by the Stockholders' Representative pursuant to the authority granted to it hereunder.

(b) The Stockholders' Representative shall have the sole and exclusive right on behalf of any Stockholder to take any action or provide any waiver, or receive any notice under this Agreement and to settle any claim or controversy arising with respect thereto. Any such actions taken, exercises of rights, power or authority, and any decision or determination made by the Stockholders' Representative consistent herewith, shall be absolutely and irrevocably final and binding on each Stockholder (including its applicable successors and assigns) as if such Stockholder personally had taken such action, exercised such rights, power or authority or made such decision or determination in such Stockholder's individual capacity, and no Stockholder (including its applicable successors or assigns) shall have the right to object, dissent, protest or otherwise contest the same. The appointment of the Stockholders' Representative is coupled with an interest and shall be irrevocable by the Stockholders in any manner or for any reason. This power of attorney shall not be affected by the death, illness, dissolution, disability, incapacity or other inability to act of the principal pursuant to any applicable Law.

(c) The Stockholders' Representative shall hold the Stockholders' Representative's Expense Fund in the Stockholders' Representative Expense Account as a fund from which the Stockholders' Representative may pay any fees, expenses, costs or Liabilities it incurs in performing its duties and obligations under this Agreement by or on behalf of any or all Stockholders, including legal, accounting and other consulting fees, expenses and costs for reviewing, analyzing and defending any claim or process arising under or pursuant to this Agreement. At such time as all payments have been settled pursuant to Section 2.7 and all indemnification claims have been finally resolved, the Stockholders' Representative shall distribute any remaining funds in the Stockholders' Representative Expense Account after payment of all fees and expenses of the Stockholders accordance with their respective Pro Rata Share.

(d) For all purposes of this Agreement, Purchaser and each of its Affiliates shall be entitled to rely conclusively on the instructions and decisions of the

Stockholders' Representative or any other actions required or permitted to be taken by the Stockholders' Representative under this Agreement or in connection with any of the transactions and other matters contemplated by this Agreement.

(e) The Stockholders' Representative may resign from its capacity as the Stockholders' Representative at any time by written notice delivered to Purchaser. If there is a vacancy at any time in the position of Stockholders' Representative for any reason, such vacancy shall be filled by a vote of the Stockholders that held a majority of the Company Stock immediately prior to the Closing.

(f) In the absence of deliberate fraud or willful misconduct, the Stockholders' Representative shall not be liable to Purchaser or the Stockholders in its capacity as the Stockholders' Representative for any liability of a Stockholder or for any error of judgment, or any act done or step taken or omitted by it that it believed to be in good faith or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection with this Agreement. The Stockholders' Representative may seek the advice of legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties under this Agreement, and without limiting the foregoing, it shall incur no liability in his capacity as Stockholders' Representative to Purchaser or the Stockholders and shall be fully protected with respect to any action taken, omitted or suffered by it in good faith in accordance with the advice of such counsel. The Stockholders shall severally, but not jointly, indemnify and hold harmless, in accordance with their respective Pro Rata Share, the Stockholders' Representative from any and all losses, Liabilities and expenses (including the fees and expenses of counsel) arising out of or in connection with the Stockholders' Representative's execution and performance of this Agreement.

(g) The rights to indemnification and immunities of a Stockholders' Representative under this Agreement shall survive the resignation or removal of the Stockholders' Representative and the Closing or termination of this Agreement. All rights and powers of the Stockholders' Representative under this Agreement shall survive the Closing or termination of this Agreement.

* * * * *

IN WITNESS WHEREOF, the Parties have executed this Agreement and Plan of Merger as of the date first written above.

PARENT:

Atlas Energy Solutions Inc.

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

PURCHASER:

Atlas Sand Company, LLC

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

Wyatt Merger Sub I Inc.

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

Wyatt Merger Sub 2, LLC

By: /s/ John Turner
Name: John Turner
Title: Manager

[Signature Page to Stock Purchase Agreement]

COMPANY:

Hi-Crush Inc.

By: /s/ Dirk Hallen
Name: Dirk Hallen
Title: Chief Executive Officer

STOCKHOLDERS' REPRESENTATIVE:

Clearlake Capital Partners V Finance, L.P.

By: /s/ Fred Ebrahemi
Name: Fred Ebrahemi

Title: General Counsel

REMAINCO:

HC Minerals Inc.

By: /s/ Dirk Hallen
Name: Dirk Hallen
Title: Chief Executive Officer

[Signature Page to Stock Purchase Agreement]

STOCKHOLDERS:

WHITEBOX RELATIVE VALUE PARTNERS, LP

By: /s/ Andrew Thau
Name: Andrew Thau
Title: Managing Director

WHITEBOX MULTI-STRATEGY PARTNERS, LP

By: /s/ Andrew Thau
Name: Andrew Thau
Title: Managing Director

PANDORA SELECT PARTNERS, LP

By: /s/ Andrew Thau
Name: Andrew Thau
Title: Managing Director

WHITEBOX CREDIT PARTNERS, LP

By: /s/ Andrew Thau
Name: Andrew Thau
Title: Managing Director

WHITEBOX GT FUND, LP

By: /s/ Andrew Thau
Name: Andrew Thau
Title: Managing Director

[Signature Page to the Agreement and Plan of Merger]

EXHIBIT A

PRE-CLOSING REORGANIZATION STEPS

Exhibit A

EXHIBIT B

FORM OF DISTRIBUTION PARTICIPATION AWARD SETTLEMENT AGREEMENT

Exhibit B

EXHIBIT C

FORM OF RESTRICTIVE COVENANT AGREEMENT

Exhibit C

EXHIBIT D

CLOSING STATEMENT

Exhibit D

EXHIBIT E

CONSIDERATION STATEMENT

Exhibit E

EXHIBIT F

FORM OF LETTER OF TRANSMITTAL

Exhibit F1

EXHIBIT F2

FORM OF ACCREDITED INVESTOR QUESTIONNAIRE

Exhibit F2

EXHIBIT G

FORM OF REGISTRATION RIGHTS AND LOCK-UP AGREEMENT

Exhibit G

Exhibit G

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "**Agreement**") is made and entered into as of [•], 2024, by and among Atlas Energy Solutions Inc., a Delaware corporation (the "**Company**"), and each of the other parties listed on the signature pages hereto (the "**Initial Holders**"), and the other Holders (as defined below) that may become party hereto from time to time (each a "**Party**" and collectively, the "**Parties**").

WHEREAS, this Agreement is being entered into pursuant to the Agreement and Plan of Merger, dated as of February 26, 2024 (the "**Merger Agreement**"), by and among HC Minerals Inc., a Delaware Corporation ("**Purchaser**"), the Company and Hi-Crush Inc. ("**Hi-Crush**");

WHEREAS, in connection with the closing of the transactions contemplated by the Merger Agreement on the date hereof, as partial consideration for the acquisition of Hi-Crush by the Purchaser pursuant to the Merger Agreement, the Company issued to stockholders of Hi-Crush an aggregate of 9,711,432 shares of the Company's common stock, par value $0.01 per share (the "**Common Stock**"), pursuant to the terms of the Merger Agreement; and

WHEREAS, pursuant to the Merger Agreement, the Company has agreed to provide the Initial Holders with certain registration rights under the Securities Act (as defined herein).

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the Parties hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms have the meanings indicated:

"**Adoption Agreement**" means an Adoption Agreement in substantially the form attached hereto asExhibit A.

"**Affiliate**" of any specified Person means any other Person which, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such

specified Person. For the avoidance of doubt, for purposes of this Agreement, the Holders shall not be considered Affiliates of the Company.

"**Agreement**" has the meaning set forth in the preamble.

"**Automatic Shelf Registration Statement**" means an "automatic shelf registration statement" as defined under Rule 405.

"**Blackout Period**" has the meaning set forth in Section 3(o).

"**Block Trade**" has the meaning set forth in Section 8.

"**Board**" means the board of directors of the Company.

"**Business Day**" means any day other than a Saturday, Sunday, any federal holiday or any other day on which banking institutions in the state of Texas or the state of New York are authorized or required to be closed by law or governmental action.

"**Commission**" means the Securities and Exchange Commission or any other federal agency then administering the Securities Act or Exchange Act.

"**Common Stock**" has the meaning set forth in the preamble.

"**Company**" has the meaning set forth in the preamble.

"**Company Securities**" means any equity interest of any class or series in the Company.

"**Control**" (including its correlative meanings "controlling" or "controlled") means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"**Covered Notice**" has the meaning set forth in Section 3(r).

"**Effective Date**" means the time and date that a Registration Statement is first declared effective by the Commission or otherwise becomes effective.

"**Effectiveness Period**" means the period beginning on the Effective Date and expiring on the earlier of (A) 180 days (or three years if a Shelf Registration Statement is requested) after the Effective Date of such Registration Statement or (B) the date on which all Registrable Securities covered by such Registration Statement have been sold or otherwise disposed of or such Shares are no longer Registrable Securities.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

"**Holder**" means each of the Initial Holders and/or any Permitted Transferee to whom registration rights conferred by this Agreement have been transferred in compliance with Section 9, in each case, for so long as such Person owns Registrable Securities; provided, however, that a Person shall cease to be a Holder when such Person owns less than 2% of the then outstanding shares of Common Stock and such Person may dispose of all Registrable Securities then owned by such Person, free of restrictions, without regard to Rule 144(b) (or any successor rule) under the Securities Act (i.e., such Person is not an affiliate of the Company, and has not been an affiliate of the Company for the previous three months, and has satisfied the one-year holding period under Rule 144).

"**Holder Indemnified Persons**" has the meaning set forth in Section 6(a).

"**Holder Lock-Up Period**" has the meaning set forth in Section 3(q).

"**Initial Holders**" has the meaning set forth in the preamble.

"**Initiating Holder(s)**" means the Holder(s) delivering the Underwritten Shelf Takedown Demand.

"**Legend Removal Documents**" has the meaning set forth in Section 3(s).

"**Lock-Up Period**" has the meaning set forth in Section 8.

"**Losses**" has the meaning set forth in Section 6(a).

"**Managing Underwriter**" means, with respect to any Underwritten Offering or Overnight Underwritten Offering, the book running lead manager or managers of such Underwritten Offering or Overnight Underwritten Offering.

"**Material Adverse Effect**" has the meaning set forth in Section 2(b)(ii),

"**MNPI**" means material non-public information within the meaning of Regulation FD promulgated under the Exchange Act.

"**Opt-Out Election**" has the meaning set forth in Section 3(r).

"**Overnight Underwritten Offering**" means an Underwritten Offering that is expected to be launched after the close of trading on one Trading Day and priced before the open of trading on the next succeeding Trading Day.

"**Parties**" has the meaning set forth in the preamble.

"**Permitted Transferee**" means (a) any Affiliate of a Holder and (b) any of the direct or indirect partners, shareholders, members or other holders of other equity interests of any Holder, provided that in each case, such transferee has delivered to the Company a duly executed Adoption Agreement.

"**Person**" means an individual, corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, estate, trust, government (or an agency or subdivision thereof) or other entity of any kind.

"**Piggyback Registration**" has the meaning set forth in Section 2(c)(i).

"**Piggyback Registration Notice**" has the meaning set forth in Section 2(c)(i).

"**Piggyback Registration Request**" has the meaning set forth in Section 2(c)(i).

"**Proceeding**" means any action, claim, suit, proceeding or investigation (including a preliminary investigation or partial proceeding, such as a deposition) pending or, to the knowledge of the Company, to be threatened.

"**Prospectus**" means the prospectus included in a Registration Statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A, Rule 430B or Rule 430C), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"**Registrable Securities**" means the Shares; provided, however, that Registrable Securities shall not include: (i) any Shares that have been registered under the Securities Act and disposed of pursuant to an effective Registration Statement or otherwise transferred to a Person who is not entitled to the registration and other rights hereunder; (ii) any Shares that have been sold or transferred by the Holder thereof pursuant to Rule 144 (or any similar provision then in force under the Securities Act) and the transferee thereof does not receive "restricted securities" as defined in Rule 144; and (iii) any Shares that cease to be outstanding (whether as a result of repurchase and cancellation, conversion or otherwise).

"**Registration Expenses**" has the meaning set forth in Section 5.

"**Registration Statement**" means a registration statement of the Company in the form required to register under the Securities Act and other applicable law the resale of the Registrable Securities in accordance with the intended plan of distribution of each Holder of Registrable Securities included therein, and including any Prospectus, amendments and supplements to each such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"**Resale Shelf Registration Statement**" has the meaning set forth in Section 2(a)(i).

"**Rule 144**" means Rule 144, as amended from time to time, promulgated by the Commission pursuant to the Securities Act.

"**Rule 405**" means Rule 405, as amended from time to time, promulgated by the Commission pursuant to the Securities Act.

"**Rule 415**" means Rule 415, as amended from time to time, promulgated by the Commission pursuant to the Securities Act.

"**Rule 424**" means Rule 424, as amended from time to time, promulgated by the Commission pursuant to the Securities Act.

"**Rule 430A**" means Rule 430A, as amended from time to time, promulgated by the Commission pursuant to the Securities Act.

"**Rule 430B**" means Rule 430B, as amended from time to time, promulgated by the Commission pursuant to the Securities Act.

"**Rule 430C**" means Rule 430C, as amended from time to time, promulgated by the Commission pursuant to the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"**Selling Expenses**" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (except as set forth in Section 5).

"**Shares**" means (i) the aggregate 9,711,432 shares of Common Stock issued to the Initial Holders pursuant to the terms of the Merger Agreement, (ii) any other shares of Common Stock issued to the Initial Holders in connection with the merger and (iii) and any other equity interests of the Company or equity interests in any successor of the Company issued in respect of such shares by reason of or in connection with any stock dividend, stock split, combination, reorganization, recapitalization, conversion to another type of entity or similar event involving a change in the capital structure of the Company. For purposes of this Agreement, a Person shall be deemed to be a holder of Shares and such Shares shall be deemed to be in existence whenever such Person has the right to acquire such Shares (upon conversion, exchange or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right other than vesting), whether or not such acquisition has actually been effected, and such Person shall be entitled to exercise the rights of a holder of Shares.

"**Shelf Registration Statement**" means a Registration Statement of the Company filed with the Commission on Form S-3 (or any successor form or other appropriate form under the Securities Act) for an offering to be made on a continuous or delayed basis pursuant to Rule 415 (or any similar rule that may be adopted by the Commission) or, if the Company is not then eligible to file on Form S-3, on Form S-1 or any other appropriate form under the Securities Act, or any successor rule that may be adopted by the Commission, and all amendments and supplements to such Registration Statement (including post-effective amendments), covering the Registrable Securities, as applicable.

"**Suspension Period**" has the meaning set forth in Section 10(b).

"**Trading Day**" means a day on which the principal Trading Market is open for trading.

"**Trading Market**" means the principal national securities exchange on which Registrable Securities are listed.

"**Underwritten Offering**" means an underwritten offering of Common Stock for cash (whether an Underwritten Shelf Takedown or in connection with a public offering of Common Stock by the Company, stockholders or both) and excludes an offering relating solely to an employee benefit plan, an offering relating to a transaction on Form S-4 or S-8 or an offering on any registration statement form that does not permit secondary sales.

"**Underwritten Offering Piggyback Notice**" has the meaning set forth in Section 2(c)(ii).

"**Underwritten Piggyback Offering**" has the meaning set forth in Section 2(c)(ii).

"**Underwritten Shelf Takedown**" has the meaning set forth in Section 2(b)(i).

"**Underwritten Shelf Takedown Demand**" has the meaning set forth in Section 2(b)(i).

"**Underwritten Shelf Takedown Notice**" has the meaning set forth in Section 2(b)(ii).

"**VWAP**" means, as of a specified date and in respect of Registrable Securities, the volume weighted average price for such security on the Trading Market for the five Trading Days immediately preceding, but excluding, such date.

Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; (b) references to Sections refer to Sections of this Agreement; (c) the terms "include," "includes," "including" and words of like import shall be deemed to be followed by the words "without limitation"; (d) the terms "hereof," "hereto," "herein" or "hereunder" refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) unless the context otherwise requires, the term "or" is not exclusive and shall have the inclusive meaning of "and/or"; (f) defined terms herein will apply equally to both the singular and plural forms and derivative forms of defined terms will have correlative meanings; (g) references to any law or statute shall include all rules and regulations promulgated thereunder, and references to any law or statute shall be construed as including any legal and statutory provisions consolidating, amending, succeeding or replacing the applicable law or statute; (h) references to any Person include such Person's successors and permitted assigns; and (i) references to "days" are to calendar days unless otherwise indicated.

2. Registration.

(a) **Shelf Registration**.

(i) Subject to Section 3(o), the Company shall, as soon as reasonably practicable after becoming eligible for use of a registration statement on Form S-3, but in no event later than the later of (x) April 1, 2024 and (y) fifteen Business Days after the date on which audited carveout financial statements and reserve report are delivered for inclusion in the registration statement (the "**Shelf Registration Filing Deadline**"), file with the Commission a registration statement on Form S-3 (or any successor form or other appropriate form under the Securities Act), or, if the Company is not eligible for use of a registration statement on Form S-3 by the Shelf Registration Filing Deadline, a registration statement on Form S-1 (or any successor form or other appropriate form under the Securities Act), in each case for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act (or any successor rule thereto) (the "**Resale Shelf Registration Statement**") covering the public resale of all of the Registrable Securities (determined as of the date hereof) on a delayed or continuous basis, which shall contain a prospectus in such form as to permit the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. The Company shall use its commercially reasonable efforts to cause the Resale Shelf Registration Statement to become effective under the Securities Act as promptly as reasonably practicable after the filing thereof (it being agreed that the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement if the Company is a well-known seasoned issuer (as defined in Rule 405) at the most recent applicable eligibility determination date). The Company shall use commercially reasonable efforts to cause the Resale Shelf Registration Statement to remain effective, and to be supplemented and amended to the extent necessary to ensure that the Resale Shelf Registration Statement is available or, if not available, that another registration statement is available (which shall be considered the "Resale Shelf Registration Statement" for purposes of this Agreement), for the resale of all the Registrable Securities by the Holders until the expiration of the Effectiveness Period. When the Resale Shelf Registration Statement is effective, (a) such Resale Shelf Registration Statement (including the documents incorporated therein by reference) will comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (b) in the case of any prospectus contained in the Resale Shelf Registration Statement, such prospectus will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which such statements are made, not misleading. The Company may require, by written request, each Holder to promptly furnish in writing to the Company such information regarding the ownership or distribution of the Registrable Securities as it may from time to time reasonably request and such other information as may be legally required in connection with the filing of the Resale Shelf Registration Statement or any amendment or supplement thereto. Notwithstanding anything herein to the contrary, the Company shall have the right to exclude from the Resale Shelf Registration Statement and any Underwritten Shelf Takedown the Registrable Securities of any Holder who does not comply with the provisions of the immediately preceding sentence.

(b) **Request for Underwritten Shelf Takedown**.

(i) Following the expiration of the Lock-Up Period, any Holder(s) shall have the option and right, exercisable by delivering a written notice to the Company (each an "**Underwritten Shelf Takedown Demand**") to distribute all or a portion of their Registrable Securities in an Underwritten Offering (an '**Underwritten Shelf Takedown**"). The Underwritten Shelf Takedown Demand must set forth the number of Registrable Securities that the Initiating Holder(s) intends to include in such Underwritten Shelf Takedown and the intended methods of disposition thereof. Notwithstanding anything to the contrary herein, in no event shall the Company be required to effectuate an Underwritten Shelf Takedown unless the Registrable Securities of the Initiating Holder(s) and its respective Affiliates to be included therein have an aggregate value, based on the VWAP as of the date of the Underwritten Shelf Takedown Demand, of at least $50 million. The Managing Underwriter of an Underwritten Shelf Takedown shall be designated by the Company, provided, that such selection shall be subject to the consent of the Initiating Holder(s), which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Company (i) is not obligated to effect more than a total of two Underwritten Shelf Takedowns during any 12-month period, (ii) will not be obligated to effect an Underwritten Shelf Takedown within 120 days of a previously granted Underwritten Shelf Takedown and (iii) is not obligated to effect more than a total of three Underwritten Shelf Takedowns.

(ii) Promptly, and in any event no later than three Business Days after receipt of an Underwritten Shelf Takedown Demand by the Company (or two Business Days if the Underwritten Shelf Takedown Demand is for an Overnight Underwritten Offering or "bought deal"), the Company shall notify all Holders (other than the Initiating Holder(s)) of such demand (the "**Underwritten Shelf Takedown Notice**"). Each such Holder that receives an Underwritten Shelf Takedown Notice shall have the opportunity to include in such Underwritten Shelf Takedown that number of Registrable Securities as such Holder may request in writing to the Company within three Business Days (or one Business Day if the Underwritten Shelf Takedown Demand is for an Overnight Underwritten Offering or "bought deal") after the date that the Underwritten Shelf Takedown Notice was delivered to such Holder by the Company. If no request for inclusion from a Holder is delivered to the Company within the applicable response period provided in this Section 2(b)(ii), such Holder shall have no further right to participate in such Underwritten Shelf Takedown. Whether or not a Holder elects to participate in an Underwritten Shelf Takedown, receipt of any Underwritten Shelf Takedown Notice required to be provided in this Section 2(b)(ii) to Holders shall be kept confidential by the Holder (including that such notice has been delivered) until such time as the Underwritten Offering contemplated by such Underwritten Shelf Takedown Notice has been publicly announced or abandoned (notice of which, in the latter case, shall be provided promptly to such Holder). Subject to Section 2(d), the Company shall include in the Underwritten Shelf Takedown all Registrable Securities sought to be included in such Underwritten Shelf Takedown as identified by the Holders that have delivered appropriate notice thereof to the Company in accordance with this Section 2(b)(ii). Notwithstanding the foregoing, if the Underwritten Shelf Takedown Demand is for an Overnight Underwritten Offering or "bought deal" and the investment bank or Managing Underwriter advises the Company and the Initiating Holder(s) in writing that the giving of notice pursuant to the first sentence of this Section 2(b)(ii) would have a material adverse effect on the price or success of the offering (a "**Material Adverse Effect**"), no such notice shall be required (and the other Holders shall have no right to include their Registrable Securities in such Underwritten Shelf Takedown) and, for the avoidance of doubt, such

offering shall not count as one of the permitted Underwritten Shelf Takedowns pursuant to Section 2(b)(i).

(iii) At any time prior to the execution of an underwriting agreement with respect to any Underwritten Shelf Takedown, any participating Holder may withdraw its request for inclusion of its Registrable Securities therein. Any Underwritten Shelf Takedown Demand that is subsequently withdrawn by the Initiating Holder shall count as one of the permitted Underwritten Shelf Takedowns pursuant to Section 2(b)(i) unless (a) the Initiating Holder(s) (or another Holder or Holders) pays all Registration Expenses incurred in connection with such withdrawn offering through the date of such withdrawal, (b) during the offering process material adverse information regarding the Company is disclosed that was not known by the Initiating Holder at the time the Underwritten Shelf Takedown Demand was made or (c) the Company has not complied in all material respects with its obligations hereunder required to have been taken prior to such withdrawal.

(iv) Without limiting Section 3, in connection with any Underwritten Shelf Takedown pursuant to and in accordance with thisSection 2(b), the Company shall (A) promptly prepare and file or cause to be prepared and filed (1) such additional forms, amendments, supplements, prospectuses, certificates, letters, opinions and other documents, as may be necessary or advisable to register or qualify the securities subject to such Underwritten Shelf Takedown, including under the securities laws of such jurisdictions as the participating Holders shall reasonably request; provided, however, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Company would become subject to general service of process or to taxation or qualification to do business in such jurisdiction solely as a result of registration and (2) such forms, amendments, supplements, prospectuses, certificates, letters, opinions and other documents as may be necessary to apply for listing or to list the Registrable Securities subject to such Underwritten Shelf Takedown on the Trading Market and (B) do any and all other acts and things that may be reasonably necessary or appropriate or reasonably requested by the participating Holders to enable the participating Holders to consummate a public sale of such Registrable Securities in accordance with the intended timing and method or methods of distribution thereof.

(c) **Piggyback Registration and Piggyback Underwritten Offering**.

(i) If the Company shall at any time propose to file a registration statement under the Securities Act with respect to an offering of Common Stock (other than a registration statement on Form S-4, Form S-8 or any successor forms thereto or filed solely in connection with an exchange offer, a rights offering or any employee benefit or dividend reinvestment plan), whether or not for its own account, then the Company shall promptly notify all Holders of such proposal reasonably in advance of (and in any event at least five Business Days, except if the Registration Statement will be a Shelf Registration Statement, at least three Business Days, before) the anticipated filing date (the "**Piggyback Registration Notice**"). The Piggyback Registration Notice shall offer Holders the opportunity to include for registration in such registration statement the number of Registrable Securities as they may request in writing (a "**Piggyback Registration**"). The Company shall use commercially reasonable efforts to include in each such Piggyback Registration such Registrable Securities for which the Company has received written requests for inclusion therein ("**Piggyback Registration Request**") within three Business Days after sending the Piggyback Registration Notice. Each Holder shall be permitted to withdraw all or part of such Holder's Registrable Securities from a Piggyback Registration by giving written notice to the Company of its request to withdraw; provided that such request must be made in writing prior to the effectiveness of such registration statement and such withdrawal shall be irrevocable and, after making such withdrawal, a Holder shall no longer have any right to include Registrable Securities in the Piggyback Registration as to which such withdrawal was made. Any withdrawing Holder shall continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of Common Stock, all upon the terms and conditions set forth herein.

(ii) If the Company shall at any time propose to conduct an Underwritten Offering, whether or not for its own account, then the Company shall promptly notify all Holders of such proposal reasonably in advance of (and in any event at least two Business Days before in connection with a "bought deal" or Overnight Underwritten Offering or pursuant to a Shelf Registration Statement) the commencement of the offering, which notice shall set forth the principal terms and conditions of the issuance, including the proposed offering price (or range of offering prices), the anticipated filing date of the related registration statement (if applicable) and the number of shares of Common Stock that are proposed to be registered (the "**Underwritten Offering Piggyback Notice**"). Receipt of any Underwritten Offering Piggyback Notice required to be provided in this Section 2(c)(ii) to Holders shall be kept confidential by the Holder until such proposed Underwritten Offering is (A) publicly announced or (B) such Holder receives notice that such proposed Underwritten Offering has been abandoned, which such notice shall be provided as reasonably practicable by the Company to each Holder. The Underwritten Offering Piggyback Notice shall offer Holders the opportunity to include in such Underwritten Offering (and any related registration, if applicable) the number of Registrable Securities as they may request in writing (an "**Underwritten Piggyback Offering**"); provided, however, that in the event that the Company proposes to effectuate the subject Underwritten Offering pursuant to an effective Shelf Registration Statement of the Company other than an Automatic Shelf Registration Statement, only Registrable Securities of Holders which are subject to an effective Shelf Registration Statement may be included in such Underwritten Piggyback Offering, unless the Company is then able to file an Automatic Shelf Registration Statement and in the reasonable judgment of the Company, the filing of the same including Registrable Securities of Holders that are not otherwise included in an effective Shelf Registration Statement would not have a Material Adverse Effect on the price, timing or distribution of the Common Stock in such Underwritten Piggyback Offering. The Company shall use commercially reasonable efforts to include in each such Underwritten Piggyback Offering such Registrable Securities for which the Company has received written requests for inclusion therein within three Business Days after sending the Underwritten Offering Piggyback Notice (or one Business Day in connection with a "bought deal" or Overnight Underwritten Offering). Notwithstanding anything to the contrary in this Section 2(c)(ii), if the Underwritten Offering pursuant to this Section 2(c)(ii) is a "bought deal" (other than a variable price reoffer) or Overnight Underwritten Offering and the Managing Underwriter advises the Company that the giving of notice pursuant to this Section 2(c)(ii) would have an adverse effect on the price, timing or distribution of the Common Stock in such Underwritten Offering, no such notice shall be required. Each Holder shall be permitted to withdraw all or part of such Holder's Registrable Securities from an Underwritten Piggyback Offering at any time, and such Holder shall continue to have the right to include any Registrable Securities in any subsequent Underwritten Offerings, all upon the terms and conditions set forth herein. For the avoidance of doubt, the piggyback rights provided herein are not subject to the Lock-Up Period or any of the restrictions contained in Section 8 of this Agreement.

(iii) The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2(c) at any time in its sole discretion whether or not any Holder has elected to include Registrable Securities in such Registration Statement. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 4 hereof.

(d) **Priority in Underwritten Offerings**. In connection with an Underwritten Offering, which, for the avoidance of doubt, includes an Underwritten Shelf Takedown, if the Managing Underwriter of any such Underwritten Offering advises the Company, and the Company advises the Holders in writing, that the total amount of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock) that the Holders and any other Persons (including the Company) intend to include in such Underwritten Offering (and any related registration, if applicable) exceeds the number that can be included in such Underwritten Offering without being reasonably likely to have an adverse effect on the price, timing or distribution of the Common Stock offered or the market for the Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock), then the Common Stock to be included in such Underwritten Offering (in each case subject to the other terms and provisions of this Agreement) shall include the number of shares of Common Stock that such Managing Underwriter advises the Company can be sold without having such adverse effect, with such number to be allocated as follows (in each case, with respect to such Persons that have validly requested to include shares of Common Stock in such Underwritten Offering in accordance with this Agreement or otherwise pursuant to rights of registration granted by the Company):

(i) if the offering was initiated for and on behalf of the Company:

(A) first, to the Company; and

(B) second, to the Holders and to all other holders of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock) entitled to participate in such Underwritten Offering, pro rata in accordance with the number of Registrable Securities then held by each such Holder and the number of shares of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock) then held by such other holders;

(ii) in the case of an Underwritten Shelf Takedown:

(A) first, to the Holders, pro rata based on the relative number of Registrable Securities then held by each such Holder;

(B) second, to the Company; and

(C) third, pro rata among all other holders of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock) entitled to participate in such Underwritten Offering, pro rata in accordance with the number of shares of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock), collectively, then held by such other holders;

(iii) if the offering was not initiated for and on behalf of the Company and was initiated for and on behalf of any holder of registration rights (other than any Holder):

(A) first, to such other holders, pro rata based on the number of shares of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock), collectively, held by such other holders;

(B) second, to the Company; and

(C) third, pro rata among all other holders of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock) and the Holders proposed to be included in such offering based on the number of shares of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock) and Registrable Securities, as applicable, collectively, held by such other holders and the Holders.

3. Registration and Underwritten Offering Procedures.

The procedures to be followed by the Company and each Holder electing to sell Registrable Securities in a Registration Statement pursuant to this Agreement, and the respective rights and obligations of the Company and such Holders, with respect to the preparation, filing and effectiveness of such Registration Statement and the effectuation of any Underwritten Offering, are as follows:

(a) In connection with the Resale Shelf Registration Statement, the Company will, at least five Business Days prior to the anticipated filing of such Resale Shelf Registration Statement and any related Prospectus or any amendment or supplement thereto (other than, after effectiveness of the Resale Shelf Registration Statement, any filing made under the Exchange Act that is incorporated by reference into the Resale Shelf Registration Statement) (for purposes of this subsection, supplements and amendments shall not be deemed to include any filing that the Company is required to make pursuant to the Exchange Act or any amendments and supplements that do not materially alter the previous disclosure or do nothing more than name Holders and provide information with respect thereto), (i) furnish to such Holders copies of all such documents prior to filing and (ii) use commercially reasonable efforts to address in each such document when so filed with the Commission such comments as such Holders reasonably shall propose prior to the filing thereof.

(b) In connection with a Piggyback Registration, Underwritten Piggyback Offering or an Underwritten Shelf Takedown, the Company will, at least three Business Days (or one Business Day in the case of any Overnight Underwritten Offering or "bought deal") prior to the anticipated filing of any initial Registration Statement that identifies the Holders and any related Prospectus or any amendment or supplement thereto (other than amendments and supplements that do not materially alter the previous disclosure or do nothing more than name Holders and provide information with respect thereto), as applicable, (i) furnish to such Holders copies of any such Registration Statement or related Prospectus or amendment or supplement thereto that identify the Holders and any related Prospectus or any amendment or supplement thereto (other than amendments and supplements that do not materially alter the previous disclosure or do nothing more than name Holders and provide information with respect thereto) prior to filing and (ii) use commercially reasonable efforts to address in each such document when so filed with the Commission such comments as such Holders reasonably shall propose prior to the filing thereof.

(c) The Company will use commercially reasonable efforts to as promptly as reasonably practicable (i) prepare and file with the Commission such amendments, including post-effective amendments, and supplements to each Registration Statement and the Prospectus used in connection therewith as may be necessary under applicable law to keep such Registration Statement continuously effective with respect to the disposition of all Registrable Securities covered thereby for its Effectiveness Period and, subject to the limitations contained in this Agreement, prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities held by the Holders; (ii) cause the related Prospectus to be amended or supplemented by any required prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424; and (iii) respond to any comments received from the Commission with respect to each Registration Statement or any amendment thereto and, as promptly as reasonably practicable provide such Holders true and complete copies of all correspondence from and to the Commission relating to such Registration Statement that pertains to such Holders as selling stockholders but not any comments that would result in the disclosure to such Holders of material and non-public information concerning the Company.

(d) The Company will comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the Registration Statements and the disposition of all Registrable Securities covered by each Registration Statement.

(e) The Company will notify such Holders who are included in a Registration Statement as promptly as reasonably practicable: (i) (A) when a Prospectus or any prospectus supplement or post-effective amendment to a Registration Statement in which such Holder is included has been filed; (B) when the Commission notifies the Company whether there will be a "review" of the applicable Registration Statement and whenever the Commission comments in writing on such Registration Statement (in which case the Company shall provide true and complete copies thereof and all written responses thereto to each of such Holders that pertain to such Holders as selling stockholders); and (C) with respect to each applicable Registration Statement or any post-effective amendment thereto, when the same has been declared effective; (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to such Registration Statement or Prospectus or for additional information that pertains to such Holders as sellers of Registrable Securities; (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such

Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; and (v) of the occurrence (but not the details) of any event or passage of time that makes any statement made in such Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to such Registration Statement, Prospectus or other documents so that, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, in the case of such Registration Statement, or include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in the case of the Prospectus (provided, however, that no notice by the Company shall be required pursuant to this clause (v) in the event that the Company either promptly files a prospectus supplement to update the Prospectus or a Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Registration Statement, which in either case, contains the requisite information that results in such Registration Statement no longer containing any untrue statement of material fact or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, in the case of such Registration Statement, or including any untrue statement of a material fact or omitting to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in the case of the Prospectus).

(f) The Company will use commercially reasonable efforts to avoid the issuance of or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, as promptly as reasonably practicable, or if any such order or suspension is made effective during any Blackout Period or Suspension Period, as promptly as reasonably practicable after such Blackout Period or Suspension Period is over.

(g) During the Effectiveness Period, the Company will furnish to each such Holder, without charge, at least one conformed copy of each Registration Statement and each amendment thereto and all exhibits to the extent requested by such Holder (including those incorporated by reference) promptly after the filing of such documents with the Commission; provided, that the Company will not have any obligation to provide any document pursuant to this Section 3(g) that is available on the Commission's EDGAR system.

(h) The Company will promptly deliver to each Holder, without charge, as many copies of each Prospectus or Prospectuses (including each form of prospectus) authorized by the Company for use and each amendment or supplement thereto as such Holder may reasonably request during the Effectiveness Period. Subject to the terms of this Agreement, including Section 10(b), the Company consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto.

(i) In connection with any Underwritten Shelf Takedown, the Company will use commercially reasonable efforts to procure and provide a copy to each Holder of any customary legal opinions, auditor "comfort" letters and reports of the independent mining engineers and geologists of the Company relating to the mineral reserves of the Company included in the Registration Statement if the Company has had its reserves prepared, audited or reviewed by an independent mining engineer or geologist as the Managing Underwriter reasonably requests.

(j) Upon the occurrence of any event contemplated by Section 3(e)(v), as promptly as reasonably practicable, the Company will prepare a supplement or amendment, including a post-effective amendment, if required by applicable law, to the affected Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, no Registration Statement will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, nor will any Prospectus include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) With respect to Underwritten Offerings, subject to the right of a Holder to withdraw such Holder's Registrable Securities from an Underwritten Offering in accordance with the terms of this Agreement, (i) the right of any Holder to include such Holder's Registrable Securities in an Underwritten Offering shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein, (ii) each Holder participating in such Underwritten Offering severally agrees to enter into an underwriting agreement in customary form and sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled to select the Managing Underwriter hereunder and (iii) each Holder participating in such Underwritten Offering severally agrees to complete and execute all questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up agreements and other documents customarily and reasonably required under the terms of such underwriting arrangements. Any such underwriting agreement to be entered into among the Company, managing underwriter of such offering and each Holder participating in such Underwritten Offering shall contain representations and warranties by such Holders and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions on the part of selling stockholders. The Company hereby agrees with each Holder that, in connection with any Underwritten Offering in accordance with the terms hereof, it will negotiate in good faith and execute all indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements, including using all commercially reasonable efforts to procure customary legal opinions, auditor "comfort" letters and reports of the independent mining engineers and geologists of the Company relating to the mineral reserves of the Company included in the Registration Statement if the Company has had its reserves prepared, audited or reviewed by an independent mining engineer or geologist.

(l) For a reasonable period prior to the filing of any Registration Statement and throughout the Effectiveness Period, the Company will make available, upon reasonable notice at the Company's principal place of business or such other reasonable place, for inspection during normal business hours by a representative or representatives of the selling Holders, the Managing Underwriter and any attorneys or accountants retained by such selling Holders or underwriters, all such financial and other information and books and records of the Company, and cause the officers, employees, counsel, independent certified public accountants and independent mining engineers and geologists of the Company to respond to such inquiries, as shall be reasonably necessary (and in the case of counsel, not violate an attorney-client privilege in such counsel's reasonable belief) to conduct a reasonable investigation within the meaning of Section 11 of the Securities Act; provided, however, that any information that is not generally publicly available at the time of delivery of such information shall be kept confidential by such Persons unless disclosure of such information is required by court or administrative order or, in the opinion of counsel to such Person, law, in which case, such Person shall be required to give the Company written notice of the proposed disclosure prior to such disclosure and, if requested by the Company, assist the Company in seeking to prevent or limit the proposed disclosure.

(m) In connection with any Underwritten Shelf Takedown, the Company will use commercially reasonable efforts to take such actions as the Holders reasonably request in order to expedite or facilitate the disposition of the Registrable Securities subject to such Underwritten Shelf Takedown and to cause appropriate officers and employees to be available, on a customary basis and upon reasonable notice, to meet with prospective investors in presentations, meetings and road shows.

(n) Each Holder agrees to furnish to the Company any other information regarding the Holder and the distribution of such securities as the Company reasonably determines is required to be included in any Registration Statement or any Prospectus or prospectus supplement relating to an Underwritten Offering.

(o) Notwithstanding any other provision of this Agreement, the Company shall not be required to file a Registration Statement (or any amendment thereto) or effect an

Underwritten Shelf Takedown (or, if the Company has filed a Shelf Registration Statement and has included Registrable Securities therein, the Company shall be entitled to suspend the offer and sale of Registrable Securities pursuant to such Registration Statement) for a period of up to 90 days if (i) the Board determines that a postponement is in the best interest of the Company and its stockholders generally due to a pending financing, acquisition, corporate reorganization, merger, share exchange or other transaction or event involving the Company or any of its subsidiaries (including a pending securities offering by the Company), (ii) the Board determines such registration would render the Company unable to comply with applicable securities laws or (iii) the Board determines such registration would require disclosure of material information that the Company has a bona fide business purpose for preserving as confidential (any such period, a "**Blackout Period**"); *provided* that in no event shall any Blackout Periods, any Suspension Periods and any Holder Lock-Up Periods collectively continue for more than 120 days in the aggregate during any consecutive 12-month period. Each Holder agrees that the receipt of any notice pursuant to this Section 3(o) does not constitute MNPI, but nevertheless shall be kept confidential and not be disclosed without the prior written consent of the Company until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the Holder in breach of the terms of this Agreement.

(p) In connection with an Underwritten Offering, the Company will use commercially reasonable efforts to provide to each Holder named as a selling securityholder in any Registration Statement, if requested, a copy of any auditor "comfort" letters, customary legal opinions or reports of the independent mining engineers and geologists of the Company relating to the mineral reserves of the Company, in each case that have been provided to the Managing Underwriter in connection with the Underwritten Offering, not later than the Business Day prior to the effective date of such Registration Statement.

(q) In connection with any Underwritten Offering, any Holder that together with its Affiliates owns 10% or more of the outstanding Common Stock, shall execute a customary "lock-up" agreement with the underwriters of such Underwritten Offering containing a lock-up period equal to the shorter of (A) the shortest number of days that a director of the Company, "executive officer" (as defined under Section 16 of the Exchange Act) of the Company or any stockholder of the Company (other than a Holder or director or employee of, or consultant to, the Company) who owns 10% or more of the outstanding Common Stock contractually agrees to with the underwriters of such Underwritten Offering not to sell any securities of the Company following such Underwritten Offering and (B) 90 days from the date of the execution of the underwriting agreement with respect to such Underwritten Offering (each such period, a "**Holder Lock-Up Period**").

(r) Notwithstanding anything to the contrary in this Agreement, any Holder may make a written election (an "**Opt-Out Election**") to no longer receive from the Company any Underwritten Shelf Takedown Notice, Piggyback Registration Notice or Underwritten Offering Piggyback Notice (each, a "**Covered Notice**"), and, following receipt of such Opt-Out Election, the Company shall not be required to, and shall not, deliver any such Covered Notice to such Holder from the date of receipt of such Opt-Out Election and such Holder shall have no right to participate in any Registration Statement or Underwritten Offering as to which such Covered Notices pertain. An Opt-Out Election shall remain in effect until it has been revoked in writing and received by the Company. A Holder who previously has given the Company an Opt-Out Election may revoke such election at any time in writing, and there shall be no limit on the ability of a Holder to issue and revoke subsequent Opt-Out Elections.

(s) The restrictive legend on any Shares covered by this Agreement shall be removed if (a) such Shares are sold pursuant to an effective Registration Statement, (b) a Registration Statement covering the sale of such Shares is effective under the Securities Act or the Shares may be resold pursuant to Rule 144 subject only to compliance with paragraph (c) of Rule 144 (i.e., such Holder is not an affiliate of the Company, and has not been an affiliate of the Company for the previous three months, and has satisfied the six-month holding period under Rule 144) and the applicable Holder delivers to the Company a representation and/or "will comply" letter, as applicable, certifying that, among other things, such Holder will only transfer such Shares pursuant to such effective Registration Statement or Rule 144 and will, upon request following any lapse of effectiveness of such Registration Statement or lapse of availability of Rule 144, cooperate with the Company to not make sales pursuant to such Registration Statement until such Registration Statement again becomes effective or until Rule 144 is available, (c) such Shares may be sold by the applicable Holder free of restrictions without regard to Rule 144(b) under the Securities Act (i.e., such Holder is not an affiliate of the Company, and has not been an affiliate of the Company for the previous three months, and has satisfied the one-year holding period under Rule 144) or (d) such Shares are being sold, assigned or otherwise transferred pursuant to Rule 144; provided, that with respect to clause (b), (c) or (d) above, the applicable Holder has provided all documentation and evidence (which may include an opinion of counsel) as may reasonably be required by the Company or its transfer agent to confirm that the legend may be removed under applicable securities laws (the "**Legend Removal Documents**"). The Company shall cooperate with the applicable Holder covered by this Agreement to effect the removal of the legends on such Shares pursuant to this Section 3(s) as soon as reasonably practicable after the delivery of notice from such Holder that the conditions to removal are satisfied (together with any Legend Removal Documents), including, without limitation, by delivering an instruction letter and an opinion of counsel to the Company to the Company's transfer agent no later than one Trading Day following the delivery of such notice. The Company shall bear all direct costs and expenses associated with the removal of a legend pursuant to this Section 3(s) (including, without limitation, costs of counsel of the Company and any fees required for processing of any instruction letter delivered by the Company); provided, that the applicable Holder shall be responsible for all fees and expenses (including of counsel for such Holder) incurred by such Holder with respect to delivering the Legend Removal Documents.

4. No Inconsistent Agreements; Additional Rights. The Company shall not hereafter enter into, and is not currently a party to, any agreement (except any agreements, if any, publicly filed via the Commission's EDGAR filing system on or before the date hereof) with respect to its securities that is inconsistent in any material respect with the rights granted to the Holders by this Agreement.

5. Registration Expenses. Subject to the last sentence of Section 3(s), all Registration Expenses incident to the Parties' performance of or compliance with their respective obligations under this Agreement or otherwise in connection with the Resale Shelf Registration Statement or any Underwritten Shelf Takedown, Piggyback Registration or Underwritten Piggyback Offering (in each case, excluding any Selling Expenses) shall be borne by the Company, whether or not any Registrable Securities are sold pursuant to a Registration Statement. "**Registration Expenses**" shall include, without limitation, (i) all registration and filing fees (including fees and expenses (A) with respect to filings required to be made with the Trading Market, (B) in compliance with applicable state securities or "Blue Sky" laws and (C) with respect to filings with The Financial Industry Regulation Authority), (ii) printing expenses (including expenses of printing certificates for Company Securities and of printing Prospectuses if the printing of Prospectuses is reasonably requested by a Holder of Registrable Securities included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel, auditors, accountants and independent mining engineers and geologists for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement, (vii) the fees and expenses of one law firm of national standing selected by the Holders owning the majority of the Registrable Securities to be included in any such registration or offering, subject to a maximum fee of $75,000 per Registration Statement filed pursuant to Section 2, and (viii) all expenses relating to marketing the sale of the Registrable Securities, including expenses related to conducting a "road show." In addition, the Company shall be responsible for all of its expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including expenses payable to third parties and including all salaries and expenses of their officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on the Trading Market.

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6. Indemnification.

(a) The Company shall indemnify and hold harmless each Holder, its Affiliates and each of their respective officers and directors and any agent thereof, and each other Person, if any, who Controls any Holder within the meaning of the Securities Act (collectively, " **Holder Indemnified Persons**"), to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, joint or several, costs (including reasonable costs of preparation and reasonable attorneys' fees) and

expenses, judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or Proceedings, whether civil, criminal, administrative or investigative, in which any Holder Indemnified Person may be involved, or is threatened to be involved, as a party or otherwise, under the Securities Act or otherwise (collectively, "**Losses**"), as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which any Registrable Securities were registered, in any preliminary prospectus (if the Company authorized the use of such preliminary prospectus prior to the Effective Date), or in any summary or final prospectus or free writing prospectus (if such free writing prospectus was authorized for use by the Company) or in any amendment or supplement thereto (if used during the Effective Period), or arising out of or based upon the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements made therein not misleading, in the case of the Registration Statement, or arising out of or based upon the omission to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in the case of any preliminary prospectus (if the Company authorized the use of such preliminary prospectus prior to the Effective Date), or in any summary or final prospectus or free writing prospectus (if such free writing prospectus was authorized for use by the Company) or in any amendment or supplement thereto (if used during the Effective Period); provided, however, that the Company shall not be liable to any Holder Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue or alleged untrue statement or omission or alleged omission made in such Registration Statement, such preliminary, summary or final prospectus or free writing prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Holder Indemnified Person specifically for use in the preparation thereof. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement. This indemnity shall be in addition to any liability the Company may otherwise have and shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder Indemnified Person or any indemnified party and shall survive the transfer of such securities by such Holder. Notwithstanding anything to the contrary herein, this Section 6 shall survive any termination or expiration of this Agreement indefinitely.

(b) In connection with any Registration Statement in which a Holder participates, such Holder shall, severally and not jointly, indemnify and hold harmless the Company, its Affiliates and each of their respective officers, directors and any agent thereof, and each other Person, if any, who Controls the Company within the meaning of the Securities Act, to the fullest extent permitted by applicable law, from and against any and all Losses as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in any such Registration Statement, in any preliminary prospectus (if used prior to the Effective Date of such Registration Statement), or in any summary or final prospectus or free writing prospectus or in any amendment or supplement thereto (if used during the period the Company is required to keep the Registration Statement current), or arising out of or based upon the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements made therein not misleading, in the case of the Registration Statement, or arising out of or based upon the omission to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in the case of any preliminary prospectus (if used prior to the Effective Date of such Registration Statement), or in any summary or final prospectus or free writing prospectus (if such free writing prospectus was authorized for use by the Company) or in any amendment or supplement thereto (if used during the period the Company is required to keep the Registration Statement current), but only to the extent that the same are made in reliance and in conformity with information relating to the Holder furnished in writing to the Company by such Holder expressly for use therein. This indemnity shall be in addition to any liability such Holder may otherwise have and shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any indemnified party. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the proceeds received by such Holder from the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim or there may be reasonable defenses available to the indemnified party that are different from or additional to those available to the indemnifying party, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (in addition to any local counsel) for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party there may be one or more legal or equitable defenses available to such indemnified party that are in addition to or may conflict with those available to another indemnified party with respect to such claim. Failure to give prompt written notice shall not release the indemnifying party from its obligations hereunder.

(d) If the indemnification provided for in this Section 6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any Losses referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such Losses in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and of the indemnified party, on the other, in connection with the untrue or alleged untrue statement of a material fact or the omission to state a material fact that resulted in such Losses, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

7. Facilitation of Sales Pursuant to Rule 144. The Company shall timely file the reports required to be filed by it under the Exchange Act or the Securities Act (including the reports under Sections 13 and 15(d) of the Exchange Act referred to in subparagraph (c)(1) of Rule 144), and shall take such further action as any Holder may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitations of the exemption provided by Rule 144. Upon the request of any Holder in connection with that Holder's sale pursuant to Rule 144, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements.

8. Lock-Up. Each of the Holders agrees that he, she or it will not, during (and to the extent prohibited by the terms of this Section 8) the Lock-up Period, (i) lend, offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, or otherwise transfer or dispose of, in each case whether effected directly or indirectly, any Registrable Securities held by such Holder; (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such Registrable Securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Registrable Securities or other securities, in cash, or otherwise; or (iii) publicly announce the intention to effect any of the transactions covered in clause (i) and (ii) above; provided, that a Holder may enter into a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Registrable Securities so long as such plan does not provide for the transfer of Registrable Securities during the Lock-up Period; provided, further, that nothing herein shall prohibit any Holder from (A) pledging any Registrable Securities in connection with such Person's entry into a credit facility or any other bona fide borrowing or similar lending arrangement, which shall include margin loans (provided, that for the avoidance of doubt, any pledgee who receives Common Stock following the exercise of remedies shall not be subject to the restrictions set forth in this Section 8), (B) transferring any Registrable Securities as a distribution or transfer to general partners, limited partners, members or stockholders of any Holder, or to any corporation, partnership, limited liability company, investment fund or other entity which controls or manages or is controlled or managed by any such Holder, or to any Affiliate under common control or management with any such Holder, (C) transferring any Registrable Securities in connection with the completion of a liquidation, merger, stock exchange or other similar transaction that results in all of the Company's securityholders having the right to exchange their shares of Common Stock for cash, securities or other property, (D) electing to dispose of Registrable Securities pursuant to a block trade with reasonably expected gross proceeds of at least $20 million from such block trade (a "**Block Trade**") provided, that the recipient of the Registrable Securities pursuant to such Block Trade agrees to be bound in writing by the restrictions in this Section 8, (E) electing to exercise his or her rights pursuant to Section 2(c) to include Registrable Securities in any Piggyback Registration or Underwritten Piggyback Offering, (F) (x) transferring Registrable Securities pursuant to a bona fide third-party tender offer for shares of the Company's capital stock made to all Holders of the Company's securities or pursuant to a merger, consolidation or other similar transaction approved by the Board of the Company the result of which is that any person (as defined in Section 13(d)(3) of the Exchange Act), or group of persons, other than the Company, becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 of the Exchange Act) of more than 50% of the total voting power of the voting stock of the Company and (y) entering into any lockup, voting or similar agreement pursuant to which the Holder may agree to transfer, sell, tender or otherwise dispose of shares of Common Stock or such other securities in connection with a transaction described in the immediately foregoing

clause (x) above (provided that, in the event that such change of control transaction is not completed, any Registrable Securities shall remain subject to the restrictions contained in this Section 8), or (G) transferring any Registrable Securities by operation of law or pursuant to a final order of a court or regulatory agency; provided, further, that, in the case of the foregoing clauses (A) through (C), (1) each such transferee agrees to be bound in writing by the restrictions set forth in this Section 8, (2) any such transfer shall not involve a disposition for value and (3) no public filing or public disclosure shall be required or voluntarily made during the Lock-up Period in connection with any such transfer (other than required filings under Sections 13(d) or 13(g) or Section 16 of the Exchange Act). For purposes of this Section 8, the term "**Lock-Up Period**" shall mean the period beginning on the date hereof and ending on the 90th day hereafter.

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9. Transfers of Registration Rights. The provisions hereof will inure to the benefit of, and be binding upon, the successors and assigns of each of the Parties, except as otherwise provided herein; provided, however, that the registration rights granted hereby may be transferred only (a) by operation of law, (b) if such transferee is a Permitted Transferee or (c) if such transfer is not made in accordance with clauses (a) and (b), with the express prior written consent of the Company, provided, in each case, that any such transferee shall not be entitled to the rights provided in this Agreement unless such transferee of registration rights hereunder agrees to be bound by the terms and conditions hereof and executes and delivers to the Company a duly executed Adoption Agreement. Notwithstanding anything to the contrary contained in this Section 9, any Holder may elect to transfer all or a portion of its Registrable Securities to any third party without assigning its rights hereunder with respect thereto; provided, that in any such event all rights under this Agreement with respect to the Registrable Securities so transferred shall cease and terminate. References to a Party in this Agreement shall be deemed to include any such transferee or assignee permitted by this Section 9.

10. Miscellaneous.

(a) **Remedies**. In the event of actual or potential breach by the Company of any of its obligations under this Agreement, each Holder, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) **Discontinued Disposition**. Subject to the last sentence of Section 3(o), each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in clauses (ii) through (v) of Section 3(e), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemental Prospectus or amended Registration Statement as contemplated by Section 3(j) or until it is advised in writing by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement (a "**Suspension Period**"). The Company may provide appropriate stop orders to enforce the provisions of this Section 10(b).

(c) **Amendments and Waivers**. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company and Holders that hold a majority of the Registrable Securities as of the date of such waiver or amendment; provided, that any waiver or amendment that would have a disproportionate adverse effect on a Holder relative to the other Holders shall require the consent of such Holder. The Company shall provide prior notice to all Holders of any proposed waiver or amendment. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any Party to exercise any right hereunder in any manner impair the exercise of any such right.

(d) **Notices**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile or electronic mail as specified in this Section 10(d) prior to 5:00 p.m. Central Time on a Business Day, (ii) the Business Day after the date of transmission, if such notice or communication is delivered via facsimile or electronic mail as specified in this Agreement later than 5:00 p.m. Central Time on any date and earlier than 11:59 p.m. Central Time on such date, (iii) the Business Day following the date of mailing, if sent by nationally recognized overnight courier service (iv) upon actual receipt by the Party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Company:	Atlas Energy Solutions Inc. Attention: Dathan Voelter 5918 W. Courtyard Drive, Suite 500 Austin, Texas 78730 Electronic mail: ***
With copy to:	Vinson & Elkins L.L.P. Attention: Thomas G. Zentner 200 West 6th Street, Suite 2500 Austin, Texas 78701 Electronic mail: ***
If to any Person who is then the registered Holder:	To the address of such Holder as it appears in the applicable register for the Registrable Securities or such other address as may be designated in writing by such Holder (including on the signature pages hereto).

(e) **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns. Except as provided in this Section 10, this Agreement, and any rights or obligations hereunder, may not be assigned by any Holder without the prior written consent of the Company (acting through the Board). The Company may not assign its rights or obligations hereunder without the prior written consent of a majority in interest of the Holders.

(f) **No Third Party Beneficiaries**. Nothing in this Agreement, whether express or implied, shall be construed to give any Person, other than the Parties or their respective successors and permitted assigns, any legal or equitable right, remedy, claim or benefit under or in respect of this Agreement.

(g) **Execution and Counterparts**. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile or electronic mail transmission, such signature shall create a valid binding obligation of the Party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such signature delivered by facsimile or electronic mail transmission were the original thereof.

(h) **Governing Law; Consent to Jurisdiction; Waiver of Jury Trial**. This Agreement shall be governed by, and construed in accordance with, the internal laws of the state of Delaware. Each of the Parties irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the state of Delaware and the United States District Court for the district of Delaware and the appellate courts therefrom for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each Party anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the Parties irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

(i) **Cumulative Remedies**. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(j) **Severability**. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the Parties shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the Parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(k) **Entire Agreement**. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior contracts or agreements with respect to the subject matter hereof and the matters addressed or governed hereby, whether oral or written.

(l) **Limitation on Subsequent Registration Rights**. The Company shall not grant any registration rights to any third party if such registration rights are senior to or are inconsistent with the registration rights granted to the Holders under this Agreement.

(m) **Termination**. Except for Section 6, this Agreement shall terminate as to any Holder on the earlier of (i) the date all Registrable Securities held by such Holder no longer constitute Registrable Securities, (ii) the date such Holder ceases to be a Holder hereunder or (iii) the third anniversary of the date hereof.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COMPANY:

Atlas Energy Solutions Inc.

By: _____
Name: John Turner
Title: President and Chief Financial Officer

HOLDERS:

_____

EXHIBIT A

ADOPTION AGREEMENT

This Adoption Agreement is executed by the undersigned transferee ("Transferee") pursuant to the terms of the Registration Rights Agreement, dated as of [____], 2024, among Atlas Energy Solutions Inc., a Delaware corporation (the "Company"), the Initial Holders and the other Holders party thereto (as it may be amended from time to time, the "Registration Rights Agreement"). Terms used and not otherwise defined in this Adoption Agreement have the meanings set forth in the Registration Rights Agreement.

By the execution of this Adoption Agreement, the Transferee agrees as follows:

1. Acknowledgement. Transferee acknowledges that Transferee is acquiring certain shares of Common Stock subject to the terms and conditions of the Registration Rights Agreement.

2. Agreement. Transferee (a) agrees that the shares of Common Stock acquired by Transferee shall be bound by and subject to the terms of the Registration Rights Agreement, pursuant to the terms thereof, and (b) hereby adopts the Registration Rights Agreement with the same force and effect as if he, she or it were originally a party thereto.

3. Notice. All notices, requests, claims, demands, waivers and other communications under the Registration Rights Agreement shall be given to Transferee at the address listed below Transferee's signature.

4. Joinder. The spouse of the undersigned Transferee, if applicable, executes this Adoption Agreement to acknowledge its fairness and that it is in such spouse's best interest, and to bind such spouse's community interest, if any, in the shares of Common Stock and in the Registration Rights Agreement.

Signature:

_____

Name:

Address:
Contact person:
Telephone number:
E-mail address:

EXHIBIT H

FORM OF TRANSITION SERVICES AGREEMENT

Exhibit H

EXHIBIT I1

FORM OF DEFERRED CASH CONSIDERATION NOTE

Exhibit I1

Exhibit I-1

Execution Version

THIS SECURED SELLER NOTE IS SUBJECT TO CERTAIN SET-OFF RIGHTS AS SET FORTH BELOW AND IN THE MERGER AGREEMENT REFERRED TO BELOW.

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*ACT*"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF BORROWER CONSENT OR REGISTRATION OF THIS SECURITY UNDER THE ACT OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS.

SECURED SELLER NOTE

$[_____] **_____,2024**

FOR VALUE RECEIVED, and subject to the terms and conditions set forth herein, Atlas Sand Company, LLC, a Delaware limited liability company (the "***Borrower***"), hereby unconditionally promises to pay to the Agent, on behalf of the Persons listed on Schedule 1 hereto and their registered assigns (collectively, the "***Noteholders***," and together with the Borrower, the Guarantor (as defined below), and the Agent (as defined below) the "***Parties***"), the aggregate principal amount of [_____] AND 00/100 DOLLARS ($[_____]) (as (w) reduced pursuant to the terms of Section 3 (including as a result of any payment, prepayment or setoff), (x) increased pursuant to one or more elections by the Borrower to pay PIK Interest in accordance with Section 5.1, (y) increased by any Refund Amount in accordance with ***Section 3.3(c)***, or (z) increased or decreased by Specified Principal Adjustments in accordance with ***Section 3.3(d)***, the "***Principal***"), together with all accrued interest thereon as provided in this Secured Seller Note (this "***Note***"). This Note constitutes the Deferred Cash Consideration Note referenced in the Merger Agreement (as defined below).

1. Definitions; Interpretation.

1.1 Capitalized terms used herein shall have the meanings set forth in this ***Section 1.1***. Other capitalized terms used herein, but not otherwise defined herein, shall have the meaning given to such terms in the Merger Agreement.

"***Agent***" means U.S. Bank Trust Company, National Association, in its capacity as administrative agent and collateral agent for the Noteholders under the Note Documents.

"***Applicable Portion***" means, with respect to any Indemnification Principal Reduction, an amount of Principal equal to the applicable Final Loss Amount.

"***Applicable Rate***" means (i) with respect to the payment of Cash Interest, 5.0% per annum, and (ii) with respect to the payment of PIK Interest, 7.0% per annum.

"***Benefit Plan Investor***" means (a) any "employee benefit plan" (as defined in Section 3(3) of Title I of ERISA) that is subject to the fiduciary responsibility provisions of Title I of ERISA, (b) any "plan" as defined in Section 4975(e) of the Code that is subject to Section 4975 of the Code, (c) any entity whose underlying assets are treated as "plan assets" (for purposes of ERISA or Section 4975 of the Code) by reason of any such employee benefit plan's or plan's investment in the entity or (d) a governmental, church, non-U.S. or other plan that is subject to Similar Law.

"***Borrower***" has the meaning set forth in the introductory paragraph.

"***Cash Interest***" has the meaning attributed to such term in ***Section 5.1***.

"***Casualty Event***" means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Collateral.

"***Claimed Amount***" has the meaning attributed to such term in ***Section 3.3(b)***.

"***Closing Date***" has the meaning attributed to such term in the Merger Agreement.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time.

"***Collateral***" means the "Trust Property" as defined in the Mortgage.

"***Company***" means Hi-Crush Inc., a Delaware corporation.

"***Controlling Person***" means a person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the Borrower or that provides investment advice for a fee (direct or indirect) with respect to such assets (or any "affiliate" of such a person as defined in the Plan Asset Regulations (other than any Benefit Plan Investor)).

"***Debt***" means all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, except current trade payables arising in the ordinary course of business; (c) obligations evidenced by notes, bonds, debentures, or other similar instruments; (d) obligations as lessee under capital leases or finance leases; (e) obligations in respect of any interest rate swaps, currency exchange agreements, commodity swaps, caps, collar agreements, or similar arrangements entered into by the Borrower providing for protection against fluctuations in interest rates, currency exchange rates, or commodity prices, or the exchange of nominal interest obligations, either generally or under specific contingencies; (f) obligations under acceptance facilities and letters of credit; (g) guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss, in each case, in respect of indebtedness set out in clauses (a) through (f) of a Person; and (h) indebtedness set out in clauses (a) through (g) of any Person secured by any Lien on any asset of the other Person.

"***Default***" means the occurrence of any event or the existence of any circumstances that would, with the giving of notice, lapse of time, or both, unless cured or waived during such time, become an Event of Default.

"***Default Rate***" means the Applicable Rate for Cash Interest plus 2% per annum.

"***Disposition***" means the sale, transfer, license, lease or other disposition of any Collateral.

"***Dispute Period***" means the period commencing on the date a Purchaser Indemnitee that is any of Parent, Borrower, an Acquired Company or any of their respective Affiliates has made an Indemnification Claim and ending on the earlier of (a) the date a Final Determination is made with respect to such Indemnification Claim or (b) the date on which the applicable Indemnifying Parties otherwise satisfy such Indemnification Claim in accordance with Article XI of the Merger Agreement.

"***Equity Interests***" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interest.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

"***ERISA Permitted Investor***" means an (A) an insurance company (i) purchasing an interest in this Note with funds from a general account less than 15% of whose assets constitute, and less than 15% of whose assets will constitute for so long as such beneficial owner holds an interest in such securities, "plan assets" for purposes of the Plan Asset Regulations, (ii) whose acquisition, holding and disposition of its interest in this Note will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code and (iii) that is not a Controlling Person or (B) a governmental, church, non-U.S. or other plan, whose acquisition, holding and disposition of an interest in this Note does not and will not constitute or give rise to a non-exempt violation of any Similar Law and will not cause the Borrower to be subject to Similar Law.

"***Event of Default***" has the meaning set forth in ***Section 11***.

"***Excepted Liens***" means (a) immaterial title deficiencies and easements, restrictions, servitudes, permits, conditions, covenants, exceptions, reservations, zoning and land use requirements in any Collateral for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines and other means of ingress and egress for the removal of gas, oil, coal, other minerals or sand or timber, and other like and/or usual and customary purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, and leases or subleases of real property and any interest or title of a lessee or sublessee under any such lease or sublease, in each case, which in the aggregate do not materially impair the use of such Collateral for the purposes of which such Collateral is held by the Borrower or any of the other Note Parties or materially impair the value of such Collateral subject thereto and (b) judgment and attachment Liens not giving rise to an Event of Default.

"***Existing ABL Credit Agreement***" means that certain Loan, Security and Guaranty Agreement, dated as of February 22, 2023, by and among Atlas Sand Company, LLC, a Delaware limited liability company ("***Atlas Sand Company***"), the guarantors from time to time party thereto, the lenders from time to time party thereto and Bank of America, N.A., as administrative agent, as amended, restated, supplemented or otherwise modified from time to time in a manner permitted pursuant to the Intercreditor Agreement.

"***Existing Credit Agreements***" means, collectively, the Existing ABL Credit Agreement and the Existing Term Loan Credit Agreement.

"***Existing Term Loan Credit Agreement***" means that certain Credit Agreement dated as of July 31, 2023, among Atlas Sand Company, the guarantors from time to time party thereto, the lenders from time to time party thereto, and Stonebriar Commercial Finance LLC, as administrative agent, as amended, restated, supplemented or otherwise modified from time to time in a manner permitted pursuant to the Intercreditor Agreement.

"***Guarantor***" means Hi-Crush Permian Sand LLC, a Delaware limited liability company.

"***Indemnification Claim***" a claim for indemnification pursuant to Section 11.2(a) or 11.2(b) of the Merger Agreement.

"***Indemnification Principal Reduction***" has the meaning attributed to such term in ***Section 3.3(a)***.

"***Intercreditor Agreement***" means the Intercreditor Agreement dated as of the date hereof, among the Agent, the agent under each Existing Credit Agreement and agreed and acknowledged by the Note Parties, as amended or otherwise modified from time to time in accordance with the terms thereof.

"***Interest Payment Date***" has the meaning attributed to such term in ***Section 5.1***.

"***Legal Expenses Limitation***" with respect to any obligation in any Note Document of a Note Party to pay or reimburse any legal fees or expenses of the Agent and the Noteholders, that such obligation shall be limited to the documented out-of-pocket fees and expenses of (a) one primary counsel and one local counsel for each relevant jurisdiction as may be necessary in the reasonable judgment of Agent, and one specialty counsel acting in each reasonably necessary specialty area as determined in the reasonable judgment of Agent and (b) one primary counsel and one local counsel for all Noteholders (taken as a whole) for each relevant jurisdiction as may be necessary in the reasonable judgment of the Noteholders, and one specialty counsel for all Noteholders acting in each reasonably necessary specialty area as determined in the reasonable judgment of the Noteholders.

"***Lien***" means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever.

"***Material Adverse Effect***" means a material adverse change in, or material adverse effect on (a) the business, operations, property or financial condition of Borrower and the Guarantor taken as a whole, (b) the ability of (i) the Borrower to perform its payment obligations under any Note Document or (ii) the Note Parties, taken as a whole, to perform any of their material obligations under any Note Document, (c) the validity or enforceability of any Note Document or (d) the rights and remedies of or benefits available to the Agent and the Noteholders, taken as a whole, under this Note or the other Note Documents.

"***Maturity Date***" means the earlier of (a) January 31, 2026 and (b) the date on which all amounts under this Note shall become due and payable pursuant to ***Section 12***.

"***Merger Agreement***" means that certain Agreement and Plan of Merger dated as of February 26, 2024, by and among the Borrower, Atlas Energy Solutions Inc., a Delaware corporation, Wyatt Merger Sub 1 Inc., a Delaware corporation, Wyatt Merger Sub 2, LLC, a Delaware limited liability company, the Company, HC Minerals Inc., a Delaware corporation, and the other parties named therein.

"***Mortgage***" means that certain Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases dated as of even date hereof granted by Guarantor, as grantor, for the benefit of the Agent, as beneficiary (as amended, restated, or otherwise modified from time to time).

"***Net Cash Proceeds***" means 100% of the cash proceeds actually received by the Note Parties from any Casualty Event or Disposition of Collateral, net of (a) reasonable and customary transaction expenses (including broker's fees or commissions, legal fees, accounting fees, investment banking fees and other professional fees, transfer and similar taxes and the Borrower's good faith estimate of taxes paid or payable in connection with such Disposition or Casualty Event), (b) amounts set aside as a reserve, in accordance with, and as required by, GAAP, including pursuant to any escrow arrangement, against any liabilities under any indemnification obligations associated with such Disposition and (c) in the case of insurance settlements, the amount of any deductibles or co-payments paid or payable by the Note Parties.

"***Note***" has the meaning set forth in the introductory paragraph.

"***Note Documents***" means (a) this Note (including all certificates and requests delivered in connection this Note and all exhibits and schedules to this Note), (b) the Mortgage, (c) the Intercreditor Agreement, (d) the Parent Guaranty, and (e) all renewals, extensions, amendments, modifications, supplements, restatements, and replacements of, or substitutions for, any of the foregoing.

"***Non-Permitted Holder***" means any Person that (a) is not eligible or qualified to be a Noteholder at the time it acquires an interest in this Note or (b) made representations or was deemed to have made representations for purposes of ERISA, Section 4975 of the Code or Similar Laws in any agreement, representation letter or assignment or transfer certificate, or by virtue of deemed representations, that are or become untrue.

"***Note Parties***" means Borrower and Guarantor. For the avoidance of doubt, Parent Guarantor shall not be a Note Party.

"***Noteholders***" has the meaning set forth in the introductory paragraph.

"***Obligations***" means all unpaid Principal and accrued and unpaid interest thereon, accrued and unpaid expenses (to the extent reimbursable under any Note Document) and indemnities (including interest and fees accruing during the pendency of any insolvency proceeding, regardless of whether allowed or allowable in such proceeding), and all other obligations and liabilities of any kind, in each case of any of the Note Parties, individually or collectively, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, arising by contract, operation of law or otherwise, now existing or hereafter arising or incurred, in each case, under this Note or any other Note Document.

"***Parent Guarantor***" means Atlas Energy Solutions Inc., a Delaware corporation.

"***Parent Guaranty***" means that certain Parent Guaranty Agreement, dated as of the date hereof, executed by Parent Guarantor in favor of the Agent for the benefit of the Noteholders, pursuant to which the Parent Guarantor unconditionally guarantees on an unsecured basis, the payment of the Obligations, as such agreement may be amended or modified from time to time.

"***Parties***" has the meaning set forth in the introductory paragraph.

"***Plan Asset Regulations***" means the regulations promulgated at 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA.

"***Permitted Liens***" means:

(a) Liens and security interests in favor of the Agent securing the Obligations (collectively, the "***Agent's Lien***");

(b)Liens that do not have priority over the Agent's Lien securing Debt outstanding under the Existing ABL Credit Agreement or the Existing Term Loan Credit Agreement and that are subject to the Intercreditor Agreement;

(c)Liens for taxes, assessments, other governmental charges or levies, and Liens in connection with workers' compensation, unemployment insurance, or other social security, old age pension or public liability obligations or similar legislation, in each case which are either not yet overdue by more than 90 days or which are being contested in good faith and for which adequate reserves have been maintained in accordance with GAAP (i.e., "***which are Not Risks***");

(d)landlords' liens, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or similar Liens, in each case, arising in the ordinary course of business and which are Not Risks;

(e)contractual Liens which arise in the ordinary course of business under real property leases, operating agreements, joint venture agreements, mineral leases, contracts for the sale, transportation or exchange of sand or minerals, area of mutual interest agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, supply agreements, seismic or other geophysical permits or agreements, and other agreements which are or have become usual and customary in the sand extracting, producing, processing, developing and/or marketing business and are for claims which are Not Risks;

(f) Liens encumbering any of the Collateral immediately prior to the consummation of the Acquisition that were not terminated in connection with the consummation of the Acquisition or required to be terminated pursuant to the terms of the Merger Agreement;

(g) Excepted Liens; and

(h)other Liens not otherwise described under clauses (a) through (g) above so long as the outstanding amount of Debt and other obligations secured by Liens under this clause (h) shall not exceed $500,000 in the aggregate at any time.

"***PIK Interest***" has the meaning attributed to such term in ***Section 5.1***.

"***Principal***" has the meaning set forth in the introductory paragraph.

"***Qualified Affiliate***" means any Affiliate of a Noteholder that, as of the date of any assignment to such Affiliate, all representations set forth in *clauses (a) through (c)* in ***Section 10*** with respect to such Affiliate are true and correct.

"***Recouped Interest Amount***" means, with respect to any Indemnification Claim that results in an Indemnification Principal Reduction, an amount equal to (a) the aggregate amount of interest paid by the Borrower (whether as Cash Interest or PIK Interest) with respect to the Applicable Portion from the Closing Date to the date of the applicable Indemnification Principal Reduction *minus* (b) the amount of interest withheld and not paid by the Borrower with respect to such Indemnification Claim in accordance with ***Section 3.3(b)***.

"***Refund Amount***" means the amount of any Tax refund or credit received by Parent or its Affiliates to which RemainCo or the Stockholders are entitled while this Note remains outstanding, as determined in accordance with Section 12.1(b)(iv) of the Merger Agreement.

"***Register***" has the meaning attributed to such term in ***Section 13.6***.

"***Required Noteholders***" means two or more unaffiliated Noteholders holding in the aggregate at least 50% of the then outstanding Principal. The Agent shall have no obligation to determine whether any Noteholders are unaffiliated and is entitled to rely solely upon any certificate from any Noteholder as to whether such Noteholders constitute Required Noteholders.

"***Similar Law***" means any federal, state or local law or regulations that are substantially similar to Section 406 of ERISA or Section 4975 of the Code.

"***Solvent***" means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities as they mature in the normal course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage and (d) the present fair salable value of the assets of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed as the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Specified Principal Adjustment***" has the meaning attributed to such term in ***Section 3.3(d)***.

"***UCC***" means the Uniform Commercial Code as in effect from time to time in the State of Texas or, when the laws of any other State govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code as in effect from time to time in such State.

1.2 Interpretation. For purposes of this Note (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Note as a whole. The definitions given for any defined terms in this Note shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. Unless the context otherwise requires, references herein to: (x) Schedules, Exhibits, and Sections mean the Schedules, Exhibits, and Sections of this Note; (y) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, restated, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Note shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

2. Purchase/Seller Financing. Subject to the terms and conditions set forth in the Merger Agreement, (a) the Borrower has agreed to acquire the Company on the Closing Date and (b) as part of the consideration for such acquisition, the Borrower has agreed to issue and deliver this Note to the Agent, for the benefit of the Noteholders, in the principal amount for each Noteholder set forth on Schedule 1, for the benefit of the Stockholders, on the Closing Date in partial fulfillment of Borrower's obligations to the Stockholders under the Merger Agreement.

3. Payment Dates; Optional Prepayments

3.1 Repayment. The aggregate unpaid Principal amount of this Note and all other Obligations shall be payable in full on the Maturity Date*provided* that if any Indemnification Claim is outstanding on and as of the Maturity Date and the applicable Indemnified Party is any of the Borrower, the Subsequent Survivor or any of their respective Affiliates, (a) the Borrower shall be entitled to withhold an aggregate amount of Principal and accrued but unpaid interest on the Maturity Date equal to the applicable Claimed Amount until a Final Determination with respect to such Claimed Amount has been obtained, (b) the effect of such Indemnification Claim and any Final Determination with respect thereto under this Note shall be determined in accordance with ***Section 3.3*** and (c) the remaining outstanding Principal balance on this Note together with all accrued and unpaid interest, if any, after giving effect to any Indemnification Principal Reduction with respect to such Claimed Amount shall be paid by the Borrower to the applicable Noteholders in cash within one Business Day of the date of the applicable Final Determination. Borrower and the Required Noteholders shall jointly notify and certify to the Agent in writing of any Indemnification Principal Reduction and when received by the Agent, the Agent is entitled to fully rely on the certifications set forth in such notice (and the Agent shall be fully protected in taking any actions in reliance on such notice), however, the Agent shall have no obligation or liability of any kind with respect to any Indemnification Principal Reduction or applicable Final Determination.

3.2 Prepayments.

(a)The Borrower may prepay this Note in whole or in part at any time or from time to time without penalty or premium by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment. The Borrower shall notify Agent at least three Business Days prior to the date of prepayment in whole or part.

(b)In the event that any Note Party receives Net Cash Proceeds from any Disposition of Collateral or any Casualty Event with respect to Collateral, the Borrower shall prepay outstanding Principal in an amount equal to 100% of the amount of such Net Cash Proceeds within three (3) Business Days of Borrower's receipt of such Net Cash Proceeds; *provided* that (i) no prepayment shall be required under this***Section 3.2(b)*** in connection with any Disposition (or series of related Dispositions) or Casualty Event resulting in a Note Party's receipt of less than $100,000 in Net Cash Proceeds, individually, or $500,000 in Net Cash Proceeds, in the aggregate for all such Dispositions or Casualty Events during the term of this Note, or and (ii) in the case of a Casualty Event, so long as no Event of Default under ***Section 11.1*** or ***11.6*** shall have occurred and be continuing, the Borrower shall be permitted to apply the Net Cash Proceeds received by the Borrower or any other Note Party in connection with such Casualty Event to repair or replace the property affected by such Casualty Event within 180 days following such receipt or to reimburse the Borrower or the applicable Note Party for amounts expended to repair or replace such property prior to receipt of such Net Cash Proceeds; *provided*, *however*, if such Net Cash Proceeds are not so reinvested (or contractually committed to be reinvested) within such 180-day period, such Net Cash Proceeds shall be applied by the Borrower to prepay outstanding Principal under this Note; *provided, further* that until so reinvested, such Net Cash Proceeds shall at all times be held by such Note Party in a deposit account segregated from other funds of such Note Party subject to the control of the Agent for the benefit of the Noteholders. The Borrower agrees that such repaired or replacement property shall constitute Collateral and the Note Parties agree to take such actions as are necessary and as Agent may reasonably request to perfect Agent's Lien in such Collateral.

(c) All payments under this Section shall be accompanied by accrued interest on the Principal amount prepaid.

3.3 Setoff; Refund Amount Increase; Principal Adjustments.

(a)Notwithstanding any other provisions set forth herein or in any other Note Document, the Noteholder hereby acknowledges and agrees that any amounts owing from time to time hereunder by the Borrower to the Noteholder shall be subject to the set-off rights of the Borrower to the extent provided in Section 11.4 of the Merger Agreement. Without duplication of Section 11.4 of the Merger Agreement, but for purposes of clarity, on the date of any Final Determination, if the applicable Indemnified Party is any of the Borrower, the Subsequent Survivor or any of their respective Affiliates and this Note remains outstanding, the outstanding Principal amount of this Note shall be reduced on such date by an amount equal to the sum of (i) the applicable Final Loss Amount *plus* (ii) the Recouped Interest Amount with respect thereto without any further action by the Borrower or the Noteholder (such reduction, an "***Indemnification Principal Reduction***"). An Indemnification Principal Reduction shall satisfy the applicable Indemnifying Party's obligation to indemnify the applicable Indemnified Party for the applicable Indemnification Claim.

(b)In addition to the Indemnification Principal Reduction provisions contained in ***Section 3.3(a)***, the Borrower shall be entitled to withhold amounts payable by it to Noteholder under this Note during a Dispute Period, including interest payable in accordance with ***Section 5***, in an amount not to exceed the aggregate amount, without duplication, of monetary damages (including legal fees and court costs) sought in connection with the applicable Indemnification Claim (the "***Claimed Amount***") and interest shall not accrue on an amount of Principal equal to the Claimed Amount during the Dispute Period (subject to recoupment as described herein). At the end of the applicable Dispute Period, (i) the applicable Indemnification Principal Reduction, if any, shall become effective and (ii) the Borrower shall pay to Noteholder all amounts previously withheld in excess of the applicable Final Loss Amount, if any, together with the amount of interest thereon that would have accrued at the Applicable Rate from the first day of the applicable Dispute Period through and including the date of payment; *provided* it is understood and agreed the Borrower may elect to make any such interest payments as PIK Interest. The Borrower shall notify and certify to the Agent and the Stockholder Representative in writing of a Claimed Amount and the effective date of the related Dispute Period (the "***Borrower Notice***"). Unless the Agent shall have received written notice from the Stockholder Representative specifying its objection thereto (the "***SR Objection Notice***") prior to the date that is five (5) Business Days after the date of the Agent receives the Borrower Notice (the "***SR Objection Period***"), the Agent is entitled to fully rely on the certifications set forth in the Borrower Notice (and the Agent shall be fully protected in taking any actions in reliance on such Borrower Notice); *provided*, that to the extent the Agent receives a SR Objection Notice within the time period set forth in this ***Section 3.3(d)***, the Agent shall not take the Claimed Amount into account until a new Borrower Notice is provided pursuant to the terms of this ***Section 3.3(b)*** and the SR Objection Period has terminated without the receipt of a SR Objection Notice. The Agent shall have no obligation or liability of any kind with respect to the Claimed Amount or the duration of the Dispute Period.

(c)Notwithstanding any other provisions set forth herein or in any other Note Document, the Noteholders and the Borrower hereby acknowledge and agree that, if this Note remains outstanding when any Tax refund or credit described in Section 12.1(b)(iv) of the Merger Agreement is received by Parent or its Affiliates, the outstanding Principal amount of this Note shall be automatically increased on such date by an amount equal to the applicable Refund Amount. Such increase in the Principal shall satisfy Parent's and its Affiliates' obligation to pay such Refund Amount to RemainCo or the Stockholders, as applicable. The Stockholder Representative shall notify and certify to the Agent and the Borrower in writing of a Tax refund or credit described in Section 12.1(b)(iv) of the Merger Agreement and the effective date of the adjustment to the Principal amount of this Note (the "***Stockholder Notice***"). Unless the Agent shall have received written

notice from the Borrower specifying its objection thereto (the "***Borrower Objection Notice***") prior to the date that is five (5) Business Days after the date of the Agent receives the Stockholder Notice (the "***Borrower Objection Period***"), the Agent is entitled to fully rely on the certifications set forth in the Stockholder Notice (and the Agent shall be fully protected in taking any actions in reliance on such Stockholder Notice); *provided*, that to the extent the Agent receives a Borrower Objection Notice within the time period set forth in this ***Section 3.3(c)***, the Agent shall not take the adjustment amount set forth in this clause (c) into account until a new Stockholder Notice is provided pursuant to the terms of this ***Section 3.3(c)*** and the Borrower Objection Period has terminated without the receipt of a Borrower Objection Notice. The Agent shall have no obligation or liability of any kind with respect to the Tax refund or the effective date.

(d)Notwithstanding any other provisions set forth herein or in any other Note Document, the Noteholders and the Borrower hereby acknowledge and agree that the outstanding Principal balance shall be increased or decreased, as applicable, by (i) the difference between (i) the Estimated Customer Prepayment Amount and the Revised Customer Prepayment Amount or Final Customer Prepayment Amount, as applicable and (ii) the Estimated Volume Shortfall Adjustment Amount and the Revised Volume Shortfall Adjustment Amount or the Final Volume Shortfall Adjustment Amount, as applicable, in each case as finally determined pursuant to the Merger Agreement and any such adjustment pursuant to this ***Section 3.3(d)*** (a "***Specified Principal Adjustment***") shall become effective automatically on the date any such amount is finally determined in accordance with Section 2.7 of the Merger Agreement. The Borrower shall notify and certify to the Agent and the Stockholders Representative in writing of a Specified Principal Adjustment and the effective date of such Specified Principal Adjustment (the "***Borrower SP Notice***"). Unless the Agent shall have received written notice from the Stockholders Representative specifying its objection thereto (the "***SR SP Objection Notice***") prior to the date that is five (5) Business Days after the date of the Agent receives the Borrower SP Notice (the "***SR SP Objection Period***"), the Agent is entitled to fully rely on the certifications set forth in the Borrower SP Notice (and the Agent shall be fully protected in taking any actions in reliance on such Borrower SP Notice); *provided*, that to the extent the Agent receives a SR SP Objection Notice within the time period set forth in this***Section 3.3(d)***, the Agent shall not take the Specified Principal Adjustment into account until a new Borrower SP Notice is provided pursuant to the terms of this ***Section 3.3(d)*** and the SR SP Objection Period has terminated without the receipt of a SR SP Objection Notice. The Agent shall have no obligation or liability of any kind with respect to the Specified Principal Adjustment or the calculations in the Merger Agreement.

(e)The effective date of any adjustment to Principal set forth in any Borrower Notice, Stockholder Notice or Borrower SP Notice shall not occur during the five (5) Business Days immediately prior to any Interest Payment Date.

4. Security and Guaranty. The amounts outstanding hereunder are secured by a first priority security interest (subject only to Permitted Liens that have priority by operation of law) in the Collateral and the Obligations of the Borrower hereunder are guaranteed by the Guarantor. The Guarantor hereby irrevocably, unconditionally guarantees to the Agent and each Noteholder, the due and punctual payment in full of the Principal and interest on (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), and any other amounts due under, the Note Documents when and as the same shall become due and payable (whether at stated maturity or by required prepayment or by acceleration or otherwise) (all such obligations are herein called the "Guaranteed Obligations"). The guaranty in the preceding sentence is an absolute, present and continuing guaranty of payment and not of collectibility and is in no way conditional or contingent upon any attempt to collect from the Borrower or upon any other action, occurrence or circumstance whatsoever. In the event that the Borrower shall fail so to pay any of such Guaranteed Obligations, the Guarantor agrees to pay the same when due to the Agent for the benefit of the Noteholders entitled thereto, without demand, presentment, protest or notice of any kind, in lawful money of the United States of America, pursuant to the requirements for payment specified in the Note Documents. The obligations of the Guarantor shall be primary, absolute, irrevocable and unconditional, irrespective of the validity or enforceability of the Note Documents or any other instrument referred to therein, shall not be subject to any counterclaim, setoff, deduction or defense based upon any claim such Guarantor may have against the Borrower or any Noteholder or Agent or otherwise (other than in accordance with ***Section 3.3*** hereof), and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, any circumstance or condition whatsoever (whether or not the Guarantor shall have any knowledge or notice thereof), including, without limitation: (a) any amendment to, modification of, supplement to or restatement of the Note Documents or any assignment or transfer of any thereof or of any interest therein, or any furnishing, acceptance or release of any security for the Notes or the addition, substitution or release of any Person primarily or secondarily liable in respect of the Guaranteed Obligations; (b) any waiver, consent, extension, indulgence or other action or inaction under or in respect of the Note Documents or any other instrument referred to therein; (c) any bankruptcy, insolvency, arrangement, reorganization, readjustment, composition, liquidation or similar proceeding with respect to the Borrower or its property; (d) any merger, amalgamation or consolidation of the Guarantor or of the Borrower into or with any other Person or any sale, lease or transfer of any or all of the assets of the Guarantor or of the Borrower to any Person; (e) any failure on the part of the Borrower for any reason to comply with or perform any of the terms of any other agreement with any Guarantor; (f) any failure on the part of any holder to obtain, maintain, register or otherwise perfect any security; or (g) any other event or circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor (whether or not similar to the foregoing), and in any event however material or prejudicial it may be to the Guarantor or to any subrogation, contribution or reimbursement rights the Guarantor may otherwise have. The Guarantor covenants that its obligations hereunder will not be discharged except by indefeasible payment in full in cash (or by setoff in accordance with ***Section 3.3***) of all of the Guaranteed Obligations (other than contingent obligations for which no claim has been made). The Guarantor unconditionally waives to the fullest extent permitted by law, (i) notice of acceptance hereof, of any action taken or omitted in reliance hereon and of any default by the Borrower in the payment of any amounts due under the Note Documents, (ii) all notices which may be required by statute, rule of law or otherwise to preserve any of the rights of any holder against the Guarantor, including, without limitation, presentment to or demand for payment from the Borrower or the Guarantor with respect to any Note Document, notice to the Borrower or to the Guarantor of default or protest for nonpayment or dishonor and the filing of claims with a court in the event of the bankruptcy of the Borrower, (iii) any right to require any holder to enforce, assert or exercise any right, power or remedy including, without limitation, any right, power or remedy conferred in the Note Documents, (iv) any requirement for diligence on the part of any Noteholder and (v) any other act or omission or thing or delay in doing any other act or thing which might in any manner or to any extent vary the risk of the Guarantor or otherwise operate as a discharge of the Guarantor or in any manner lessen the obligations of the Guarantor hereunder.

5. Interest.

5.1 Interest Rate. The outstanding Principal amount of this Note shall bear interest at the Applicable Rate from the Closing Date until the Principal is paid in full, whether at maturity, upon acceleration, by prepayment, setoff or reduction (including in accordance with ***Section 3.3*** hereof). Accrued interest will be payable quarterly in arrears on the last Business Day of each fiscal quarter, commencing on March 29, 2024 (each such date being referred to herein as an "***Interest Payment Date***"). On each Interest Payment Date accrued interest shall be at the borrower's election (a) paid entirely in cash ("***Cash Interest***") or (b) paid-in-kind ("***PIK Interest***") by automatically increasing the Principal amount of this Note (in which case the Principal owing to each Noteholder shall be ratably increased) by the amount of such PIK Interest on such Interest Payment Date. The Borrower shall deliver a written notice (an "***Interest Election Notice***") to the Agent on or prior to the date that is five (5) Business Days immediately prior to the applicable Interest Payment Date, which Interest Election Notice either (i) confirms that accrued interest to be paid on such Interest Payment Date shall be paid entirely as Cash Interest, or (ii) elects to pay accrued interest on such Interest Payment Date as PIK Interest. If the Borrower does not timely deliver an Interest Election Notice in accordance with this ***Section 5.1***, (A) then the Borrower shall be deemed to have delivered an Interest Election Notice confirming the payment of accrued interest as PIK Interest on such Interest Payment Date and (B) such failure to deliver an Interest Election Notice shall not constitute an Event of Default. Notwithstanding the foregoing, but subject to ***Section 3.3(b)***, interest shall not accrue during any Dispute Period on an amount of Principal equal to the Claimed Amount with respect to such Dispute Period, *provided* that, to the extent any portion of such Claimed Amount pursuant to a Final Determination is not determined to be a claim for indemnification pursuant to which the Stockholders or Remainco are liable, such portion shall be deemed to have accrued PIK Interest during such Dispute Period and shall be automatically

added to the Principal. The Agent shall have no obligation to determine whether a Dispute Period is in effect and shall be entitled to rely on written instructions in the Borrower Notice as to whether a Dispute Period is in effect at any time.

5.2 Default Interest. During the existence of any Event of Default under ***Sections 11.1*** or ***11.6*** hereof, all Obligations shall automatically bear interest at the Default Rate. During the existence of any other Event of Default, all Obligations shall bear interest at the Default Rate, at the Required Noteholders written direction to the Agent.

5.3 Computation of Interest. All computations of interest shall be made on the basis of 365 or 366 days, as the case may be, and the actual number of days elapsed. Interest shall accrue on the Closing Date and shall not accrue on the Principal (or the portion thereof, as applicable) for the day on which it is paid. Each determination by Agent of an interest rate, fee or Principal outstanding shall be conclusive and binding for all purposes, absent manifest error.

5.4 Interest Rate Limitation. If at any time and for any reason whatsoever, the interest rate payable on the Principal outstanding under this Note shall exceed the maximum rate of interest permitted to be charged by the Noteholder to the Borrower under applicable Law, such interest rate shall be reduced automatically to the maximum rate of interest permitted to be charged under applicable Law.

6. Payment Mechanics.

6.1 Manner of Payments. All payments of interest, principal, fees and other Obligations shall be made in lawful money of the United States of America, without defense setoff or counterclaim (other than in accordance with ***Section 3.3*** hereof), free of any restriction or condition and in immediately available funds, and delivered no later than 2:00 PM CT on the date on which such payment is due by wire transfer of immediately available funds to the Agent at a bank specified by the Agent in writing to the Borrower from time to time. Any payment after such time shall be deemed made on the next Business Day. All payments of Obligations shall be made to the Agent for the benefit of the Noteholders on a pro rata basis based on the then outstanding Principal owed to each Noteholder.

6.2 Application of Payments. During the continuation of an Event of Default, all payments made under this Note shall be applied ratably *first* to the payment of all expenses, indemnities and other amounts payable by Borrower to the Agent in accordance with this Note, *second* to the applicable Noteholders in accordance with the terms of ***Section 13.2*** (other than, for the avoidance of doubt, in each case, principal and accrued interest), including in connection with the exercise of rights and remedies, together with all reasonable and documented out-of-pocket costs and expenses of collection, attorneys' fees (subject to the Legal Expenses Limitation), court fees and foreclosure expenses, *third* to the payment of accrued interest, *fourth* to the payment of the Principal amount outstanding under this Note, and *last* to all other Obligations.

6.3 Business Day Convention. Whenever any payment to be made hereunder shall be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension will be taken into account in calculating the amount of interest payable under this Note.

6.4 Rescission of Payments. If at any time any payment made by a Note Party under any Note Document is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Note Party or otherwise, the obligation of such Note Party to make such payment shall be reinstated as though such payment had not been made.

7. Representations and Warranties. Each Note Party hereby represents and warrants to the Noteholders on the date hereof as follows:

7.1 Existence; Power and Authority; Compliance with Laws. Such Note Party (a) is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of its jurisdiction of organization, (b) has the requisite power and authority, and the legal right, to own, lease, and operate its properties and assets and to conduct its business as it is now being conducted, to execute and deliver this Note and any other Note Document to which it is a party, and to perform its obligations hereunder and thereunder and (c) is in compliance with all Laws except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

7.2 Authorization; Execution and Delivery. The execution and delivery of this Note and each other Note Document to which it is a party and the performance of its obligations hereunder and thereunder have been duly authorized by all necessary limited liability company action in accordance with all applicable Laws. Such Note Party has duly executed and delivered this Note and any other Note Document to which it is a party.

7.3 No Approvals. No consent or authorization of, filing with, notice to, or other act by, or in respect of, any Governmental Authority or any other Person is required in order for such Note Party to execute, deliver, or perform any of its obligations under this Note or any other Note Document to which it is a party other than those being made or obtained in connection with the Closing Date to perfect the Liens securing the Obligations.

7.4 No Violations. The execution and delivery of this Note and the other Note Documents to which such Note Party is a party and the consummation by such Note Party of the transactions contemplated hereby and thereby do not and will not (a) violate any Law or order applicable to such Note Party or by which any of its properties or assets may be bound; (b) violate any provision of the Governing Documents of such Note Party; or (c) constitute a default under the Existing ABL Credit Agreement or the Existing Term Loan Credit Agreement.

7.5 Enforceability. Each of this Note and each other Note Document to which the Borrower is a party is a valid, legal, and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

7.6 No Litigation. No action, suit, litigation, investigation, or proceeding of, or before, any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened in writing by or against the Borrower or any of its property or assets that could reasonably be expected to have a Material Adverse Effect or that involve the enforceability of any Note Document.

7.7 Solvency. After giving effect to this Note and the transactions contemplated herein, the Note Parties, taken as a whole, are Solvent.

8. Covenants. Until all amounts outstanding under this Note have been paid in full, the Note Parties shall:

8.1 Notices. Promptly, but in any event within five (5) Business Days after the Borrower obtains actual knowledge thereof (a) notify the Agent of the occurrence of any Event of Default and (b) provide to the Agent notice of any Casualty Event with respect to Collateral having an aggregate fair market value in excess of $5,000,000.

8.2 Maintenance of Existence. (a) Preserve, renew, and maintain in full force and effect its corporate or organizational existence and (b) take all reasonable action to maintain all rights, privileges, and franchises necessary or desirable in the normal conduct of its business, except, in each case of this clause (b), where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

8.3 Compliance with Laws. Comply with all Laws applicable to it and its business and its obligations under its material contracts and agreements, except, in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

8.4 Payment of Taxes. Pay and discharge all Taxes prior to the date on which they become delinquent or penalties attach, unless (a) (i) such Taxes are being contested in good faith by appropriate proceedings and (ii) appropriate reserves have been established in accordance with GAAP or (b) the failure to make such payment would not reasonably be expected to (i) result in a Material Adverse Effect or (ii) result in the seizure or levy of any Collateral that, individually or in the aggregate has a fair market value in excess of $2,500,000.

8.5 Insurance. Maintain or cause to be maintained insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts and covering such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

8.6 Operation of Properties.

(a)Maintain all of its material Collateral necessary and useful in the conduct of its business, taken as a whole, in good operating condition and repair, ordinary wear and tear and casualty excepted, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b)Promptly perform, or make reasonable and customary efforts to cause to be performed, in accordance with customary industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in the Collateral, except, in each case, where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

(c)Pay, satisfy and/or obtain the release of all Liens affecting title to the Collateral or any part thereof (other than Permitted Liens) and (ii) pay all costs, charges, interest and penalties on account of the Collateral, including without limitation the claims of all subcontractors and other Persons supplying labor or materials to the Collateral, except in the case of this clause (ii) where the failure to make such payment would not reasonably be expected to (A) result in a Material Adverse Effect or (B) result in the seizure or levy of any Collateral that, individually or in the aggregate has a fair market value in excess of $2,500,000.

8.7 Restricted Payments. Not make any dividend or other distribution to any holders of the Equity Interests of the Borrower, unless no Default or Event of Default then exists or would result therefrom.

8.8 Fundamental Changes. Not (a) change its legal name or change its form or state of formation or organization, in each case, without giving the Agent at least 10 days prior written notice and taking such actions as are necessary or that Agent may reasonably request with respect thereto to continue the creation and perfection of Agent's Liens in any Collateral; (b) liquidate, wind up its affairs or dissolve itself; or (c) merge, combine or consolidate with any Person, in each case whether in a single transaction or series of related transactions; *provided* that, notwithstanding the foregoing clauses (b) and (c) Guarantor may merge with or liquidate into the Borrower so long as the Borrower is the surviving Person and Guarantor may merge with any other Person so long as Guarantor is the surviving Person.

8.9 Amendments to Existing Credit Agreements. Not amend, supplement or otherwise modify any Existing Credit Agreement in a manner prohibited by the Intercreditor Agreement.

8.10 Affiliate Transactions. Not enter into or be party to any transaction with an Affiliate that is not a Note Party (or amend or modify any such transaction) with respect to any of the Collateral, except transactions with Affiliates in the ordinary course of business, upon fair and reasonable terms and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate; *provided* that, for the avoidance of doubt, the foregoing shall not prohibit shared administrative, overhead, technology or licensing arrangements or the granting of use of the Collateral to Affiliates that are wholly-owned subsidiaries of the Borrower entered into in the ordinary course of business or consistent with customary industry practices between or among the Note Parties and their Subsidiaries.

9. Covenants Regarding Collateral. Borrower will not, and will not permit any other Note Party to, in any way hypothecate or create or permit to exist any Lien in any of the Collateral, except for Permitted Liens. Borrower will not, and will not permit any other Note Party to, Dispose of, dividend or otherwise distribute any of the Collateral (other than in connection with a Casualty Event) unless (a) such Disposition is for 100% cash consideration (i) to an unaffiliated third party and (ii) for fair market value (as determined by the Borrower in good faith) and (b) the Net Cash Proceeds of such Disposition are applied to prepay the Principal outstanding under this Note in accordance with and to the extent required under ***Section 3.2(b)***.

10. Noteholder Representations. Each Noteholder hereby represents and warrants to the Agent and Borrower as of the date hereof as follows:

(a)This Note is being acquired for such Noteholder's own account, and not for the account of any other Person other than such Noteholder, and not with a view to, or for sale in connection with, any distribution or resale to others within the meaning of Section 2(11) under the Act.

(b)Such Noteholder acknowledges that this Note has not been registered under the Act nor qualified under any applicable state securities or blue sky laws and, as such, may not be offered, sold or otherwise transferred unless they are registered under the Act and applicable state securities or blue sky laws or an applicable exemption from such registration is available (and solely to the extent permitted hereunder).

(c)Such Noteholder has such knowledge and experience in financial and business matters that such Noteholder is capable of evaluating the merits and risks of investment in the Borrower and of making an informed investment decision. Such Noteholder, or such Noteholder's professional advisor, has the capacity to protect such Noteholder's concerns in connection with the investment in this Note, and such Noteholder is able to bear the economic risk, including the complete loss, of an investment in this Note.

(d)Such Noteholder is either (i) an "Accredited Investor" as such term is defined under Rule 501(a) of Regulation D promulgated under the Act or (ii) is capable of making each of the representations and warranties contained in this ***Section 10***. Such Noteholder agrees to furnish such documents and to comply with such reasonable requests of the Borrower as may be necessary to substantiate such Noteholder's status as a qualifying investor in connection with the issuance of this Note to such Noteholder or the Agent on such Noteholder's behalf. Such Noteholder represents and warrants that all information contained in such documents and any other written materials concerning the status of such Noteholder will be true, complete and correct in all material respects.

11. Events of Default. The occurrence of any of the following shall constitute an Event of Default hereunder (each an "***Event of Default***"):

11.1 Failure to Pay. Any Note Party fails to pay (i) any Principal when due (whether at the due date thereof or at a date fixed for a mandatory prepayment thereof, by acceleration or otherwise) or (ii) interest or any other amount payable by such Note Party hereunder or under any other Note Document when due and such failure under this clause (ii) continues unremedied for five (5) Business Days after the due date therefor, whether upon demand or otherwise.

11.2 Breach of Representations and Warranties. Any representation or warranty made by Borrower or any other Note Party to the Noteholders herein or in any other Note Document to which any such Note Party is a party is incorrect in any material respect on the date as of which such representation or warranty was made.

11.3 Breach of Covenants. Any Note Party fails to observe or perform (a) any covenant, obligation, condition, or agreement set forth in ***Sections 8.1(a)***, ***8.2(a)***, ***8.5***, ***8.7***, ***8.8***, ***8.9*** or ***9*** hereof or (b) any other covenant, obligation, condition, or agreement contained in this Note or in any other Note Document to which it is a party, other than those specified in ***Sections 11.1*** and ***11.2*** hereof, and such failure described in this clause (b) continues unremedied for a period of fifteen (15) days after the earlier to occur of (i) the Borrower having knowledge of such failure or (ii) receipt of written notice thereof by the Borrower from the Agent or any Noteholder (through the Agent).

11.4 Cross-Default.

(a) Any Note Party fails to pay when due the principal amount of any Debt outstanding under the Existing ABL Credit Agreement or the Existing Term Loan Credit Agreement or any other agreement evidencing outstanding Debt in excess of the greater of (i) $25,000,000 and (ii) the corresponding threshold then in effect under either Existing Credit Agreement, and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or

(b) Any event or condition occurs that results in the Debt outstanding under either the Existing ABL Credit Agreement or the Existing Term Loan Credit Agreement or any other Debt referenced in the above clause (a) becoming due prior to its scheduled maturity (other than, for the avoidance of doubt, any springing maturity date or borrowing base reserve based on the scheduled maturity of other Debt).

11.5 Change of Control. (a) Parent Guarantor neither directly nor indirectly owns and controls 100% of the issued and outstanding Equity Interests of the Borrower or (b) the Borrower neither directly nor indirectly owns and controls 100% of the issued and outstanding Equity Interests of the Guarantor.

11.6 Bankruptcy.

(a)Any Note Party or Parent Guarantor commences any case, proceeding, or other action (i) under any existing or future Law relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts or (ii) seeking appointment of a receiver, trustee, custodian, conservator, or other similar official for it or for all or any substantial part of its assets, or such Note Party makes a general assignment for the benefit of its creditors;

(b)There is commenced against any Note Party or Parent Guarantor any case, proceeding, or other action of a nature referred to in ***Section 11.6(a)*** which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged, or unbonded for a period of sixty (60) days;

(c)There is commenced against any Note Party or Parent Guarantor any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which has not been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof;

(d)Any Note Party or Parent Guarantor takes any action in furtherance of any of the acts set forth in ***Section 11.6(a)***, ***Section 11.6(b)*** or ***Section 11.6(c)*** above; or

(e) Any Note Party or Parent Guarantor admits in writing its inability to pay its debts as they become due.

11.7 Judgment. (a) One or more final judgments for the payment of money in an aggregate amount in excess of (i) the greater of (i) $25,000,000 and (ii) the corresponding threshold then in effect under either Existing Credit Agreement (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage) or (b) any one or more final non-monetary judgments that have resulted in, or would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, in either case, shall be rendered against any Note Party or its assets or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed (by reason of a pending appeal or otherwise), or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Note Party to enforce any such judgment; *provided* that no judgment arising out of or related to an Excluded Liability or any other claim or cause of action against an Acquired Company arising prior to the Closing shall constitute an Event of Default.

11.8 Security. The Mortgage after delivery thereof shall cease to create a valid and perfected first priority Lien (subject to Permitted Liens having priority over the Agent's Lien by operation of law) on any Collateral having a Fair Market Value in excess of $1,000,000, except to the extent permitted by the terms of a Note Document or solely as a result of the acts or omissions of the Agent (after the Note Party or any Noteholder has made a written request for or instructions to the Agent to so act), or any Note Party shall so state in writing.

11.9 Validity and Enforcement of Note Documents. Any Note Document at any time after its execution and delivery (a) ceases to be in effect in any material respect or any material covenant, agreement or obligation hereunder is determined to be unenforceable or is declared by a Governmental Authority to be null and void, or (b) its validity or enforceability is contested by a Note Party or a Note Party denies that it has any further liability or obligations under such Note Document.

12. Remedies. Upon the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, the Agent may, if directed by the Required Noteholders, by written notice to the Borrower (a) declare the entire Principal amount of this Note, together with all accrued interest thereon, immediately due and payable; and (b) exercise (at the direction of the Required Noteholders), any or all of its rights, powers or remedies under the Note Documents or applicable Law; *provided, however*, that if an Event of Default described in ***Section 11.6*** shall occur, the entire Principal of and accrued interest under this Note shall become immediately due and payable without any notice, declaration, or other act on the part of the Agent or any Noteholder. Notwithstanding anything to the contrary contained herein or in any other Note Document, the authority to enforce rights and remedies hereunder and under the other Note Documents against the Note Parties and Parent Guarantor or any of them shall be

vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with this ***Section 12*** and ***Section 13.9(c)*** for the benefit of all of the Noteholders and each Noteholder hereby agrees, that it will not take any enforcement action or exercise any right that it might otherwise have under applicable Law with respect to any Note Party in connection with the Note Documents or the Collateral.

13. Miscellaneous.

13.1 Notices.

(a)All notices, requests, or other communications required or permitted to be delivered hereunder shall be delivered in writing, in each case to the address specified below or to such other address as the Borrower or the Agent may from time to time specify in writing in compliance with this provision:

(i) If to the Borrower:

Atlas Sand Company, LLC
5918 West Courtyard Drive, Suite 500
Austin, Texas 78730

Attention: John Turner
Email: ***

(ii) If to the Agent:

U.S. Bank Trust Company, National Association
1011 Centre Road, Suite 203
Wilmington, DE 19805
Attention: Agency Services/James A. Hanley
Email: ***

(b) Notices if (i) mailed by certified or registered mail or sent by hand or overnight courier service shall be deemed to have been given when received; (ii) sent by facsimile during the recipient's normal business hours shall be deemed to have been given when sent (and if sent after normal business hours shall be deemed to have been given at the opening of the recipient's business on the next Business Day); and (iii) sent by email shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email, or other written acknowledgment).

(c)The Note Parties shall deal solely with the Agent in the administration of this Note and the Note Documents and shall have no obligation to provide notices or other information to any Noteholder other than through the Agent to the extent required by the terms of the Note Documents. Agent agrees to promptly forward all notices received by it from a Note Party to the Noteholders.

13.2 Expenses. (a) Each of the Borrower and the Noteholders shall be responsible for their own costs, expenses, and fees (including all expenses and fees of its external counsel) in any way related to this Note or any other Note Document on or prior to the Closing Date; *provided that*, notwithstanding anything herein to the contrary, the Borrower will pay to the Agent (a) all filing and recording fees related to the perfection or maintenance of perfection of the Agent's Lien in the Collateral and (b) all documented out-of-pocket costs, expenses, and fees incurred by the Noteholders in connection with the enforcement of any of the provisions of this Note or any other Note Document or the enforcement of any of the Obligations, or any collection, compromise or settlement of any of the Collateral; and all such fees and expenses shall be Obligations within the terms of this Note. This Section ***13.2*** shall be subject to the Legal Expenses Limitation. In addition, the Noteholders agree to pay the costs, expenses and fees of the Agent as set forth on Annex 1, and the Borrower and Guarantor jointly and severally agree to pay the costs, expenses and fees of the Agent as set forth on Annex 2.

(b) Indemnification by Borrower. The Borrower and the Guarantor each agrees to indemnify, hold harmless and defend each Noteholder and their respective Affiliates (each, an "Indemnitee") for, from and against all liabilities and claims that may be imposed on, incurred by or asserted against an Indemnitee in any matter relating to or arising out of: (i) the Borrower's operations at or relating to the Collateral and (ii) any misrepresentation or inaccuracy in any representation or warranty made by a Note Party in any Note Document (collectively, the "Indemnified Matters"). Notwithstanding the foregoing, Borrower shall not have any liability hereunder to any Indemnitee with respect to any Indemnified Matter, to the extent such liability has resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Affiliates, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. The Borrower and Guarantor jointly and severally agree to indemnify, hold harmless and defend the Agent and its respective Affiliates as set forth on Annex 2.

13.3 Governing Law. This Note and any claim, controversy, dispute, or cause of action (whether in contract or tort or otherwise) based upon, arising out of, or relating to this Note and the transactions contemplated hereby and thereby shall be governed by the laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

13.4 Submission to Jurisdiction.

(a)THE PARTIES HERETO FURTHER AGREE THAT ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS NOTE OR ANY DOCUMENT RELATING HERETO MAY BE BROUGHT ONLY IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN TRAVIS COUNTY, TEXAS. Each party hereto agrees to commence any such action either in a state or federal court sitting in Travis County, Texas. Each party hereto further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth herein shall be effective service of process for any action in Texas with respect to any matters to which it has submitted to jurisdiction in this ***Section 13.4***. Each Party hereto irrevocably and unconditionally waives any objection to the laying of venue of any action arising out of this Note or the transactions contemplated hereby in a state or federal court sitting in Travis County, Texas, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action brought in any such court has been brought in an inconvenient forum.

(b)Nothing in this ***Section 13.4*** shall affect the right of the Agent to (i) commence legal proceedings or otherwise sue any Note Party in any other court having jurisdiction over any Note Party or (ii) serve process upon any Note Party in any manner authorized by the laws of any such jurisdiction.

13.5 INTEGRATION. THE MERGER AGREEMENT, THIS NOTE AND THE OTHER NOTE DOCUMENTS TO WHICH A NOTE PARTY IS A PARTY CONSTITUTE THE ENTIRE CONTRACT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND SUPERSEDES ALL PREVIOUS AGREEMENTS AND UNDERSTANDINGS, ORAL OR WRITTEN, WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF.

13.6 Successors and Assigns. This Note (or any interest hereunder) shall not be assigned or transferred by the Agent or any Noteholder to any Person without the prior written consent of the Borrower; *provided* that (i) the Agent may resign in accordance with Annex 1, and (ii) a Noteholder may assign its interest in this Note to a Qualified Affiliate of such Noteholder, another Noteholder or any Qualified Affiliate of another Noteholder; provided, further, that any assignment to an Affiliate shall be deemed to constitute a representation and warranty by the applicable assignee that such Person is a Qualified Affiliate and the Borrower shall be entitled to rely on such representation and warranty. The Borrower may not assign or transfer this Note or any of its rights hereunder without the prior written consent of the Agent and each Noteholder. This Note shall inure to the benefit of, and be binding upon, the Parties and their permitted assigns. The Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each assignment delivered to it by a Noteholder and a register for the recordation of the names and addresses of the Noteholders and the then outstanding Principal owed to each Noteholder pursuant to the terms hereof from time to time (the "***Register***"), which Register is intended to cause this Note to be treated as in registered form under Sections 5f.103-1(c) and 1.871-14(c)(1)(i) of the United States Treasury Regulations. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Noteholders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Noteholder hereunder for all purposes of this Note, notwithstanding notice to the contrary. Any assignment or transfer of any interest in this Note shall be effective only upon appropriate entries with respect thereto being made in the Register together with a processing and recordation fee of $3,500 paid to the Agent by the parties to the assignment. The Register shall be available for inspection by the Borrower or any Noteholder at any reasonable time and from time to time upon reasonable prior notice. Any transfer of an interest in this Note to a Person that is a Non-Permitted Holder shall be null and void *ab initio* and shall not be given effect for any purpose hereunder. The Borrower and each Noteholder covenant and agree with the agreements set forth on Annex 3 attached hereto.

13.7 Waiver of Notice. Each Note Party hereby waives demand for payment, presentment for payment, protest, notice of payment, notice of dishonor, notice of nonpayment, notice of acceleration of maturity, and diligence in taking any action to collect sums owing hereunder.

13.8 Amendments and Waivers. No term of this Note may be waived, modified, or amended except by an instrument in writing signed by the Borrower, the Agent (to the extent any of its rights or obligations are waived, modified or amended) and the Required Noteholders. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. Notwithstanding anything contained in this ***Section 13.8***, no waiver, modification or amendment shall:

(a)reduce the principal of, or rate of interest specified herein on, any Obligation, or other amounts payable hereunder or under any other Note Document, without the written consent of each Noteholder directly and adversely affected thereby;

(b)postpone any date scheduled for any payment of principal of, or interest on, any Obligation, or any other amounts payable hereunder or under any other Note Document, or reduce the amount of, waive or excuse any such payment, without the written consent of each Noteholder directly and adversely affected thereby;

(c) release any Note Party from its Obligations, including any Guaranteed Obligations, without the written consent of each Noteholder;

(d) release the Parent Guaranty;

(e) release all or substantially all of the Collateral from the Agent's Liens without the written consent of each Noteholder;

(f)change any provision in any Note Document in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Noteholder directly and adversely affected thereby;

(g) change any provision of this Section without the written consent of each Noteholder; or

(h) affect the rights or duties of the Agent under any Note Document without the written consent of the Agent.

13.9 Agency Matters.

(a)The Noteholders shall share the Collateral and the proceeds of such Collateral in accordance with their pro rata share of their then outstanding Principal, without priority of one over the other.

(b)Each Noteholder hereby appoints the Agent, as the collateral agent and administrative agent, under this Note and the other Note Documents, and hereby authorizes the Agent to acquire, hold and enforce any and all liens on Collateral granted by the Note Parties to secure any of the Obligations and to take such actions on each of its behalf and to exercise such rights, powers, authorities and privileges under this Note and the other Note Documents as are expressly delegated to the Agent by the terms hereof and thereof. Each Noteholder (i) accepts the authorizations, appointments and acknowledgements and other actions taken by the Agent, on behalf of the Noteholders, in accordance with this Note and the other Note Documents, and (ii) authorizes and directs the Agent to execute, deliver and perform each of the Note Documents to which the Agent is or is intended to be a party (including any amendments, supplements, accession agreements, acknowledgements or similar documents thereto or thereunder). The provisions of this Section 13.9 are solely for the benefit of the Agent and the Noteholders, and none of the Note Parties shall have rights as a third-party beneficiary of any of such provisions. The rights, powers and obligations of the Agent are governed by the provisions set forth on ***Annex 1*** hereto.

(c)Enforcement of the Noteholders' rights under any Note Document shall (a) with respect to any Collateral, be taken by the Agent at the direction of the Required Noteholders, and (b) with respect to all other rights under the Note Documents, be taken by the Agent at the direction of the Required Noteholders.

13.10 Certain Tax Matters.

(a)Any and all payments by or on account of any obligation of the Borrower hereunder may be subject to deduction or withholding to the extent required by applicable Law, and to the extent any amounts are deducted or withheld from any amounts payable to or with respect to a Noteholder under this Note and paid to the appropriate Governmental Authority, such deducted or withheld amounts shall be treated as if paid to such Noteholder for all purposes hereof; *provided*, *however*, that, if the Borrower or any of its Affiliates or the Agent determines that any such deduction or withholding is required, except in the case of any deduction or withholding required as a result of a Noteholder's or a permitted transferee's failure to deliver an Internal Revenue Service Form W-9 or applicable Internal Revenue Service Form W-8 in accordance with this ***Section 13.10(a)*** establishing an exemption from withholding, then the Borrower or the Agent, as

applicable, shall use commercially reasonable efforts to (x) notify the Noteholder that such deduction or withholding is intended at least five (5) Business Days prior to the applicable payment date and (y) cooperate with the Noteholder to obtain any available exemption from, or reduction in the amount of, such deduction or withholding. Each of the Noteholders (and any permitted transferee thereof) will provide to the Borrower (i) a properly completed and duly executed Internal Revenue Service Form W-9 certifying that the Noteholder or such permitted transferee, as applicable, is not subject to backup withholding, or (ii) an applicable properly completed and duly executed Internal Revenue Service Form W-8, on or before the first date on which any amount is paid to or with respect to the Noteholder or such permitted transferee, as applicable, under this Note, and the Noteholder or its permitted transferee, as applicable, will provide a revised version of such form when materially obsolete or inaccurate.

(b)Each of the Parties acknowledges and agrees that, for U.S. federal income tax purposes (and applicable state and local tax purposes): (i) this Note is intended to be treated as indebtedness and (ii) all adjustments to the Principal pursuant to Section 3.3 are, except to the extent properly treated as interest or original issue discount, intended to be treated as an adjustment to the Closing Adjusted Merger Consideration payable pursuant to the Merger Agreement. The Parties shall (and shall cause their respective Affiliates to) file their applicable Tax Returns consistent with, and take no position for Tax purposes (whether in Tax Proceedings, on Tax Returns or otherwise) inconsistent with, such treatment, unless a contrary position is required by a "determination" within the meaning of Section 1313(a) of the Code.

13.11 Headings. The headings of the various Sections and subsections herein are for reference only and shall not define, modify, expand, or limit any of the terms or provisions hereof.

13.12 No Waiver; Cumulative Remedies. No failure to exercise, and no delay in exercising on the part of the Noteholder, of any right, remedy, power, or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The rights, remedies, powers, and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers, and privileges provided by law.

13.13 Effectiveness. This Note shall be issued and become effective upon being fully executed and delivered to all parties hereto on the Closing Date in accordance with the provisions set forth in the Merger Agreement.

13.14 Electronic Execution. The words "execution," "signed," "signature," and words of similar import in the Note shall be deemed to include electronic or digital signatures or electronic records, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper-based record-keeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001 to 7031), the Uniform Electronic Transactions Act (UETA), or any state law based on the UETA, including the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301 to 309).

13.15 Severability. If any term or provision of this Note is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Note or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Note so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.16 Noteholders. Each Person listed on ***Schedule 1*** hereto, to the extent not signatory hereto, by its acceptance of the benefits hereunder, shall be deemed to have accepted and agreed to be bound by the terms and conditions of this Note.

[*SIGNATURE PAGE FOLLOWS*]

IN WITNESS WHEREOF, each Note Party has executed this Note as of the date first written above.

BORROWER:

ATLAS SAND COMPANY, LLC,
a Delaware limited liability company

By _____
Name:
Title:

GUARANTOR:

HI-CRUSH PERMIAN SAND LLC,
a Delaware limited liability company

By _____
Name:
Title:

Signature Page to Secured Seller Note

By its acceptance of this Note, the Agent and each Noteholder acknowledges and agrees to be bound by the provisions hereof, as applicable.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,

as Agent

By _____
Name: James A. Hanley
Title: Senior Vice President

Signature Page to Secured Seller Note

[NOTEHOLDER],

a [_____] [_____]

By _____
Name:
Title:

[NOTEHOLDER],

a [_____] [_____]

By _____
Name:
Title:

[NOTEHOLDER],

a [_____] [_____]

By _____
Name:
Title:

[NOTEHOLDER],

a [_____] [_____]

By _____
Name:
Title:

Signature Page to Secured Seller Note

Schedule 1

Noteholders

Annex 1

Agency Provisions

1. Appointment and Authorization of the Agent.

1.Each Noteholder hereby irrevocably appoints U.S. Bank Trust Company, National Association, as the administrative agent and the collateral agent under the Note Documents as provided in Section 13.9 of this Note.

2.Each Noteholder hereby agrees, that, except as otherwise set forth in this Note, any action taken by the Required Noteholders (or the Agent, at the direction of the Required Noteholders) in accordance with the provisions of this Note or the Note Documents, and the exercise by the Required Noteholders (or the Agent, at the direction of the Required Noteholders) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Noteholders. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under the Note Documents in accordance with the direction of the Required Noteholders, and such direction and any action taken or failure to act pursuant thereto shall be binding upon all Noteholders and all future holders of this Note.

3. The Agent shall have no obligation whatsoever to the Noteholders or to any other Person to assure that the Collateral exists or is owned by the Borrower or any Note Party or is cared for, protected or insured or that the Liens granted to the Agent pursuant to any Note Documents have been properly or sufficiently or

lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Agent in this Annex or in the Note Documents. The Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence or collectability of the Collateral, the existence, priority or perfection of the Agent's Lien thereon, or any certificate prepared by the Borrower or any Note Party in connection therewith, nor shall the Agent be responsible or liable to the Noteholders for any failure to monitor or maintain any portion of the Collateral, Liens therein or financing statements filed in connection therewith. The Agent shall not be under any liability for interest on any funds received by the Agent under any Note Document.

4. The duties of the Agent shall be mechanical and administrative in nature; the Agent shall not have by reason of this Note or any other Note Document a fiduciary relationship in respect of any Noteholder; and nothing in this Note or in any other Note Document, expressed or implied, is intended to or shall be so construed as to impose upon the Agent any obligations in respect of this Note or any other Note Document except as expressly set forth herein or therein. Each Noteholder acknowledges, agrees and accepts the terms and conditions of each Note Document, and authorizes and instructs the Agent to execute and perform its obligations, as applicable. No provision of this Note or the Note Documents shall require the Agent to advance, expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers contemplated hereunder.

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5. The Agent shall be entitled to rely upon, and shall be fully protected in relying upon (and shall not be liable for so relying upon), any communication, request, instrument, note, consent, affidavit, letter, writing, resolution, notice, statement, certificate, e-mail or other electronic message, order, internet or intranet website posting, or other document (or writing), conversation or telephone message signed, sent or made (or authenticated) by (or, in the case of a conversation, with) any Person that the Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Note and any other Note Documents and its duties hereunder and thereunder, upon advice of legal counsel, independent accountants and other experts and professional advisors selected by the Agent.

2. Indemnification of Agent by the Noteholders. (a)To the extent the Agent Indemnified Parties (such term is used herein as defined on Annex 2) are not reimbursed and indemnified by the Note Parties in accordance with the terms of this Note or any of the Note Documents, the Noteholders will reimburse and indemnify the Agent Indemnified Parties for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred at any time by the Agent or any of the Agent Indemnified Parties in performing the Agent's duties under any other Note Documents or in any way relating to or arising out of this Note; provided that no Noteholder shall be liable to any of the Agent Indemnified Parties for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent Indemnified Party's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Matters (as defined herein), this Section applies whether any such investigation, litigation or proceeding is brought by any Noteholder or any other Person.

(b)Without limitation of the foregoing, each Noteholder shall reimburse the Agent, as applicable, upon demand for any costs or out-of-pocket expenses (including attorneys' fees, costs and expenses) incurred by the Agent, as applicable, in connection with the preparation, execution, delivery, administration, modification, amendment, forbearance or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under any Note Documents, or any document contemplated by or referred to herein or in any Note Document, or in connection with any transaction contemplated hereunder, or in connection with any action taken or omitted to be taken by Agent or any of the Agent Indemnified Parties, as applicable, under or in connection with any of the foregoing including without limitation, exercising any of the Agent's powers, rights, and remedies and performing its duties hereunder and thereunder (or omitting to do the same), in each case, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Borrower or the Guarantor, provided that such reimbursement by the Noteholders shall not affect the Borrower's or the Guarantor's continuing reimbursement obligations with respect thereto, provided further that the failure of any Noteholder to indemnify or reimburse the Agent shall not relieve any other Noteholder of its obligation in respect thereof. If any indemnity furnished to the Agent for any purpose shall, in the opinion of the Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The Noteholders hereby, jointly and severally, agree to pay all fees and reasonable and documented out-of-pocket costs and expenses of the Agent in connection with the preparation, execution, delivery and administration of this Note and the other Note Documents, including without limitation, reasonable fees and expenses of legal counsel for the Agent, in each case to the extent incurred on or prior to the date of this Note. This ***Section 2(b)*** shall be subject to the Legal Expenses Limitation.

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3. Resignation or Removal of Agent. The Agent may resign from the performance of all its functions and duties hereunder or under the other Note Documents at any time by giving 10 Business Days' prior written notice to the Noteholders and the Borrower. If the Agent is in material breach of its obligations hereunder as Agent, then the Agent may be removed as the Agent at the reasonable request of the Required Noteholders. Upon any such notice of resignation by, or notice of removal of, the Agent, the Borrower and the Required Noteholders shall appoint a successor Agent hereunder. After the resignation or removal of the Agent hereunder, the provisions of Annex 1 and Annex 2 shall continue in effect for the benefit of the Agent and its successor, its sub-agents and its Agent Indemnified Parties in respect of any actions taken or omitted to be taken by any of them while acting as the administrative agent and collateral agent hereunder.

4. Notice of Event of Default. The Agent shall have no obligation to any Noteholder or any other Person to ascertain or inquire into the existence of any Event of Default, the observance or performance by any obligor of any terms of this Note or any of the Note Documents, or the satisfaction of any conditions precedent contained in this Note or in any of the Note Documents. The Agent shall not be deemed to have knowledge of any default or Event of Default unless and until written notice describing such default or Event of Default is given to the Agent by the Borrower or any Noteholder and expressly stating that such notice is a "notice of default."

5. Applicable Laws. In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering (collectively, "***Applicable Laws***"), the Agent is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Agent. Accordingly, each of the parties agree to provide to the Agent upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Agent to comply with Applicable Laws or which the Agent may reasonably request in connection with the performance by the Agent of its duties under any of the Note Documents.

6. Force Majeure. The Agent shall not be liable or responsible for delays or failures in the performance of its obligations hereunder arising out of or caused, directly or indirectly, by circumstances beyond its control (such acts include but are not limited to acts of God, pandemics, epidemics, strikes, lockouts, riots, acts of war and interruptions, losses or malfunctions of utilities, computer (hardware or software) or communications services); it being understood that the Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

Annex 2

Expenses and Indemnity of the Agent

The parties to this Note covenant and agree as follows:

1. Expenses. Borrower and each of the other Note Parties hereby, jointly and severally, agrees to pay (a) on demand in the case of clauses (i) and (v) below and (b) within ten (10) days of written demand in the case of clauses (ii), (iii) and (iv) below: (i) all fees and reasonable and documented out-of-pocket costs and expenses of the Agent in connection with the administration of this Note and the other Note Documents after the date of this Note and the preparation, execution and delivery of any and all amendments, modifications, supplements, waivers, consent and ratifications to this Note or any other Note Document, including without limitation, reasonable fees and expenses of legal counsel for the Agent, (ii) all reasonable and documented out-of-pocket costs and expenses of the Agent in connection with any Event of Default and the enforcement of this Note or any other Note Document, including, without limitation, court costs and the fees and expenses of legal counsel or advisors for the Agent; (iii) all transfer, stamp, intangible, court or documentary, or other similar taxes, assessments, or charges levied by any Governmental Authority in respect of this Note or any of the other Note Documents; (iv) all reasonable and documented out-of-pocket costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any Lien contemplated by this Note or any other Note Document; and (v) all other documented out-of-pocket costs and expenses incurred by the Agent in connection with the enforcement or protection of its rights under this Note or any other Note Document, any workout or restructuring (including the negotiations thereof), any litigation, dispute, suit, proceeding or action, the enforcement of its rights and remedies, and the protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges incurred in connection with examining, appraising, selling, liquidating, or otherwise disposing of the Collateral or other assets of the Note Parties. Any amount to be paid under this Section which is not paid when due shall bear interest, to the extent not prohibited by and not in violation of applicable Law, from the due date until paid at a rate per annum equal to the Default Rate. This ***Section 1*** shall be subject to the Legal Expenses Limitation.

2. INDEMNIFICATION. Borrower and the other Note Parties shall, jointly and severally, indemnify the Agent and its Affiliates and the directors, officers, employees, agents, managers, advisors and representatives of the Agent and its Affiliates (each, an "***Agent Indemnified Party***" and collectively, the "***Agent Indemnified Parties***") from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, penalties, judgments, disbursements, costs, and expenses (including reasonable attorneys' fees) to which any of them may become subject which directly or indirectly arise from or relate to (a) the negotiation, execution, delivery, performance, administration, or enforcement of any of the Note Documents, (b) any of the transactions contemplated by the Note Documents, (c) any breach by any Note Party of any representation, warranty, covenant, or other agreement contained in any of the Note Documents, (d) the presence, release, threatened release, disposal, removal, or cleanup of any hazardous material located on, about, within, or affecting the Collateral or assets of any Note Party or any of their subsidiaries, or (e) any investigation, litigation, or other proceeding, including, without limitation, any threatened or prospective investigation, litigation, or other proceeding, relating to any of the foregoing, whether brought by a Noteholder, a third party or by Borrower or any other Note Party. WITHOUT LIMITING ANY PROVISION OF THIS NOTE OR OF ANY OTHER NOTE DOCUMENT, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH OF THE AGENT INDEMNIFIED PARTIES SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY, COMPARATIVE, CONCURRENT OR ORDINARY NEGLIGENCE OF SUCH AGENT INDEMNIFIED PARTY; *provided* that such indemnity shall not, as to any Agent Indemnified Party, be available to the extent such losses, liabilities, claims, damages, penalties, judgments, disbursements, costs and expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Agent Indemnified Party. Any amount to be paid under this Section shall be a demand obligation owing by Borrower and the other Note Parties and if not paid within ten (10) days of demand shall bear interest, to the extent not prohibited by and not in violation of applicable Law, from the date of expenditure until paid at a rate per annum equal to the Default Rate. This ***Section 2*** shall be subject to the Legal Expenses Limitation.

3. Schedule 1. The Agent shall not be liable for the Noteholder information listed on Schedule 1 attached to this Note and makes no representation or warranty with respect to any of the Noteholder information listed on Schedule 1 attached to this Note. The Agent shall be fully protected in relying on the Noteholder information listed on Schedule 1 which has been prepared by the Borrower and for which the Borrower represents and warrants is true, correct and accurate in all respects. The Agent shall have no liability for the failure or omission of any Noteholder to execute this Note or any other Note Document.

4. Survival. The Borrower and Guarantor's obligations under this Annex 2 shall survive the termination of this Note, the payment in full of the Obligations and the resignation or removal of the Agent (or any assignment).

Annex 3

ERISA Restrictions; Non-Permitted Holders.

No transfer or exchange of an interest in this Note will be permitted to a Benefit Plan Investor, other than an ERISA Permitted Investor, and any such transfer will be null and void.

If any Non-Permitted Holder shall become the beneficial owner of an interest in this Note, the Borrower shall, promptly after discovery that such person is a Non-Permitted Holder by the Borrower, send notice to such Non-Permitted Holder demanding that such Non-Permitted Holder transfer its interest in this Note held by such person to a Person that is not a Non-Permitted Holder within 10 days of the date of such notice. If such Non-Permitted Holder fails to so transfer such interest in this Note, the Borrower shall have the right, without further notice to the Non-Permitted Holder, to sell such interest in this Note to a purchaser selected by the Borrower that is not a Non-Permitted Holder on such terms as the Borrower may choose. The Borrower may select the purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities similar to this Note, and selling such interest in this Note to the highest such bidder. However, the Borrower may select a purchaser by any other means determined by it in its sole discretion. Each Noteholder, the Non-Permitted Holder and each other Person in the chain of title from a Noteholder to a Non-Permitted Holder, by its acceptance of an interest in this Note, agrees to cooperate with the Borrower and the Agent to effect such transfer. The proceeds of such sale, net of any commissions, expenses and taxes due in connection with such sale, shall be remitted to the Non-Permitted Holder. The terms and conditions of any sale under this subsection shall be determined in the sole discretion of the Borrower, and the Borrower shall not be liable to any Person having an interest in this Note sold as a result of any such sale or the exercise of such discretion.

EXHIBIT I2

FORM OF INTERCREDITOR AGREEMENT

Exhibit I2

EXHIBIT I3

FORM OF DEFERRED CASH CONSIDERATION MORTGAGE

Exhibit I3

EXHIBIT I4

FORM OF PARENT GUARANTY

Exhibit I4

EXHIBIT J

INITIAL CERTIFICATE OF MERGER

Exhibit J

EXHIBIT K

SURVIVING FORM OF CORPORATION CERTIFICATE OF INCORPORATION

Exhibit K

EXHIBIT L

SURVIVING CORPORATION FORM OF BYLAWS

Exhibit L

EXHIBIT M

JOINDER

Exhibit M

Exhibit 10.1

Execution Version

FIRST AMENDMENT TO LOAN, SECURITY AND GUARANTY AGREEMENT

This FIRST AMENDMENT TO LOAN, SECURITY AND GUARANTY AGREEMENT (this "***First Amendment***") dated as of February 26, 2024 (the "***First Amendment Effective Date***"), is by and among **ATLAS SAND COMPANY, LLC**, a Delaware limited liability company (the "***Company***" and a "***Borrower***"), certain of its Subsidiaries, as Guarantors, the financial institutions party hereto as Lenders, and **BANK OF AMERICA, N.A.**, a national banking association, as agent for the Lenders (in such capacity, "***Agent***").

RECITALS:

A. The Company, as a Borrower, the Guarantors, the Lenders and Agent are parties to that certain Loan, Security and Guaranty Agreement dated as of February 22, 2023 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "***Loan Agreement***"), pursuant to which the Lenders have made certain credit available to Borrowers.

B. The Company has advised the Lenders that it will directly or indirectly acquire substantially all of the assets (other than Excluded Assets (as defined in the Hercules Acquisition Agreement referred to below)) of Hi-Crush Inc., a Delaware corporation ("***Hi-Crush***"), pursuant to that certain Agreement and Plan of Merger dated as of the date hereof among Atlas Energy Solutions Inc., a Delaware corporation, the Company, certain Subsidiaries of the Company, Hi-Crush Inc., the stockholders of Hi-Crush and the other Persons named therein (the "***Hercules Acquisition Agreement***", and such Acquisition, the "***Hercules Acquisition***").

C. In connection with the Hercules Acquisition, the Company has requested that (a) Barclays Bank PLC (the "***New Lender***") become a Lender under the Loan Agreement with a Commitment of (i) $0 as of the First Amendment Effective Date and (ii) $25,000,000 on, and subject to the occurrence of, the Increase Effective Date, (b) Goldman Sachs Bank USA increase its Commitment under the Loan Agreement to $25,000,000 on, and subject to the occurrence of, the Increase Effective Date, and (c) Bank of America, N.A. increase its Commitment under the Loan Agreement to $75,000,000 on, and subject to the occurrence of, the Increase Effective Date (the foregoing being referred to herein collectively as the "***Commitment Increase***"), and that the Lenders extend the Termination Date and make certain other changes to the Loan Agreement as more fully set forth herein.

D. NOW, THEREFORE, to induce Agent and the Lenders to enter into this First Amendment and in consideration of the promises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1.Defined Terms. Unless otherwise indicated, each capitalized term used herein but not otherwise defined herein has the meaning given such term in the Loan Agreement, as amended by this First Amendment.

Section 2. Amendments to Loan Agreement. Effective as of the First Amendment Effective Date, the Loan Agreement is hereby amended to delete the red stricken text (indicated in the same manner as the following example: ~~stricken text~~) and to add the blue double underlined text (indicated in the same manner as the following example: underlined text) as and where indicated in ***Annex A*** attached hereto.

Section 3. Amendment to Schedule 1.1(a) to Loan Agreement. Effective as of the Increase Effective Date, Schedule 1.1(a) to the Loan Agreement shall be replaced in its entirety with ***Schedule 1.1(a)*** attached hereto, and ***Schedule 1.1(a)*** attached hereto shall be deemed to be attached as Schedule 1.1(a) to the Loan Agreement.

Section 4. Conditions Precedent to First Amendment. The effectiveness of this First Amendment shall be subject to the satisfaction (or waiver in accordance with *Section 14.1* of the Loan Agreement) of each of the following conditions:

4.1 This First Amendment shall have been duly executed and delivered to Agent by each of the signatories thereto.

4.2 Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral, as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.

4.3 The Company shall have delivered, or have caused to be delivered, to Agent each of the following items, each in form and substance reasonably satisfactory to Agent:

(a) a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the First Amendment is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this First Amendment; and (iii) to the title, name and signature of each Person authorized to sign the First Amendment;

(b) copies of the charter documents of each Obligor, certified by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization as of a recent date, together with good standing certificates as of a recent date for such Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization and each jurisdiction where such Obligor's conduct of business or ownership of Property necessitates qualification;

(c) a certificate from a knowledgeable Senior Officer of the Company certifying that, after giving effect to this First Amendment, (i) the Obligors are Solvent; (ii) no Default or Event of Default exists; and (iii) the representations and warranties set forth in this First Amendment and the other Loan Documents are true and correct in all material respects (without duplication of any materiality qualification applicable thereto) on and as of the First Amendment Effective Date (or, if stated to have been made expressly as of an earlier date, were true and correct in all material respects (without duplication of any materiality qualification applicable thereto) as of such earlier date); and

(d) a written opinion of Vinson & Elkins L.L.P.

4.4 Agent shall have received an executed copy of a reaffirmation of the Intercreditor Agreement from the Term Loan Agent in form and substance reasonably acceptable to Agent.

4.5 With respect to any Real Estate secured by a Mortgage prior to the First Amendment Effective Date, completion of flood diligence and documentation as required by Flood Laws or as otherwise satisfactory to all Lenders.

4.6 Agent shall have received an executed copy of the Hercules Acquisition Agreement.

4.7 Agent shall have received a copy of an effective amendment to the Term Loan Agreement in form and substance reasonably satisfactory to it pursuant to which the amount of debt permitted thereunder in respect of the Loan Agreement is increased to at least $150,000,000.

By providing counterparts to this First Amendment to Agent as required under ***Section 4.1***, each of the undersigned Obligors represents and warrants that, as of the First Amendment Effective Date, the conditions set forth in this ***Section 4*** are satisfied assuming Agent's satisfaction with all matters that are subject to Agent's satisfaction.

Agent is authorized to declare this First Amendment to be effective when it has received, to the reasonable satisfaction of Agent, the documents and deliverables satisfying the conditions set forth in this ***Section 4*** or the waiver of such conditions as permitted in *Section 14.1* of the Loan Agreement. Such declaration shall be final, conclusive and binding upon all parties to the Loan Agreement for all purposes. Each Lender hereby authorizes Agent to enter into the Hercules Intercreditor Agreement (as defined in the Loan Agreement, as amended by this First Amendment) on behalf of such Lender and agrees that Agent, in its capacity thereunder, may take such actions on its behalf as is contemplated by the terms of the Hercules Intercreditor Agreement.

Section 5. Conditions Precedent to Commitment Increase. The Commitment Increase shall become effective on the date (such date, the "***Increase Effective Date***"), when each of the following conditions is satisfied (or waived in accordance with *Section 14.1* of the Loan Agreement):

5.1 The Hercules Acquisition shall be consummated substantially concurrently with the Increase Effective Date and in accordance with the terms of the Hercules Acquisition Agreement (including the exhibits thereto), without giving effect to any waiver, modification or consent thereunder that could reasonably be expected to be material and adverse to the interests of the Agent and the Lenders unless approved by Agent.

5.2 Agent shall have received fully executed copies of the primary Hercules Note Documents and the Hercules Intercreditor Agreement (each as defined in the Loan Agreement, as amended by this First Amendment, and in the case of the Hercules Seller Note, the Hercules Seller Mortgage and the Hercules Intercreditor Agreement substantially in the forms as attached to the Hercules Acquisition Agreement on the First Amendment Effective Date or otherwise reasonably satisfactory to Agent).

5.3 Agent shall have received all Payoff Documentation (as defined in the Hercules Acquisition Agreement) received by the Obligors pursuant to the Hercules Acquisition Agreement.

5.4 After giving pro forma effect to this First Amendment, the Commitment Increase, the Hercules Acquisition and the funding of all Loans and issuance of any Letters of Credit in connection therewith, and the payment by Obligors of all fees and expenses incurred in connection herewith and therewith, (a) Availability shall be at least $25,000,000 and (b) the aggregate outstanding principal amount of the Loans shall not exceed $50,000,000.

5.5 Agent shall have received (a) forms of all UCC-1 financing statements necessary to perfect its Liens in the Collateral of any surviving Subsidiary of the Company formed or acquired in connection with the Hercules Acquisition (collectively, the "***Hercules Subsidiaries***") and (b) UCC and Lien searches and other evidence reasonably satisfactory to Agent that, after giving effect to the Hercules Acquisition and the filing of any lien releases and terminations to be filed in connection therewith, Agent's Liens are the only Liens upon the Collateral, except Permitted Liens.

5.6 Agent shall have received joinder documentation required under Section 10.1.9 of the Loan Agreement with respect to each Hercules Subsidiary consisting of a joinder agreement, a customary secretary's certificate with appropriate attachments, a supplement to the Intercreditor Agreement and a customary legal opinion.

5.7 Each Obligor (including any joined under Section 5.6 above) shall have provided, in form and substance reasonably satisfactory to Agent and each Lender, all documentation and other information reasonably requested by Agent or any Lender on or prior to February 26, 2024 in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act and Beneficial Ownership Regulation. If any Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall have provided a Beneficial Ownership Certification to Agent and Lenders in relation to such Obligor.

5.8 The Company shall have delivered, or have caused to be delivered, to Agent each of the following items, each in form and substance reasonably satisfactory to Agent:

(a) a certificate from a knowledgeable Senior Officer of the Company certifying that, after giving effect to the Commitment Increase and the Hercules Acquisition, (i) the Obligors are Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in the Loan Documents are true and correct in all material respects (without duplication of any materiality qualification applicable thereto) on and as of the Increase Effective Date (or, if stated to have been made expressly as of an earlier date, were true and correct in all material respects (without duplication of any materiality qualification applicable thereto) as of such earlier date); (iv) true and correct copies of the Hercules Acquisition Agreement and the primary Hercules Note Documents have been provided to Agent; (v) the Hercules Acquisition has been consummated in accordance with the terms of the Hercules Acquisition Agreement substantially concurrently with the Increase Effective Date and without giving effect to any waiver, modification or consent thereunder that could reasonably be expected to be material and adverse to the interests of the Agent and the Lenders unless approved by Agent; and (vi) the $100,000,000 delayed draw facility remains undrawn and available to the Company under the Term Loan Agreement; and

(b) an updated Borrowing Base Report giving pro forma effect to this First Amendment and the Hercules Acquisition.

5.9 Agent and the Lenders shall have received all fees and other amounts due and payable on or prior to the Increase Effective Date in connection with this First Amendment, including pursuant to the fee letter and payment of legal fees of Haynes and Boone, LLP, counsel to Agent, and all other reasonable and documented out-of-pocket expenses required to be reimbursed or paid by Borrowers pursuant to the Loan Agreement.

5.10 Each other condition set forth in ***Section 4*** and this ***Section 5*** shall have been satisfied or waived on or prior to April 3, 2024.

Section 6. Representations and Warranties. As of the First Amendment Effective Date, each Obligor hereby represents and warrants to Agent and Lenders as follows:

6.1 No Default or Event of Default has occurred and is continuing as of the First Amendment Effective Date or would result from this First Amendment

becoming effective in accordance with its terms and the consummation of the Hercules Acquisition.

6.2 The execution, delivery and performance of this First Amendment, and the performance of the amended Loan Agreement, are within each Obligor's corporate, limited liability company or partnership powers and have been duly authorized by all necessary corporate, limited liability company or partnership and, if required, equityholder action (including, without limitation, any action required to be taken by any class of directors, whether interested or disinterested, of the Obligors or any other Person in order to ensure the due authorization of the First Amendment). This First Amendment has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable in accordance with its terms, subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

6.3 The execution, delivery and performance of this First Amendment, and the performance of the amended Loan Agreement, (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including equityholders, members, partners or any class of directors or managers, whether interested or disinterested, of the Obligors or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of the First Amendment or the consummation of the obligations hereunder, except such as have been obtained or made and are in full force and effect, other than (i) the recordations and filings necessary to perfect Agent's Liens in the Collateral and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default and would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate any Applicable Law or any order of any Governmental Authority material to any Obligor's or its Restricted Subsidiary's business, (c) will not violate or result in a default under any Organic Documents of any Obligor or any indenture or other material agreement regarding Debt binding upon any Obligor or its Restricted Subsidiaries or its Properties (including the Term Loan Documents), or give rise to a right thereunder to require any payment to be made by any Obligor, and (d) will not result in the creation or imposition of any Lien on any Sand Property of any Obligor or its Restricted Subsidiaries (other than the Liens created by the Loan Documents).

Section 7. Post-Closing Covenants. The Obligors will complete each of the actions that is described below no later than the date set forth below with respect to such action, or such later date as Agent may agree:

(a) Within 90 days of the Hercules Acquisition, Obligors shall deliver a Deposit Account Control Agreement with respect to each Deposit Account (other than an Excluded Account) acquired in the Hercules Acquisition;

(b) Subject to completion of flood diligence and documentation as required by Flood Laws or as otherwise satisfactory to all Lenders, within 90 days of the Hercules Acquisition, Obligors shall deliver a Mortgage and the Related Real Estate Documents for the Trust Property (as defined in the Hercules Seller Mortgage) that is subject to a Lien in favor of the Term Loan Agent to secure the Term Loan Debt;

(c) Within 90 days of the Hercules Acquisition and to the extent not covered by a satisfactory Mortgage, Obligors shall deliver as-extracted collateral filings naming Hi-Crush Permian Sand LLC, as debtor, to be filed in Winkler County, Texas; and

(d) Within 30 days of the Hercules Acquisition, Obligors shall deliver updated certificates of insurance and endorsements for the insurance policies carried by Obligors (inclusive of the Hercules Acquisition) in compliance with the Loan Documents.

Failure to complete any action described above by the date required therefor shall constitute an Event of Default under Section 11.1 of the Loan Agreement without further notice or grace period.

Section 8. Miscellaneous.

8.1 Confirmation. The provisions of the Loan Agreement, as amended by this First Amendment, shall remain in full force and effect following the effectiveness of this First Amendment. This First Amendment shall constitute a "Loan Document" for all purposes of the Loan Agreement and the other Loan Documents. On and after the First Amendment Effective Date, the terms "Agreement", "this Agreement", "herein", "hereinafter", "hereto", "hereof" and words of similar import, as used in the Loan Agreement, shall, unless the context otherwise requires, mean the Loan Agreement, as amended by this First Amendment. Each reference to the Loan Agreement in the other Loan Documents shall mean the Loan Agreement, as amended by this First Amendment. The amendments contemplated by this First Amendment are limited solely to the items expressly set forth herein and are subject to the conditions set forth herein.

8.2 Reservation of Rights. The execution, delivery and effectiveness of this First Amendment shall not, except as expressly set forth herein, (a) constitute a consent to any action or inaction by Obligors, (b) be a consent to any other amendment, waiver or modification of any term or condition of the Loan Agreement or any other Loan Document, nor (c) prejudice, limit, impair or otherwise affect or operate as a waiver of any right, power or remedy which Agent or the Lenders may now have or may have in the future under or in connection with the Loan Agreement or any other Loan Document (after giving effect to this First Amendment). Nothing in this First Amendment shall be construed to imply any willingness on the part of Agent or the Lenders to grant any similar or future amendment (or any consent or waiver) of any of the terms and conditions of the Loan Agreement or the other Loan Documents.

8.3 Ratification and Affirmation. Each Obligor hereby ratifies and affirms its obligations under, and acknowledges its continued liability under, each Loan Document to which it is a party and agrees that each Loan Document to which it is a party remains in full force and effect as expressly amended hereby, including its guaranty under Section 5.10 of the Loan Agreement of the Obligations as increased by this First Amendment. The amendments to the Loan Agreement contemplated hereby shall not limit or impair any Liens securing the Obligations, which Liens are hereby ratified and affirmed by each Obligor and shall continue to secure the Obligations as increased by this First Amendment.

8.4 No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Loan Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

8.5 Further Assurances. The Obligors shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under Applicable Law or as Agent may reasonably request, in order to effect the purposes of this First Amendment.

8.6 Counterparts. This First Amendment and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this First Amendment (each a "***Communication***"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Obligors agree that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person, enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same

Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("***Electronic Copy***"), which shall be deemed created in the ordinary course of the such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent Agent has agreed to accept such Electronic Signature, Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Obligor without further verification and (b) upon the request of Agent or any Lender, any Electronic Signature shall be promptly followed by such number of manually executed counterparts as reasonably requested. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

8.7 Payment of Expenses. The Company agrees to pay or reimburse Agent for its reasonable and documented out-of-pocket costs and expenses incurred in connection with this First Amendment, any other documents prepared herewith and the transactions contemplated hereby, including, without limitation, all reasonable and documented out-of-pocket fees and expenses of Haynes and Boone, LLP, counsel to Agent.

8.8 NO ORAL AGREEMENT. THIS FIRST AMENDMENT, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND THEREWITH REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

8.9 GOVERNING LAW. THIS FIRST AMENDMENT AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

8.10 CERTAIN MATTERS OF CONSTRUCTION; SEVERABILITY; CONSENT TO FORUM; WAIVERS BY OBLIGORS . The provisions of *Sections 1.4, 14.6, 14.15* and *14.16* of the Loan Agreement are hereby incorporated herein as though stated in their entirety herein,*mutatis mutandis*.

8.11 New Lender Voting Rights. Notwithstanding anything to the contrary in the Loan Agreement and subject to the immediately following sentence, on the First Amendment Effective Date the New Lender shall constitute a Lender under the Loan Agreement for purposes of Section 14.1 of the Loan Agreement. The voting rights granted to the New Lender pursuant to the immediately preceding sentence shall terminate upon the earlier of (a) the Increase Effective Date, upon which the New Lender shall constitute a Lender for all purposes under the Loan Documents (and shall join and be bound by the Loan Agreement), and (b) April 3, 2024.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWER:

ATLAS SAND COMPANY, LLC

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

GUARANTORS:

ATLAS SAND EMPLOYEE COMPANY, LLC

By: Atlas Sand Company, LLC, its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS SAND EMPLOYEE HOLDING COMPANY, LLC

By: Atlas Sand Company, LLC, its sole member

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS SAND CONSTRUCTION, LLC

By: Atlas Sand Company, LLC, its sole member

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS CONSTRUCTION EMPLOYEE COMPANY, LLC

By: Atlas Sand Company, LLC, its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD LOGISTICS, LLC

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD LOGISTICS EMPLOYEE COMPANY, LLC

By: Atlas Sand Company, LLC, its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD TRANSPORTATION SERVICES, LLC

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS OLC EMPLOYEE COMPANY, LLC

By: Atlas Sand Company, LLC, its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

OLC KERMIT, LLC

By: Atlas Sand Company, LLC, its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

OLC MONAHANS, LLC

By: Atlas Sand Company, LLC, its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD EQUIPMENT LEASING, LLC

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

AGENT AND LENDERS:

BANK OF AMERICA, N.A., as Agent and a Lender

By: /s/ Matthew O'Keefe
Name: Matthew O'Keefe
Title: Senior Vice President

Signature Page to
First Amendment to Loan, Security and Guaranty Agreement

GOLDMAN SACHS BANK USA, as a Lender

By: /s/ Andrew B. Vernon
Name: Andrew B. Vernon
Title: Authorized Signatory

Signature Page to
First Amendment to Loan, Security and Guaranty Agreement

BARCLAYS BANK PLC, as New Lender

By: /s/ Joseph Jordan
Name: Joseph Jordan
Title: Managing Director

Signature Page to
First Amendment to Loan, Security and Guaranty Agreement

ANNEX A

[see attached]

Annex A

~~*Execution Version*~~*Conformed (Amendment No. 1)*

LOAN, SECURITY AND GUARANTY AGREEMENT

Dated as of February 22, 2023

ATLAS SAND COMPANY, LLC,
as a Borrower,

AND CERTAIN OF ITS SUBSIDIARIES,
as Guarantors,

BANK OF AMERICA, N.A.,
as Agent

and

BANK OF AMERICA, N.A.,
as Sole Lead Arranger and Sole Bookrunner

TABLE OF CONTENTS

LIST OF EXHIBITS AND SCHEDULES

LOAN, SECURITY AND GUARANTY AGREEMENT

THIS LOAN, SECURITY AND GUARANTY AGREEMENT is dated as of February 22, 2023 (as amended, modified or supplemented from time to time, this "Agreement"), among **ATLAS SAND COMPANY, LLC**, a Delaware limited liability company (the "Company" and a "Borrower", and together with any Restricted Subsidiary of the Company that becomes party to this Agreement as an additional Borrower after the date hereof, collectively, "Borrowers"), and certain of their Subsidiaries, as Guarantors, the financial institutions party to this Agreement from time to time as Lenders, and **BANK OF AMERICA, N.A.,** a national banking association ("Bank of America"), as agent for the Lenders (in such capacity, "Agent").

R E C I T A L S:

Borrowers have requested that Lenders provide a credit facility to Borrowers to finance their mutual and collective business enterprise. Lenders are willing to provide the credit facility on the terms and conditions set forth in this Agreement.

NOW, **THEREFORE**, for valuable consideration hereby acknowledged, the parties agree as follows:

Section 1. DEFINITIONS; RULES OF CONSTRUCTION.

1.1 Definitions. As used herein, the following terms have the meanings set forth below:

ABL Priority Collateral: as defined in the Intercreditor Agreement.

Accounts Formula Amount: the sum of (a) 90% of the Value of Eligible Accounts and (b) the lesser of (i) 80% of the Value of Eligible Unbilled Accounts and (ii) 15% of the Borrowing Base.

Acquisition: a transaction or series of transactions resulting in (a) the acquisition of (i) a business, division or substantially all assets of a Person or (ii) record or beneficial ownership of 50% or more of the Equity Interests of a Person or (b) the merger, consolidation or combination of an Obligor or Restricted Subsidiary with another Person.

Affected Financial Institution: any EEA Financial Institution or UK Financial Institution.

Affiliate: with respect to a specified Person, any other Person that directly, or indirectly through intermediaries, Controls, is Controlled by or is under common Control with the specified Person. Without limitation to the foregoing, any Person that directly or indirectly holds 10% or more of the Equity Interests of another Person shall be deemed to be an Affiliate of that Person for purposes of this Agreement.

Agent: as defined in the introductory paragraph hereof.

Agent Indemnitees: Agent and its officers, directors, employees, Affiliates and Agent Professionals.

Agent Professionals: attorneys, accountants, appraisers, auditors, advisors, consultants, agents, service providers, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals, experts and representatives retained or used by Agent.

Agreement: as defined in the introductory paragraph hereof.

Allocable Amount: as defined in **Section 5.10.3**.

Anti-Corruption Law: any law relating to bribery or corruption, including the U.S. Foreign Corrupt Practices Act of 1977, UK Bribery Act 2010 and Patriot Act.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the Patriot Act.

Applicable Law: all laws, rules, regulations and governmental guidelines applicable to the Person or matter in question, including statutory law, common law and equitable principles, as well as provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Margin: the margin set forth below, as determined by the average daily Availability as a percentage of the Borrowing Base for the last Fiscal Quarter:

Level	Average Daily Availability as a Percentage of the Borrowing Base	Base Rate Loans	Term SOFR Loans
I	≥67%	0.50%	1.50%
II	≥33% < 67%	0.75%	1.75%
III	< 33%	1.00%	2.00%

Until March 31, 2023, margins shall be determined as if Level I were applicable. Thereafter, margins shall be subject to increase or decrease by Agent on the first day of the calendar month following each Fiscal Quarter end. If Agent is unable to calculate average daily Availability for a Fiscal Quarter due to Borrowers' failure to deliver a Borrowing Base Report when required hereunder, then, at the option of Agent or Required Lenders, margins shall be determined as if Level III were applicable until the first day of the calendar month following its receipt.

Applicable Reporting Entity: ~~(a) at any time prior to an IPO Event, the Company and (b) at any time from and after the occurrence of an IPO Event,~~the public Parent Entity of the Company; provided that the calculations of Consolidated Net Income, Consolidated Net Tangible Assets, the Consolidated Leverage Ratio, Consolidated Total Debt, Consolidated Total Net Debt, Consolidated Interest Expense, EBITDA, Fixed Charges, the Fixed Charge Coverage Ratio and any component of the foregoing shall only include amounts attributable to the Company and its Restricted Subsidiaries.

Applicable Trigger: the greater of $~~7,500,000~~12,500,000 or 12.5% of the Borrowing Base.

Approved Fund: any entity owned or Controlled by a Lender or Affiliate of a Lender, if such entity is engaged in making or investing in commercial bank asset based revolving loans in its ordinary course of activities.

Assignment: an assignment agreement between a Lender and Eligible Assignee, in the form of**Exhibit A** or otherwise satisfactory to Agent.

Availability: the Borrowing Base minus Revolver Usage.

Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) the aggregate amount of liabilities secured by Liens on Collateral that are senior to Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (e) the Dilution Reserve; (f) reserves for taxes; (g) royalty reserves; (h) the Hercules Seller Note Reserve;and (~~h~~i) additional reserves in amounts and with respect to matters as Agent may establish from time to time in its Permitted Discretion (including in respect of the Hercules Assets based on the results of the field examination and appraisal conducted in connection with the Hercules Acquisition) upon, so long as no Event of Default is continuing, two (2) Business Days' prior written notice (which may be by email) to Borrower Agent (which notice shall include a reasonably detailed description of such reserve being established). During such two (2) Business Day period, (i) Agent shall, if requested by Borrower Agent, discuss any such reserve or change with Borrower Agent and Borrower Agent may take such action as may be required so that the event, condition or matter that is the basis for such reserve or change no longer exists or exists in a manner that would result in the establishment of a lower reserve or result in a lesser change, in each case, in a manner and to the extent satisfactory to Agent in its Permitted Discretion and (ii) no Loan or Letter of Credit may be requested if an Overadvance would result therefrom assuming implementation of such reserve or change. Notwithstanding anything to the contrary herein, (x) the amount of any such reserve shall have a reasonable relationship to the event, condition or other matter that is the basis for such reserve, (y) no reserves shall be duplicative of reserves already accounted for through eligibility criteria, and (z) no notice shall be required for changes in the amount of existing reserves resulting solely from mathematical calculations.

Available Equity Amount: as of any date of determination, an amount equal to, without duplication, but only to the extent Not Otherwise Applied, the amount of any capital contributions or proceeds from issuances of Equity Interests, in each case, received in cash by the Company after the Closing Date (excluding any Pass-Through Equity Contribution) and either (a) substantially contemporaneously applied upon receipt as a usage of the Available Equity Amount or (b) deposited into and continuously maintained in a segregated Deposit Account until applied as a usage of the Available Equity Amount, but excluding, in each case, all proceeds from the issuance of Disqualified Equity Interests, proceeds from any IPO Event and Cure Amounts; provided that during a Trigger Period the Available Equity Amount shall not be available to be used.

Bail-In Action: the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

Bail-In Legislation: with respect to (a) any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, or (b) the United Kingdom, Part I of the United Kingdom Banking Act 2009 and any other law applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

Bank of America: as defined in the introductory paragraph hereof.

Bank of America Indemnitees: Bank of America and its officers, directors, employees, Affiliates, agents, advisors, attorneys, consultants, service providers and other representatives.

Bank Product: any of the following products or services extended to an Obligor or Restricted Subsidiary of an Obligor by a Lender or any of its Affiliates: (a) Cash Management Services; (b) Swaps; (c) commercial credit card and merchant card services; and (d) other banking products or services, other than Letters of Credit.

Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its Permitted Discretion with respect to Secured Bank Product Obligations.

Bankruptcy Code: Title 11 of the United States Code.

Base Rate: for any day, a per annum rate equal to the greater of (a) the Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) Term SOFR for a one month interest period as of such day, plus 1.0%; provided, that in no event shall the Base Rate be less than 1.0%.

Base Rate Loan: a Loan that bears interest based on the Base Rate.

Beneficial Ownership Certification: a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, in form and substance satisfactory to Agent.

Beneficial Ownership Regulation: as defined in 31 C.F.R. §1010.230.

Benefit Plan: any (a) employee benefit plan (as defined in ERISA) subject to Title I of ERISA, (b) plan (as defined in and subject to Section 4975 of the Code), or (c) Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such employee benefit plan or plan.

Borrowed Money: with respect to any Obligor or Subsidiary, without duplication, (a) any obligation that (i) arises from the lending of money by any Person to such Obligor or Subsidiary, (ii) is evidenced by notes, loan agreements, drafts, bonds, debentures, credit documents or similar instruments, (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business and not more than 90 days past due), or (iv) was issued or assumed as full or partial payment for Property or services; (b) Capital Leases; (c) non-contingent letter of credit reimbursement obligations; and (d) guaranties of any of the foregoing owing by another Person.

Borrower Agent: as defined in **Section 4.4**.

Borrower Materials: Borrowing Base Reports, Compliance Certificates, Notices of Borrowing, Notices of Conversion/Continuation, and other information, reports, financial statements and materials delivered by Obligors under the Loan Documents, as well as Reports and other information provided by Agent to Lenders in connection with the credit facility established by this Agreement.

Borrowers: as defined in the introductory paragraph hereof, together with any additional borrower joined following the Closing Date pursuant to **Section 10.1.9**.

Borrowing: Loans made or converted together on the same day, with the same interest option and, if applicable, Interest Period.

Borrowing Base: on any date of determination and based on the most recent Borrowing Base Report (as it may be adjusted hereunder), an amount equal to the lesser of (a) the aggregate Commitments; or (b) the sum of the Accounts Formula Amount, plus the Inventory Formula Amount, plus the Hercules Formula Amount, minus the Availability Reserve.

Borrowing Base Report: a report of the Borrowing Base, in form and substance reasonably satisfactory to Agent, by which Borrowers certify as to the calculation of the Borrowing Base.

Brigham Exploration: any of (a) Brigham Exploration Company, LLC, (b) BEXP I GP, LLC and/or (c) BEXP I, LP.

Brigham Family: collectively: (a) the lineal descendants by blood or adoption of Bud Brigham ("descendants"), and the spouses and surviving spouses of such descendants, (b) any estate, trust, guardianship, custodian or other fiduciary arrangement for the primary benefit of any one or more individuals described in clause (a) of this definition, and (c) any corporation, partnership, limited liability company or other business organization so long as (i) one or more individuals or entities described in clause (a) or (b) of this definition possess, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation, partnership, limited liability company or other business organization, and (ii) substantially all of the ownership, beneficial or other Equity Interests in such corporation, partnership, limited liability company or other business organization are owned, directly or indirectly, by one or more individuals or entities described in clause (a) or clause (b) of this definition (any such corporation, partnership, limited liability company or other business organization, the "Eligible Affiliates").

Business Day: any day except a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, North Carolina or New York City.

Capital Expenditures: for any period of determination, the sum of (a) the aggregate of all expenditures incurred by the Company and its Restricted Subsidiaries during such period for purchases of property, plant and equipment or similar items (other than repairs in the Ordinary Course of Business that are expensed as income statement items) which, in accordance with GAAP, are or should be included in the statement of cash flows of the Company and its Restricted Subsidiaries during such period, net of (b) proceeds received by the Company or its Restricted Subsidiaries from dispositions of property, plant and equipment or similar items reflected in the statement of cash flows of the Company and its Restricted Subsidiaries during such period; provided that the term "Capital Expenditures" shall not include:

(i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed from insurance proceeds or compensation or condemnation awards paid on account of a casualty or condemnation event,

(ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time,

(iii) the purchase of property, plant or equipment to the extent financed with the proceeds of dispositions of assets outside the Ordinary Course of Business,

(iv) expenditures that constitute any part of consolidated lease expense to the extent relating to operating leases,

(v) any expenditures made as payments of the consideration for a Permitted Acquisition (or Investments similar to those made for a Permitted Acquisition and Permitted Parent Entity Investments), and

(vi) expenditures to the extent the Company or any of its Restricted Subsidiaries has received reimbursement in cash from a Person that is not an Affiliate of any of the Obligors and for which neither the Company nor any of its Restricted Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person.

Capital Lease: any financing lease or lease required to be capitalized for financial reporting purposes in accordance with GAAP, subject to **Section 1.2**.

Cash Collateral: cash delivered to Agent to Cash Collateralize any Obligations, and all interest, dividends, earnings and other proceeds relating thereto.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of Obligations, in an amount equal to (a) 103% of LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including fees, expenses, indemnification obligations and Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the U.S. government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States or any state or district thereof, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by

Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within one year of the date of acquisition; and (e) shares of any money market fund that has not less than 90% of its assets invested continuously in the types of investments referred to above.

Cash Management Services: services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, blocked account, lockbox and stop payment services.

Casualty Event: means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of any Obligor.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.).

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: (a) ~~at any time prior to the consummation of an IPO Event, (i) Bud Brigham and/or the Brigham Family shall cease to have the authority, directly or indirectly, to appoint a majority of the members of the board of managers of the Company or (ii) Bud Brigham and/or the Brigham Family shall cease to own, directly or indirectly, more than 50% of the Equity Interests of the Company held, directly or indirectly, by Bud Brigham and the Brigham Family in the Company as of the Closing Date; (b) at any time after the consummation of an IPO Event,~~ any Person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended), that does not include Bud Brigham or the Brigham Family, shall at any time have acquired, beneficially or of record, direct or indirect ownership (as defined in SEC Rules 13(d)-3 and 13(d)-5 under the Securities Exchange Act of 1934, as amended) of 50% or more of the economic and/or voting interest in the Equity Interests in the Company (other than as a result of the direct or indirect acquisition by a Parent Entity of additional Equity Interests in the Company); (~~c~~b) the Company ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in all other Borrowers; or (~~d~~c) a "change of control" or similar event occurs under the Term Loan Agreement or any other Material Debt.

Claims: subject to the Legal Expenses Limitation, all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable out-of-pocket attorneys' fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or exit of Agent or any Lender) incurred by or asserted against any Indemnitee by an Obligor or other Person, relating to any (a) Loan, Letter of Credit, Loan Document, Borrower Materials or related transaction, (b) action taken or omitted in connection with this credit facility, (c) existence or perfection of Liens or realization on Collateral, (d) exercise of rights or remedies under a Loan Document or Applicable Law, (e) failure by an Obligor to perform or observe any term of a Loan Document, or (f) reliance by an Indemnitee on an electronic signature, record or Communication, in each case including all reasonable and documented out-of-pocket costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an appeal or Insolvency Proceeding), whether or not an Indemnitee or Obligor is a party.

Closing Date: as defined in **Section 6.1**.

CME: CME Group Benchmark Administration Limited.

Code: the Internal Revenue Code of 1986.

Collateral: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Commitment: for any Lender, its obligation to make Loans and to participate in LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, as hereafter modified pursuant to **Section 2.1.7** or an Assignment to which it is a party. "Commitments" means the aggregate amount of all Lenders' Commitments. As of the ~~Closing~~Increase Effective Date, the aggregate amount of the Commitments ~~is~~will be $~~75,000,000~~125,000,000 (if the Increase Effective Date occurs, and otherwise the Commitments will remain $75,000,000 until the Commitments are otherwise increased or decreased in accordance with the terms of this Agreement).

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. §1 et seq.).

Communication: any notice, request, election, representation, certificate, report, disclosure, statement, authorization, approval, consent, waiver, document, amendment or transmittal of information of any kind in connection with a Loan Document, including any Borrower Materials or Modification of a Loan Document.

Compliance Certificate: a certificate, in the form of **Exhibit B** or otherwise reasonably satisfactory to Agent, by which Obligors (a) make certain representations and warranties and (b) certify (i) compliance with **Section 10.3**, (ii) that no Default or Event of Default has occurred and is continuing, and (iii) certain financial statements.

Conforming Changes: with respect to use, administration of or conventions associated with SOFR, Term SOFR or any proposed Successor Rate, as applicable, any conforming changes to the definitions of Base Rate, SOFR, Term SOFR and Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of Business Day and U.S. Government Securities Business Day, timing of borrowing requests or prepayment, conversion or continuation notices, and length of lookback periods) as may be appropriate, in Agent's discretion, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as Agent determines is reasonably necessary in connection with the administration of any Loan Document).

Connection Income Taxes: Other Connection Taxes that are imposed on or measured by net income (however denominated) or are franchise or branch profits Taxes.

Consolidated Interest Expense: for any period of determination, total interest expense of the Company and its Restricted Subsidiaries on a consolidated basis with respect to all of the outstanding Debt of the Company and its Restricted Subsidiaries (excluding interest paid-in-kind, amortization of financing fees, and other non-cash interest expense and net of cash interest income).

Consolidated Leverage Ratio: as of any date of determination, the ratio of (a) Consolidated Total Net Debt to (b) EBITDA for the four Fiscal Quarter period most recently ended, in each case calculated based on the financial statements most recently delivered whether as Historical Financial Statements or pursuant to **Section 10.1.2(a)** or **10.1.2(b)**.

Consolidated Net Income: for any period of determination, the consolidated net income (or loss) of the Company and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP; provided, that there shall be excluded the income (or deficit) of any Person accrued prior to the date it becomes a Restricted Subsidiary or is merged into or consolidated with Company or any of its Restricted Subsidiaries. For the avoidance of doubt, Consolidated Net Income shall exclude the income or loss of Unrestricted Subsidiaries (including by equity method accounting) other than to the extent set forth in the last sentence of the definition of EBITDA.

Consolidated Net Tangible Assets: at any date of determination, the total amount of consolidated assets of the Company and its Restricted Subsidiaries on a consolidated basis (including the Sand Reserves Value) after deducting, without duplication, therefrom: (a) all current liabilities (excluding (i) any current liabilities that by their terms are extendable or renewable at the option of the obligor thereon to a time more than 12 months after the time as of which the amount thereof is being computed and (ii) current maturities of long-term debt) and (b) the value (net of any applicable reserves) of all goodwill, trade names, trademarks, patents and other like intangible assets, all as set forth, or on a pro forma basis would be set forth, on the consolidated balance sheet of the Company and its Restricted Subsidiaries on a consolidated basis for the most recently completed Fiscal Quarter, prepared in accordance with GAAP.

Consolidated Total Debt: as of any date of determination, without duplication, all of the consolidated Debt of the Company and its Restricted Subsidiaries (a) described in clauses (a), (b), (c), (d) and (e) of the definition herein of "Debt" and (b) described in clause (f) of the definition herein of "Debt" to the extent such Debt is comprised of guaranty obligations in respect of Debt of others of the type described in clause (a), (b), (c), (d) or (e) of the definition herein of "Debt", excluding, in each case, any Debt with respect to letters of credit to the extent such letters of credit have not been drawn.

Consolidated Total Net Debt: as of any date of determination, the remainder of (a) Consolidated Total Debt minus (b) the aggregate amount of all Unrestricted Cash of the Company and its Restricted Subsidiaries on such date.

Contingent Obligation: any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation ("primary obligation") of another obligor ("primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; or (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

Control: possession, directly or indirectly, of the power to direct or cause direction of a Person's management or policies, whether through the ability to exercise voting power, by contract or otherwise.

Covenant Trigger Period: the period (a) commencing on any day that (i) an Event of Default occurs, (ii) if no Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized) are outstanding, Liquidity is less than the Applicable Trigger, or (iii) if any Loan or Letter of Credit (other than Letters of Credit that have been Cash Collateralized) is outstanding, Specified Availability is less than the Applicable Trigger; and (b) continuing until, during each of the preceding 30 consecutive days, (i) no Event of Default has existed, (ii) in the case of a Covenant Trigger Period arising as a result of clause (a)(ii) above, Liquidity has been more than the Applicable Trigger at all times, and (iii) in the case of a Covenant Trigger Period arising as a result of clause (a)(iii) above, Specified Availability has been more than the Applicable Trigger at all times in each case during such 30 day period.

Covered Entity: (a) a "covered entity," as defined and interpreted in accordance with 12 C.F.R. §252.82(b); (b) a "covered bank," as defined in and interpreted in accordance with 12 C.F.R. §47.3(b); or (c) a "covered FSI," as defined in and interpreted in accordance with 12 C.F.R. §382.2(b).

Credit Card Agreements: with respect to the Obligors, all agreements now or hereafter entered into by any Obligor with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, including, without limitation, the agreements set forth on **Schedule 9.1.27**.

Credit Card Issuer: any Person (other than any Obligor) who issues or whose members issue credit or debit cards, including, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., VISA, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards.

Credit Card Processor: with respect to each Obligor, any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of such Obligor's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

Credit Card Receivables Account: one or more deposit accounts established in connection with a Credit Card Agreement and which is maintained in accordance with **Section 10.1.12**.

Cure Amount: as defined in **Section 11.6.1**.

Cure Deadline: as defined in **Section 11.6.1**.

Cure Right: as defined in **Section 11.6.1**.

Daily Simple SOFR: with respect to any applicable determination date, the secured overnight financing rate published on the FRBNY website (or any successor source satisfactory to Agent).

Debt: as applied to any Person, without duplication, (a) all Borrowed Money; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services; (d) all obligations of such Person under Capital Leases, conditional sales or title retention agreements; (e) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person (provided, however, if such Person has not assumed or otherwise become liable in respect of such Debt, such Debt shall be deemed to be in an amount equal to the Fair Market Value of the property subject to such Lien at the time of determination); (f) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person or in respect of which such Person otherwise has a Contingent Obligation to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (g) any Debt (as defined in the other clauses of this definition) of a partnership for which such Person is liable either by agreement, by operation of law or by a governmental requirement but only to the extent of such liability; (h) obligations of such Person with respect to Disqualified Equity Interests and (i) all net obligations of such Person in respect of any Swaps; provided, however, that "Debt" does not include (i) obligations with respect to surety or performance bonds and similar instruments entered into in the Ordinary Course of Business in connection with the operation of the Sand Mines or with respect to appeal bonds, (ii) accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the Ordinary Course of Business which are not greater than 90 days past the date of invoice or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP, or (iii) endorsements of negotiable instruments for collection. The Debt of a Person shall include any recourse Debt of any partnership in which such Person is a general partner or joint venturer. The Debt of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP.

Debtor Relief Laws: the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate or fee (including margin) otherwise applicable thereto.

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations hereunder, and such failure is not cured within two Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or under any other credit facility, or has made a public statement to that effect; (c) has failed, within three Business Days following request by Agent or any Borrower, to confirm in a manner satisfactory to Agent and Borrowers that such Lender will comply with its funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or Bail-In Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account Control Agreement: control agreement reasonably satisfactory to Agent executed by an institution maintaining a Deposit Account for an Obligor, to perfect Agent's Lien on such account.

Designated Non-Cash Consideration: the Fair Market Value of non-cash or Cash Equivalent consideration received by any Obligor or its Restricted Subsidiaries in connection with a sale, disposition or transfer pursuant to **Section 10.2.5(n)** that is designated as "Designated Non-Cash Consideration" pursuant to a certificate of a Senior Officer of Borrower Agent delivered to Agent, setting forth the basis of such valuation.

Dilution Percent: the percent, determined for Obligors' most recent Fiscal Quarter, equal to (a) bad debt write-downs or write-offs, discounts, returns, credits, credit memos and other dilutive items with respect to Accounts, divided by (b) gross sales.

Dilution Reserve: a reserve determined by Agent in its Permitted Discretion to the extent that the Dilution Percent exceeds 2.5%.

Disposition: the sale, transfer, license, lease, consignment or other disposition (in one transaction, a series of transactions or otherwise) of property of a Person, including a sale-leaseback transaction, synthetic lease, issuance of Equity Interests by a subsidiary, Division, or sale, assignment, transfer or other disposal, with or without recourse, of any notes, accounts receivable or related rights.

Disqualified Equity Interests: any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Equity Interests which would not constitute Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to 91 days after the Termination Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt or (ii) any Equity Interests referred to in clause (a) above, in each case at any time on or prior to 91 days after the Termination Date, or (c) contains any mandatory repurchase obligation which may come into effect prior to Full Payment of all Obligations; provided, that any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the 91 days after the Termination Date shall not constitute Disqualified Equity Interests if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the Full Payment of the Obligations.

Distribution: any (a) declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); or (b) purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

Division: the division of assets, liabilities and/or obligations of a Person among two or more Persons (whether pursuant to a "plan of division" or similar arrangement, including under Texas law with respect to a divisive merger), which may or may not include the original dividing Person and pursuant to which the original dividing Person may or may not survive.

Dollars: lawful money of the United States.

Dominion Account: a special account established by Obligors at Bank of America or another bank acceptable to Agent, over which Agent has exclusive or springing control for withdrawal purposes; provided, that such Deposit Account is a collection account only and not also an operating or disbursement account.

EBITDA: for any fiscal period and determined on a consolidated basis for Obligors and Restricted Subsidiaries in accordance with GAAP, the result of (a) Consolidated Net Income, plus (b) without duplication, the sum of the following to the extent deducted from Consolidated Net Income: (i) Consolidated Interest Expense, plus (ii) Taxes based on income, profits or capital gains thereto, including any franchise Taxes, margin Taxes and foreign withholding Taxes paid or accrued during such period, including penalties and interest related to such Taxes or arising from any Tax examination, plus (iii) depreciation, amortization, depletion and accretion expense, plus (iv) losses arising from the sale of capital assets, plus (v) any documented out-of-pocket fees, costs and expenses incurred in connection with negotiating and documenting the Loan Documents and any required amendments to the Term Loan Documents (whether occurring on or prior to the Closing Date), plus (vi) stock-based compensation expense and other non-cash items, including any non-cash losses or negative adjustments under ASC 815 as a result of changes in the fair market value of derivatives or otherwise resulting from fair value accounting required under GAAP (unless representing a reserve for a cash item in a future period), plus (vii) reasonable and customary fees, expenses and costs relating to any IPO Event, Permitted Parent Entity Investment, the Hercules Acquisition, Permitted Acquisition (including the determination of any related earnout and similar obligations in connection with a Permitted Acquisition), Disposition outside of the Ordinary Course of Business, Investments (other than Investments in Unrestricted Subsidiaries), equity issuances and debt issuances (including refinancings) permitted under the Loan Documents (in each case whether or not consummated), plus (viii) fees, expenses and costs incurred during such period in connection with any amendment, modification, consent or waiver (whether or not consummated) of or under the Loan Documents and/or the Term Loan Documents, plus (ix) any extraordinary, unusual or non-recurring items, and minus (c) without duplication, the sum of the following to the extent included in Consolidated Net Income: (i) gains arising from the sale of capital assets, plus (ii) any extraordinary, unusual or non-recurring gains, plus (iii) the amount of all non-cash items increasing net income for such period, including any non-cash gains or positive adjustments under ASC 815 as a result of changes in the fair market value of derivatives or otherwise resulting from fair value accounting required under GAAP (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for a potential cash item in any prior period). For the purposes of calculating EBITDA for any period, if at any time during such period, any Obligor or any Restricted Subsidiary of an Obligor shall have made any Material Acquisition or Material Disposition, then EBITDA for such period shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to such Material Acquisition or Material Disposition, are factually supportable, and are expected to have a continuing impact, in each case as determined by the Obligors and approved by Agent in its reasonable discretion) or in such other manner acceptable to Borrower Agent and Agent as if any such Material Acquisition, Material Disposition or adjustment occurred on the first day of such period. For the avoidance of doubt, EBITDA shall exclude the results of Unrestricted Subsidiaries (including by equity method accounting) other than an amount equal to, but not less than zero, the amount of cash dividends or distributions received by the Company and its Restricted Subsidiaries from Unrestricted Subsidiaries during the applicable period minus the amount of cash investments received by the Unrestricted Subsidiaries from the Company and its Restricted Subsidiaries during such period; provided, that cash proceeds attributable to any incurrence of Debt or issuance of (or contribution to) Equity Interests will not be included in any calculation of investments, dividends, or distributions referenced above.

EEA Financial Institution: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses and is subject to consolidated supervision with its parent.

EEA Member Country: any of the member states of the European Union, Iceland, Liechtenstein and Norway.

EEA Resolution Authority: any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

Electronic Copy: as defined in **Section 14.8**.

Electronic Record and Electronic Signature: as defined in 15 U.S.C. §7006.

Eligible Account: an Account owing to an Obligor that arises in the Ordinary Course of Business from the sale of Sand Inventory or rendition of services, is payable in Dollars, and has been invoiced. Notwithstanding the foregoing, no Account shall be an Eligible Account if (a) (i) it is unpaid for more than 60 days after the original due date or (ii) the Account Debtor has failed to pay (A) if the payment terms offered to such Account Debtor is 60 days or less, within 120 days of original invoice date, or (B) otherwise, within 90 days of the original invoice date, in each case, unless the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent; (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause unless the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent; (c) when aggregated with other Accounts owing by the Account Debtor and its Affiliates, it exceeds (i) in the case of an Account Debtor that is not an Investment Grade Account Debtor, 20% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor from time to time) or (ii) in the case of an Account Debtor that is an Investment Grade Account Debtor, 35% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor from time to time); (d) it does not conform with a covenant or representation herein; (e) it is owing by a creditor or supplier, or is otherwise subject to an asserted or presently existing offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, is not Solvent (provided, that Agent may, in its Permitted Discretion, include Accounts from such Account Debtors if, and to the extent that, (i) such Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, (ii) such Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent or (iii) such Account is an Account that was created on a post-petition basis of an Account Debtor that is a debtor in a Chapter 11 Insolvency Proceeding under the U.S. federal bankruptcy law that has "debtor in possession" financing in effect (or other court orders in effect) that is reasonably satisfactory to Agent and Agent shall have reasonably determined that the timely payment and collection of such Account will not be impaired), or is the target of a Sanction; or the applicable Obligor is not able to bring suit or enforce remedies against the Account Debtor through judicial process; (g) the Account Debtor is organized or has its principal offices or assets outside the United States or Canada, unless the Account is supported by a letter of credit (delivered to and directly drawable by Agent) or credit insurance satisfactory to Agent in all respects (in Agent's Permitted Discretion) and assigned to it; provided that this **clause (g)** shall not exclude any Accounts of (x) any Investment Grade Account Debtor organized or headquartered in the United Kingdom, Austria, Belgium, Canada, Denmark, Finland, Germany, Holland, Ireland, Luxembourg, Norway, Sweden, or Switzerland (or any other country requested to be included in this list from time to time by the Borrower Agent and approved in writing by Agent in its Permitted Discretion), in each case, which has significant assets and operations in the United States (as

reasonably determined by Agent) or (y) any Person listed on **Schedule 1.1(a)**, as such list may be supplemented by the Borrower Agent from time to time in writing to Agent and agreed to in writing by Agent; (h) it is owing by a Governmental Authority, unless the Account Debtor is (i) the United States or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the federal Assignment of Claims Act or (ii) any state (or political subdivision thereof) and the Obligors have complied, to the reasonable satisfaction of Agent, with any applicable state legislation similar to the federal Assignment of Claims Act for the creation and perfection of security interests in such Account, if applicable, and Agent shall have determined that no immunity or other impediment exists to the enforcement of such Account; (i) it is not subject to a duly perfected, first priority Lien in favor of Agent, or is subject to any other Lien (other than (i) the subordinate Lien in favor of the Term Loan ~~Lender~~Agent permitted by **Section 10.2.2(b)** and (ii) other Permitted Liens that do not have priority over the Lien in favor of Agent); (j) the goods giving rise to it have not been delivered to the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale; (k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (l) its payment has been extended or the Account Debtor has made a partial payment; (m) it arises from a sale to an Affiliate (other than Eligible Affiliate Accounts), from a sale on a cash-on-delivery, bill-and-hold, sale or return, sale on approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; (o) it is a credit card sale or an amount due from a Credit Card Issuer or Credit Card Processor; (p) ~~it is owed by an Account Debtor where the proceeds of any Accounts of such Account Debtor are, or such Account Debtor has made, Pass-Through Customer Prepayments up to the lesser of (i) the amount of such Pass-Through Customer Prepayments and (ii) Eligible Accounts owed from such Account Debtor~~ [reserved]; (q) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof; (r) it is a comingled invoice with a Person that is not an Obligor (it being understood that an invoice that is otherwise payable solely to an Obligor shall not be deemed ineligible under this clause (r) as a result of any separate obligation of Obligors to pay any Unrestricted Subsidiary for services rendered by such Unrestricted Subsidiary for, or on behalf of, an Obligor in the Ordinary Course of Business); or (s) Agent determines that such Account is otherwise ineligible for inclusion in the Borrowing Base in its Permitted Discretion. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 90 days old will be excluded.

Eligible Affiliate Accounts: Accounts owed to an Obligor by Eligible Affiliates and/or Brigham Exploration; provided that (a) such Accounts are on arm's-length terms and arise out of the Ordinary Course of Business of such Obligor and any such Eligible Affiliate or Brigham Exploration, as applicable, and are administered in accordance with the customary collection and credit policies of the Obligors and (b) the aggregate amount of all such Accounts included in the calculation of Eligible Accounts shall not exceed 5.0% of Eligible Accounts.

Eligible Affiliates: as defined in the definition of "Brigham Family"; provided, that no Unrestricted Subsidiary may be an Eligible Affiliate.

Eligible Assignee: (a) a Lender, Affiliate of a Lender or Approved Fund that satisfies **Section 12.13**; (b) an assignee approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed, and shall be deemed given if no objection is made within 10 Business Days after notice of the proposed assignment) and Agent; or (c) during the continuance of an Event of Default under **Section 11.1(a)**, **(i)**, **(j)** or **(k)**, any Person acceptable to Agent in its discretion.

Eligible Inventory: Sand Inventory owned by an Obligor. Notwithstanding the foregoing, no Inventory shall be Eligible Inventory unless it (a) is finished goods, work-in-process or raw materials, and not packaging or shipping materials, labels, samples, display items, bags, replacement parts or manufacturing supplies; (b) is not held on consignment, nor subject to any deposit or down payment; (c) is in saleable condition and is not unfit for sale; (d) is not slow-moving, perishable, obsolete or unmerchantable, and does not constitute returned or repossessed goods; (e) meets all standards imposed by any Governmental Authority in all material respects, has not been acquired from a Person that is the target of a Sanction, and does not constitute hazardous materials under any applicable Environmental Law; (f) conforms with the covenants and representations herein in all material respects; (g) is subject to Agent's duly perfected, first priority Lien, and no other Lien (other than the subordinate Lien in favor of the Term Loan ~~Lender~~Agent permitted by **Section 10.2.2(b)** and other Permitted Liens that do not have priority over Agent's Lien); (h) is within the continental United States, is not in transit except between locations of Obligors, and is not consigned to any Person; (i) is not subject to any warehouse receipt or negotiable Document; (j) is not subject to any License or other arrangement that restricts such Obligor's or Agent's right to dispose of such Inventory, unless Agent has received an appropriate Lien Waiver; (k) is not located on leased premises or in the possession of a customer, warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate Rent and Charges Reserve has been established; (l) is reflected in the details of a current perpetual inventory report; and (m) is otherwise determined by Agent in its Permitted Discretion to be eligible for inclusion in the Borrowing Base.

Eligible Unbilled Account: an Account owing to an Obligor that would otherwise qualify as an Eligible Account except that such Account has not yet been billed to the applicable Account Debtor; provided that an Account shall cease to be an Eligible Unbilled Account upon the earlier of (a) the date such Account is billed to the applicable Account Debtor and (b) 30 days after the goods giving rise to such Account have been delivered to the applicable Account Debtor or the applicable service has been performed.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

Environmental Laws: Applicable Laws (including programs, permits and guidance promulgated by regulators) relating to public health (other than occupational safety and health regulated by OSHA) or the protection or pollution of the environment, including the Resource Conservation and Recovery Act (42 U.S.C. §§6991-6991i), Clean Water Act (33 U.S.C. §1251 et seq.) and CERCLA.

Environmental Permit: any permit, registration, license, approval, consent, exemption, variance, or other authorization required under or issued pursuant to applicable Environmental Laws.

Environmental Release: a release as defined in CERCLA or under any other Environmental Law.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest, including without limitation, warrants, options, or other rights to purchase or acquire, and securities convertible into or exchangeable for, an equity security or ownership interest.

ERISA: the Employee Retirement Income Security Act of 1974.

ERISA Affiliate: any trade or business (whether or not incorporated) under common control with an Obligor within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

ERISA Event: (a) a Reportable Event with respect to a Pension Plan; (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) complete or partial withdrawal of an Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is

insolvent; (d) filing of a notice of intent to terminate, treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or institution of proceedings by the PBGC to terminate a Pension Plan; (e) determination that a Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA; (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan; (g) imposition of any liability on an Obligor or ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; or (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

Event of Default: as defined in **Section 11**.

Exam Trigger Period: the period (a) commencing on any day that (i) an Event of Default occurs or (ii)Specified Availability is less than the Applicable Trigger for five consecutive Business Days; and (b) continuing until, during each of the preceding 30 consecutive days, no Event of Default has existed and Specified Availability has been more than the Applicable Trigger at all times, in each case during such 30 day period.

Excepted Liens: (a) Liens for Taxes, assessments or other governmental charges or levies which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens in connection with workers' compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) landlords' liens, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising in the Ordinary Course of Business or incident to the excavation, development, operation and maintenance of the Sand Mines or the Sand Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) contractual Liens which arise in the Ordinary Course of Business under operating agreements, joint venture agreements, mineral leases, contracts for the sale, transportation or exchange of sand or minerals, area of mutual interest agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, seismic or other geophysical permits or agreements, and other similar agreements which are usual and customary in the sand extracting, producing, processing, developing and/or marketing business and are for claims which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (e) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution; provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Obligors to provide collateral to the depository institution; (f) Liens in favor of the depository bank arising under documentation governing deposit accounts or in any Deposit Account Control Agreement or Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC, which Liens secure the payment of returned items, settlement item amounts, bank fees, or similar items or fees; (g) Immaterial Title Deficiencies and easements, restrictions, servitudes, permits, conditions, covenants, exceptions, reservations, zoning and land use requirements in any Property of the Borrowers or any of the other Obligors for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines and other means of ingress and egress for the removal of gas, oil, coal, other minerals or sand or timber, and other like and/or usual and customary purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, and leases or subleases of real property and any interest or title of a lessee or sublessee under any such lease or sublease, in each case, that do not secure any Debt and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrowers or any of the other Obligors or materially impair the value of such Property subject thereto; (h) Liens on cash or securities pledged to secure (either directly, or indirectly by securing letters of credit that in turn secure) performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred in the Ordinary Course of Business; (i) title and ownership interests of lessors (including sub-lessors) of Property leased by such lessors to any Obligor or any Restricted Subsidiary of any Obligor, Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the applicable Obligor's or any Restricted Subsidiary's leasehold interests may be subject or subordinate, in each case whether or not evidenced by UCC financing statement filings or other documents of record, provided that such Liens do not secure Debt of any Obligor or its Restricted Subsidiaries and do not encumber Property of any Obligor or its Restricted Subsidiaries other than the Property that is the subject of such leases and items located thereon; provided, further, that any such Lien referred to in this clause does not materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by the applicable Obligor or any Restricted Subsidiary of any Obligor or materially impair the value of such Property subject thereto; (j) judgment and attachment Liens not giving rise to an Event of Default; provided that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; (k) a Lien existing on any Property prior to the acquisition thereof by any Obligor or any Subsidiary or existing on any Property of any Person that becomes an Obligor or a Subsidiary of any Obligor after the date hereof prior to the time such Person becomes an Obligor or a Subsidiary of any Obligor; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming an Obligor or a Subsidiary of an Obligor, as applicable, (ii) such Lien shall not apply to any other Property of such Obligor or Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes an Obligor or Subsidiary, as applicable, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof and (l) nonexclusive licenses of intellectual property rights granted in the Ordinary Course of Business, which in the aggregate do not materially impair the use of any Property owned by any of the Obligors or their Restricted Subsidiaries for the purposes of which such Property is held by any of the Obligors or their Restricted Subsidiaries or materially impair the value of such Property subject thereto; provided, that (x) Liens described in clauses (a) through (e) shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the Lien granted in favor of Agent for the benefit of the Secured Parties is to be hereby implied or expressed by the permitted existence of such Excepted Liens and (y) the term "Excepted Liens" shall not include any Lien securing Debt for Borrowed Money other than the Obligations.

Excluded Account: any Deposit Account (a) exclusively used for payroll, payroll taxes or employee benefits, (b) constituting zero-balance disbursement accounts through which disbursements are made and settled on a daily basis with no uninvested balance remaining overnight, (c) exclusively used for escrow arrangements, fiduciary arrangements, or trust arrangements, in each case for the benefit of unaffiliated third parties and (d) other accounts containing not more than $500,000 on deposit therein at any time (but no more than $2,000,000 for all such accounts in the aggregate); provided, that so long as the Term Loan Debt is outstanding, no Deposit Account described above shall constitute an Excluded Account hereunder unless it also constitutes an "Excluded Account" under and as defined in the applicable Term Loan Documents; provided, further that in no event shall a Credit Card Receivables Account be an "Excluded Account".

Excluded Property: each of the following: (a) Equity Interests of (i) any Foreign Subsidiary in excess of 65% of the voting stock of such Foreign Subsidiary, (ii) any

FSHCO in excess of 65% of the voting stock of such FSHCO, (iii) any Subsidiary of a Foreign Subsidiary and (iv) any Unrestricted Subsidiary, (b) any Obligor's right, title or interest in any lease, license or agreement (other than customer contracts, customer leases or work orders, Chattel Paper and Accounts) existing on the Closing Date if and to the extent that a security interest therein is prohibited by or in violation of a term, provision or condition of any such lease, license or agreement (unless in each case, such term, provision or condition has been waived or would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), provided, however, that the foregoing shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the contractual prohibition shall no longer be applicable and to the extent severable, such security interest shall attach immediately to any portion of such lease, license or agreement not subject to the prohibitions specified above, provided, further, that Excluded Property shall not include any proceeds of any such lease, license or agreement or any goodwill of Obligors' business associated therewith or attributable thereto, (c) Deposit Accounts described in clauses (a) and (c) of the definition of "Excluded Accounts", (d) Property owned by any Obligor on the date hereof or hereafter acquired that is subject to a Lien permitted to be incurred pursuant to **Section 10.2.2(c)**, for so long as the contract or other agreement in which such Lien is granted (or the documentation governing such Lien or the obligations secured thereby) validly prohibits the creation of any other Lien on such Property (and, in the case of Property hereafter acquired, so long as such prohibition was not entered into in contemplation of such acquisition) (unless in each case, such prohibition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), (e) applications filed in the United States Patent and Trademark Office to register trademarks or service marks on the basis of any Obligor's "intent to use" such trademarks or service marks unless and until the filing of a "Statement of Use" or "Amendment to Allege Use" has been filed and accepted, whereupon such applications shall be automatically subject to the Lien granted herein and deemed included in the Collateral, (f) vehicles and other assets subject to certificates of title (except to the extent the security interest in such assets can be perfected by the filing of an "all assets" financing statement), (g) Property with respect to which the cost to the Obligors of pledging such Property and perfecting Agent's Lien thereon is excessive (as determined by Agent in its reasonable discretion and confirmed by it in writing) in relation to the benefits to the Secured Parties of the security to be afforded thereby, (h) Real Estate (other than fixtures and as-extracted collateral) that is not required to be subject to a Mortgage pursuant to **Section 7.4**, and (i) any Property to the extent that such grant of a security interest is prohibited by any Applicable Law or requires a consent not obtained of any Governmental Authority pursuant to such Applicable Law (unless in each case, such Applicable Law, term, provision or condition has been waived or would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity); provided, that, notwithstanding the foregoing in each case, "Excluded Property" shall not include any proceeds, products, substitutions or replacements of Excluded Property, including monies due or to become due to an Obligor (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an "eligible contract participant" as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a hedging agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Taxes: (a) Taxes imposed on or measured by a Recipient's net income (however denominated), franchise Taxes and branch profits Taxes (i) as a result of such Recipient being organized under the laws of, or having its principal office or applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Loan or Commitment pursuant to a law in effect on the date on which the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless such Taxes were payable pursuant to**Section 5.8** to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.9**; and (d) withholding Taxes imposed pursuant to FATCA.

Extraordinary Expenses: all documented out-of-pocket costs, expenses or advances incurred by any Agent Indemnitee during an Event of Default or Obligor's Insolvency Proceeding, including those relating to any (a) audit, inspection, repossession, storage, repair, appraisal, insurance, processing, preparation or advertising for sale, sale, collection, or other preservation of or realization upon Collateral; (b) action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any creditor(s) of an Obligor or any other Person) in any way relating to any Collateral, Agent's Liens, Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) Enforcement Action or exercise of any rights or remedies in, or the monitoring of, an Insolvency Proceeding; (d) settlement or satisfaction of Taxes, charges or Liens with respect to any Collateral; and (e) negotiation and documentation of any Modification, workout, restructuring, forbearance, liquidation or collection with respect to any Loan Document, Collateral or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage and insurance costs, permit fees, utility expenses, legal and accounting fees and expenses, appraisal costs, brokers' and auctioneers' commissions, environmental study costs, wages and salaries paid to employees of any Obligor or independent contractors in liquidating Collateral, and travel expenses.

Fair Market Value: with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset.

FATCA: Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreement, treaty or convention among Governmental Authorities (and related fiscal or regulatory legislation, or related official rules or practices) entered into in connection with implementing the foregoing.

Federal Funds Rate: for any day, the per annum rate calculated by FRBNY based on such day's federal funds transactions by depository institutions (as determined in such manner as FRBNY shall set forth on its public website from time to time) and published on the next Business Day by FRBNY as the federal funds effective rate; provided, that in no event shall the Federal Funds Rate be less than zero.

Financed Capital Expenditures: with respect to the Company and its Restricted Subsidiaries and for any period, Capital Expenditures of the Company and its Restricted Subsidiaries during such period that are financed with, without duplication, (a) the net proceeds of any incurrence of Debt (other than Loans) or (b) the proceeds of any issuance of Equity Interests (other than Disqualified Equity Interests or any other issuance of Equity Interests which increases any available basket hereunder). For the period from the Closing Date through and including June 30, 2025 (and, for the avoidance of doubt, but subject to the proviso below, all Fiscal Quarters ending during such period) (such period, the "CapEx Period"), the Company may deem Unfinanced Capital Expenditures made or incurred during the CapEx Period in an aggregate amount of up to the lesser of (i) $150,000,000 and (ii) the actual amount of Unfinanced Capital Expenditures made in support of the Dune Express project during the CapEx Period, to constitute Financed Capital Expenditures; provided, that for the four consecutive Fiscal Quarter period ending September 30, 2025 and any four consecutive Fiscal Quarter period ending thereafter, no Unfinanced Capital Expenditures may be deemed to be Financed Capital Expenditures.

First Amendment: that certain First Amendment to Loan, Security and Guaranty Agreement dated as of the First Amendment Effective Date, among the Obligors,

Agent and the Lenders.

First Amendment Effective Date: February 26, 2024.

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Obligors and Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

Fixed Charge Coverage Ratio: as of any date of determination, the ratio, determined on a consolidated basis for the Obligors and their Restricted Subsidiaries for the most recent four Fiscal Quarter period ended on or prior to such date for which financial statements have been delivered whether as Historical Financial Statements or pursuant to **Section 10.1.2(a)** or **10.1.2(b)**, of (a) EBITDA minus Unfinanced Capital Expenditures and cash Taxes of the Obligors and their Restricted Subsidiaries (including Permitted Tax Distributions) paid or required to be paid during such period, to (b) Fixed Charges. In the event that EBITDA is being calculated on a pro forma basis as a result of any Material Acquisition or Material Disposition during the relevant period, Unfinanced Capital Expenditures, cash Taxes and Fixed Charges shall also be determined on a pro forma basis for such Material Acquisition or Material Disposition, as applicable, by the Borrower Agent in good faith and approved by Agent in its reasonable discretion.

Fixed Charges: the sum of Consolidated Interest Expense, scheduled principal payments made on Borrowed Money (other than the Loans), and Distributions made in cash (excluding Permitted Tax Distributions and other than Distributions solely among Obligors).

FLSA: the Fair Labor Standards Act of 1938.

Flood Laws: the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973 and related laws.

Foreign Lender: any Lender that is not a U.S. Person.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary that is a "controlled foreign corporation" under Section 957 of the Code.

FRBNY: the Federal Reserve Bank of New York.

Fronting Exposure: a Defaulting Lender's interest in LC Obligations, Swingline Loans and Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

FSHCO: any Subsidiary substantially all of whose assets consist of Equity Interests or Debt of one or more direct or indirect Foreign Subsidiaries.

Full Payment: with respect to any Obligations, (a) other than with respect to LC Obligations described in clause (b) of the definition thereof and Secured Bank Product Obligations, the full cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); (b) with respect to LC Obligations described in clause (b) of the definition thereof, the Cash Collateralization thereof (or delivery of standby letter(s) of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral); (c) if such Obligations consist of indemnification or contingent obligations for which a claim has been made or asserted, the Cash Collateralization thereof or other arrangements reasonably acceptable to the Agent; and (d) with respect to Secured Bank Product Obligations, the termination thereof and full cash payment of all amounts thereof that are then due and payable (other than Secured Bank Products allowed to remain outstanding by Bank Product providers).

Full Payment of the Obligations or Full Payment of all Obligations: Full Payment of all Obligations has occurred and all Commitments have been terminated.

GAAP: generally accepted accounting principles in effect in the United States from time to time, subject to **Section 1.2**.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

Guarantor Payment: as defined in **Section 5.10.3**.

Guarantors: each Person that guarantees payment or performance of Obligations. As of the ~~Closing~~First Amendment Effective Date, the Guarantors include each Borrower (in respect of the obligations of the other Borrowers), Atlas Sand Employee Company, LLC, Atlas Sand Employee Holding Company, LLC, Atlas Sand Construction, LLC, Atlas Construction Employee Company, LLC, Fountainhead Logistics Employee Company, LLC, ~~and~~ Fountainhead Logistics, LLC, Fountainhead Transportation Services, LLC, OLC Kermit, LLC, OLC Monahans, LLC, Atlas OLC Employee Company, LLC, and Fountainhead Equipment Leasing, LLC.

Guaranty: each guaranty agreement executed by a Guarantor in favor of Agent, including this Agreement.

Hazardous Material: any substance regulated or as to which liability might arise under any Environmental Law, or any other Applicable Law related to pollution or protection of the environment or human health through exposure to the environment, including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of "hazardous substance," "hazardous material," "hazardous waste," "solid waste," "toxic waste," "extremely hazardous substance," "toxic substance," "contaminant," "pollutant," or words of similar meaning or import found in any applicable Environmental Law; (b) hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes.

Hercules Acquisition: the direct or indirect Acquisition by the Company of substantially all of the assets (other than Excluded Assets (as defined in the Hercules

Acquisition Agreement)) of Hi-Crush Inc., a Delaware corporation, in accordance with the terms of the Hercules Acquisition Agreement.

Hercules Acquisition Agreement: that certain Agreement and Plan of Merger dated as of the First Amendment Effective Date, among Atlas Energy Solutions, Inc., the Company, certain Subsidiaries of the Company, Hi-Crush Inc., the stockholders of Hi-Crush Inc. and the other Persons named therein.

Hercules Assets: the assets directly or indirectly acquired by the Company pursuant to the Hercules Acquisition.

Hercules Formula Amount: on and following the Increase Effective Date with respect to Eligible Accounts and Eligible Unbilled Accounts that are Hercules Assets (including Accounts derived from the Hercules Assets following the Increase Effective Date (collectively, "Hercules Accounts")), the sum of:

(a) 80% of the Value of such Eligible Accounts, plus

(b) the lesser of (i) 50% of the Value of such Eligible Unbilled Accounts and (ii) 15% of the Hercules Formula Amount;

provided, that, (i) the Hercules Formula Amount may not exceed 50% of the sum of the Accounts Formula Amount, the Inventory Formula Amount and the Hercules Formula Amount (prior to giving effect to the foregoing 50% limitation), (ii) from and after the date that Agent receives a reasonably satisfactory field examination with respect to the Hercules Accounts, the value of Hercules Accounts for purposes of the Borrowing Base shall be determined in accordance with the definition of Accounts Formula Amount, and (iii) from and after the Hercules Formula Termination Date, the Hercules Formula Amount shall be $0. For the avoidance of doubt, (A) Hercules Accounts may not be included in the Accounts Formula Amount until completion by Agent of a reasonably satisfactory field exam with respect to the Hercules Accounts, which Agent shall use commercially reasonable efforts to cause to be completed promptly following the Increase Effective Date, and (B) no Inventory relating to the Hercules Assets may be eligible for inclusion in the Borrowing Base until completion of a field exam and appraisal with respect to the Hercules Assets, which Agent shall use commercially reasonable efforts to cause to be completed promptly following the Increase Effective Date.

Hercules Formula Termination Date: the date that is the earlier of (a) the date that a satisfactory (determined in Agent's Permitted Discretion) field examination with respect to the Hercules Assets is received by Agent and (b) the date that is 90 days following the Increase Effective Date.

Hercules Intercreditor Agreement: that certain intercreditor agreement in substantially the form attached to the Hercules Acquisition Agreement on the First Amendment Effective Date or otherwise reasonably satisfactory to Agent, among the Company, Hi-Crush Permian Sand LLC, Agent, Term Loan Agent and Hercules Note Agent, pursuant to which, among other things, (a) Hercules Note Agent agrees to provide Agent with certain access rights to the Hercules Assets and (b) Agent subordinates its Lien on the Real Estate (other than as-extracted collateral) securing the Hercules Seller Note.

Hercules Note Agent: U.S. Bank Trust Company, National Association and its successors and assigns and any replacement administrative agent or collateral agent with respect to the Hercules Seller Note.

Hercules Note Documents: the Hercules Seller Note, the Hercules Seller Mortgage and the other "Note Documents" or similar term under (and as defined in) the Hercules Seller Note.

Hercules Seller Mortgage: that certain Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases dated as of the date of the Hercules Acquisition in substantially the form attached to the Hercules Acquisition Agreement on the First Amendment Effective Date or otherwise reasonably satisfactory to Agent, from Hi-Crush Permian Sand LLC for the benefit of Hercules Note Agent.

Hercules Seller Note: that certain Secured Seller Note dated as of the date of the Hercules Acquisition in substantially the form attached to the Hercules Acquisition Agreement on the First Amendment Effective Date or otherwise reasonably satisfactory to Agent, by the Company in favor of Hercules Note Agent in the original principal amount of up to $125,000,000, as amended, restated or otherwise modified from time to time (subject to **Section 10.2.16**).

Hercules Seller Note Reserve: a reserve in an amount not to exceed, at any time of determination, the outstanding principal balance and accrued and unpaid interest on the Hercules Seller Note at such time, which may be implemented by Agent beginning on the date that is 91 days prior to the maturity date of the Hercules Seller Note if at such time or at any time thereafter until the Hercules Seller Note is paid in full Borrowers fail to maintain at least $225,000,000 of Liquidity. For purposes of this definition, Liquidity shall be determined based upon the Liquidity Certificate most recently delivered pursuant to **Section 10.1.2(n)**; provided that Agent may impose the Hercules Seller Note Reserve if Borrowers fail to timely deliver any Liquidity Certificate in accordance with **Section 10.1.2(n)**.

Historical Financial Statements: as defined in **Section 9.1.4**.

Immaterial Title Deficiencies: minor defects or deficiencies in title which do not diminish by more than 2.0% the aggregate value of the Sand Properties.

Increase Effective Date: as defined in the First Amendment.

Indemnified Taxes: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment of an Obligation (excluding any Secured Bank Product Obligation); and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that an Obligor's or Restricted Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Intercreditor Agreement: that certain Second Amended and Restated ABL/Term Intercreditor Agreement dated as of the Closing Date, among each Obligor from time to time party thereto, Agent, as the ABL Agent, and the Term Loan ~~Lender~~Agent, as the Term Representative, as the same may be amended, restated, supplemented or otherwise modified from time to time (including by that certain Reaffirmation of Intercreditor Agreement dated as of July 31, 2023)

Interest Payment Date: (a) for each Term SOFR Loan, the last day of the applicable Interest Period and, if the Interest Period is more than three months, each three month anniversary of the beginning of the Interest Period; and (b) for all other Loans, the first day of each calendar quarter.

Interest Period: as defined in **Section 3.1.3**.

Inventory: as defined in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in an Obligor's business (but excluding Equipment).

Inventory Formula Amount: the least of (i) 70% of the Value of Eligible Inventory; (ii) 85% of the NOLV Percentage of the Value of Eligible Inventory; or (iii) 20% of the Borrowing Base (without giving effect to clause (a) of the definition therefor).

Inventory Reserve: reserves established by Agent in its Permitted Discretion to reflect factors that may negatively impact the Value of Inventory, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

Investment: an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests or Debt of a Person, or an advance, loan or capital contribution to or other investment in a Person, including any Contingent Obligation in respect of Debt of another Person.

Investment Grade Account Debtor: any Account Debtor that has a long term issuer rating of no less than Baa3 from Moody's and BBB- from S&P.

IP Assignment: a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Agent, as security for any Obligations.

IPO Event: the initial public offering and sale of common stock of Atlas Energy Solutions Inc. (or~~any other Person that directly or indirectly owns a majority of the outstanding common Equity Interests of the Company~~its predecessor issuer) pursuant to an effective registration statement filed with the SEC under the Securities Act, which offering and sale occurred on or about March 9, 2023.

IRS: the United States Internal Revenue Service.

Issuing Bank: Bank of America (including any Lending Office of Bank of America), or any replacement issuer appointed pursuant to **Section 2.2.4**.

Issuing Bank Indemnitees: Issuing Bank and its officers, directors, employees, Affiliates, agents, advisors, attorneys, consultants, service providers and other representatives.

Junior Debt: Subordinated Debt, Borrowed Money secured by a Lien that is junior to Agent's Liens (excluding the Term Loan Debt) and unsecured Borrowed Money.

Kermit Facility: the Sand Mine(s) located in or around Kermit, Texas (including those acquired in the Hercules Acquisition).

LC Application: an application by Borrower Agent to Issuing Bank for issuance of a Letter of Credit, in form and substance reasonably satisfactory to Issuing Bank and Agent.

LC Conditions: upon giving effect to any issuance or modification of a Letter of Credit, (a) the conditions in **Section 6** are satisfied; (b) total LC Obligations do not exceed the Letter of Credit Subline and Revolver Usage does not exceed the Borrowing Base; (c) the Letter of Credit and payments thereunder are denominated in Dollars or other currency satisfactory to Agent and Issuing Bank; (d) the form of the Letter of Credit is satisfactory to Agent and Issuing Bank in their reasonable discretion; and (e) the Letter of Credit would not violate any policy or procedure of the Issuing Bank applicable to letters of credit generally.

LC Documents: all documents, instruments and agreements (including requests and applications) delivered by any Borrower or other Person to Issuing Bank or Agent in connection with a Letter of Credit.

LC Obligations: the sum of (a) all amounts owing by Obligors for draws under Letters of Credit; and (b) the Stated Amount of all outstanding Letters of Credit.

LC Request: a request by Borrower Agent for issuance of a Letter of Credit, in form reasonably satisfactory to Agent and Issuing Bank.

Legal Expenses Limitation: (a) with respect to any obligation in any Loan Document of an Obligor to pay or reimburse any legal fees or expenses of Agent, that such obligation shall be limited to the documented out-of-pocket fees and expenses of one primary counsel, one local counsel for each relevant jurisdiction as may be necessary in the reasonable judgment of Agent, and one specialty counsel acting in each reasonably necessary specialty area as determined in the reasonable judgment of Agent and (b) with respect to any obligation in any Loan Document of an Obligor to pay or reimburse any legal fees or expenses of the Lenders or any other Indemnitee (other than Agent acting in its capacity as such), that such obligation shall be limited to the documented out-of-pocket fees and expenses of one primary counsel and one local counsel for each relevant jurisdiction for all such Persons as a whole; provided, that if such legal counsel determines in good faith that representing all such Persons would or could result in a conflict of interest under laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to one such Person that is not available to all such Persons, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such a defense or counterclaim, each group of affected similarly situated Persons shall be entitled to separate representation by legal counsel selected by such group of similarly situated Persons.

Lender Indemnitees: Lenders and Secured Bank Product Providers, and their officers, directors, employees, Affiliates, agents, advisors, attorneys, consultants, service providers and other representatives.

Lenders: lenders party to this Agreement (including Agent in its capacity as provider of Swingline Loans or Protective Advances) and any Person who hereafter becomes a "Lender" pursuant to an Assignment, including any Lending Office of the foregoing.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by Agent, a Lender or Issuing Bank by notice to Borrower Agent and, if applicable, Agent.

Letter of Credit: any standby or documentary letter of credit, foreign guaranty, documentary bankers acceptance, indemnity, reimbursement agreement or similar instrument issued by Issuing Bank for the account or benefit of an Obligor or Affiliate of an Obligor.

Letter of Credit Subline: $25,000,000.

License: any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: an interest in Property securing an obligation or claim, including any lien, security interest, pledge, hypothecation, assignment, trust, reservation, assessment right, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and allows Agent to enter the premises and remove, store and dispose of Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

Liquidity: at any time of determination, the sum of (a) Availability , *plus* (b) Unrestricted Cash, *plus* (c) the amount of undrawn and available to be borrowed Delayed Draw Term Loan Commitments at such time under and as defined in the Term Loan Agreement.

Liquidity Certificate: as defined in **Section 10.1.2(n)**.

Loan: a loan made by Agent or a Lender under the credit facility established by this Agreement.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Major Material Contract: (a) any contract or agreement (other than any Loan Document or Term Loan Document) entered into in respect of a Sand Facility pursuant to which any Obligor or any of Subsidiary of any Obligor pays, receives or incurs liabilities (or could reasonably be expected to pay, receive or incur liabilities during the term thereof) in excess of $~~25,000,000~~40,000,000, and (b) any real property lease necessary for the operation of any Sand Facility to which any Obligor or any Subsidiary of any Obligor is the tenant, lessee, subtenant, licensee or other similar party thereunder for which breach, nonperformance, cancellation, or failure to renew would reasonably be expected to result in a Material Adverse Effect, together, in each case, with all amendments, modifications, replacements, extensions and rearrangements of the foregoing made in accordance with the terms of this Agreement.

Major Material Contract EOD: an event or circumstance occurred with respect to a Major Material Contract which, after giving effect to the expiration of any applicable grace period or the giving of notice, or both, provided in such Major Material Contract, entitles any party thereto to terminate such Major Material Contract prior to its scheduled termination.

Margin Stock: as defined in Regulation U of the Federal Reserve Board of Governors.

Material Acquisition: any acquisition of Property or series of related acquisitions of Property (including by way of merger or consolidation) that involves the payment of consideration by one or more of the Obligors in excess of $~~25,000,000~~40,000,000.

Material Adverse Effect: the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (a) has or could be reasonably expected to have a material adverse effect on (i) the business, operations, Properties or financial condition of the Obligors taken as a whole, (ii) the enforceability of any Loan Document, or (iii) the rights and remedies of or benefits available to, taken as a whole, Agent or any Lender under any Loan Document; or (b) impairs the ability of (i) the Borrowers to perform their payment obligations under any Loan Document or (ii) the Obligors, taken as a whole, to perform any of their obligations under any Loan Document.

Material Debt: means Debt (other than the Obligations), or obligations in respect of one or more Swaps, of any one or more of the Obligors or Restricted Subsidiaries in an aggregate principal amount exceeding $~~25,000,000~~40,000,000. For purposes of determining Material Debt, the "principal amount" of the obligations of any Obligor or Restricted Subsidiary of any Obligor in respect of any Swap at any time shall be the Swap Termination Value of such Swap.

Material Disposition: any Disposition of Property or series of related Dispositions of Property outside of the Ordinary Course of Business that yields gross proceeds to one or more of the Obligors or Restricted Subsidiaries in excess of $~~25,000,000~~40,000,000.

Modification: any amendment, supplement, extension, approval, consent, waiver, change or other modification of a Loan Document, including any waiver of a Default or Event of Default.

Monahans Facility: the Sand Mine located in or around Monahans, Texas.

Moody's: Moody's Investors Service, Inc. or any successor acceptable to Agent.

Mortgage: a mortgage, deed of trust or other Lien on Real Estate granted to Agent by an Obligor to secure any Obligations.

Mortgaged Property: means any Property owned or leased by any Obligor that is subject to the Liens under the terms of any Mortgage.

Multiemployer Plan: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which an Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Multiple Employer Plan: a Plan with two or more contributing sponsors, including an Obligor or ERISA Affiliate, at least two of whom are not under common control, as described in ERISA Section 4064.

Net Proceeds: with respect to a Disposition, proceeds (including, when received, any deferred or escrowed payments) received by an Obligor or Restricted Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) Taxes paid or reasonably estimated to be payable as a result thereof and any Permitted Tax Distributions in connection therewith; and (d) reserves for indemnities, until such reserves are no longer needed.

NOLV Percentage: the net orderly liquidation value of Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrowers' Inventory performed by an appraiser and on terms reasonably satisfactory to Agent.

Not Otherwise Applied: with reference to any amount otherwise for inclusion in the Available Equity Amount or as a Pass-Through Equity Contribution, as applicable, that such amount (a) was not previously applied to prepay the Obligations, (b) was not previously utilized (meaning such funds remain available for application as part of the Available Equity Amount or as a Pass-Through Equity Contribution, as applicable) for some other purpose (including to make any Investments, Distributions or purchases, redemptions, defeasements and satisfaction in respect of Debt, as applicable), and (c) that such amount was not committed to be applied for any other purpose, provided that such commitment remains outstanding or has not otherwise terminated or expired for some other reason.

Notice of Borrowing: notice by Borrower Agent of a Borrowing, in form reasonably satisfactory to Agent.

Notice of Conversion/Continuation: notice by Borrower Agent for conversion or continuation of a Loan as a Term SOFR Loan, in form reasonably satisfactory to Agent.

Obligations: all (a) principal of and premium, if any, on the Loans, (b) LC Obligations and other obligations of Obligors with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Claims and other amounts payable by Obligors under the Loan Documents, (d) Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, in each case whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: each Borrower and each Guarantor.

Ordinary Course of Business: the ordinary course of business of any Obligor or Subsidiary, undertaken in good faith and consistent in all material respects with Applicable Law.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: the Intercreditor Agreement, the Hercules Intercreditor Agreement, and each LC Document, fee letter, Lien Waiver, ~~Intercreditor Agreement,~~ Related Real Estate Document, Borrower Material, Communication, note, assignment, document, instrument or agreement of any kind (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transaction relating hereto.

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 13.4(c)**).

Overadvance: the amount of Revolver Usage in excess of the Borrowing Base.

Parent: the collective reference to all Parent Entities of the Company.

Parent Entity: any Person that is or becomes a direct or indirect parent company of the Company ~~on and following an IPO Event~~. For the avoidance of doubt, (a) ~~on and following an IPO Event~~ (i) Atlas Energy Solutions Inc. and (ii) any other Person that is ~~formed to effect an IPO Event that is~~ the direct or indirect managing member of or that directly or indirectly owns a majority of the voting Equity Interests of the Company, in each case, shall be deemed to constitute a Parent Entity of the Company and (b) the term Parent Entity shall exclude (i) the Brigham Family and (ii) any Person that is a parent company to the public entity or that is a direct or indirect non-managing member of the Company.

Participant: as defined in **Section 13.2**.

Participant Register: as defined in **Section 13.2.3**.

~~Pass-Through Customer Prepayment: as defined in **Section 10.2.4(n)**.~~

Pass-Through Equity Contribution: as defined in **Section 10.2.4(m)**.

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Conditions: with respect to any designation made pursuant to **Section 1.6**, Distribution made pursuant to **Section 10.2.3(a)(v)**, Permitted Acquisition made pursuant to **Section 10.2.4(g)**, Investment made pursuant to **Section 10.2.4(j)**, ~~or~~ Debt payment made pursuant to **Section 10.2.6** or other reference to the Payment Conditions:

(a) no Event of Default shall have occurred and be continuing on the date of such transaction or would result after giving effect to such transaction;

(b) (I) if no Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized and other Letters of Credit having an aggregate Stated Amount of not more than $7,500,000) are outstanding, Liquidity exceeds $30,000,000 after giving effect to and at all times during the 30 consecutive day period immediately prior to such transaction on a pro forma basis as if the payment were made at the beginning of such period; or

(II) if any Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized and other Letters of Credit having an aggregate Stated Amount of not more than $7,500,000) are outstanding or Borrower Agent otherwise elects, either (i) Specified Availability shall be higher than the greater of (A) $~~12,000,000~~20,000,000 and (B) 20.0% of the Borrowing Base then in effect after giving effect to and at all times during the 30 consecutive day period immediately prior to such transaction on a pro forma basis as if the payment were made at the beginning of such period or (ii) both (A) Specified Availability shall be higher than the greater of (x) $~~9,000,000~~15,000,000 and (y) 15.0% of the Borrowing Base then in effect after giving effect to and at all times during the 30 consecutive day period immediately prior to such transaction on a pro forma basis as if the payment were made at the beginning of such period and (B) the Fixed Charge Coverage Ratio for the most recently ended Fiscal Quarter for which financial statements have been delivered, calculated on a pro forma basis by including such transactions in the denominator as Fixed Charges, as and to the extent applicable, shall be greater than 1.00 to 1.00 (whether or not the financial covenant is being tested at such time); and

(c) in the case of any such transaction or series of related transactions exceeding $1,000,000 (but in any event if the total of all such transactions in a month exceeds $5,000,000), at least two Business Days prior to (but in no event more than five Business Days prior to) such transaction, Agent shall have received a certificate of a Senior Officer of Borrower Agent (i) certifying satisfaction of the foregoing conditions concurrently with any such transaction and (ii) setting forth in reasonable detail the pro forma calculations of the Fixed Charge Coverage Ratio, Specified Availability and Liquidity, as applicable (along with evidence supporting such pro forma calculations, including, in the case of any determination of Liquidity, bank statements or such other evidence as may be reasonably acceptable to Agent).

For the avoidance of doubt, a pro forma calculation in respect of any Distribution shall account for any mandatory prepayment of the Term Loan Debt required in connection therewith.

Payment Item: each check, draft or other item of payment payable to an Obligor, including those constituting proceeds of any Collateral.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Funding Rules: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

Pension Plan: any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: any Acquisition as long as (a) no Default or Event of Default exists or is caused thereby; (b) the Acquisition is consensual; (c) the assets, business or Person being acquired is useful or engaged in the business of Obligors and Restricted Subsidiaries and is located or organized within the United States; (d) the Payment Conditions are satisfied with respect thereto; and (e) Borrowers deliver to Agent, at least five Business Days prior to the Acquisition, copies of all material agreements relating thereto and a certificate, in form and substance reasonably satisfactory to Agent, stating that the Acquisition is a "Permitted Acquisition" and demonstrating compliance with the foregoing requirements.

Permitted Contingent Obligations: Contingent Obligations (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; (b) arising from customary indemnification obligations in favor of purchasers in connection with dispositions of Equipment permitted hereunder; and (c) arising under the Loan Documents.

Permitted Discretion: a determination made in good faith, using reasonable business judgment (from the perspective of a secured, asset-based lender).

Permitted Disposition: a Disposition permitted by **Section 10.2.5**.

Permitted Intercompany Activities: shared administrative, overhead, technology or licensing arrangements entered into in the Ordinary Course of Business or consistent with customary industry practices between or among Parent, the Borrowers and their Subsidiaries, in each case that (i) are, in the good faith judgment of the Borrowers, necessary or advisable in connection with the ownership or operation of the business of the Borrowers and their Subsidiaries and (ii) do not interfere in any material respect with the ordinary conduct of business of any Borrower or any Restricted Subsidiary; provided, that there is a reasonable allocation of any material costs and expenses for such arrangements as between Borrowers and their Restricted Subsidiaries, on the one hand, and the Unrestricted Subsidiaries, on the other hand.

Permitted Lien: as defined in **Section 10.2.2**.

Permitted Parent Entity Investment: as defined in **Section 10.2.3(a)(x)**.

Permitted Refinancing Debt: with respect to any outstanding Debt (the "Original Debt"), any Debt incurred to refinance, refund or replace such Original Debt; provided that (a) the principal amount (or accreted value, if applicable) of such Debt is not increased at the time of such refinancing or refunding or replacement from the principal amount (or accreted value, if applicable) of the Original Debt outstanding immediately prior to such refinancing, refunding or replacement, except by an amount equal

to any unpaid accrued interest, fees, expenses and premiums paid in respect of the Original Debt and other amounts paid, and fees and expenses incurred, in connection with such refinancing, refunding or replacement, (b) the final stated maturity and the average life to maturity of any refinancing or refunding or replacement of such Debt is not less than the final stated maturity and then average life to maturity, as applicable, of the Original Debt so refinanced, refunded or replaced, (c) the terms of such Debt shall be not be materially more restrictive to the Obligors (taken as a whole), than the Original Debt being refinanced, refunded or replaced, (d) such Debt shall not be recourse to any Obligor or any Subsidiary of an Obligor other than those Persons which were obligated with respect to the Original Debt that is being so refinanced, refunded or replaced (provided that the foregoing shall not prohibit the guarantee of such Debt by Subsidiaries formed or acquired after the incurrence of such Debt if such Subsidiaries also guarantee the Obligations), (e) if secured, the Liens securing such Debt shall have the same or lesser collateral priority as the Liens securing the Original Debt and such Debt shall not be secured by any categories of assets or property of any Obligor or any Subsidiary of an Obligor that does not secure the Original Debt that is being so refinanced, refunded or replaced unless such assets or property also secure the Obligations, and (f) if the Original Debt was subordinated in right of payment to the Obligations, then the refinancing Debt shall include subordination terms and conditions that are no less favorable to the Lenders in all material respects as those that were applicable to the Original Debt.

Permitted Tax Distributions: without duplication, (i) dividends or distributions by the Company to Parent in an amount required for Parent to pay franchise, excise and similar taxes, (ii) with respect to any taxable period (or portion thereof) for which the Company and any of its subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable foreign, state or local income tax purposes (each, a "Tax Group") of which a direct or indirect parent of the Company is the common parent, or for which the Company is a partnership or disregarded entity for U.S. federal or applicable foreign, state or local income tax purposes that is wholly-owned (directly or indirectly) by an entity that is taxable as a corporation for such income tax purposes, dividends or distributions by the Company to any direct or indirect parent of the Company in an amount not to exceed the amount of any U.S. federal, foreign, state and/or local income taxes that the Company and/or its subsidiaries that are members of the relevant Tax Group, as applicable, would have paid for such taxable period had the Company and/or such subsidiaries, as applicable, been a stand-alone corporate taxpayer or a stand-alone corporate group~~;~~, and (iii) with respect to any taxable period (or portion thereof) ~~prior to~~beginning at or after an IPO Event for which the Company is a passthrough entity (including a partnership or disregarded entity) for U.S. federal income tax purposes and is not wholly owned (directly or indirectly) by an entity that is taxable as a corporation for U.S. ~~federal income tax purposes, dividends or distributions by the Company to any member or partner of the Company in accordance with Section 4.1(b) of the Third Amended and Restated Limited Liability Company Agreement of the Company, dated as of January 30, 2018 (taking into account any loss carryforwards of such member or partner available from losses allocable to such member or partner by the Company to the extent such loss is of a character that would allow such loss to be available to reduce taxes in the current taxable period (taking into account any limitations on the utilization of such loss to reduce such taxes and to the extent such loss had not already been utilized)); and (iv) with respect to any taxable period (or portion thereof) beginning at or after an IPO Event for which the Company is a passthrough entity (including a partnership or disregarded entity) for U.S. federal income tax purposes and is not wholly owned (directly or indirectly) by an entity that is taxable as a corporation for U.S.~~ federal income tax purposes, dividends or distributions by the Company to any member or partner of the Company, on or prior to each estimated tax payment date as well as each other applicable due date, on a pro rata basis, such that each such member or partner (or its direct or indirect members or partners, if applicable) receives, in the aggregate for such period, payments or distributions sufficient to equal such member's or partner's U.S. federal, state and/or local income taxes (as applicable) attributable to its direct or indirect ownership of the Company and its subsidiaries with respect to such taxable period (assuming that such member or partner is subject to tax at the highest combined marginal U.S. federal, state, and/or local income tax rates (including any tax rate imposed on "net investment income" by Section 1411 of the Code)) applicable to an individual or, if higher, a corporation, resident in New York, New York, determined by taking into account (A) the deductibility of state and local income taxes for U.S. federal income tax purposes (disregarding any deduction that is subject to a dollar limitation), (B) the alternative minimum tax, (C) any U.S. federal, state and/or local (as applicable) loss carryforwards of such member or partner available from losses of such member or partner attributable to its direct or indirect ownership of the Company and its subsidiaries for prior taxable periods beginning at or after an IPO Event to the extent such loss is of a character that would allow such loss to be available to reduce taxes in the current taxable period (taking into account any limitations on the utilization of such loss to reduce such taxes and to the extent such loss had not already been utilized), (D) the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income, and (E) any adjustment to such member or partner's taxable income attributable to its direct or indirect ownership of the Company and its subsidiaries as a result of any tax examination, audit or adjustment with respect to any period (or portion thereof). Notwithstanding the foregoing, no Permitted Tax Distributions may be made in respect of taxable income of Unrestricted Subsidiaries except to the extent that a like amount is received by the Obligors in cash from such Unrestricted Subsidiaries during the most recent twelve (12) calendar month period.

Person: any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity of any kind.

Plan: any Benefit Plan maintained for employees of an Obligor or ERISA Affiliate, or to which an Obligor or ERISA Affiliate is required to contribute on behalf of its employees.

Platform: as defined in **Section 14.3.3**.

Pledged Collateral: as defined in **Section 7.3**.

Pledged Debt Securities: as defined in **Section 7.3**.

Pledged Equity Interests: as defined in **Section 7.3**.

Prime Rate: the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. Any change in such rate publicly announced by Bank of America shall take effect at the opening of business on the day specified in the announcement.

Pro Rata: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such Lender's Commitment by the aggregate outstanding Commitments; or (b) following termination of the Commitments, by dividing the amount of such Lender's Loans and LC Obligations by the aggregate outstanding Loans and LC Obligations or, if all Loans and LC Obligations have been paid in full and/or Cash Collateralized, by dividing such Lender's and its Affiliates' remaining Obligations by the aggregate remaining Obligations.

Properly Contested: with respect to any obligation of an Obligor or Subsidiary, (a)the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (b)appropriate reserves have been established in accordance with GAAP; (c)while any such contest is pending, there is no material impairment of the enforceability, validity, or priority of any of the Agent's Liens in and to the collateral affected thereby; and (d)the failure to make any payment while any such protest is pending could not reasonably be expected to result in a Material Adverse Effect.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: as defined in **Section 2.1.6**.

PTE: a prohibited transaction class exemption issued by the U.S. Department of Labor, as amended from time to time.

Qualified ECP: an Obligor with total assets exceeding $10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such act.

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon, including sand or mineral mining leases.

Recipient: Agent,Issuing Bank, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation (excluding any Secured Bank Product Obligation).

Redemption or Redeem: with respect to any Debt, the repurchase, redemption, prepayment, repayment, satisfaction and discharge or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of any such Debt.

Register: as defined in **Section 13.3.4**.

Reimbursement Certificate: as defined in **Section 3.3**.

Reimbursement Date: as defined in **Section 2.2.2**.

Related Real Estate Documents: with respect to any Real Estate required to be subject to a Mortgage pursuant to**Section 7.4.1**, the following, in form and substance reasonably satisfactory to Agent and received by Agent for review: (a) at least 45 days prior to the effective date of the Mortgage, all information requested by any Lender for its due diligence pursuant to Flood Laws; and (b)at least 15 days prior to the effective date of the Mortgage, (i)such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably require with respect to other Persons having an interest in the Real Estate; (ii)a current, as-built survey of the Real Estate, containing a metes-and-bounds property description to the extent in the possession of an Obligor; (iii)a life-of-loan flood hazard determination and, if any Real Estate is located in a special flood hazard zone, flood insurance documentation and coverage in accordance with Flood Laws or as otherwise satisfactory to each Lender; and (iv)such other information, documents, instruments or agreements as Agent may reasonably request.

Release Event: as defined in **Section 7.4.3**.

Relevant Governmental Body: the Federal Reserve Board and/or FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or FRBNY.

Rent and Charges Reserve: the aggregate of (a)all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Collateral or could assert a Lien on any Collateral; and (b)a reserve equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a reasonably satisfactory Lien Waiver.

Report: as defined in **Section 12.2.3**.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

Required Lenders: two or more unaffiliated Lenders holding more than 50% of (a)the aggregate outstanding Commitments; or (b)after termination of the Commitments, the aggregate outstanding Loans and LC Obligations or, upon Full Payment of all Loans and LC Obligations, the aggregate remaining Obligations; provided, that (i)Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Lender (including in its capacity as Issuing Bank) that funded the applicable Loan or issued the applicable Letter of Credit and (ii) in the event there is only one Lender at any time, such Lender shall constitute Required Lenders.

Required Real Estate Collateral: Real Estate of an Obligor that is or was subject to a Lien in favor of the Term Loan~~Lender~~Agent to secure the Term Loan Debt or a Lien securing Debt permitted under **Section 10.2.1(n)**; provided, that no item of Real Estate shall constitute Required Real Estate Collateral upon the occurrence of a Release Event with respect to such Real Estate (unless such Real Estate is later subject to a Lien described above following such Release Event).

Rescindable Amount: as defined in **Section 4.1.3(c)**.

Resolution Authority: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Restricted Subsidiary: any Subsidiary of an Obligor that is not an Unrestricted Subsidiary.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Restricted Subsidiary or other Obligor to incur or repay Borrowed Money, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt.

Revolver Usage: the aggregate amount of outstanding LC Obligations (net of Cash Collateral posted with respect to the Stated Amount of Letters of Credit) and Loans.

S&P: Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc., or any successor acceptable to Agent.

Sanction: a sanction administered or enforced by the U.S. government, UN Security Council, European Union, U.K. government or other applicable sanctions authority, including restrictions imposed with respect to the specially designated nationals list maintained by the U.S. Treasury Office of Foreign Assets Control (OFAC).

Sand Facility: each of the Kermit Facility and the Monahans Facility.

Sand Facility Improvements: any improvements to the Sand Facilities.

Sand Interests: with respect to any Sand Facility, all rights, titles, interests and estates of any Obligor or any Restricted Subsidiary of any Obligor now or hereafter acquired in and to Real Estate related to such Sand Facility (a)that contains or may contain silica, sand, silica sand, gravel, or minerals or similar substances, and (b)used to excavate, produce, mine, extract or recover such silica, sand, silica sand, gravel, or minerals or similar substances, including any mining lease, license, mineral lease, mineral fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature, in each case with respect to such silica, sand, silica sand, gravel, or minerals or similar substances, or otherwise used in the mining, transportation, or processing thereof or in the operation of any Obligor's or any Restricted Subsidiary's businesses.

Sand Inventory: Inventory consisting of wet or dry sand, silica or silica sand that has been mined, extracted, or otherwise severed from the land; provided, however, that "Sand Inventory" shall not include any Sand Reserves.

Sand Mine: any excavation or opening into the earth now or hereafter made from which sand, silica, silica sand, gravel or any mineral or similar substance is or can be extracted on or from any Real Estate, now owned or hereafter acquired, to which any Obligor or any Restricted Subsidiary of any Obligor has any right, title, interest or estate.

Sand Properties: (a)Sand Interests; (b)all operating agreements, production sales or other contracts, equipment leases and other agreements that relate to any of the Sand Interests or any interests therein or to the production, sale, purchase, exchange, processing, handling, storage, transporting or marketing of the sand, silica, silica sand, gravel or minerals or similar substances from or attributable to such Sand Interests; (c)all sand, silica, silica sand, gravel and minerals and similar substances in and under and which may be produced and saved or attributable to the Sand Interests, including all work in process and sand, silica, silica sand, gravel and minerals and similar substances extracted from and/or processed from the Sand Interests and in storage, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Sand Interests; (d)all tenements, hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to the Sand Interests and (e)all Property, real or personal, now owned or hereinafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Sand Interests (excluding personal Property which may be on such premises for temporary uses) and including any and all buildings, structures, plants, compressors, pumps, conveyors, dryers, silos and other storage facilities, transloading equipment, rail equipment, infrastructure, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise expressly provided herein, all references in this Agreement to "Sand Properties" refer to Sand Properties owned at the time in question by the Obligors or any of their Subsidiaries.

Sand Reserves: collectively, sand reserves that, in accordance with SEC's Industry Guide 7, are classified as "Probable (Indicated) Reserves" or "Proven (Measured) Reserves". Unless otherwise expressly provided herein, all of the references in this Agreement to "Sand Reserves" refer to the Sand Reserves attributable to the Sand Properties of the Obligors.

Sand Reserves Value: as of any date of determination, the present value of the estimated future net revenues, discounted at a rate of 9% per annum, from forecasted sales of Inventory during the remaining expected economic lives of the reserves related thereto.

Scheduled Unavailability Date: as defined in **Section 3.6.2**.

Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to Bank Products owing by an Obligor or Restricted Subsidiary of an Obligor to a Secured Bank Product Provider; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a)Bank of America or any of its Affiliates; and (b)any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, in form and substance reasonably satisfactory to Agent, (i)describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.14**.

Secured Parties: Agent, Issuing Bank, Lenders and Secured Bank Product Providers.

Securities Account Control Agreement: a control agreement reasonably satisfactory to Agent executed by an institution maintaining a Securities Account for an Obligor, to perfect Agent's Lien on such account.

Securities Act: the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

Security Documents: the Guaranties,IP Assignments, Deposit Account Control Agreements, Securities Account Control Agreements, Credit Card Acknowledgments, Mortgages and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, president, chief executive officer or chief financial officer of the applicable Obligor.

Senior Secured Leverage Ratio: as of any date of determination, the ratio of (a)Consolidated Total Net Debt that is secured by a Lien on any asset or property of the Company or any Restricted Subsidiaries to (b) EBITDA for the four Fiscal Quarter period most recently ended, in each case calculated based on the financial statements most recently delivered whether as Historical Financial Statements or pursuant to **Section 10.1.2(a)** or **Section 10.1.2(b)**.

Settlement Report: a report summarizing Loans and participations in LC Obligations outstanding as of a settlement date, allocated to Lenders on a Pro Rata basis in accordance with their Commitments.

SOFR: the secured overnight financing rate as administered by FRBNY (or a successor administrator).

SOFR Adjustment: 0.10%.

Solvent: as to any Person, such Person (a)owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b)owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c)is able to pay all of its debts as they mature; (d)has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is

about to engage; (e)is not "insolvent" within the meaning of Section101(32) of the Bankruptcy Code; and (f)has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "Fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Specified Availability: at any time of determination, the sum of (a)Availability and (b)Suppressed Availability (provided, that during any period that the Hercules Formula Amount is in effect, this ***clause (b)*** shall be deemed to be zero).

Specified Event of Default: an Event of Default under **Section 11.1(a)**, **Section 11.1(b)**(solely to the extent related to the breach of any representation or warranty set forth in a Borrowing Base Report), **Section 11.1(c)**(solely to the extent arising from a breach of **Section 8.1**, **Section 8.2.4**, **Section 8.2.5**, **Section 8.5** or **Section 10.3**), **Section 11.1(i)**, **Section 11.1(j)** or **Section 11.1(k)**.

~~Specified IPO Event Transactions collectively, the transactions described to Agent in the restructuring steps slides dated February3, 2023 and delivered to Agent on February6, 2023, and any other related actions that are necessary to implement such transactions; provided that immediately following the completion of all such transactions the corporate structure of Parent and its Subsidiaries (including the Company) is substantially as set forth on page 15 of such restructuring steps slides.~~

Specified Obligor: an Obligor that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to **Section 5.10**).

Stated Amount: the outstanding undrawn amount of a Letter of Credit, including any automatic increase or tolerance (whether or not then in effect) provided by the Letter of Credit or related LC Documents.

Subordinated Debt: Debt incurred by an Obligor that is expressly subordinate and junior in right of payment to Full Payment of all Obligations, and is on terms (including maturity, interest, fees, repayment, covenants and subordination) satisfactory to Agent.

Subsidiary: any entity at least 50% of whose voting securities or Equity Interests is owned by an Obligor or combination of Obligors (including indirect ownership through other entities in which an Obligor directly or indirectly owns 50% of the voting securities or Equity Interests).

Successor Rate: as defined in **Section 3.6.2**.

Super Majority Lenders: two or more unaffiliated Lenders holding more than 66-2/3% of (a)the aggregate outstanding Commitments; or (b)after termination of the Commitments, the aggregate outstanding Loans and LC Obligations or, upon Full Payment of all Loans and LC Obligations, the aggregate remaining Obligations; provided, that (i)Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Lender (including in its capacity as Issuing Bank) that funded the applicable Loan or issued the applicable Letter of Credit and (ii) in the event there is only one Lender at any time, such Lender shall constitute the Super Majority Lenders.

Suppressed Availability: at any time of determination, the lesser of (i)the amount by which ***clause (b)***of the definition of "Borrowing Base" exceeds the aggregate Commitments and (ii) an amount equal to 5.0% of the aggregate Commitments.

Swap: as defined in §1a(47) of the Commodity Exchange Act.

Swap Obligations: obligations under an agreement relating to a Swap.

Swap Termination Value: in respect of any one or more Swaps, after taking into account the effect of any legally enforceable netting agreement relating to such Swaps, (a)for any date on or after the date such Swaps have been closed out and settlement amounts, early termination amounts or termination value(s)determined in accordance therewith, such settlement amounts, early termination amounts or termination value(s), and (b)for any date prior to the date referenced in clause (a), the amount(s)determined as the mark-to-market value(s)for such Swaps, as determined based upon one or more commercially reasonable mid-market or other readily available quotations provided by any dealer which is a party to such Swap or any other recognized dealer in such Swaps.

Swingline Loan: any Borrowing of Base Rate Loans funded with Agent's funds, until such Borrowing is settled among Lenders or repaid by Borrowers.

Taxes: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

Term Loan Agent: Stonebriar Commercial Finance LLC and its successors and assigns or any replacement administrative agent with respect to the Term Loan Debt.

Term Loan Agreement: that certain Credit Agreement dated as of ~~October 20~~July 31, ~~2021~~2023, among the Company, as borrower, ~~and~~the Term Loan ~~Lender~~Agent, and the lenders from time to time party thereto, as amended, restated, replaced or otherwise modified from time to time (subject to**Section 10.2.16**).

Term Loan Debt: as defined in **Section 10.2.1(b)**.

Term Loan Documents: the "Loan Documents" or similar term under (and as defined in) the Term Loan Agreement.

~~Term Loan Lender: Stonebriar Commercial Finance LLC and its successors and assigns or any replacement lender with respect to the Term Loan Debt.~~

Term Priority Collateral: as defined in the Intercreditor Agreement.

Term SOFR: (a)for any Interest Period relating to a Loan (other than a Base Rate Loan), a per annum rate equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to such Interest Period, with a term equivalent to such Interest Period (or if such rate is not published prior to 11:00 a.m.on the determination date, the applicable Term SOFR Screen Rate on the U.S. Government Securities Business Day immediately prior thereto), plus the SOFR Adjustment for such Interest Period; and (b)for any interest calculation relating to a Base Rate Loan on any day, a fluctuating rate of interest equal to the Term SOFR Screen Rate with a term of one month commencing that day; provided, that in no event shall Term SOFR be less than zero.

Term SOFR Loan: a Loan that bears interest based on clause (a) of the definition of Term SOFR.

Term SOFR Screen Rate: the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Agent from time to time).

Termination Date: the earliest of (a)February22, 2028 ~~, (b)June30, 2027, if any portion of the Term Loan Debt remains outstanding on~~ (but if the Increase Effective Date occurs, such date ~~and has not been refinanced or~~shall be automatically extended to ~~a~~February26, 2029); (b)the date ~~at least~~that is 91 days ~~following~~prior to the maturity date ~~in clause (a)~~for any portion of the Term Loan Debt; or (c) any date on which the aggregate Commitments terminate hereunder.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Trigger Period: the period (a)commencing on any day that (i)an Event of Default occurs, (ii)if no Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized) are outstanding, Liquidity is less than the Applicable Trigger for five consecutive Business Days, or (iii)if any Loan or Letter of Credit (other than Letters of Credit that have been Cash Collateralized) is outstanding, Specified Availability is less than the Applicable Trigger for five consecutive Business Days; and (b)continuing until, during each of the preceding 30 consecutive days, (i)no Event of Default has existed, (ii)in the case of a Trigger Period arising as a result of clause (a)(ii)above, Liquidity has been more than the Applicable Trigger at all times, and (iii)in the case of a Trigger Period arising as a result of clause (a)(iii)above, Specified Availability has been more than the Applicable Trigger at all times.

UCC: the Uniform Commercial Code as in effect in the State of New York or, when used in reference to a Lien for which the laws of another jurisdiction govern perfection or enforcement, the Uniform Commercial Code of such other jurisdiction, as applicable.

UK Financial Institution: any BRRD Undertaking (as defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

UK Resolution Authority: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

Unfinanced Capital Expenditures: means, with respect to the Company and its Restricted Subsidiaries and for any period, Capital Expenditures of the Company and its Restricted Subsidiaries during such period that are not Financed Capital Expenditures (or deemed to be Financed Capital Expenditures pursuant to the final sentence of the definition of "Financed Capital Expenditures").

Unfunded Pension Liabilities: has the meaning assigned to such term in **Section 9.1.10(f)**.

Unrestricted Cash: unrestricted cash and Cash Equivalents of Obligors in each case that are (i)free and clear of all Liens other than Liens in favor of Agent, Liens permitted under **Section 10.2.2(b)**(other than any Term Cash Collateral Account (as defined in the Intercreditor Agreement)), and Liens permitted under clauses (e)and (f)of the definition of Excepted Liens and (ii)subject to a control agreement in favor of Agent (it being understood that cash and Cash Equivalents of the Obligors that are subject to control agreements or Liens in favor of Agent shall, in each case, not be deemed "restricted" under this definition unless constituting Cash Collateral). Notwithstanding the foregoing, cash and Cash Equivalents constituting part of the Available Equity Amount at the relevant time of determination ~~,~~ or Pass-Through Equity Contributions ~~or Pass-Through Customer Prepayments~~ shall not be treated as Unrestricted Cash.

Unrestricted Subsidiary: any Subsidiary of an Obligor designated as such on **Schedule 9.1.14(a)**or which the Borrower Agent has designated in writing to Agent to be an Unrestricted Subsidiary pursuant to **Section 1.6** and any Subsidiary of an Unrestricted Subsidiary. Notwithstanding the foregoing, on and following the First Amendment Effective Date there are no, and shall not be, any Unrestricted Subsidiaries.

Unused Line Fee Rate: a per annum rate equal to (a)0.50%, if average daily Revolver Usage was less than 50% of the Commitments during the preceding calendar month, or (b) 0.375%, if average daily Revolver Usage was 50% or more of the Commitments during such month.

Upstream Payment: a Distribution by a Subsidiary of an Obligor to such Obligor.

U.S. Government Securities Business Day: any Business Day, except any day on which the Securities Industry and Financial Markets Association, New York Stock Exchange or FRBNY is not open for business because the day is a legal holiday under New York law or U.S. federal law.

U.S. Person: "United States Person" as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in **Section 5.9.2(b)(iii)**.

Value: (a)for Inventory, its value determined on the basis of the lower of cost or market, calculated in accordance with GAAP, and excluding any portion of cost attributable to intercompany profit among Obligors and their Affiliates, provided, that, with respect to any Inventory that is anticipated to be sold pursuant to a fixed price contract, the value of such Inventory shall equal such contract price; and (b)for an Account, its face amount, net of any prepayments, deposits, returns, rebates, discounts (calculated on the shortest terms), credits, allowances or sales, excise or other similar Taxes.

Write-Down and Conversion Powers: (a)the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule; or (b)with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Accounting Terms. Under the Loan Documents (except as otherwise specified therein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Applicable Reporting Entity delivered to Agent before the Closing Date and using the same inventory valuation method as used in such financial statements; provided, that the Applicable Reporting Entity may adopt a change required or permitted by GAAP after the Closing Date as long as the Applicable Reporting Entity's certified public accountants concur in such change, it is disclosed to Agent and the Loan Documents are amended in a manner satisfactory to Required Lenders to address the change.

Upon request by Agent in connection with any such change, the Applicable Reporting Entity's financial statements and Borrower Materials shall set forth a reconciliation between calculations made before and after giving effect to any such change in GAAP. In addition, all accounting terms shall be interpreted, all accounting determinations shall be made and all financial statements shall be prepared without giving effect to any election under *FASB Accounting Standards Codification Topic 825, Financial Instruments*, or any successor thereto (including pursuant to the Accounting Standards Codification), to value any Debt at "fair value", as defined therein. Notwithstanding any changes in GAAP after December31, 2017, any lease of the Obligors or their Restricted Subsidiaries that would be characterized as an operating lease under GAAP in effect on December31, 2017 (whether such lease is entered into before or after December31, 2017) shall not constitute a Capital Lease under this Agreement or any other Loan Document as a result of such changes in GAAP unless otherwise agreed to in writing by the Borrower Agent and the Agent (it being understood and agreed that, for the avoidance of doubt, any future effectiveness of ASC 842 after December 31, 2017 shall be disregarded for purposes of this Agreement).

1.3 **Uniform Commercial Code**. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York: "Account," "Account Debtor," "As-Extracted Collateral," "Chattel Paper," "Commercial Tort Claim," "Deposit Account," "Document," "Equipment," "Fixtures," "General Intangibles," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right," "Payment Intangibles," "Securities Account" and "Supporting Obligation."

1.4 **Certain Matters of Construction**. The rulesof construction and interpretation included in this Sectionapply to all Loan Documents. The terms "herein," "hereof," "hereunder" and other words of similar import refer to the applicable document as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" mean "including, without limitation", "or" includes "and/or", and the ruleof *ejusdem generis* does not apply. Sectiontitles appear as a matter of convenience only and will not affect the interpretation of a Loan Document. Reference to any (a)law includes all related regulations, interpretations, supplements, amendments and successor provisions; (b)document, instrument or agreement includes any amendment, extension, supplement, waiver, replacement and other modification thereto (to the extent permitted by the Loan Documents and except as otherwise specified herein); (c)section means, unless the context otherwise requires, a section of the applicable document; (d)exhibit or schedule means, unless the context otherwise requires, an exhibit or schedule to the applicable document, which is thereby incorporated by reference; (e)Person includes its permitted successors and assigns; (f)time of day means the time at Agent's notice address under **Section 14.3.1**; or (g)discretion or satisfaction of Agent,Issuing Bank or any Lender means the sole and absolute discretion of such Person exercised from time to time. Any references to Value, Borrowing Base components, Loans, Letters of Credit, Obligations and other amounts herein shall be denominated in Dollars, unless expressly provided otherwise, and any determination (including calculation of Borrowing Base and financial covenants) made from time to time by Obligors under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise reasonably satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Obligors have the burden of establishing any alleged negligence, misconduct or lack of good faith by any Indemnitee under a Loan Document. No provision of a Loan Document shall be construed against a party by reason of it having, or being deemed to have, drafted the provision. Reference to an Obligor's "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

1.5 **Division**. Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division, or an allocation of assets to a series of any such entity (or the unwinding of a Division or allocation) as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer or similar term, as applicable, to, of or with a separate Person. Any Division of Person shall constitute a separate Person hereunder.

1.6 **Designation and Conversion of Subsidiaries**.

1.6.1 Generally. Unless designated as an Unrestricted Subsidiary on **Schedule 9.1.14(a)** as of the Closing Date or thereafter, assuming compliance with **Section 1.6.2**, any Person that becomes a Subsidiary of an Obligor or any of its Restricted Subsidiaries shall be classified as a Restricted Subsidiary.

1.6.2 Designation. Borrower Agent may designate by written notification thereof to Agent, any Restricted Subsidiary, including a newly formed or newly acquired Subsidiary, as an Unrestricted Subsidiary (other than a Borrower or a direct or indirect parent of a Borrower); provided that (a)immediately prior, and immediately after giving effect, to such designation, no Default or Event of Default shall have occurred and be continuing; (b)each Subsidiary designated as an "Unrestricted Subsidiary" and its Subsidiaries has not at the time of designation, and does not thereafter create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Debt pursuant to which a lender or any other Person has recourse to any Obligor or any Restricted Subsidiary of any Obligor or any of the assets of any Obligor or any Restricted Subsidiary of any Obligor (other than to the extent consisting solely of a pledge of the Equity Interests of such Unrestricted Subsidiary to secure Debt of such Subsidiary); (c)no Obligor or Restricted Subsidiary of any Obligor shall have any liability for any Debt or other obligations of any Unrestricted Subsidiary; (d)such designation is deemed to be (i)an Investment in an Unrestricted Subsidiary in an amount equal to the Fair Market Value as of the date of such designation of the Obligors' direct and indirect ownership interest in the assets of such Subsidiary and such Investment would be permitted to be made at the time of such designation under **Section 10.2.4** and (ii)a Disposition of 100% of the assets of such Subsidiary and such Disposition would be permitted to be made at the time of such designation under **Section 10.2.5**; (e)no Subsidiary may be designated as an Unrestricted Subsidiary (i)if immediately after such designation, it will be a restricted subsidiary for purposes of any other Debt of an Obligor or other Restricted Subsidiary, (ii)to the extent it owns (directly or indirectly) Equity Interests in any Obligor, any material Intellectual Property, any Sand Facility, or, to the extent constituting assets included in the Borrowing Base (or constituting locations from which assets included in the Borrowing Base in the immediately preceding 90 day period originated) any Sand Interest, Sand Property or Sand Mine or (iii)if it was previously an Unrestricted Subsidiary that had been re-designated as a Restricted Subsidiary; (f)Agent shall have received a Borrowing Base Report (giving pro forma effect to such Unrestricted Subsidiary designation) to the extent that at the time of such designation such Subsidiary holds assets or property constituting more than 5.0% of the assets included in the most recent calculation of the Borrowing Base; (g)the Payment Conditions are satisfied at the time of such designation and immediately after giving effect thereto on a pro forma basis, and (h)Agent shall have received an officer's certificate executed by a Senior Officer of Borrower Agent, certifying compliance with the requirements of the preceding clauses (a)through (g). Notwithstanding the foregoing, no Unrestricted Subsidiary may hold any Debt of, Liens on or Equity Interests in any Obligor or any Restricted Subsidiary (or any of their respective assets). Except as provided in this **Section 1.6.2**, no Restricted Subsidiary may be redesignated as an Unrestricted Subsidiary. For the avoidance of doubt, the ongoing requirements in **clauses (b)**, **(c)** and **(e)** of the first sentence of this **Section 1.6** shall apply to Subsidiaries that are designated as Unrestricted Subsidiaries on **Schedule 9.1.14(a)** on the Closing Date.

1.6.3 Redesignation. Borrower Agent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary if after giving effect to such designation, (a) the representations and warranties of the Obligors and their Restricted Subsidiaries contained in each of the Loan Documents are true and correct in all material respects (without duplication of any materiality qualification applicable thereto) on and as of such date as if made on and as of the date of such redesignation (or, if stated to have been made

expressly as of an earlier date, were true and correct as of such date), (b)no Default or Event of Default would exist, (c)such designation shall constitute an incurrence of any Debt and Liens of such Unrestricted Subsidiary and must be permitted under **Section 10.2.1** and **Section 10.2.2**, respectively, and (d)the Obligors comply with the requirements of **Section 10.1.9**. Any such designation shall be treated as a cash dividend in an amount equal to the lesser of the Fair Market Value of the applicable Obligor's direct and indirect ownership interest in such Subsidiary or the amount of the Obligors' cash investment previously made for purposes of the limitation on Investments under **Section 10.2.4**.

1.6.4. No Unrestricted Subsidiaries. Notwithstanding anything to the contrary in this **Section 1.6** or otherwise in this Agreement, on and following the First Amendment Effective Date, there are no Unrestricted Subsidiaries and Obligors may not designate any Subsidiary as an Unrestricted Subsidiary.

1.7 **Negative Covenant Compliance**. For purposes of determining whether the Obligors and their Restricted Subsidiaries comply with any exception to **Section 10.2** where compliance with any such exception is based on a financial ratio or metric being satisfied as of a particular point in time, it is understood that (a)compliance shall be measured at the time when the relevant event is undertaken, as such financial ratios and metrics are intended to be "incurrence" tests and not "maintenance" tests, and (b)correspondingly, any such ratio and metric shall only prohibit the Obligors and their Restricted Subsidiaries from creating, incurring, assuming, suffering to exist or making, as the case may be, any new, for example, Liens, Debt or Investments, but shall not result in any previously permitted, for example, Liens, Debt or Investments ceasing to be permitted hereunder.

Section 2. CREDIT FACILITIES.

2.1 Loan Commitments

2.1.1 Commitments. Each Lender agrees, severally on a Pro Rata basis up to its Commitment, on the terms set forth herein (including **Section 6**), to make Loans to Borrowers from time to time through the Termination Date. The Loans may be repaid and reborrowed as provided herein. In no event shall Lenders have any obligation to honor a request for a Loan if Revolver Usage at such time plus the requested Borrowing would exceed the Borrowing Base.

2.1.2 Notes. Loans and interest accruing thereon shall be evidenced by the records of Agent and the applicable Lender. At the request of a Lender, Borrowers shall deliver promissory note(s) to such Lender, evidencing its Loans.

2.1.3 Use of Proceeds. The proceeds of Loans shall be used by Borrowers solely (a)to satisfy existing Debt; (b)to pay fees and transaction expenses associated with the closing of this credit facility; (c)to pay Obligations in accordance with this Agreement; and (d)for lawful corporate purposes, including working capital. Borrowers shall not, directly or, knowingly, indirectly, use any Letter of Credit or Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Loan proceeds to any Subsidiary, joint venture partner or other Person, (i)to purchase or carry, or to reduce or refinance any debt incurred to purchase or carry, any Margin Stock or for any related purpose as governed by any regulation (including Regulation U) of the Federal Reserve Board of Governors; (ii)to fund any activities of or business with any Person, or in any country or territory, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the target of any Sanction; or (iii)in any manner that would result in a violation of a Sanction, Anti-Corruption Law or other Applicable Law by any Person (including any Secured Party or other individual or entity participating in any transaction).

2.1.4 Voluntary Reduction or Termination. Upon at least three Business Days' prior written notice to Agent at any time, Borrowers may terminate or reduce the Commitments. Each reduction shall be specified in the notice, in a minimum amount of $5,000,000 (plus any increment of $1,000,000), and applied ratably to all Commitments. A notice of termination or reduction by Borrowers is irrevocable; provided, that a notice of termination in full may state that such notice is conditional upon the effectiveness of another credit facility or any other transaction or condition, in which case such notice may be revoked by Borrower Agent by notice to Agent on or prior to the specified effective date if such condition is not satisfied.

2.1.5 Overadvances. Any Overadvance shall be repaid by Borrowers within one Business Day of written demand by Agent (including by email), and constitute an Obligation secured by the Collateral, entitled to all benefits of the Loan Documents. Agent may require Lenders to fund Base Rate Loans requested by Borrowers that cause or constitute an Overadvance and to forbear from requiring Borrowers to cure an Overadvance, as long as the total Overadvance does not exceed $~~7,500,000~~12,500,000 and does not continue for more than 30 consecutive days without the consent of Required Lenders. In no event shall Loans be required that would cause Revolver Usage to exceed the aggregate Commitments. No funding or sufferance of an Overadvance shall constitute a waiver by Agent or Lenders of any Event of Default. No Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.6 Protective Advances. Agent shall be authorized, in its discretion, at any time that any condition in **Section 6** is not satisfied, to make Base Rate Loans ("Protective Advances") (a)up to an aggregate amount of $~~7,500,000~~12,500,000 outstanding at any time, if Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance payment of Obligations, as long as such Loans do not cause Revolver Usage to exceed the aggregate Commitments; or (b)to pay any other amounts chargeable to Obligors under any Loan Documents, including interest, costs, fees and expenses. Each Lender hereby purchases an undivided Pro Rata participation in Protective Advances outstanding from time to time. Required Lenders may at any time revoke Agent's authority to make further Protective Advances under clause (a)by written notice to Agent. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. No funding of a Protective Advance shall constitute a waiver by Agent or Lenders of any Event of Default. No Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.7 Increase in Commitments. Borrowers may request an increase in Commitments from time to time upon not less than 10 Business Days' notice to Agent, as long as (a)the requested increase is in a minimum amount of $5,000,000 and is offered on the same terms as existing Commitments, except for a closing fee specified by Borrowers, (b)total increases under this Sectiondo not exceed $75,000,000 and no more than five increases are made ; *provided* that the Commitment Increase (as defined in the First Amendment) shall be disregarded for purposes of the limits set forth in this clause (b), and (c)the requested increase does not cause the Commitments to exceed 90% of any applicable cap under any intercreditor or subordination agreement (including the Intercreditor Agreement). Agent shall promptly notify Lenders of the requested increase and, within five Business Days thereafter, each Lender shall notify Agent if and to what extent such Lender commits to increase its Commitment. No Lender is obligated to provide any increase, and any Lender not responding within such period shall be deemed to have declined an increase. If Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional Commitments and become Lenders hereunder. Agent may allocate, in consultation with Borrowers, the increased Commitments among committing Lenders and, if necessary, Eligible Assignees. Total Commitments shall be increased by the requested amount (or such lesser amount committed by Lenders and Eligible Assignees) on a date agreed upon by Agent and Borrower Agent, provided (i)the conditions set forth in **Section 6.2** are satisfied at such time and (ii)flood insurance diligence and documentation have been completed as required by all Flood Laws or otherwise in a manner satisfactory to all Lenders. Agent, Obligors, and the new and existing Lenders shall execute and deliver such documents and agreements as Agent reasonably deems appropriate to evidence the increase in and allocations of Commitments and Obligors shall pay any reasonable and documented out-of-pocket fees and expenses incurred in connection therewith. On the effective date of an increase, the Revolver Usage and other exposures under the Commitments shall be reallocated among Lenders, and settled by Agent as necessary, in accordance with Lenders' adjusted shares of Commitments.

2.2 Letter of Credit Facility.

2.2.1 Issuance of Letters of Credit. Issuing Bank shall issue Letters of Credit from time to time until five Business Days prior to the Termination Date, on the terms set forth herein, including the following:

(a) Each Borrower acknowledges that Issuing Bank's issuance of any Letter of Credit is conditioned upon Issuing Bank's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Issuing Bank shall have no obligation to issue any Letter of Credit unless (i)Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii)each LC Condition is satisfied; and (iii)if a Defaulting Lender exists, such Lender or Borrowers have entered into arrangements reasonably satisfactory to Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act,Issuing Bank receives written notice from Agent or Required Lenders that a LC Condition has not been satisfied,Issuing Bank shall not issue the requested Letter of Credit. Prior to receipt of any such notice,Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions. Letters of Credit may not extend beyond the scheduled Termination Date unless Cash Collateralized to the reasonable satisfaction of Agent (it being agreed that delivery of cash collateral in an amount equal to 103% of the Stated Amount of such Letter of Credit shall be satisfactory), and Issuing Bank shall be entitled to issue notices of non-renewal to the beneficiaries thereof with respect to any Letter of Credit with automatic renewal provisions.

(b) Letters of Credit may be requested by a Borrower to support obligations incurred by Obligors. Increase, renewal or extension of a Letter of Credit shall be treated as issuance of a new Letter of Credit, but Issuing Bank may require a new LC Application in its discretion.

(c) Borrowers assume all risks of beneficiaries' acts, omissions or misuses of Letters of Credit. None of Agent,Issuing Bank or Lenders shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial, incomplete or failed shipment of any goods referred to in a Letter of Credit or Documents; deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; breach of contract between a shipper or vendor and an Obligor; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in translation or interpretation of technical terms; misapplication by a beneficiary of a Letter of Credit or proceeds thereof; or consequences arising from causes beyond the control of Issuing Bank, Agent or any Lender, including any act or omission of a Governmental Authority. Obligors shall take commercially reasonable actions (including enforcement of available rights against a beneficiary) requested by Issuing Bank or Agent to avoid and mitigate damages relating to Letters of Credit or claimed against Issuing Bank, Agent or any Lender. Issuing Bank shall be fully subrogated to all rights and remedies of a beneficiary whose claims are discharged through a Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents,Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or other Communication in whatever form believed by Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Issuing Bank may use legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act (and shall be fully protected in any action taken in good faith reliance) upon any advice given by such experts. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.2.2 Reimbursement; Participations.

(a) If Issuing Bank honors any request for payment under a Letter of Credit, Borrowers shall pay to Issuing Bank, (i)within one Business Day of the date of such drawing or disbursement if the Issuing Bank provides notice to the Borrower Agent of such drawing or disbursement prior to 11:00 a.m.(Central time) on such prior Business Day after the date of such drawing or disbursement or (ii)if such notice is received after such time, on the next Business Day following the date of receipt of such notice (such required date for reimbursement under clause (i)or (ii), as applicable, the "Reimbursement Date"), the amount paid by Issuing Bank under such Letter of Credit, together with interest at the interest rate for Base Rate Loans from the Reimbursement Date until payment by Borrowers. The obligation of Borrowers to reimburse Issuing Bank for any payment made under a Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that Borrowers may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Borrowers shall be deemed to have requested a Borrowing of Base Rate Loans in an amount necessary to pay all amounts due Issuing Bank on any Reimbursement Date and each Lender shall fund its Pro Rata share of such Borrowing whether or not the Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Each Lender hereby irrevocably and unconditionally purchases from Issuing Bank, without recourse or warranty, an undivided Pro Rata participation in all LC Obligations outstanding from time to time. Issuing Bank is issuing Letters of Credit in reliance upon this participation. If Borrowers do not make a payment to Issuing Bank when due hereunder, Agent shall promptly notify Lenders and each Lender shall within one Business Day after such notice pay to Agent, for the benefit of Issuing Bank, the Lender's Pro Rata share of such payment. Upon request by a Lender, Issuing Bank shall provide copies of Letters of Credit and LC Documents in its possession.

(c) The obligation of each Lender to make payments to Agent for the account of Issuing Bank in connection with Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made as provided in this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; a draft, certificate or other document presented under a Letter of Credit being determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; waiver by Issuing Bank of a requirement that exists for its protection (and not a Obligor's protection) or that does not materially prejudice an Obligor; honor of an electronic demand for payment even if a draft is required; payment of an item presented after a Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. Issuing Bank does not assume responsibility for any failure or delay in performance or any breach by any Obligor or other Person of any obligations under any LC Documents. Issuing Bank does not make any express or implied warranty, representation or guaranty to Lenders with respect to any Letter of Credit, Collateral, LC Document or Obligor. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Indemnitee shall be liable to any Obligor, Lender or other Person for any action taken or omitted to be taken in connection with any Letter of Credit or LC Document except as a result of such Indemnitee's gross negligence or willful misconduct. Issuing Bank may refrain from taking any action with respect to a Letter of Credit until it receives written instructions (and in its discretion, appropriate assurances) from the Lenders.

2.2.3 Cash Collateral. At Agent's or Issuing Bank's request, Obligors shall Cash Collateralize (a)the Fronting Exposure of any Defaulting Lender; and (b)all outstanding Letters of Credit if an Event of Default exists (provided, that such cash collateral shall be returned to the Obligors upon the cure or waiver of such Event of Default), the Termination Date is scheduled to occur within five Business Days or the Termination Date occurs. If Obligors fail to provide any Cash Collateral as required hereunder, Lenders may (and shall upon direction of Agent) advance, as Loans, the amount of Cash Collateral required (whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied).

2.2.4 Resignation of Issuing Bank. Issuing Bank may resign at any time upon 30 days' prior written notice to Agent and Borrowers, and any resignation of Agent hereunder shall automatically constitute its concurrent notice of resignation as Issuing Bank. In the event of any such resignation as Issuing Bank, the Borrowers shall be entitled to appoint from among the Lenders a successor Issuing Bank hereunder; provided, that no failure by the Borrowers to appoint any such successor shall affect the resignation of the resigning Issuing Bank. From the effective date of its resignation,Issuing Bank shall have no obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall otherwise have all rights and obligations of an Issuing Bank hereunder relating to any Letter of Credit issued by it prior to such date. A replacement Issuing Bank may be appointed by written agreement among Agent, Borrower Agent and the new Issuing Bank.

Section 3. INTERESTS, FEES AND CHARGES

3.1 Interest

3.1.1 Rates and Payment of Interest.

(a) The Obligations shall bear interest (i)if a Base Rate Loan, at the Base Rate in effect from time to time, plus the Applicable Margin; (ii)if a Term SOFR Loan, at Term SOFR for the applicable Interest Period, plus the Applicable Margin; and (iii) if any other Obligation (including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Loans.

(b) During an Insolvency Proceeding with respect to any Obligor, or during any other Specified Event of Default if Agent or Required Lenders in their discretion so elect, all overdue Obligations shall bear interest at the Default Rate (whether before or after any judgment), payable **on demand**.

(c) Interest shall accrue from the date a Loan is advanced or Obligation is incurred or payable, as applicable, until paid in full by Borrowers, and shall in no event be less than zero at any time. Interest accrued on the Loans is due and payable in arrears (i)on each Interest Payment Date; (ii)concurrently with prepayment of any Loan, with respect to the principal amount being prepaid; and (iii) on the Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the applicable agreements or, if no payment date is specified, within five Business Days of Agent's demand therefor.

3.1.2 Application of Term SOFR to Outstanding Loans.

(a) Borrowers may elect to convert any portion of Base Rate Loans to, or to continue any Term SOFR Loan at the end of its Interest Period as, a Term SOFR Loan. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a Term SOFR Loan.

(b) Borrower Agent shall give Agent a Notice of Conversion/Continuation by 11:00 a.m.at least three Business Days before the requested conversion or continuation date. Promptly after receiving such notice, Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation is irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, at expiration of an Interest Period for a Term SOFR Loan, Borrowers have failed to deliver a Notice of Conversion/Continuation, the Loan shall convert to a Base Rate Loan. Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternate, replacement or successor to such rate (including any Successor Rate), or any component thereof, or the effect of any of the foregoing, or of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. Agent may select information source(s) in its discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Successor Rate), or any component thereof, in each case pursuant to the terms hereof, and shall have no liability to any Lender, Obligor or other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise, and whether at law or in equity) for any error or other act or omission related to or affecting the selection, determination or calculation of any rate (or component thereof) provided by such information source(s).

3.1.3 Interest Periods. Borrowers shall select an interest period ("Interest Period") of one, three or six months (in each case, subject to availability) to apply to each Term SOFR Loan; provided, that (a)the Interest Period shall begin on the date the Loan is made or continued as, or converted into, a Term SOFR Loan, and shall expire one, three or six months thereafter, as applicable; (b)if any Interest Period begins on the last day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at its end, or if such corresponding day falls after the last Business Day of the end month, then the Interest Period shall expire on the end month's last Business Day; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day; and (c) no Interest Period shall extend beyond the Termination Date.

3.2 Fees.

3.2.1 Unused Line Fee. Borrowers shall pay to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Unused Line Fee Rate times the amount by which the Commitments exceed the average daily Revolver Usage during any month. Such fee shall be payable in arrears, on the first day of each quarter and on the Termination Date.

3.2.2 LC Facility Fees. Borrowers shall pay (a)to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Applicable Margin in effect for Term SOFR Loans times the average daily Stated Amount of Letters of Credit, payable in arrears on the first day of each quarter; (b)to Issuing Bank, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each Letter of Credit, payable in arrears on the first day of each quarter; and (c) to Issuing Bank, for its own account, all

customary charges associated with issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, payable as and when incurred. During an Event of Default, the fee payable under **clause (a)** shall be increased by 2% per annum.

3.2.3 Fee Letters. Borrowers shall pay all fees set forth in any fee letter executed in connection with this Agreement.

3.3 Computation of Interest, Fees, Yield Protection. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be computed for actual days elapsed, based on a year of 365 or 366 days, as applicable. All other interest, as well as fees and other charges calculated on a per annum basis, shall be computed for actual days elapsed, based on a year of 360 days. Each determination by Agent of any interest, fee, interest rate or amounts payable hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by Borrowers under **Section 3.4**, **3.7**, **3.9** or **5.8** that is submitted to Borrower Agent by Agent or the affected Lender in reasonable detail (a "Reimbursement Certificate") shall be final, conclusive and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

3.4 Reimbursement Obligations. Obligors shall pay all Claims within 10 days of receipt of a reasonably detailed written request therefor from the requesting Person. Obligors shall also reimburse Agent for all reasonable and documented legal, accounting, appraisal, consulting, and other fees and expenses incurred by it in connection with (a)the negotiation and preparation of Loan Documents, including any modification thereof; (b)the administration of and actions relating to any Collateral, Loan Documents and the transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder that the Obligors fail to maintain or to verify Collateral; and (c)subject to **Section 10.1.1(b)**, any examination or appraisal with respect to any Obligor or Collateral by Agent's personnel or a third party. All legal, accounting and consulting fees shall be charged to Obligors by Agent's professionals at their then applicable hourly rates, regardless of any alternative fee arrangements that Agent, any Lender or any of their Affiliates may have with such professionals that otherwise might apply to any other transaction. Obligors acknowledge that counsel may provide Agent with a benefit (such as a discount, credit or accommodation for other matters) based on counsel's overall relationship with Agent, including fees paid hereunder. If, for any reason (including inaccurate information in Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrowers shall within 10 days following Agent's demand therefor pay to Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Obligors under this Sectionshall be due within 10 days in accordance with **Section 3.3**. This **Section 3.4** shall be subject to the Legal Expenses Limitation.

3.5 Illegality. If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder, to make, maintain, issue, fund or commit to, participate in, or charge applicable interest or fees with respect to any Loan or Letter of Credit, or to determine or charge interest or fees based on SOFR or Term SOFR, then, on notice thereof by such Lender to Agent, (a)any obligation of such Lender to perform such obligations, to make, maintain, issue, fund, commit to or participate in the Loan or Letter of Credit (or to charge interest or fees otherwise applicable thereto), or to continue or convert Loans as Term SOFR Loans, shall be suspended and Borrowers shall make such appropriate accommodations regarding affected Letters of Credit as Agent or such Lender may reasonably request, as applicable, (b)if such notice asserts the illegality of such Lender to make or maintain Base Rate Loans whose interest rate is determined by reference to Term SOFR, the interest rate applicable to such Lender's Base Rate Loans shall, as necessary to avoid such illegality, be determined by Agent without reference to the Term SOFR component of Base Rate, in each case until such Lender notifies Agent that the circumstances giving rise to Lender's determination no longer exist. Upon delivery of such notice, Borrowers shall prepay or convert Term SOFR Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain the Loan and charge applicable interest to such day, or immediately, if such Lender cannot so maintain the Loan. Upon any prepayment or conversion of a Loan pursuant to this Section, Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.6 Inability to Determine Rates

3.6.1 Inability to Determine Rate. If in connection with any request for a Term SOFR Loan or a conversion to or continuation thereof, as applicable, (a)Agent determines (which determination shall be conclusive absent manifest error) that (i)no Successor Rate has been determined in accordance with **Section 3.6.2**, and the circumstances under **Section 3.6.2(a)**or the Scheduled Unavailability Date has occurred (as applicable), or (ii)adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (b) Agent or Required Lenders determine that for any reason Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Agent will promptly so notify Borrowers and Lenders. Thereafter, (x)the obligation of Lenders to make, maintain, or convert Base Rate Loans to, Term SOFR Loans shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y)in the event of a determination described in the preceding sentence with respect to the Term SOFR component of Base Rate, the utilization of such component in determining Base Rate shall be suspended, in each case until Agent (or, in the case of a determination by Required Lenders described above, until Agent upon instruction of Required Lenders) revokes such notice. Upon receipt of such notice, (I)Borrowers may revoke any pending request for a Borrowing, conversion or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for Base Rate Loans, and (II)any outstanding Term SOFR Loans shall convert to Base Rate Loans at the end of their respective Interest Periods.

3.6.2 Successor Rates. Notwithstanding anything to the contrary in any Loan Document, if Agent determines (which determination shall be conclusive absent manifest error), or Borrower Agent or Required Lenders notify Agent (with, in the case of the Required Lenders, a copy to Borrower Agent) that Borrowers or Required Lenders (as applicable) have determined, that:

(a) adequate and reasonable means do not exist for ascertaining one, three and six month interest periods of Term SOFR, including because the Term SOFR Screen Rate is not available or published on a current basis, and such circumstances are unlikely to be temporary; or

(b) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over Agent, CME or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one, three and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided, that at the time of such statement, there is no successor administrator satisfactory to Agent that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one, three and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, "Scheduled Unavailability Date");

then, on a date and time determined by Agent (any such date, "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (b)above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any other applicable Loan Document with Daily Simple SOFR plus the SOFR Adjustment, for any payment period for interest calculated that can be determined by Agent, in each case, without any amendment to, or further action or consent of any other party to, any Loan Document ("Successor Rate"). If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (x)if Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date or (y)if the events or circumstances of the type described in clauses (a)or (b)above have occurred with respect to the Successor Rate then in effect, then in each case, Agent and Borrower Agent may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for such alternative benchmarks in similar U.S. dollar denominated credit facilities syndicated and agented in the United States and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for such benchmarks in similar U.S. dollar denominated credit facilities syndicated and agented in the United States, which adjustment or method for calculating such adjustment shall be published on an information service selected by Agent from time to time in its discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a Successor Rate. Any such amendment shall become effective at 5:00 p.m.on the fifth Business Day after Agent posts such proposed amendment to all Lenders and Borrowers unless, prior to such time, Required Lenders deliver to Agent written notice that Required Lenders object to the amendment.

Agent will promptly (in one or more notices) notify Borrowers and Lenders of implementation of any Successor Rate. A Successor Rate shall be applied in a manner consistent with market practice; provided, that to the extent market practice is not administratively feasible for Agent, the Successor Rate shall be applied in a manner as otherwise reasonably determined by Agent. Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for all purposes of the Loan Documents.

3.7 Increased Costs; Capital Adequacy

3.7.1 Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or Issuing Bank;

(b) subject any Recipient to Taxes (other than (i)Indemnified Taxes, (ii)Taxes described in clauses (b)through (d)of the definition of Excluded Taxes, and (iii)Connection Income Taxes) with respect to any Loan, Letter of Credit, Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender,Issuing Bank or any applicable interbank market any other condition, cost or expense (in each case, other than Taxes) affecting any Loan, Letter of Credit, participation in LC Obligations, Commitment or Loan Document;

and the result thereof shall be to increase the cost to a Lender of making or maintaining any Loan or its Commitment, or converting to or continuing any interest option for a Loan, or to increase the cost to a Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by a Lender or Issuing Bank hereunder (whether of principal, interest or any other amount) then, within 10 days following the written request of such Lender or Issuing Bank in accordance with **Section 3.3**, Borrowers will pay to it such additional amount(s)as will compensate it for the additional costs incurred or reduction suffered as set forth in such request.

3.7.2 Capital Requirements. If a Lender or Issuing Bank determines that a Change in Law affecting it or its holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's,Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Commitment, Loans, Letters of Credit or participations in LC Obligations or Loans, to a level below that which such Lender,Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time Borrowers will pay to such Lender or Issuing Bank, as the case may be, such additional amounts as will compensate it or its holding company for the reduction suffered within 10 days following delivery of a written request therefor in accordance with **Section 3.3**.

3.7.3 Compensation. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Sectionshall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender or Issuing Bank for any increased costs, reductions or other amounts pursuant to this Sectionsuffered more than six months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender or Issuing Bank notifies Borrower Agent of the applicable Change in Law and of such Lender's or Issuing Bank's intention to claim compensation therefor.

3.8 Mitigation. If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if Borrowers are required to pay any Indemnified Taxes or additional amounts with respect to a Lender under **Section 5.8**, then at the request of Borrower Agent, such Lender shall use reasonable efforts to designate or assign its obligations hereunder to a different Lending Office, if, in the judgment of such Lender, such designation or assignment would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, would not subject the Lender to any unreimbursed cost or expense, and would not otherwise be disadvantageous to it or unlawful. Borrowers shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.9 Funding Losses. If for any reason (a)any Borrowing, conversion or continuation of a Loan (other than a Base Rate Loan) does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b)any repayment or conversion of a Loan (other than a Base Rate Loan) occurs on a day other than the end of its Interest Period or tenor, (c)Borrowers fail to repay a Loan (other than a Base Rate Loan) when required, or (d)a Lender (other than a Defaulting Lender) is required to assign a Loan (other than a Base Rate Loan) prior to the end of its Interest Period pursuant to **Section 13.4**, then Borrowers shall pay to Agent its customary administrative charge and to each Lender all losses, expenses and fees arising from redeployment of funds or termination of match funding, but excluding any loss of anticipated profits. All amounts payable by Obligors under this Sectionshall be due within 10 days following delivery of a written request therefor in accordance with **Section 3.3**.

3.10 Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law ("maximum rate"). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to Borrowers. In

determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a)characterize any payment that is not principal as an expense, fee or premium rather than interest; (b)exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread (in equal or unequal parts) the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 4. LOAN ADMINISTRATION.

4.1 Manner of Borrowing and Funding Loans

4.1.1 Notice of Borrowing.

(a) To request Loans, Borrower Agent shall deliver a Notice of Borrowing to Agent by 12:00 p.m.(noon) (i)on the requested funding date, in the case of Base Rate Loans, and (ii)at least two Business Days prior to the requested funding date, in the case of Term SOFR Loans. Notices received by Agent after such time shall be deemed received on the next Business Day. Each Notice of Borrowing is irrevocable and must specify (A)the Borrowing amount, (B)the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Base Rate Loan or Term SOFR Loan, and (D) in the case of a Term SOFR Loan, the applicable Interest Period (which shall be deemed to be one month if not specified).

(b) Unless payment is otherwise made by Borrowers, the becoming due of any Obligation (whether principal, interest, fees or other charges, including any Swingline Loan, Overadvance, Protective Advance, Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for a Base Rate Loan on the due date in the amount due and the Loan proceeds shall be disbursed as direct payment of such Obligation.

(c) If a Borrower maintains a disbursement account with Agent or any of its Affiliates, then presentation for payment in the account of a Payment Item when there are insufficient funds to cover it shall be deemed to be a request for a Base Rate Loan on the presentation date, in the amount of the Payment Item. Proceeds of the Loan may be disbursed directly to the account.

4.1.2 Funding by Lenders. Except for Swingline Loans, Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 1:00 p.m.on the proposed funding date for a Base Rate Loan or by 3:00 p.m.two Business Days before a proposed funding of a Term SOFR Loan. Each Lender shall fund its Pro Rata share of a Borrowing in immediately available funds not later than 3:00 p.m.on the requested funding date, unless Agent's notice is received after the times provided above, in which case Lender shall fund by 10:00 a.m.on the next Business Day. Subject to its receipt of such amounts from Lenders, Agent shall disburse the Borrowing proceeds in a manner directed by Borrower Agent and acceptable to Agent. Unless Agent receives (in sufficient time to act) written notice from a Lender that it will not fund its share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to Borrowers. If a Lender's share of a Borrowing or of a settlement under **Section 4.1.3(b)**is not received by Agent, then Borrowers agree to repay to Agent within one Business Day of demand therefor the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to the Borrowing. Agent, a Lender or Issuing Bank may fulfill its obligations under Loan Documents through one or more Lending Offices, and this shall not affect any obligation of Obligors under the Loan Documents or with respect to any Obligations.

4.1.3 Swingline Loans; Settlement; Rescindable Amounts.

(a) To fulfill any request for a Base Rate Loan hereunder, Agent may in its discretion advance Swingline Loans to Borrowers, up to an aggregate outstanding amount of $7,500,000. Swingline Loans shall constitute Loans for all purposes, except that payments thereon shall be made to Agent for its own account until settled with or funded by Lenders hereunder. Each Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all Swingline Loans outstanding from time to time.

(b) Settlement of Loans, including Swingline Loans and Protective Advances, among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly, unless the settlement amount is de minimis), on a Pro Rata basis in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its discretion apply any payment received from an Obligor to Swingline Loans and Protective Advances, regardless of any designation by any Obligor or anything herein to the contrary. If any Loan cannot be settled among Lenders, whether due to an Obligor's Insolvency Proceeding or otherwise, each Lender shall pay the amount of its participation in the Loan to Agent, in immediately available funds, within one Business Day after Agent's request therefor. Interest on a Loan shall be payable in favor of a Lender from the later of the date the Loan is advanced to Borrowers or the Lender funds the Loan (or participation therein). No Obligor or Secured Party shall be entitled to credit for interest paid by a Secured Party to Agent pursuant to **Section 4.1.3(c)** or **12.10.2**, nor shall a Defaulting Lender be entitled to interest on amounts held by Agent pursuant to **Section 4.2.** Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied.

(c) Unless Agent receives notice from Borrowers prior to the date on which a payment is due to Agent for the account of Lenders or Issuing Bank hereunder that Borrowers will not make such payment, Agent may assume that Borrowers have made such payment on such date in accordance herewith and may, in reliance on such assumption, distribute to Lenders or Issuing Bank, as applicable, the amount due. With respect to any payment that Agent makes for the account of Lenders or Issuing Bank hereunder as to which Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment, a "Rescindable Amount"): (1)Borrowers have not in fact made such payment, (2)Agent has made a payment in excess of the amount so paid by Borrowers (whether or not then owed), or (3)Agent has for any reason otherwise erroneously made such payment, then each Lender or Issuing Bank, as applicable, severally agrees to repay to Agent forthwith on demand the Rescindable Amount so distributed to or otherwise made for the account of such Lender or Issuing Bank, in immediately available funds with interest thereon for each day from and including the date such amount is distributed to it to but excluding the date of payment to Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry ruleson interbank compensation. A notice by Agent to Issuing Bank, any Lender or any Borrower with respect to any amount owing under this clause (c) shall be conclusive, absent manifest error.

4.1.4 Notices. If Borrowers request, convert or continue Loans, select interest rates or transfer funds based on telephonic or electronic instructions to Agent, Borrowers shall confirm the request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, as applicable. Agent and Lenders are not liable for any loss suffered by a Borrower as a result of Agent or a Lender acting on its understanding of telephonic or electronic instructions from a person believed in good faith to be authorized to give instructions on a Borrower's behalf.

4.1.5 Conforming Changes. Agent may make Conforming Changes from time to time in consultation with Borrower Agent with respect to SOFR, Term SOFR or any Successor Rate. Notwithstanding anything to the contrary in any Loan Document, any amendment implementing such changes shall be effective without further action or consent of any party to any Loan Document. Agent shall post or provide each such amendment to Lenders and Borrower Agent reasonably promptly after it becomes effective.

4.2 **Defaulting Lender**. Notwithstanding anything herein to the contrary:

4.2.1 Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to Loans and Letters of Credit (including existing Swingline Loans, Protective Advances and LC Obligations), Agent may in its discretion reallocate Pro Rata shares by excluding a Defaulting Lender's Commitments and Loans from the calculation of shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c)**.

4.2.2 Payments; Fees. Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may use such amounts to cover the Defaulting Lender's defaulted obligations, to Cash Collateralize such Lender's Fronting Exposure, to readvance the amounts to Borrowers or to repay Obligations. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender and its unfunded Commitment shall be disregarded for purposes of calculating the unused line fee under **Section 3.2.1**. If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2** shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3 Status; Cure. Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and the effective date of such status shall be conclusive and binding on all parties, absent manifest error. Borrowers, Agent and Issuing Bank may agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Commitments and Loans, and the Revolver Usage and other exposures under the Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender, including its payment of breakage costs for reallocated Term SOFR Loans) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Agent and Issuing Bank, or as expressly provided herein with respect to Bail-In Actions and related matters, no reallocation of Commitments and Loans to non-Defaulting Lenders or reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

4.3 **Number and Amount of Term SOFR Loans; Determination of Rate**. Each Borrowing of Term SOFR Loans when made shall be in a minimum amount of $1,000,000, plus an increment of $100,000 in excess thereof. No more than eight Borrowings of Term SOFR Loans may be outstanding at any time, and all Term SOFR Loans having the same length and beginning date of their Interest Periods shall be aggregated and considered one Borrowing. Upon determining Term SOFR for any Interest Period requested by Borrowers, Agent shall promptly notify Borrowers thereof by telephone or electronically and, if requested by Borrowers, shall confirm any telephonic notice in writing.

4.4 **Borrower Agent**. Each Borrower hereby designates the Company ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Loans and Letters of Credit, designation of interest rates, delivery or receipt of Communications, delivery of Borrower Materials, payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent,Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon any Communication (including any notice of borrowing) delivered by or to Borrower Agent on behalf of any Borrower. Each of Agent,Issuing Bank and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for all purposes under the Loan Documents. Each Obligor agrees that any Communication, delivery, action, omission or undertaking by Borrower Agent shall be binding upon and enforceable against such Obligor.

4.5 **One Obligation**. The Loans, LC Obligations and other Obligations constitute one general obligation of Borrowers, jointly and severally, and are secured by Agent's Lien on all Collateral; provided, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.

4.6 **Effect of Termination**. On the effective date of the termination of all Commitments, the Obligations shall be immediately due and payable, and each Secured Bank Product Provider may terminate its Bank Products. Until Full Payment of the Obligations, all undertakings of Obligors contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. Agent shall not be required to terminate its Liens unless it receives Cash Collateral or a written agreement, in each case reasonably satisfactory to it, protecting Agent and Lenders from dishonor or return of any Payment Item previously applied to the Obligations. **Sections 2.2**, **3.4**, **3.6**, **3.7**, **3.9**, **4.1.3(c)**, **5.4**, **5.8**, **5.9**, **12**, **14.2**, this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive any assignment by Agent,Issuing Bank or any Lender of rights or obligations hereunder, termination of any Commitment, and any repayment, satisfaction, discharge or Full Payment of any Obligations.

Section 5. PAYMENTS

5.1 **General Payment Provisions**. All payments of Obligations shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes (except Taxes as required by Applicable Law), and in immediately available funds, not later than 1:00 p.m.on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a Term SOFR Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Sections 3.1.1(c)** and **3.9**. Agent shall have the continuing, exclusive right to apply and reapply payments and proceeds of Collateral against the Obligations, at Agent's discretion, but whenever possible (provided no Default or Event of Default exists) any prepayment shall be applied to Base Rate Loans before Term SOFR Loans.

5.2 **Repayment of Loans**. Loans may be prepaid from time to time, without penalty or premium (subject to **Section 3.9**), pursuant to a notice of prepayment (in form reasonably satisfactory to Agent), delivered to Agent concurrently with prepayment of a Swingline Loan and at least three Business Days prior to prepayment of other Loans; provided, that no such notice shall be required for payments applied pursuant to **Section 5.6**. Loans shall be due and payable in full on the Termination Date, unless payment is sooner required hereunder, and any Overadvance or Protective Advance shall be due and payable as provided in **Sections 2.1.5** and **2.1.6**. If a Disposition includes Accounts or Inventory when a Trigger Period exists (or would result therefrom), Obligors shall apply Net Proceeds to repay Loans equal to the greater of (a)the net book value (or fair market value, if higher) of such Accounts and Inventory, or (b) the reduction in Borrowing Base resulting from the disposition.

5.3 **Payment of Other Obligations**. Obligations other than Loans, including LC Obligations and Claims, shall be paid by Obligors as provided in the Loan Documents or, if no payment date is specified, within five Business Days of demand therefor.

5.4 **Marshaling; Payments Set Aside**. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Obligors is made to Agent,Issuing Bank or any Lender, or if Agent,Issuing Bank or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent,Issuing Bank or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

5.5 **Application and Allocation of Payments**

5.5.1 Application. Payments made by Borrowers hereunder shall be applied (a)first, as specifically required hereby; (b)second, to Obligations then due and owing; (c) third, to other Obligations specified by Borrowers; and (d)fourth, as determined by Agent in its discretion. If funds received by or available to Agent under clause (b)are insufficient to pay fully all Obligations then due and owing, such funds shall be applied (i)ratably to pay interest and fees until paid in full, and then (ii)ratably to pay unreimbursed draws under Letters of Credit and Loan principal then due and owing.

5.5.2 Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary but subject to the Intercreditor Agreement, during an Event of Default under **Section 11.1(i), (j)** or **(k)**, or during any other Event of Default at the discretion of Agent or Required Lenders, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent;

(b) second, to all other amounts owing to Agent, including Swingline Loans, Protective Advances, and Loans and participations that a Defaulting Lender has failed to settle or fund;

(c) third, to all amounts owing to Issuing Bank;

(d) fourth, to all Obligations (other than Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Lenders;

(e) fifth, to all Obligations (other than Secured Bank Product Obligations) constituting interest;

(f) sixth, to Cash Collateralize all LC Obligations;

(g) seventh, to all Loans, and to Secured Bank Product Obligations constituting Swap Obligations (including Cash Collateralization thereof) up to the amount of Reserves existing therefor;

(h) eighth, to all other Secured Bank Product Obligations; and

(i) last, to all remaining Obligations.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in each category. Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from a Secured Bank Product Provider. If the provider fails to deliver the calculation within five days following request, Agent may assume the amount is zero. The allocations in this Sectionare solely to determine the priorities among Secured Parties and may be changed by agreement of affected Secured Parties without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Obligor, and no Obligor has any right to direct the application of payments or Collateral proceeds subject to this Section.

5.5.3 Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been paid shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.6 **Dominion Account**. The ledger balance in the Dominion Account(s)as of the end of a Business Day shall be transferred to Bank of America and applied to the Obligations at the beginning of the next Business Day, during any Trigger Period. Any resulting credit balance shall not accrue interest in favor of Borrowers and Agent shall use commercially reasonable efforts to transfer such credit balance to Borrowers' operating account on such next Business Day so long as no Event of Default exists (an "Existing Event of Default"); provided that upon the cure or waiver of all Existing Events of Default, any such credit balance shall be made available to Borrowers.

5.7 **Account Stated**. Agent shall maintain, in accordance with its customary practices, loan account(s)evidencing the Debt of Borrowers hereunder, including the Register in accordance with **Section 13.3.4**. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries in a loan account shall be presumptive evidence of the information contained therein. If information in a loan account is provided to or inspected by or on behalf of a Borrower, the information shall be conclusive and binding on Borrowers for all purposes absent manifest error, except to the extent Borrower Agent notifies Agent in writing within 30 days of specific information subject to dispute.

5.8 **Taxes**.

5.8.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.

(a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Agent or an Obligor in its good faith discretion) requires the deduction or withholding of any Tax from any such payment by Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding. For purposes of **Sections 5.8** and **5.9**, "Applicable Law" shall include FATCA, "Lender" shall include Issuing Bank and "Obligations" shall exclude Secured Bank Product Obligations.

(b) Subject to **Section 5.8.1(a)**, if Agent or any Obligor is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) Agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant

to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) If Agent or any Obligor is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.8.2 Payment of Other Taxes. Without limiting the foregoing, Obligors shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

5.8.3 Tax Indemnification.

(a) Each Obligor shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Obligor shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrower Agent by a Lender or Issuing Bank (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.

(b) Each Lender and Issuing Bank shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender or Issuing Bank (but only to the extent Obligors have not already paid or reimbursed Agent therefor and without limiting Obligors' obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant Register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender and Issuing Bank shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender or Issuing Bank by Agent shall be conclusive absent manifest error.

5.8.4 Evidence of Payments. As soon as practicable after payment by an Obligor of any Taxes to a Governmental Authority pursuant to this Section, Borrower Agent shall deliver to Agent the original or a certified copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment or other evidence of payment reasonably satisfactory to Agent.

5.8.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender or Issuing Bank, nor have any obligation to pay to any Lender or Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of a Lender or Issuing Bank. If a Recipient determines in its discretion, exercised in good faith, that it has received a refund of Taxes that were indemnified by Obligors or with respect to which an Obligor paid additional amounts pursuant to this Section, it shall pay the amount of such refund to Borrower Agent (but only to the extent of indemnity payments or additional amounts actually paid by Obligors with respect to the Taxes giving rise to the refund), net of all reasonable out-of-pocket expenses (including Taxes) incurred by such Recipient and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Obligors shall, upon request by the Recipient, repay to the Recipient such amount paid over to Obligors (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.8.5**, no Recipient shall be required to pay any amount to Obligors if such payment would place it in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its taxes that it deems confidential) available to any Obligor or other Person.

5.9 Lender Tax Information.

5.9.1 Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrower Agent and Agent, at the times reasonably requested by the Borrower Agent or the Agent, such properly completed and executed documentation reasonably requested by Borrower Agent or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Agent or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower Agent or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in **Sections 5.9.2(a)**, **(b)** and **(d)**) shall not be required if a Lender reasonably believes such completion, execution or submission would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.9.2 Documentation. Without limiting the foregoing,

(a) any Lender that is a U.S. Person shall deliver to Borrower Agent and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower Agent or Agent), executed copies of IRS Form W-9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower Agent or Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BENE establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W-8BENE establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate

in form satisfactory to Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code ("U.S. Tax Compliance Certificate"), and (y) executed copies of IRS Form W-8BENE; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BENE, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more of its direct or indirect partners is claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of Borrower Agent or Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers or Agent to determine the withholding or deduction required to be made; and

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrower Agent and Agent, at the time(s) prescribed by law and otherwise upon reasonable request, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Agent or Agent as may be necessary for Obligors or Agent to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof; and

(e) on or before the date on which Bank of America, N.A. (and any successor or replacement Agent) becomes the Agent hereunder, it shall deliver to Borrower Agent an executed copy of IRS Form W-9 certifying that such Agent is exempt from U.S. federal backup withholding tax.

5.9.3 Redelivery of Documentation. If any form or certification previously delivered by a Lender or Agent pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrower Agent and Agent in writing of its legal inability to do so.

5.10 Nature and Extent of Each Obligor's Liability.

5.10.1 Joint and Several Liability. Each Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and the other Secured Parties the prompt payment and performance of, all Obligations, except its Excluded Swap Obligations. Each Obligor agrees that its guaranty of the Obligations hereunder constitutes a continuing guaranty of payment and performance and not of collection, that such guaranty shall not be discharged until Full Payment of the Obligations, and that such guaranty is absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any other Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Obligations or any action or inaction by Agent or any other Secured Party in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Agent or any other Secured Party in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any other Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Obligations.

5.10.2 Waivers.

(a) Each Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or any other Secured Party to marshal assets or to proceed against any other Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is an Obligor. It is agreed among each Obligor, Agent and the other Secured Parties that the provisions of this Section are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and the other Secured Parties would decline to make Loans and issue Letters of Credit. Each Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(b) Agent and the other Secured Parties may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral or any Real Estate by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this Section. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any other Secured Party shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Obligor or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any other Secured Party to seek a deficiency judgment against any Obligor shall not impair any other Obligor's obligation to pay the full amount of the Obligations. Each Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys such Obligor's rights of subrogation against any other Person. Agent may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but may be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any other Secured Party might otherwise be entitled but for such bidding at any such sale.

5.10.3 Extent of Liability; Contribution.

(a) Notwithstanding anything herein to the contrary, each Obligor's liability under this Section shall not exceed the greater of (i) all amounts for which such Obligor is primarily liable, as described in clause (c) below, or (ii) such Obligor's Allocable Amount.

(b) If any Obligor makes a payment under this Section of any Obligations (other than amounts for which such Obligor is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Obligor, exceeds the amount that such Obligor would otherwise have paid if each Obligor had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Obligor's Allocable Amount bore to the total Allocable Amounts of all Obligors, then such Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Obligor for the amount of such excess, ratably based on their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Obligor shall be the maximum amount that could then be recovered from such Obligor under this Section without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(c) This Section shall not limit the liability of any Obligor to pay or guarantee Loans made directly or indirectly to it (including Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such Obligor), LC Obligations relating to Letters of Credit issued to support its business, Secured Bank Product Obligations incurred to support its business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Obligor shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of Loans and Letters of Credit to a Borrower based on that calculation.

(d) Each Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

5.10.4 Joint Enterprise. Each Obligor has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Obligors' business most efficiently and economically. Obligors' business is a mutual and collective enterprise, and the successful operation of each Obligor is dependent upon the successful performance of the integrated group. Obligors believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. Obligors acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Obligors and at Obligors' request.

5.10.5 Subordination. Each Obligor hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of its Obligations.

Section 6. CONDITIONS PRECEDENT.

6.1 Conditions Precedent to Initial Loans. In addition to the conditions set forth in **Section 6.2**, Lenders shall not be required to fund any requested Loan, issue any Letter of Credit, or otherwise extend credit to Borrowers hereunder, until the date ("Closing Date") that each of the following conditions has been satisfied:

(a) Each Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof.

(b) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral, as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.

(c) Agent shall have received duly executed agreements establishing each Dominion Account and related lockbox and Deposit Account Control Agreements for all Deposit Accounts (other than Excluded Accounts), in form and substance reasonably satisfactory to Agent.

(d) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each Obligor certifying that, after giving effect to the initial Loans and transactions hereunder, (i) such Obligor is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; (iv) assuming Agent and the Lenders are satisfied with any items that are subject to their satisfaction, such Obligor has complied with all agreements and conditions to be satisfied by it under the Loan Documents; and (v) attached to such certificate are true, accurate and complete copies of the Term Loan Agreement and all amendments thereto.

(e) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(f) Agent shall have received a written opinion of Vinson & Elkins L.L.P., in form and substance reasonably satisfactory to Agent.

(g) Agent shall have received copies of the charter documents of each Obligor, certified by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization as of a recent date. Agent shall have received good standing certificates as of a recent date for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization and each jurisdiction where such Obligor's conduct of business or ownership of Property necessitates qualification.

(h) Agent shall have received copies of policies or certificates of insurance for the insurance policies carried by Obligors.

(i) Each Obligor shall have provided, in form and substance satisfactory to Agent and each Lender, all documentation and other information as Agent or

any Lender deems appropriate in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act and Beneficial Ownership Regulation. If any Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall have provided a Beneficial Ownership Certification to Agent and Lenders in relation to such Obligor.

(j) Agent shall have completed its business, financial and legal due diligence of Obligors, including a field examination and appraisal, with results satisfactory to Agent. No material adverse change in the financial condition of any Obligor or in the quality, quantity or value of any Collateral shall have occurred since December 31, 2021.

(k) Obligors shall have paid all fees and expenses to be paid to Agent on the Closing Date, including field exam and appraisal costs and the reasonable and documented out-of-pocket fees and expenses of Haynes & Boone, LLP and other external advisors to the extent invoiced prior to the Closing Date.

(l) Agent shall have received a Borrowing Base Report as of December 31, 2022. Upon giving effect to the initial funding of Loans and issuance of Letters of Credit, and the payment by Obligors of all fees and expenses incurred in connection herewith as well as any payables stretched beyond their customary payment practices, Availability shall be at least $15,000,000.

(m) Agent shall have received a duly executed payoff letter in form and substance satisfactory to it and dated on or prior to the Closing Date with respect to the Company's ABL Credit Agreement dated December 14, 2018 with Barclays Bank PLC, as administrative agent, together with evidence satisfactory to it (including UCC-3 financing statement terminations and other termination documents) that on the Closing Date such Debt will be repaid in full and the Liens securing such Debt have been released, subject only to the filing of applicable terminations and releases.

(n) Term Loan ~~Lender~~Agent shall have entered into (i) the Intercreditor Agreement with Agent and (ii) an amendment to the Term Loan Agreement in order to permit this Agreement, which shall each be in form and substance reasonably satisfactory to Agent.

(o) Agent shall have received the Related Real Estate Documents requested by Agent for all Real Estate described on **Schedule 6.1(o)**.

6.2 Conditions Precedent to All Credit Extensions. Agent, Issuing Bank and Lenders shall not be required to make any credit extension hereunder (including funding a Loan, arranging a Letter of Credit, or granting any other accommodation to or for the benefit of any Obligor), if the following conditions are not satisfied on such date and upon giving effect thereto:

(a) No Default or Event of Default exists or would result therefrom;

(b) The representations and warranties of each Obligor in the Loan Documents are true and correct in all material respects without duplication of any materiality qualification applicable thereto (except for representations and warranties that expressly apply only on an earlier date, which shall be true and correct in all material respects, without duplication, as of such date);

(c) Sufficient Availability exists therefor; and

(d) With respect to a Letter of Credit issuance, all LC Conditions are satisfied.

Each request (or deemed request) by a Borrower for any credit extension shall constitute a representation by Obligors that the foregoing conditions are satisfied on the date of such request and on the date of the credit extension. Notwithstanding the foregoing, no more than $50,000,000 of Loans may be outstanding on the date the Hercules Acquisition is consummated (and, if applicable, Borrowers shall prepay the outstanding Loans such that the aggregate principal amount of Loans does not exceed $50,000,000 on the date the Hercules Acquisition is consummated).

Section 7. COLLATERAL.

7.1 Grant of Security Interest. To secure the prompt payment and performance of the Obligations, each Obligor hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest and Lien on all personal Property of such Obligor, including the following, whether now owned or hereafter acquired, and wherever located:

(a) all Accounts and all Payment Intangibles;

(b) all Chattel Paper, including electronic chattel paper;

(c) all Commercial Tort Claims, including those shown on **Schedule 7.5**;

(d) all Deposit Accounts and Securities Accounts;

(e) all Documents;

(f) all General Intangibles (including Intellectual Property) and all business interruption insurance;

(g) all Goods, including Inventory, Equipment, Fixtures and As-Extracted Collateral;

(h) all Instruments;

(i) all Investment Property;

(j) all Letter-of-Credit Rights;

(k) all Supporting Obligations;

(l) all monies, whether or not in the possession or under the control of Agent, including any Cash Collateral;

(m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and

(n) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

To the extent that any of the above-described Property is not subject to the UCC, each Obligor hereby pledges and collaterally assigns all of such Obligor's right, title, and interest in and to such Property, whether now owned or hereafter acquired, to Agent for the benefit of the Secured Parties to secure the payment and performance of the Obligations to the full extent that such a pledge and collateral assignment is possible under relevant law.

Notwithstanding the foregoing, Collateral shall not include any Excluded Property; provided that Excluded Property shall not include any proceeds, products, substitutions or replacements of Excluded Property, including monies due or to become due to an Obligor (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

7.2 Lien on Deposit Accounts; Cash Collateral.

7.2.1 Deposit Accounts. Agent's Lien hereunder encumbers all amounts credited to any Deposit Account of an Obligor (other than to the extent constituting Excluded Property), including sums in any blocked, lockbox, sweep or collection account.

7.2.2 Cash Collateral. As security for the Obligations, each Obligor hereby grants to Agent a security interest in and Lien upon all Cash Collateral delivered hereunder from time to time, whether held in a segregated cash collateral account or otherwise. Agent may apply Cash Collateral to the payment of the Obligations as they become due, in such order as Agent may elect. All Cash Collateral and related Deposit Accounts shall be under the sole dominion and control of Agent, and no Obligor or other Person shall have any right to any Cash Collateral until Full Payment of the Obligations.

7.3 Pledged Collateral.

7.3.1 Pledged Equity Interests and Debt Securities. As security for the payment and performance of the Obligations, each Obligor hereby assigns and pledges to Agent, for the benefit of the Secured Parties, and hereby grants to Agent, for the benefit of Secured Parties, a security interest in, all of such Obligor's right, title and interest in, to and under (a) the Equity Interests now owned or at any time hereafter acquired by such Obligor, including the Equity Interests set forth opposite the name of such Obligor on **Schedule 7.3**, and all certificates and other instruments representing such Equity Interests (excluding any Excluded Property, collectively, the "Pledged Equity Interests"); (b) the debt securities now owned or at any time hereafter acquired by such Obligor, including the debt securities set forth opposite the name of such Obligor on **Schedule 7.3**, and all promissory notes and other instruments evidencing such debt securities (collectively, the 'Pledged Debt Securities"); (c) all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the property referred to in clauses (a) and (b) above; (d) all rights and privileges of such Obligor with respect to the securities, instruments and other property referred to in clauses (a), (b) and (c) above; and (e) all proceeds of any and all of the foregoing (the items referred to in clauses (a) through (e) above being collectively referred to as the "Pledged Collateral").

7.3.2 Delivery of the Pledged Collateral.

(a) Each Obligor agrees to deliver or cause to be delivered to Agent any and all Pledged Collateral at any time owned by such Obligor promptly following the acquisition thereof by such Obligor (and in any event within 30 days) to the extent that such Pledged Collateral is either (i) certificated Pledged Equity Interests or (ii) in the case of Pledged Debt Securities, required to be delivered pursuant to paragraph (b) of this **Section 7.3.2**; provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.2(a)** so long as the Intercreditor Agreement is in full force and effect.

(b) All Debt (other than Debt that has a principal amount of less than $250,000 individually and $1,000,000 in the aggregate) owing to any Obligor that is evidenced by a promissory note or other Instrument shall be promptly (and in any event within 30 days of the acquisition thereof) delivered to Agent pursuant to the terms hereof; provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.2(b)** so long as the Intercreditor Agreement is in full force and effect.

(c) Upon delivery (i) any Pledged Equity Interests shall be accompanied by undated stock powers duly executed by the applicable Obligor in blank or other instruments of transfer reasonably satisfactory to Agent and by such other instruments and documents as Agent may reasonably request and (ii) all other property comprising part of the Pledged Collateral shall, if relevant or applicable to such property, be accompanied by undated proper instruments of assignment duly executed by the applicable Obligor in blank and by such other instruments and documents as Agent may reasonably request. In connection with any delivery of Pledged Collateral after the date hereof, Borrower Agent shall deliver a Schedule describing the Pledged Collateral so delivered, which Schedule shall be attached to **Schedule 7.3** and made a part hereof; provided, that failure to deliver any such Schedule hereto or any error in a Schedule so attached shall not affect the validity of the pledge of any Pledged Collateral.

7.3.3 Pledge Related Representations, Warranties and Covenants. Each Obligor hereby represents, warrants and covenants to Agent and the Secured Parties that:

(a) As of the Closing Date, **Schedule 7.3** sets forth a true and complete list, with respect to such Obligor, of (i) all the Equity Interests owned by such Obligor and the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by the Pledged Equity Interests owned by such Obligor and (ii) all debt owned by such Obligor, and all promissory notes and other instruments evidencing such debt. **Schedule 7.3** sets forth all Equity Interests, debt and promissory notes required to be pledged hereunder as of the Closing Date.

(b) The Pledged Equity Interests and Pledged Debt Securities, solely with respect to Pledged Equity Interests and Pledged Debt Securities issued by a Person that is an Obligor or a Subsidiary of the Company, have been duly and validly authorized and issued by the issuers thereof and (i) in the case of Pledged Equity Interests issued by a Person that is an Obligor or a Subsidiary of the Company, are fully paid and nonassessable (to the extent such concepts are relevant to such Pledged Equity Interests) and (ii) in the case of Pledged Debt Securities issued by an Obligor or a Subsidiary of the Company, are legal, valid and binding obligations of the issuers thereof (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(c) Except for the security interests granted hereunder, such Obligor (i) is and, subject to any transfers or dispositions made in compliance with this Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Collateral indicated on **Schedule 7.3** as owned by such Obligor, (ii) holds the same free and clear of all Liens (other than Permitted Liens), (iii) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral (other than Permitted Liens and Permitted Dispositions), and (iv) will defend its title or interest thereto or therein against any and all Liens (other than Permitted Liens and Permitted Dispositions), however arising, of all Persons whomsoever.

(d) Such Obligor has the power and authority to pledge the Pledged Collateral pledged by it hereunder.

(e) No Governmental Approval or any other action by any Governmental Authority and no consent or approval of any securities exchange or any other Person (including stockholders, partners, members or creditors of such Obligor) is or will be required for the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect).

7.3.4 Registration in Nominee Name; Denominations. Agent shall have the right to hold the Pledged Collateral in its own name as pledgee, in the name of its nominee or in the name of the applicable Obligor, endorsed or assigned in blank or in favor of Agent. During the continuance of an Event of Default, Agent shall at all times have the right to exchange the certificates representing Pledged Equity Interests for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

7.3.5 Voting Rights; Dividends and Interest.

(a) Unless and until an Event of Default shall have occurred and be continuing and Agent shall have notified any Obligors that their rights under this Section are being suspended:

(i) Each Obligor shall be entitled to exercise any and all voting and other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement and the other Loan Documents; provided, that such rights and powers shall not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral or the rights and remedies of Agent or any other Secured Party under this Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same.

(ii) Agent shall promptly execute and deliver to Obligors, or cause to be executed and delivered to Obligors, all such proxies, powers of attorney and other instruments as Obligors may reasonably request for the purpose of enabling Obligors to exercise the voting and other consensual rights and powers they are entitled to exercise pursuant to paragraph (i) above.

(iii) Each Obligor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of this Agreement, the other Loan Documents and Applicable Law; provided, that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity Interests or Pledged Debt Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Collateral or received in exchange for Pledged Collateral or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral and, if received by any Obligor, shall be held in trust for the benefit of Agent and shall be forthwith delivered to Agent promptly following demand in the same form as so received (with any necessary endorsement); provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.5** so long as the Intercreditor Agreement is in full force and effect.

(b) Upon the occurrence and during the continuance of an Event of Default, after Agent shall have notified any Obligors of the suspension of their rights under paragraph (a)(iii) of this Section, all rights of any Obligor to dividends, interest, principal or other distributions that such Obligor is authorized to receive pursuant to paragraph (a)(iii) of this Section shall cease, and all such rights shall thereupon become vested in Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by any Obligor contrary to the provisions of this Section shall be held in trust for the benefit of Agent and shall be forthwith delivered to Agent upon demand in the same form as so received (with any necessary endorsement); provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.5** so long as the Intercreditor Agreement is in full force and effect. Any and all money and other property paid over to or received by Agent pursuant to the provisions of this paragraph shall be retained by Agent in an account to be established by Agent upon receipt of such money or other property, shall be held as security for the Obligations and shall be applied in accordance with the provisions of **Section 5.5**.

(c) Upon the occurrence and during the continuance of an Event of Default, after Agent shall have notified any Obligors of the suspension of their rights under paragraph (a)(i) of this Section, all rights of any Obligor to exercise the voting and other consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section, and the obligations of Agent under paragraph (a)(ii) of this Section, shall cease, and all such rights shall thereupon become vested in Agent, which shall have the sole and exclusive right and authority to exercise such voting and other consensual rights and powers; provided, that unless otherwise directed by the Required Lenders, Agent shall have the right from time to, in its sole discretion, notwithstanding the continuance of an Event of Default, to permit any Obligor to exercise such rights and powers.

7.3.6 Consents.

(a) In the case of each Obligor which is an issuer of Pledged Collateral, such Obligor agrees to be bound by the terms of this Agreement relating to the Pledged Collateral issued by it and will comply with such terms insofar as such terms are applicable to it. Without limitation to the foregoing, with respect to each Obligor that is an issuer of Pledged Collateral constituting uncertificated securities, such Obligor agrees that upon notice from Agent following the occurrence and during the continuance of an Event of Default, such Obligor shall comply with Agent's instructions with respect to such Pledged Collateral without further consent of the Obligor holding such Pledged Collateral.

(b) Each Obligor on behalf of itself, and in the case of each Obligor which is a partner, shareholder or member, as the case may be, in a partnership, corporation, limited liability company or other entity that is an issuer of Pledged Collateral such Obligor in such capacity, hereby (i) consents, to the extent required by the applicable Organic Documents of such Obligor or such issuer of Pledged Collateral, to the pledge by it and by each other Obligor pursuant to the terms hereof of the Pledged Collateral in such partnership, corporation, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Pledged Collateral to Agent or its nominee or transferee and admission of such Person as a substitute partner, shareholder or member, as the case may be, and (ii) to the maximum extent permitted to do so, irrevocably waives any and all provisions of the applicable Organic Documents of such issuer of Pledged Collateral that conflict with the terms of this Agreement or prohibit, restrict, condition or otherwise affect the grant hereunder of any Lien on any of the Pledged Collateral or any enforcement action which

may be taken in respect of any such Lien.

7.4 Real Estate Collateral.

7.4.1 Lien on Real Estate. The Obligations shall be secured by Mortgages upon all Required Real Estate Collateral owned or leased by Obligors. If any Obligor acquires Required Real Estate Collateral hereafter (or any previously owned or leased Real Estate becomes Required Real Estate Collateral after the date hereof), Obligors shall promptly notify Agent and, within 60 days (or such later date as the Agent may agree), execute, deliver and record a Mortgage, in form and substance reasonably satisfactory to Agent, together with all Related Real Estate Documents. The Mortgages shall be duly recorded, at Obligors' expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby.

7.4.2 Collateral Assignment of Leases. To further secure the prompt payment and performance of its Obligations, each Obligor hereby transfers and assigns to Agent and grants a Lien in favor of Agent on all of such Obligor's right, title and interest in, to and under all now or hereafter existing leases of Real Estate to which such Obligor is a party, whether as lessor or lessee, and all extensions, renewals, modifications and proceeds thereof.

7.4.3 Release of Required Real Estate Collateral. Notwithstanding anything in any Loan Document to the contrary, with respect to any Real Estate (other than fixtures and as-extracted collateral) subject to a Lien in favor of Agent, in the event that no Term Loan Debt is outstanding or the Term Loan Debt is not secured by a Lien on such Real Estate (and no other Borrowed Money permitted under **Section 10.2.1(n)** is secured by such Real Estate) (the occurrence of such event with respect to any Real Estate, a "Release Event"), the Obligors may request that Agent release its Lien on such Real Estate and Agent shall release such Lien promptly following such Obligors' request pursuant to such release documentation as the Obligors may reasonably request and that is reasonably acceptable to Agent, provided, that (a) no Event of Default exists at such time, (b) Agent may make or retain UCC "as-extracted" collateral and/or fixture filings, and (c) any such release shall be without prejudice to **Section 7.4.1** in the event that such Real Estate subsequently constitutes Required Real Estate Collateral.

7.5 Other Collateral.

7.5.1 Commercial Tort Claims. As of the Closing Date, no Obligor has a Commercial Tort Claim (other than any Commercial Tort Claim of less than $500,000) except as set forth on **Schedule 7.5**. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor has an additional Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than $500,000), shall promptly amend **Schedule 7.5** to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority Lien in favor of Agent (subject to the Intercreditor Agreement).

7.5.2 Certain After-Acquired Collateral. As of the Closing Date, no Obligor has any Chattel Paper (other than any Chattel Paper with a face amount individually of less than $500,000 or less than $1,000,000 in the aggregate) except as set forth on **Schedule 7.5**. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor acquires any Chattel Paper with a face amount individually in excess of $500,000 or in the aggregate in excess of $1,000,000) constituting Collateral, and shall, upon Agent's request, deliver to Agent the originals of any such Chattel Paper. As of the Closing Date, no Obligor has any Document evidencing or constituting Collateral in an amount individually in excess of $500,000 or in the aggregate in excess of $1,000,000 except as set forth on **Schedule 7.5**. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor acquires any Document evidencing or constituting Collateral in an amount individually in excess of $500,000 or in the aggregate in excess of $1,000,000, and shall, upon Agent's request, deliver to Agent the originals of any such Documents. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor acquires any Letter of Credit Right evidencing or constituting Collateral in an amount individually in excess of $500,000 or in the aggregate in excess of $1,000,000, and shall, upon Agent's request, take such further actions as Agent may reasonably require to perfect its Lien thereon. Obligors shall notify Agent of the acquisition of any material Intellectual Property at the time of delivery of each Compliance Certificate and shall, upon Agent's request, take such further actions as Agent may reasonably require to perfect its Lien thereon.

7.6 Limitations. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Obligors relating to any Collateral. In no event shall any Obligor's grant of a Lien under any Loan Document secure its Excluded Swap Obligations.

7.7 Further Assurances. All Liens granted to Agent under the Loan Documents are for the benefit of Secured Parties. Promptly (and in any event within 30 days) upon request, Obligors shall deliver such instruments and agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of such Obligor, or words to similar effect.

Section 8. COLLATERAL ADMINISTRATION.

8.1 Borrowing Base Reports. By the 25th day of each month, Borrower Agent shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a Borrowing Base Report as of the close of business of the previous month; provided, that if a Trigger Period is in effect Borrower Agent shall, no later than the third Business Day of each calendar week, deliver a Borrowing Base Report prepared as of the close of business of such previous week. All information (including the calculation of Availability) in a Borrowing Base Report shall be certified by Borrower Agent. Agent may from time to time adjust such report (a) to reflect Agent's reasonable estimate of declines in value of Collateral, due to collections received in the Dominion Account or otherwise; and (b) to the extent any information or calculation does not comply with this Agreement.

8.2 Accounts.

8.2.1 Records and Schedules of Accounts. Each Obligor shall keep accurate and complete, in all material respects, records of its Accounts, including all payments and collections thereon, and shall submit to Agent each of the reports set forth on **Schedule 8.2.1** at the times specified therein. If Accounts in an aggregate face amount of $2,500,000 or more cease to be Eligible Accounts or Eligible Unbilled Accounts, Borrowers shall notify Agent of such occurrence promptly (and in any event within three Business Days) after any Obligor has knowledge thereof.

8.2.2 Taxes. If an Account of any Obligor includes a charge for any Taxes, Agent is authorized, in its discretion if Obligors have not paid such Taxes

when due and a Default or an Event of Default has occurred and is continuing, to pay the amount thereof to the proper taxing authority for the account of such Obligor and to charge Obligors therefor; provided, that neither Agent nor Lenders shall be liable for any Taxes that may be due from Obligors or relate to any Collateral.

8.2.3 Account Verification. Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Obligor, to verify the validity, amount or any other matter relating to any Accounts of Obligors by mail, telephone or otherwise; provided that as long as no Event of Default exists (a) Agent shall provide Borrower Agent at least two (2) Business Days' notice prior to such verification and (b) shall provide an opportunity for a representative of the Borrower Agent to participate in any such phone call, if Borrower Agent so elects. Obligors shall provide reasonable cooperation with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4 Maintenance of Dominion Account. Obligors shall maintain Dominion Accounts pursuant to lockbox or other arrangements reasonably acceptable to Agent (and which Dominion Accounts shall be separate from the collection accounts for any Unrestricted Subsidiary). Obligors shall obtain a Deposit Account Control Agreement from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account (which may be exercised by Agent only during a Trigger Period) requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. Agent may, during any Trigger Period, require immediate transfer of all funds in such Dominion Account(s) to Bank of America pursuant to **Section 5.6** and such transferred funds shall be applied to the Obligations or made available to Borrowers, as applicable, in accordance with **Section 5.6**. Agent and Lenders assume no responsibility to Obligors for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5 Proceeds of ABL Priority Collateral. Obligors shall request in writing and otherwise take all commercially reasonable steps to ensure that all payments on Accounts or otherwise relating to ABL Priority Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Obligor or Subsidiary receives cash or Payment Items with respect to any ABL Priority Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit the same into a Dominion Account. Obligors shall not deposit or comingle payments on Accounts owing to any Unrestricted Subsidiary into the Dominion Account.

8.3 Inventory.

8.3.1 Records and Reports of Inventory. Each Obligor shall keep accurate and complete records of its Inventory, and shall submit to Agent each of the reports set forth on **Schedule 8.2.1** at the times specified therein.

8.3.2 [Reserved].

8.3.3 Acquisition, Sale and Maintenance. No Obligor shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. No Obligor shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require an Obligor to repurchase such Inventory. Obligors shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where any Collateral is located, in each case except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

8.4 [Reserved].

8.5 Administration of Deposit Accounts and Securities Accounts. As of the Closing Date, **Schedule 8.5** lists all Deposit Accounts and Securities Accounts maintained by Obligors, including Dominion Accounts. Obligors shall be the sole account holders of each Deposit Account and Securities Account (other than Excluded Accounts described in clauses (a) and (c) of the definition thereof) and shall not allow any Person (other than Agent, the depository bank or securities intermediary and the Term Loan ~~Lender~~Agent) to have control over their Deposit Accounts, Securities Accounts or any Property deposited therein (other than Excluded Accounts described in clauses (a) and (c) of the definition thereof). Obligors shall promptly notify Agent of any opening of a Deposit Account or a Securities Account. With respect to all Deposit Accounts (other than Excluded Accounts) and Securities Accounts existing on the Closing Date, and promptly following the opening of any new Deposit Account (other than Excluded Accounts) and Securities Account after the Closing Date (but in any event prior to the transfer of any funds or other property thereto), the Obligors shall provide Agent with a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable. Obligors shall not comingle funds of any Unrestricted Subsidiary in Obligors' Deposit Accounts or Securities Accounts; provided that the inadvertent comingling of funds in an aggregate amount not exceeding $1,000,000 at any one time shall not constitute a breach of the foregoing requirement so long as promptly rectified following knowledge thereof.

8.6 General Provisions.

8.6.1 Location of Collateral. All material tangible items of Collateral, other than Inventory in transit and Equipment out for repair or in use away from a Sand Facility in the Ordinary Course of Business, shall at all times be kept by Obligors at the business locations set forth in **Schedule 8.6.1** (as updated from time to time by the Obligors by written notice to the Agent), except that Obligors may (a) make sales or other dispositions of Collateral in accordance with **Section 10.2.5**; and (b) move Collateral to customer sites, drop depots and trucking yards in the Ordinary Course of Business.

8.6.2 Insurance of Collateral; Condemnation Proceeds.

(a) Each Obligor shall maintain insurance with respect to the Collateral with financially sound and reputable insurance companies in such amounts and against such risks (including casualty) as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations and with insurers reasonably satisfactory to Agent (it being agreed that insurers with a Best rating of at least A- shall be deemed satisfactory to Agent), which insurance policies and proceeds thereof, whether now owned or hereafter existing, are hereby collaterally assigned to Agent as security for the Obligations; provided, that if Real Estate secures any Obligations, flood hazard diligence, documentation and insurance for such Real Estate shall comply with all Flood Laws or shall otherwise be reasonably satisfactory to all Lenders. From time to time upon Agent's reasonable request, Obligors shall deliver to Agent copies of its insurance policies and updated flood plain searches. Each policy shall include endorsements reasonably satisfactory to Agent (i) showing Agent as additional insured and lender's loss payee; and (ii) requiring 30 days prior written notice to Agent of cancellation of the policy for any reason whatsoever (10 days in the case of non-payment). If any Obligor fails to provide and pay for any insurance, Agent may, in its discretion, procure the insurance and charge Obligors therefor. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim. If an Event of Default exists, only Agent may settle, adjust and compromise such claims with respect to Collateral (subject to the Intercreditor Agreement with respect to any Term Priority Collateral).

(b) Any proceeds of business interruption insurance and of property insurance in respect of ABL Priority Collateral (other than, for the avoidance of

doubt, workers' compensation, D&O insurance and liability policy payments to third parties) and awards from condemnation of ABL Priority Collateral shall be paid directly to Agent for application to the Obligations during a Trigger Period.

8.6.3 Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Obligors. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.6.4 Defense of Title. Each Obligor shall use commercially reasonable efforts to defend its title to any material Collateral and Agent's Liens therein against all Persons, claims and demands, except Permitted Liens.

8.7 Power of Attorney. Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Agent, or Agent's designee, may (in its discretion), without notice and in either its or an Obligor's name, but at the cost and expense of Obligors:

(a) Endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During the continuance of an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (vii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (viii) use information contained in any data processing, electronic or information systems relating to Collateral; (ix) make and adjust claims under insurance policies; (x) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; (xi) exercise any voting or other rights relating to Investment Property following written notice to Borrower Agent of its intention to do so; and (xii) take all other actions as Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

Section 9. REPRESENTATIONS AND WARRANTIES.

9.1 General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Obligor represents and warrants that:

9.1.1 Organization; Powers. Each of the Obligors and their Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications would not reasonably be expected to result in a Material Adverse Effect.

9.1.2 Authority; Enforceability. The execution, delivery and performance of the Loan Documents are within each Obligor's corporate, limited liability company or partnership powers and have been duly authorized by all necessary corporate, limited liability company or partnership and, if required, equityholder action (including, without limitation, any action required to be taken by any class of directors, whether interested or disinterested, of the Obligors or any other Person in order to ensure the due authorization of the Loan Documents). Each Loan Document to which any Obligor is a party has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable in accordance with its terms, subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

9.1.3 Approvals; No Conflicts. The execution, delivery and performance of the Loan Documents to which each Obligor is a party (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including equityholders, members, partners or any class of directors or managers, whether interested or disinterested, of the Obligors or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the obligations under the Loan Documents, except such as have been obtained or made and are in full force and effect, other than (i) the recordations and filings necessary to perfect Agent's Liens in the Collateral, as required by this Agreement and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder and would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate any Applicable Law or any order of any Governmental Authority material to any Obligor's or its Restricted Subsidiary's business, (c) will not violate or result in a default under any Organic Documents of any Obligor or any indenture or other material agreement regarding Debt binding upon any Obligor or its Restricted Subsidiaries or its Properties (including the Term Loan Documents), or give rise to a right thereunder to require any payment to be made by any Obligor, and (d) will not result in the creation or imposition of any Lien on any Sand Property of any Obligor or its Restricted Subsidiaries (other than the Liens created by the Loan Documents).

9.1.4 Financial Condition; No Material Adverse Effect.

(a) The Borrowers have delivered to the Agent (for further distribution to the Lenders) the annual financial statements for the Fiscal Year ending December 31, 2021 and the quarterly financial statements for the Fiscal Quarter ending September 30, 2022 (the "Historical Financial Statements"). The Historical Financial Statements, including schedules and notes thereto, if any, have been prepared in reasonable detail in accordance with GAAP consistently applied throughout the periods covered thereby and present fairly, in all material respects, the Company's and its Subsidiaries' financial position as at the dates thereof and their results of operations for the periods then ended, subject, in the case of such unaudited financial statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(b) Since December 31, 2021, there has been no event, development or circumstance that has had or would reasonably be expected to result in a Material Adverse Effect.

(c) No Obligor or any of its Restricted Subsidiaries has as of the Closing Date any material (i) Debt (including Disqualified Equity Interests) or contingent liabilities, (ii) off-balance sheet liabilities or partnership liabilities, (iii) liabilities for past due Taxes, (iv) unusual forward or long-term commitments or

(v) unrealized or anticipated losses from any unfavorable commitments, in each case, that would be required by GAAP to be reflected or noted in audited financial statements, except as referred to or reflected or provided for in the Historical Financial Statements or in other written information provided by the Borrowers to the Agent and the Lenders prior to the Closing Date.

9.1.5 Litigation. There are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrowers, threatened in writing against or affecting any Obligor or any of its Restricted Subsidiaries (i) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable probability of an adverse determination that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (ii) that involve the enforceability of any Loan Document.

9.1.6 Environmental Matters.

(a) Except for matters set forth on **Schedule 9.1.6** or that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect:

(i) the Obligors and each of their respective Properties and operations thereon are, and within all applicable statute of limitation periods have been, in compliance with all applicable Environmental Laws;

(ii) the Obligors have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and neither the Company nor the other Obligors has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be denied;

(iii) there are no claims, demands, suits, orders, inquiries, or proceedings concerning any violation of, or any liability (including as a potentially responsible party or any liability for investigation, remediation, removal, abatement, or monitoring of Hazardous Materials) under, any applicable Environmental Laws that is pending or, to the Obligors' knowledge, threatened in writing against any Obligor or any of its Restricted Subsidiaries or any of their respective Properties or as a result of any operations at such Properties;

(iv) there has been no Environmental Release or, to the Obligors' knowledge, threatened Environmental Release, of Hazardous Materials at, on, under or from the Obligors' Properties, there are no investigations, remediations, abatements, removals, or monitorings of Environmental Releases of Hazardous Materials required under applicable Environmental Laws at such Properties and, to the knowledge of the Obligors, none of such Properties are adversely affected by any Environmental Release or threatened Environmental Release of a Hazardous Material originating or emanating from any other real property;

(v) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Obligors' Properties that would reasonably be expected to form the basis for a claim for damages or compensation; and

(vi) none of the Properties of the Obligors contain any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law.

(b) The Obligors have made available to the Agent, to the extent requested by the Agent, complete and correct copies of all material written environmental site assessment reports, investigative reports, studies, analyses, and governmental correspondence, in each case on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrowers' or any other Obligor's possession or control and relating to their respective Properties or operations thereon.

9.1.7 Compliance with the Laws and Agreements; No Defaults.

(a) Each of the Obligors (i) is in compliance with (A) all Applicable Laws applicable to it or its Property or to the construction of the Sand Facility Improvements, and (B) all agreements and other instruments binding upon it or its Property, and (ii) possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations, in each case, necessary for the ownership of its Property, the construction of the Sand Facility Improvements, and the conduct of its business, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) There exists no default or event or circumstance that, but for the expiration of any applicable grace period or the giving of notice, or both, would result in or permit the acceleration of the maturity of or would require any Borrower or any other Obligor or any of their respective Restricted Subsidiaries to redeem, defease or otherwise repay or make any offer therefor under any indenture, note, credit agreement or instrument pursuant to which any Material Debt is outstanding or by which any Borrower or any other Obligor or any of their Restricted Subsidiaries or any of their Properties is bound.

(c) No Default or Event of Default has occurred and is continuing.

9.1.8 Investment Company Act. None of the Obligors is an "investment company" or a company "controlled" by an "investment company," within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

9.1.9 Taxes. Each of the Obligors has (a) timely filed or caused to be filed all federal income Tax returns and all material state and other tax returns and reports, in each case required by Applicable Law to have been filed, and such Tax returns accurately reflect in all material respects all liabilities for Taxes of the Obligors for the periods covered thereby, and (b) paid or caused to be paid all material Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Borrower or such other Obligor or its Restricted Subsidiaries, as applicable, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Obligors and their Restricted Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Obligors, adequate. To the knowledge of the Obligors, (i) no Tax lien has been filed other than those constituting an Excepted Lien described in clause (a) of the definition thereof and (ii) as of the Closing Date, no claim is being asserted in writing with respect to any such Tax or other such governmental charge.

9.1.10 ERISA. Except as would not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect:

(a) Each Pension Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other Applicable Laws; and each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from Federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Obligors, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) Other than routine claims for benefits, there are no pending or, to the knowledge of any Obligor, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Pension Plan. To the knowledge of any Obligor, there has been no "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) or violation of the fiduciary responsibility rules with respect to any Pension Plan that.

(c) No ERISA Event has occurred, and neither the Obligors nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan.

(d) Full payment when due has been made of all amounts which each Borrower, each other Obligor or any Restricted Subsidiaries or any ERISA Affiliate is required, under the terms of each Pension Plan, Multiemployer Plan or Applicable Law, to have paid as contributions to such Pension Plan or Multiemployer Plan as of the date hereof.

(e) None of the Obligors nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in Section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities (other than in accordance with Section 4980B of the Code or any similar state law), that may not be terminated by any Borrower, any other Obligor or any Restricted Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) The present value of all accrued benefit liabilities (as defined in Section 4001(a)(16) of ERISA) under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount (any such excess, "Unfunded Pension Liabilities"). As of the most recent valuation date for each Multiemployer Plan, the potential liability of any Obligor or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero.

9.1.11 Disclosure; No Material Misstatements. The reports, financial statements, certificates and other written information, taken as a whole, furnished by or on behalf of the Obligors to the Agent and the Lenders in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; *provided* that (a) to the extent any such report, financial statement, certificate or other written information was based upon or constitutes a forecast or projection, each Obligor represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such report, financial statement, certificate or other written information (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that the Obligors make no representation that such projections will be realized) and (b) as to statements, information and reports supplied by third parties, each Obligor represents only that it is not aware of any material misstatement or omission therein. The information included in the Beneficial Ownership Certification most recently delivered under this Agreement is true and correct in all respects.

9.1.12 Insurance. The Obligors have (a) all insurance policies sufficient for the compliance by each of them with all material Applicable Laws and all material agreements and (b) insurance coverage in at least amounts and against such risks (including, without limitation, public liability) that are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Obligors. The Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies and the Agent has been named as a lender loss payee with respect to Property loss insurance.

9.1.13 Restriction on Liens. None of the Obligors is a party to any material agreement or arrangement, or subject to any order, judgment, writ or decree, which either restricts or purports to restrict its ability to grant Liens to the Agent for the benefit of the Secured Parties on or in respect of their Properties that are subject to a Lien under one or more Loan Documents to secure the Obligations, except for Permitted Liens.

9.1.14 Subsidiaries and Capitalization.

(a) Except as set forth on **Schedule 9.1.14(a)** or as disclosed in writing to the Agent (which shall promptly furnish a copy to the Lenders), which shall be deemed to be a supplement to **Schedule 9.1.14(a)**, the Obligors have no Subsidiaries. The Obligors have no Foreign Subsidiaries.

(b) **Schedule 9.1.14(b)** lists the owners of all of the authorized and outstanding Equity Interests of each Obligor on the Closing Date, including options and other equity equivalents of the Obligors, together with the amount and percentage of such Equity Interests held by each such owner. All of the outstanding Equity Interests of each Subsidiary of the Obligors is validly issued and free and clear of any and all Liens (other than Permitted Liens).

9.1.15 Location of Business and Offices. Each Obligor's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business or chief executive office, as applicable, is stated on **Schedule 9.1.15** (or as set forth in a notice delivered pursuant to**Section 10.1.9**, **Section 10.2.7** and **Section 14.3**). Each Subsidiary's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business or chief executive office, as applicable, is stated on **Schedule 9.1.15** (or as set forth in a notice delivered pursuant to**Section 10.1.9**, **Section 10.2.7** and **Section 14.3**).

9.1.16 Properties; Titles, Etc.

(a) Subject to Immaterial Title Deficiencies, each of the Obligors has good and defensible title to all of its real Sand Properties and good title to all of its personal Sand Properties, in each case, free and clear of all Liens except Permitted Liens. All leases and agreements necessary for the conduct of the business of the Obligors are valid and subsisting, in full force and effect, and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such leases or agreements that would reasonably be expected to result in a Material Adverse Effect.

(b) All of the Sand Mines are described on **Schedule 9.1.16(b)** attached hereto or have been disclosed in writing as "Sand Mines" to the Agent after the Closing Date, which shall be deemed to be a supplement to **Schedule 9.1.16(b)**. The Obligors possess all of the real property interests necessary for the operation of the Sand Facilities currently operated by the Obligors, and all of the Sand Properties of the Obligors that are reasonably necessary for the operation of such Sand Facilities are in good working condition and are maintained in accordance with prudent business standards.

(c) Each Obligor and its Restricted Subsidiaries owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other Intellectual Property material to its business (including geological data, geophysical data, engineering data, seismic data, maps and interpretations), and the use thereof by such Obligor and its Restricted Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(d) Each Obligor and each of its Restricted Subsidiaries has good and defensible title in fee simple to, or valid leasehold interests in, or easements or other marketable property interests in, all Property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Permitted Liens and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

9.1.17 Maintenance of Properties. Except for such acts or failures to act as would not reasonably be expected to result in a Material Adverse Effect, the Sand Facilities currently operated by the Obligors have been maintained, operated, developed and mined in a good and workmanlike manner and in conformity with all Applicable Laws and in conformity with the provisions of all leases, subleases, agreements or other contracts forming a part of the Sand Properties of the Obligors related thereto. All improvements, fixtures and equipment owned in whole or in part by the Obligors that are necessary for the operation of such Sand Facilities are being maintained in a state adequate to conduct normal operations thereof, other than those the failure of which to maintain in accordance with this **Section 9.1.17** would not reasonably be expected to result in a Material Adverse Effect.

9.1.18 Borrowing Base Calculations. The calculation by the Borrowers of the Borrowing Base in any Borrowing Base Report delivered to the Agent and the valuation thereunder is complete and accurate in all material respects as of the date of such delivery.

9.1.19 Validity and Priority of Security Interest. Upon execution and delivery thereof by the parties thereto, the applicable Loan Documents will be effective to create legal and valid Liens on all the applicable Collateral in favor of the Agent for the benefit of the Secured Parties, subject to the effects of Debtor Relief Laws, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing and, upon the taking of such actions set forth in the Loan Documents, but subject to any exceptions to the taking of any actions as set forth therein, such Liens (a) constitute perfected Liens on all of the applicable Collateral, (b) have priority over all other Liens on the Collateral, subject to Permitted Liens and the provisions of any applicable Intercreditor Agreement then in existence, and (c) are enforceable against each Obligor, as applicable, granting such Liens.

9.1.20 Swap Obligations. **Schedule 9.1.20**, as of the Closing Date, and after the date hereof, each report required to be delivered by the Borrowers pursuant to **Section 10.1.2(i)**, sets forth a true and complete list of all Swap Obligations of each Borrower and each other Obligor and its Restricted Subsidiaries, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), all credit support agreements relating thereto and the counterparty to each such agreement.

9.1.21 Use of Loans. The proceeds of the Loans and Letters of Credit shall be used only for the purposes specified in **Section 2.1.3**. The Obligors and their Restricted Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan or Letter of Credit will be used whether on or following the Closing Date for any purpose which violates the provisions of Regulations T, U or X of the Board.

9.1.22 Solvency. The Obligors and their Restricted Subsidiaries, taken as a whole, are Solvent.

9.1.23 Major Material Contracts. As of the Closing Date, no Obligor or its Restricted Subsidiaries is a party to any Major Material Contract other than those Major Material Contracts set forth on **Schedule 9.1.23**. Each of the Obligors and their Subsidiaries is in compliance with the terms of the Major Material Contracts, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect.

9.1.24 Sanctions; Anti-Corruption.

(a) None of Parent, any Obligor or any of their Subsidiaries or, to the knowledge of Parent and such Obligor, any director, officer, employee, or agent of Parent, such Obligor or such Subsidiary, is a Person that is, or is owned or controlled by Persons that are, (i) the target of any Sanction, or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions.

(b) Parent, the Obligors and their respective Subsidiaries and, to the knowledge of Obligors and Parent, their respective directors, officers employees and agents, are, and have at all times in the past been, in compliance with all applicable Sanctions and Anti-Corruption Laws. Neither any Obligor or Parent has received notice of any action, suit, proceeding, or investigation against it with respect to Sanctions from any Governmental Authority during the past five (5) years. Each Obligor and Parent has instituted and maintains in effect such policies and procedures reasonably designed to ensure compliance with applicable Sanctions and the Anti-Corruption Laws.

9.1.25 Designation of Senior Debt. The Obligations are "Designated Senior Debt" (or any similar term) under the terms of the documentation governing any Subordinated Debt.

9.1.26 Affiliate Transactions. No Obligor or any of its Restricted Subsidiaries has entered into any transaction after the Closing Date that is not permitted by **Section 10.2.14**.

9.1.27 Credit Card Agreements. Set forth on **Schedule 9.1.27** is a correct and complete list of all of the Credit Card Agreements existing as of the Closing Date among any Obligor, Credit Card Issuers, Credit Card Processors and any of their Affiliates.

Section 10. COVENANTS AND CONTINUING AGREEMENTS.

10.1 Affirmative Covenants. As long as any Commitment or Obligations are outstanding, each Obligor shall, and shall cause each Restricted Subsidiary to:

10.1.1 Inspections; Appraisals.

(a) Permit Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Obligor or Subsidiary, inspect, audit and make extracts from any Obligor's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Obligor's or Subsidiary's business, financial condition, assets and results of operations; provided that so long as no Event of Default shall have occurred and be continuing, (i) Agent shall limit the number of inspections to not more than four (4) during any twelve (12) month period, and (ii) not more than one such inspection during any twelve (12) month period shall be at Borrowers' expense; provided, further, that if an Exam Trigger Period occurred during such year, Obligors shall reimburse Agent for all charges, costs and expenses associated with two inspections in a 12-month period. During any such inspection, Agent and its employees and agents and any employees and agents of any participating Lender shall comply with Borrowers' standard health and safety policies and procedures. Lenders may participate in any such visit or inspection, at their own expense. Secured Parties shall have no duty to any Obligor to make any inspection, nor to share any results of any inspection, appraisal or report with any Obligor. Obligors acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Obligors shall not be entitled to rely upon them.

(b) Reimburse Agent for all its reasonable and documented charges, costs and expenses in connection with (i) examinations of Obligors' books and records or any other financial or Collateral matters as it deems reasonably appropriate, up to one time per calendar year; and (ii) appraisals of Inventory, up to one time per calendar year; provided, that if (A) an Exam Trigger Period occurred during such year, Obligors shall reimburse Agent for all charges, costs and expenses associated with two examinations and two appraisals in a 12-month period and (B) an examination or appraisal is initiated during an Event of Default, all documented charges, costs and expenses relating thereto shall be reimbursed by Obligors without regard to such limits. Obligors shall pay Agent's then standard charges for examination activities, including charges for its internal examination and appraisal groups, as well as the charges of any third party used for such purposes. ~~No~~Except with respect to Hercules Accounts that are included in the Hercules Formula Amount (and subject to the limitations thereon in this Agreement), no Borrowing Base calculation shall include Collateral acquired in a Permitted Acquisition, the Hercules Acquisition or otherwise outside the Ordinary Course of Business until completion of applicable field examinations and appraisals (whichfield examinations and appraisals, including those in respect of the Hercules Assets, shall not be included in the limits provided above) reasonably satisfactory to Agent.

10.1.2 Financial and Other Information. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent:

(a) as soon as available, and in any event within 120 days (or, if applicable, such earlier date on which such annual financial statements are required to be filed with the SEC) after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders equity for such Fiscal Year, on a consolidated basis for the Applicable Reporting Entity and its Subsidiaries, which consolidated statements shall be audited and certified (without any "going concern" or other qualification, exception or explanatory paragraph (except resulting from (i) the impending maturity of the Obligations within the four fiscal quarter period following the relevant audit date or (ii) any potential future breach of the financial covenants under this Agreement) or any qualification, exception or explanatory paragraph as to the scope of such audit) by a firm of independent certified public accountants of recognized standing selected by Borrower Agent and reasonably acceptable to Agent, and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and other information acceptable to Agent;

(b) as soon as available, and in any event within 60 days (or, if applicable, such earlier date on which such quarterly financial statements are required to be filed with the SEC) after the end of each Fiscal Quarter, unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income, cash flow and shareholders equity for such Fiscal Quarter and for the portion of the Fiscal Year then lapsed, on a consolidated basis for the Applicable Reporting Entity and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting, in all material respects, the financial position and results of operations for such Fiscal Quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(c) while a Trigger Period is in effect (provided, that if a Trigger Period commenced and is no longer in effect, Agent shall receive at least one set of monthly financial statements pursuant to this clause (c)), as soon as available, and in any event within 30 days after the end of each month, unaudited balance sheets as of the end of such month and the related statements of income, cash flow and shareholders equity for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Applicable Reporting Entity and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting, in all material respects, the financial position and results of operations for such month and period, subject to normal year-end adjustments and the absence of footnotes;

(d) concurrently with delivery of financial statements under clauses (a) through (c) above, a Compliance Certificate executed by a Senior Officer of Borrower Agent (which shall calculate the Fixed Charge Coverage Ratio if a Covenant Trigger Period is in effect);

(e) concurrently with delivery of financial statements under clause (a) above, copies of all management letters and other material reports submitted to the Applicable Reporting Entity by its accountants in connection with such financial statements;

(f) concurrently with delivery of financial statements under clause (a) above, projections of Obligors' consolidated balance sheets, results of operations, cash flow and Availability for the current Fiscal Year, month by month;

(g) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that any Obligor or Parent has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that any Obligor or Parent files with the Securities and Exchange Commission or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by an Obligor or Parent to the public concerning material changes to or developments in the business of such Obligor or Parent;

(h) promptly after the sending or filing thereof, copies of any annual report to be filed in connection with each Plan or Foreign Plan;

(i) concurrently with any delivery of financial statements under **clauses (a)** through **(c)** above, a certificate of a financial officer of Borrower Agent, in form and substance reasonably satisfactory to the Agent, setting forth as of a recent date a reasonably detailed summary of the Swaps to which any Obligor or any of its Subsidiaries is a party on such date;

(j) within five Business Days of the sending or effectiveness thereof, copies of (i) any material statement or report furnished by any Obligor to any other party pursuant to the terms of the Term Loan Documents and not otherwise required to be furnished to the Agent pursuant to this Agreement and (ii) any amendment or modification to the Term Loan Documents or the Hercules Note Documents;

(k) such other reports and information (financial or otherwise, including financial covenant reporting) as Agent may reasonably request from time to time in connection with any Collateral or any Borrower's, Subsidiary's or other Obligor's financial condition, ownership or business , including bank statements, certifications and other evidence as may be reasonably requested by Agent in connection with any determination of Liquidity under this Agreement;

(l) concurrently with any delivery of financial statements under **clauses (a)** through **(c)** above, a copy of any Major Material Contract (or material amendment or modification thereto) entered into by any Obligor or any of its Subsidiaries after the Closing Date and not previously delivered to the Agent; ~~and~~

(m) at any time that any Unrestricted Subsidiaries or Parent are included in the financial statements delivered pursuant to**clauses (a)** through **(c)** above, then concurrently with any delivery of such financial statements, a certificate of a financial officer of Borrower Agent setting forth consolidating spreadsheets that show all of the Unrestricted Subsidiaries and Parent and the eliminating entries, in such form as would be presentable to the auditors of the Applicable Reporting Entity, and that summarizes the results of the Obligors and their Restricted Subsidiaries on a stand-alone basis; and

(n) not later than the third Business Day of each calendar week (beginning on the first such Business Day that is immediately prior to the date that is 91 days before the scheduled maturity date of the Hercules Seller Note and continuing thereafter until the Hercules Seller Note has been paid in full), a certificate in form and detail reasonably satisfactory to Agent executed by a Senior Officer of Borrower Agent certifying as to the amount of Liquidity of Borrowers as of the close of business of the prior calendar week, accompanied by reasonably detailed calculations of Liquidity and bank statements as of the close of business of the prior calendar week (a "**Liquidity Certificate**").

Documents, reports and notices required to be delivered pursuant to**clauses (a)** and **(b)** (to the extent any such documents are included in materials otherwise filed with the SEC or any similar regulator or Governmental Authority of any jurisdiction) or **(g)** may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are posted on the Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that the Borrower Agent shall notify the Agent (by electronic mail) of the posting of any such documents and shall deliver paper copies of such documents to the Agent or any Lender that so requests.

10.1.3 Notices. Notify Agent in writing, promptly (any in any event within five Business Days) after a Borrower's knowledge thereof, of any of the following affecting an Obligor: (a) the threat in writing or the commencement of any proceeding or investigation, whether or not covered by insurance, that, if adversely determined, would reasonably be expected to have a Material Adverse Effect; (b) the occurrence of any Major Material Contract EOD that has resulted, or would reasonably be expected to result, in liability of any Obligor or any Subsidiary of any Obligor in an aggregate amount in excess of $~~25,000,000~~40,000,000; (c) the early termination of any real property lease that is a Sand Interest; (d) the occurrence of an "Event of Default" under and as defined in the Term Loan Agreement or the Hercules Seller Note; (e) existence of a Default or Event of Default; (f) any judgment for the payment of money in an amount exceeding $~~25,000,000~~40,000,000; (g) assertion of any Intellectual Property Claim, if an adverse resolution could reasonably be expected to have a Material Adverse Effect; (h) violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA or any Sanction or Environmental Law), if an adverse resolution could reasonably be expected to have a Material Adverse Effect; (i) the occurrence of an ERISA Event; (j) any material change in any accounting or financial reporting practice that affects the calculation of the Borrowing Base or the Fixed Charge Coverage Ratio; (k) any change in any information contained in a Beneficial Ownership Certificate delivered to Agent or any Lender; (l) the discharge, withdrawal or resignation of Obligors' independent accountants; (m) the opening or move of the Company's chief executive office, not more than 10 Business Days following such opening or move; or (n) the filing of any Tax lien affecting any Collateral with respect to an amount owing in excess of $1,000,000.

10.1.4 Landlord and Storage Agreements. Promptly upon Agent's request, provide Agent with copies of all existing agreements between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.

10.1.5 Compliance with Laws. Comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA and Anti-Terrorism Laws, and maintain all Governmental Approvals necessary for ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws) or maintain could not reasonably be expected to have a Material Adverse Effect. Each Obligor and Subsidiary shall maintain such policies and procedures, if any, as it reasonably deems appropriate, in light of its business and international activities (if any), to promote compliance with applicable Anti-Corruption Laws and Sanctions. Without limiting the generality of the foregoing, if any Environmental Release occurs at or on any Properties of any Obligor or Subsidiary, it shall act promptly and diligently to investigate and report to Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

10.1.6 Taxes. Pay and discharge all Taxes prior to the date on which they become delinquent or penalties attach, unless (a) such Taxes are being Properly Contested or (b) the failure to make payment would not reasonably be expected to result in a Material Adverse Effect.

10.1.7 Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with financially sound and reputable insurance companies with respect to the Properties and business of Obligors and Subsidiaries of such type, in such amounts, and with such coverages and deductibles as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

10.1.8 Licenses. Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Obligors and Subsidiaries in full force and effect and pay all royalties and other amounts when due under any License, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

10.1.9 Future Subsidiaries. Promptly (and in any event within 10 days) notify Agent if any Person becomes a Subsidiary and deliver any know-your customer or other background diligence information requested by Agent or any Lender with respect to such Subsidiary; and (provided it is not a Foreign Subsidiary, a FSHCO or a Subsidiary of a Foreign Subsidiary or not designated by Borrower Agent as an Unrestricted Subsidiary in accordance with **Section 1.6**) within 30 days (or such later date as Agent may agree in its reasonable discretion) of such Person becoming a Subsidiary (or an Unrestricted Subsidiary being redesignated as a Restricted Subsidiary) cause it to become a "Borrower" or "Guarantor" under this Agreement and to guaranty and grant Liens securing the Obligations, in each case in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent may reasonably request to evidence and perfect a Lien in favor of Agent on all assets of such Person (other than Excluded Property), including, if requested by Agent, delivery of legal opinions, in form and substance reasonably satisfactory

to Agent.

10.1.10 [Reserved].

10.1.11 Post-Closing Obligations. Each Obligor will complete each of the actions that is described in **Schedule 10.1.11** as soon as commercially reasonable following the Closing Date, but in any event no later than the date set forth in **Schedule 10.1.11** with respect to such action, or such later date as Agent may agree in its sole discretion.

10.1.12 Credit Card Agreements. Each of the Obligors shall: (a) observe and perform all material terms of the Credit Card Agreements to be observed and performed by it at the times set forth therein; and (b) deposit or cause to be deposited all cash received with respect to Credit Card Agreements into a Credit Card Receivables Account subject to a Deposit Account Control Agreement; provided that the maximum amount on deposit in all Credit Card Receivables Accounts shall not exceed $500,000 at any one time.

10.1.13 Operation and Maintenance of Properties.

(a) Maintain all of its material property necessary and useful in the conduct of its business, taken as a whole, in good operating condition and repair (or, in the case of Inventory, in saleable, useable or rentable condition), ordinary wear and tear and casualty excepted, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(b) operate the Sand Facilities and other material Sand Properties, or cause the Sand Facilities and other material Sand Properties to be operated, in a careful manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Applicable Laws, including, without limitation, applicable Environmental Laws, and all other applicable laws, rules and regulations of every Governmental Authority from time to time constituted to regulate the development and operation of the Sand Facilities and the production and sale of sand and minerals therefrom, except, in each case, where the failure to do so would not reasonably be expected to result in a Material Adverse Effect;

(c) keep and maintain all Sand Property material to the conduct of its business in good working order and condition (ordinary wear and tear excepted) and preserve, maintain and keep in good repair and working order (ordinary wear and tear and obsolescence excepted) all of its Properties necessary to operate the Sand Facilities, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect;

(d) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Sand Properties and do all other things necessary to keep unimpaired its rights with respect thereto and prevent any forfeiture thereof or default thereunder, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect;

(e) promptly perform, or make reasonable and customary efforts to cause to be performed, in accordance with customary industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in the Sand Facilities and other material Sand Properties, except, in each case, where the failure to do so would not reasonably be expected to result in a Material Adverse Effect; and

(f) pay, satisfy and obtain the release of all other claims and Liens affecting or purporting to affect title to the Mortgaged Property or any part thereof (other than Permitted Liens), and all costs, charges, interest and penalties on account thereof, including without limitation the claims of all subcontractors and other Persons supplying labor or materials to the Mortgaged Property, and to give the Agent within five Business Days of Agent's written demand therefor (including by email), evidence reasonably satisfactory to the Agent of the payment, satisfaction or release thereof, except those (i) being contested in good faith by appropriate proceedings and for which the Borrowers or any other Obligor or any Subsidiary of any Obligor, as applicable, has set aside on its books adequate reserves in accordance with GAAP and (ii) the failure to pay, satisfy, or release would not reasonably be expected to result in a Material Adverse Effect.

10.2 Negative Covenants. As long as any Commitment or Obligations are outstanding, each Obligor shall not, and shall cause each Restricted Subsidiary not to:

10.2.1 Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) (i) Debt incurred under the Term Loan Agreement and (ii) Permitted Refinancing Debt incurred to refinance or replace Debt previously incurred in reliance on this **clause (b)**, in each case, in an aggregate principal amount not to exceed an amount at any one time outstanding equal to the result of (x) the sum of (1) $~~180,000,000~~430,000,000 plus (2) additional amounts so long as at the time of incurrence thereof and immediately after giving pro forma effect thereto and the use of proceeds thereof, the Borrowers would be in compliance with a Senior Secured Leverage Ratio on a pro forma basis of less than or equal to 3.00 to 1.00 (and the Borrowers shall, on the date of incurrence of such Debt in reliance on this clause (2), deliver a certificate from a Senior Officer in form and detail reasonably satisfactory to Agent demonstrating compliance with such Senior Secured Leverage Ratio), less (y) the aggregate amount of all payments of the principal of the Debt under the Term Loan Agreement; provided that (A) such Debt incurred in reliance on this **clause (b)** and the Liens securing such Debt are subject to the Intercreditor Agreement and subordinate to the Agent's Liens on the ABL Priority Collateral, (B) no Default or Event of Default is then continuing or would result from incurrence thereof ~~and~~, (C) the scheduled maturity date of such Debt is at least 91 days after the Termination Date and (D) with respect to any Permitted Refinancing Debt incurred in reliance on this **clause (b)**, such Debt is not guaranteed by any Person other than an Obligor (Debt incurred in reliance on this **clause (b)**, the "Term Loan Debt");

(c) Debt that constitutes purchase money Debt or under Capital Leases (or other equipment financing arrangements for mobile excavation equipment, automobiles, trucks, rental equipment or other personal Property (excluding Inventory) to be used in the Ordinary Course of Business) not to exceed in the aggregate principal amount at any one time outstanding the greater of (i) $25,000,000 and (ii) 5.0% of Consolidated Net Tangible Assets;

(d) Debt existing on the Closing Date and not satisfied with the initial Loan proceeds, to the extent set forth on **Schedule 10.2.1** hereto and Permitted Refinancing Debt incurred to refinance, replace or extend any such Debt;

(e) Debt with respect to Bank Products;

(f) Debt incurred or assumed in connection with Permitted Acquisitions (including a Permitted Acquisition effectuated by a Permitted Parent Entity Investment but excluding the Hercules Seller Note), including Debt consisting of indemnities, obligations in respect of earn outs or other purchase price adjustments or similar

obligations in connection therewith, not to exceed (i) $50,000,000 or (ii) an unlimited amount so long as, on the date of creation, incurrence or assumption thereof and after giving pro forma effect thereto, the Borrowers would be in compliance on a pro forma basis with a Consolidated Leverage Ratio of no greater than 3.00 to 1.00 as of such time (and the Borrower Agent shall deliver a certificate of a Senior Officer in form and detail reasonably satisfactory to Agent demonstrating compliance with such Consolidated Leverage Ratio);

(g) (i) Permitted Contingent Obligations and (ii) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the Ordinary Course of Business; provided, that such Debt is extinguished within two Business Days of its incurrence;

(h) Debt incurred in connection with the financing of insurance premiums in the Ordinary Course of Business;

(i) intercompany Debt among the Obligors and their Restricted Subsidiaries permitted under **Section 10.2.4**; provided, that any such Debt owing by an Obligor to a non-Obligor must constitute Subordinated Debt;

(j) Debt incurred by the Obligors in respect of Credit Card Agreements in the Ordinary Course of Business not to exceed in the aggregate principal amount at any one time outstanding $500,000;

(k) Debt constituting a guaranty by any Obligor or Restricted Subsidiary of other Debt permitted to be incurred under this **Section 10.2.1**;

(l) Debt and obligations owing under Swap Agreements to the extent permitted under **Section 10.2.12**;

(m) Debt of any Restricted Subsidiary that is not an Obligor incurred under this **clause (m)**; provided that (i) such Debt is not guaranteed by any Obligor, (ii) the holder of such Debt does not have, directly or indirectly, any recourse to any Obligor, whether by reason of representations or warranties, agreements of the parties, operation of law, or otherwise, (iii) such Debt is not secured by any assets of any Obligor and (iv) the aggregate amount of Debt incurred under this **clause (m)** shall not exceed $25,000,000;

(n) Debt incurred under this **clause (n)** and then outstanding in an aggregate principal amount, measured at the time of incurrence and after giving pro forma effect thereto and the use of the proceeds therefrom, not to exceed $35,000,000 at any time;

(o) other unsecured Debt; provided that (i) on the date of incurrence thereof and after giving pro forma effect thereto and the use of proceeds thereof, the Borrowers would be in compliance on a pro forma basis with a Consolidated Leverage Ratio of no greater than 5.00 to 1.00 at such time (and the Borrower Agent shall, on the date of incurrence of such Debt, deliver a certificate of a Senior Officer in form and detail reasonably satisfactory to Agent demonstrating compliance with such Consolidated Leverage Ratio), (ii) no Default or Event of Default shall exist or will result immediately after giving effect to the incurrence of such Debt, (iii) the borrower and the guarantors with respect to such Debt shall only be the Obligors (or if any other Person is a borrower or guarantor in respect of such Debt, such other Person shall become a Guarantor hereunder and under the other Loan Documents pursuant to **Section 10.1.9**), (iv) the maturity of such Debt is not prior to, and such Debt does not require any scheduled amortization or other scheduled prepayments of principal, prior to, the date that is ninety-one (91) days after the Termination Date and (v) the covenants and events of default governing such Debt shall not be, taken as a whole, materially more restrictive to the Obligors than those under this Agreement;

(p) unsecured Debt arising from loan programs of the Small Business Administration or other Governmental Authorities where the principal thereof is eligible for forgiveness under the applicable program or legislation; provided that the Obligor or Restricted Subsidiary incurring such Debt meets the requirements and criteria for forgiveness under such program or legislation; ~~and~~

(q) Debt consisting of obligations in respect of letters of credit in an aggregate amount not to exceed $25,000,000 at any one time outstanding solely to the extent such letters of credit are issued when no Person is acting in the capacity of Issuing Bank under this Agreement; and

(r) Debt outstanding under the Hercules Seller Note in an aggregate principal amount not to exceed, at any one time outstanding, the sum of (i) $125,000,000, *plus* (ii) the aggregate amount of paid in kind interest added to the principal amount of the Hercules Seller Note in accordance with the terms thereof, *plus* (iii) the amount of any purchase price adjustment that results in an increase in the principal balance of the Hercules Seller Note in accordance with the terms of the Hercules Acquisition Agreement.

10.2.2 Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "Permitted Liens"):

(a) Liens in favor of Agent;

(b) Liens now or hereafter securing the Term Loan Debt, so long as such Liens remain subject to the terms of the Intercreditor Agreement;

(c) Liens securing Debt permitted by **Section 10.2.1(c)** (other than Liens on Inventory); provided, that (i) such Liens do not secure any Property other than the Property leased or financed by such Debt (provided that individual financings of equipment or other property permitted under **Section 10.2.1(c)** provided by one lender may be cross collateralized to other financings permitted under **Section 10.2.1(c)** provided by such lender) and (ii) the principal amount of Debt secured by any such Lien shall at no time exceed 100% of the original purchase price or lease payment amount of such Property at the time it was acquired;

(d) Excepted Liens;

(e) Liens on assets that are acquired in a Permitted Acquisition (including a Permitted Acquisition effectuated by a Permitted Parent Entity Investment), securing Debt permitted by **Section 10.2.1(f)**;

(f) Liens arising from precautionary UCC financing statements regarding specifically described assets (which may not include Inventory) that are the subject of an operating lease;

(g) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(h) Liens securing Debt permitted by **Section 10.2.1(l)** (other than on Accounts and Inventory); provided that at the time of the incurrence thereof, the aggregate outstanding amount of Debt and other obligations secured by Liens under this **clause (h)** and then-outstanding shall not exceed $10,000,000;

(i) Liens existing on the Closing Date and shown on **Schedule 10.2.2**;

(j) other Liens; provided that the aggregate outstanding amount of Debt and other obligations secured by Liens under this **clause (j)** and then-outstanding shall not exceed $35,000,000 at any one time; provided, further, that the holder of any such Debt or obligations (or an agent representative in respect thereof) shall have entered into an intercreditor agreement in form and substance reasonably satisfactory to Agent and the Borrowers (providing, among other things, that the Liens on the ABL Priority Collateral securing such Debt or other obligations shall rank junior to Agent's Liens on the ABL Priority Collateral);

(k) Liens or rights of setoff against credit balances or cash and Cash Equivalents held in a Credit Card Receivables Account of the Borrowers or any of their Restricted Subsidiaries with Credit Card Issuers or Credit Card Processors to secure indebtedness permitted by **Section 10.2.1(j)**; provided, that the aggregate amount of credit balances or cash or Cash Equivalents subject to such Liens and rights of setoff under this **Section 10.2.2(k)** shall not exceed $500,000 at any one time;

(l) Liens on the Equity Interests of Unrestricted Subsidiaries pledged by an Obligor on a non-recourse basis to secure Debt incurred by one or more Unrestricted Subsidiaries; ~~and~~

(m) Liens on cash collateral securing Debt permitted under **Section 10.2.1(q)**; and

(n) Liens on the Trust Property (as defined in the Hercules Seller Mortgage) securing Debt permitted by **Section 10.2.1(r)**, so long as such Liens remain subject to the terms of the Hercules Intercreditor Agreement at all times prior to the occurrence of a Release Event with respect to such Property (and following a Release Event is subject to a collateral access agreement reasonably acceptable to Agent).

10.2.3 Distributions; Upstream Payments.

(a) Declare or make any Distributions, except, Obligors and Restricted Subsidiaries may make:

(i) Upstream Payments;

(ii) the Company may declare and make Distributions with respect to its Equity Interests payable solely in additional shares of its Equity Interests that do not constitute Disqualified Equity Interests (including exchanges of Equity Interests for different classes);

(iii) Distributions by the Company constituting Permitted Tax Distributions;

(iv) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, repurchases or redemptions of any Equity Interests that are not Disqualified Equity Interests of the Company or Parent held by officers, directors or employees (or their transferees, estates or beneficiaries under their estates) of Parent or any Obligor, including any repurchase, retirement or redemption pursuant to stock option plans, employee benefit plans, or any shareholders' agreement or other similar agreement or arrangement then in effect or upon their death, disability, retirement, severance or termination of employment or service, provided, that the aggregate cash consideration paid for all such redemptions and payments shall not exceed $10,000,000 in any Fiscal Year; provided, further that any unused amount in a Fiscal Year may be carried over to the subsequent Fiscal Year for a maximum amount available under this clause of $15,000,000 in any Fiscal Year;

(v) other cash Distributions by the Company so long as the Payment Conditions are satisfied before and after giving effect thereto;

(vi) to the extent constituting Distributions and without duplication of **Section 10.2.14(e)(i)**, Distributions by the Company to Parent to pay Parent's overhead costs and expenses incurred in the Ordinary Course of Business (including legal, accounting and other general and administrative expenses) in each case that are reasonable and customary and directly attributable to the ownership or operations of the Company and its Subsidiaries; provided, that no such Distribution may be made in respect of overhead costs and expenses directly attributable to Unrestricted Subsidiaries unless a like amount has been received by the Obligors and their Restricted Subsidiaries from the Unrestricted Subsidiaries;

(vii) Distributions by the Company to the holders of its Equity Interests in an aggregate amount not to exceed $5,000,000 during the term of this Agreement; provided that no Default or Event of Default has occurred and is continuing or would result therefrom;

(viii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, additional cash Distributions by the Company in an aggregate amount not to exceed the Available Equity Amount at the time of such Distribution;

(ix) repurchases of Equity Interests (i) deemed to occur on the exercise of options by the delivery of Equity Interests in satisfaction of the exercise price of such options and (ii) in consideration of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or restricted stock units;

(x) Distributions by the Company to Parent (or any other Person of which the Company is a direct or indirect Subsidiary) to finance any Investment (including any Permitted Acquisition) permitted under **Section 10.2.4** (provided that (x) any Distribution under this **clause (a)(x)** shall be made substantially concurrently with the closing of such Investment and (y) Parent (or such other parent entity) shall, promptly following the closing thereof, cause (I) all property acquired to be contributed to the Company or one or more other Obligors, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Company or one or more other Obligors, in order to consummate such Investment in compliance with the applicable requirements of **Section 10.2.4** as if undertaken as a direct Investment by the Company or the relevant Obligor) (any such Investment or Permitted Acquisition described in this clause (x), a "**Permitted Parent Entity Investment**"); and

(xi) ~~Specified IPO Event Transactions~~[reserved]; or

(b) create or suffer to exist any encumbrance or restriction on the ability of a Restricted Subsidiary to make an Upstream Payment, except for restrictions (i) under the Loan Documents and the Term Loan Documents, (ii) under Applicable Law, (iii) permitted under **Section 10.2.12** and (iv) in effect on the Closing Date as shown on **Schedule 10.2.3**.

10.2.4 Investments. Make any Investment, other than:

(a) (i) Investments in Subsidiaries to the extent existing on the Closing Date and (ii) Investments existing on the Closing Date and set forth on **Schedule 10.2.4**, in each case for this clause (a), excluding increases thereof following the Closing Date;

(b) cash and Cash Equivalents;

(c) advances to an officer or employee for salary, travel expenses, commissions and similar items in the Ordinary Course of Business;

(d) intercompany cash Investments (i) solely among Obligors and (ii) by a Restricted Subsidiary that is not an Obligor in any other Restricted Subsidiary that is not an Obligor or an Obligor; provided, that any Investment in the form of a loan or advance shall be evidenced by an intercompany note and, in the case of a loan or advance by any Obligor, pledged by such Person as Collateral pursuant to the Security Documents;

(e) the grant of trade credit in the Ordinary Course of Business and payable or dischargeable in accordance with customary trade terms, and Investments received in the Ordinary Course of Business in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(f) Investments consisting of lease, utility and other similar deposits in the Ordinary Course of Business;

(g) Permitted Acquisitions;

(h) ~~[Reserved]~~the Hercules Acquisition;

(i) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, any Investment in an amount not to exceed the Available Equity Amount at such time;

(j) other Investments (excluding Acquisitions) so long as the Payment Conditions are satisfied before and after giving effect thereto;

(k) other Investments; provided that the aggregate unrecovered/then outstanding amount of Investments made pursuant to this **clause (k)** shall not exceed, at the time of the making of such Investment and immediately after giving pro forma effect thereto, $5,000,000;

(l) to the extent constituting an Investment, the guarantee by an Obligor of any Debt of an Unrestricted Subsidiary so long as such guarantee is limited solely to a non-recourse pledge of the Equity Interests of such Unrestricted Subsidiary;

(m) Investments, including Investments in Unrestricted Subsidiaries, to the extent funded with, to the extent Not Otherwise Applied, cash proceeds from contributions to the Company's common equity capital or from the sale of its Equity Interests (other than Disqualified Equity Interests and the proceeds of Cure Amounts and any IPO Event) received by an Obligor after the Closing Date (a "**Pass-Through Equity Contribution**") and applied to such Investments within 90 days of the receipt thereof (it being understood and agreed that (x) the Borrower Agent shall provide Agent prior written notice of any such Pass-Through Equity Contribution, which such notice shall designate the applicable cash proceeds as a Pass-Through Equity Contribution and (y) in no event shall any Pass-Through Equity Contribution increase the Available Equity Amount, the Borrowing Base or Liquidity);

(n) ~~Investments in Unrestricted Subsidiaries to the extent funded solely with prepayments from customers in connection with the conveyor project of one or more of the Unrestricted Subsidiaries that are received by an Obligor in cash after the Closing Date (a "**Pass-Through Customer Prepayment**") and are substantially contemporaneously contributed to such Unrestricted Subsidiaries (it being understood and agreed that (x) the Borrower Agent shall provide Agent prior written notice of (i) any such Pass-Through Customer Prepayment, which such notice shall designate the applicable cash proceeds as a Pass-Through Customer Prepayment and (ii) if, immediately after giving effect to such Investment on a pro forma basis, a Trigger Period would commence, an updated Borrowing Base Report and (y) in no event shall any Pass-Through Customer Prepayment increase the Available Equity Amount, the Borrowing Base or Liquidity);~~ [reserved]; and

(o) to the extent constituting an Investment, Permitted Intercompany Activities~~; and~~

~~(p) Specified IPO Event Transactions~~.

10.2.5 Disposition of Assets. Make any Disposition, except for as long as no Default or Event of Default exists or would result therefrom, a Disposition constituting:

(a) the sale of Inventory in the Ordinary Course of Business;

(b) the use, transfer or disposition of cash and Cash Equivalents pursuant to any transaction not prohibited by the terms of the Loan Documents;

(c) a Disposition of obsolete, unmerchantable or otherwise unsalable Inventory that is not included in the Borrowing Base;

(d) a transfer of Property by a Restricted Subsidiary or Obligor to another Obligor or solely among Restricted Subsidiaries that are not Obligors;

(e) Distributions permitted under **Section 10.2.3** and Investments permitted under **Section 10.2.4**;

(f) the Disposition of any Equity Interest (i) in a Subsidiary to any Obligor and (ii) in any Unrestricted Subsidiary;

(g) the issuance of Equity Interests (other than Disqualified Equity Interests) in the Company to the extent such issuance does not result in a Change of

Control;

(h) the sale or transfer of equipment and other personal property that is no longer necessary for the business of an Obligor or is replaced by equipment or other personal property of at least comparable value and use;

(i) non-exclusive licensing and cross-licensing arrangements involving any technology or other intellectual property of the Company or any Restricted Subsidiary in the Ordinary Course of Business;

(j) the abandonment of any rights, franchises, licenses, or intellectual property that any Obligor reasonably determines are no longer useful in its business or commercially desirable;

(k) the transfer of interests in any Sand Properties, or portions thereof, to which no Sand Reserves are attributed;

(l) the transfer of Property (other than ABL Priority Collateral) in connection with a Casualty Event;

(m) the sale, disposition or other transfer of any Properties (other than Accounts) that are not regulated by clauses (a) through (l) of this **Section 10.2.5** having a Fair Market Value not to exceed $10,000,000 in the aggregate during any 12-month period; provided that (i) the Borrower Agent shall deliver an updated Borrowing Base Report prior to giving effect to such sale, disposition, or other transfer if more than 5.0% of the assets included in the most recent calculation of the Borrowing Base are being disposed of pursuant to this **clause (m)**, (ii) no Overadvance shall exist or result therefrom, and (iii) Obligors shall comply with **Section 5.2**, if applicable;

(n) the sale, disposition or other transfer of any Property (other than Accounts), if such Property is so sold, disposed of or transferred for Fair Market Value; provided that the applicable Obligor or Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents; provided, further, that, for purposes of determining what constitutes cash and Cash Equivalents under this **clause (n)** in connection with any disposition, sale or transfer of any Property (other than with respect to any Disposition of any ABL Priority Collateral), up to $5,000,000 of any Designated Non-Cash Consideration received by the applicable Obligor or such Restricted Subsidiary in respect of such Property, taken together with all other Designated Non-Cash Consideration received pursuant to this **clause (n)** that is outstanding at the time such Designated Non-Cash Consideration is received, shall be deemed to be cash; provided however (i) the Borrower Agent shall deliver an updated Borrowing Base Report if more than 5.0% of the assets included in the most recent calculation of the Borrowing Base are being disposed of pursuant to this **clause (n)**, (ii) Obligors shall comply with **Section 5.2**, if applicable, and (iii) no Overadvance shall exist or result therefrom; and

(o) the transfer of Property by means of a transaction expressly permitted under **Section 10.2.7**~~; and~~

~~(p) Specified IPO Event Transactions~~.

10.2.6 Restrictions on Payment of Certain Debt. Make any voluntary prepayments or other Redemptions with respect to any Junior Debt, except (a) regularly scheduled payments of principal, interest and fees and any Permitted Refinancing Debt, in each case but only to the extent permitted under any subordination agreement relating to such Debt (if applicable), (b) to the extent the Payment Conditions are satisfied with respect thereto or (c) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, additional prepayments or Redemptions in an aggregate amount not to exceed the Available Equity Amount at the time of such prepayment or Redemption.

10.2.7 Fundamental Changes. (a) Change its legal name or change its form or state of formation or organization, in each case, without giving Agent at least 10 days prior written notice (or such lesser period as Agent may agree in its sole discretion) and taking such actions as Agent may reasonably request with respect thereto to continue the creation and perfection of Agent's Liens in any Collateral or the enforceability of the Loan Documents; (b) liquidate, wind up its affairs or dissolve itself; (c) consummate or unwind a Division; (d) effect a Disposition of substantially all its assets; or (e) merge, combine or consolidate with any Person, in each case whether in a single transaction or series of related transactions, except (i) for mergers or consolidations of a wholly-owned Obligor or Restricted Subsidiary with another wholly-owned Obligor or Restricted Subsidiary, provided, that (A) with respect to any merger or consolidation involving a Borrower, a Borrower is the surviving person in such merger or consolidation and (B) with respect to any merger or consolidation involving a Guarantor (unless **clause (A)** also applies, in which case such clause shall govern), such Guarantor is the surviving person in such merger or consolidation, (ii) Permitted Acquisitions, (iii) ~~Specified IPO Event Transactions, provided that with respect to any merger or consolidation involving an Obligor, the Obligor is the surviving person in such merger or consolidation~~[reserved], and (iv) any non-Obligor Restricted Subsidiary may liquidate or dissolve so long as any remaining assets are transferred to another non-Obligor Restricted Subsidiary or to an Obligor and any Obligor (other than the Company) may liquidate or dissolve so long as any remaining assets of such Obligor are transferred to another Obligor.

10.2.8 Subsidiaries. Form or acquire any Subsidiary after the Closing Date, except in accordance with **Sections 10.1.9**; or permit any existing Restricted Subsidiary to issue any additional Equity Interests except directors' qualifying shares or Equity Interests issued to its immediate parent company. Following the Closing Date, the Obligors shall not form or acquire any Foreign Subsidiaries.

10.2.9 Organic Documents. Amend, modify or otherwise change any of its Organic Documents in a manner that would reasonably be expected to be materially adverse to the Lenders.

10.2.10 Accounting Changes. Make any material change in accounting treatment or reporting practices, except in accordance with **Section 1.2**, or change its Fiscal Year.

10.2.11 Restrictive Agreements. Become a party or be subject to any contract, agreement or understanding (other than those in existence on the Closing Date and set forth on **Schedule 10.2.3**, this Agreement, the Security Documents, agreements with respect to purchase money Debt or Capital Leases creating Liens permitted by **Section 10.2.2(c)** (limited to the Property securing such Debt and the proceeds thereof), documents creating Liens which are described in **clause (d)**, **(g)**, **(i)** or **(l)** of the definition of "Excepted Liens", agreements, instruments, and documents executed in connection with Debt permitted under **Section 10.2.1(b)**, **10.2.1(f)** (limited to the subject of and Property acquired in such Permitted Acquisition and the proceeds thereof), and **10.2.1(n)** (limited to the Property securing such Debt and the proceeds thereof), constituting customary restrictions on assignment in leases and other contracts and customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under this Agreement pending the consummation of such sale) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Sand Property or Property constituting ABL Priority Collateral in favor of the Agent for the benefit of the Secured Parties or restricts any Restricted Subsidiary from paying dividends or making distributions in respect of its Equity Interests to any Obligor.

10.2.12 Swaps. Enter into any Swap, except (i) Swaps to hedge existing or anticipated interest rate risk in respect of Debt permitted pursuant to **Section 10.2.1** and (ii) Swaps entered into not for speculative purposes and intended to hedge existing or anticipated risk in respect of commodity prices.

10.2.13 Conduct of Business. Engage in any business, other than its business as conducted on the Closing Date and any businesses or activities that are similar, related, ancillary, incidental or complementary thereto or businesses that are a reasonable extension, development or expansion thereof.

10.2.14 Affiliate Transactions. Enter into or be party to any transaction with an Affiliate (or amend or modify any such transaction) involving aggregate payments or consideration in any Fiscal Year in excess of $500,000, except (a) transactions otherwise expressly permitted by the Loan Documents; (b) compensation to, and the terms of any employment contracts with, individuals who are employees, officers, managers or directors of the Obligors (including, the performance of employment, equity award, equity option or equity appreciation agreements, plans or other similar compensation or benefit plans or arrangements (including vacation plans, health and insurance plans, deferred compensation plans and retirement or savings plans)); (c) transactions solely among Obligors or transactions solely among Restricted Subsidiaries that are not Obligors; (d) transactions with Affiliates entered into prior to the Closing Date, as shown on **Schedule 10.2.14**; (e) (i) Distributions permitted under **Section 10.2.3** (or payment of Parent's overhead costs and expenses as described in **Section 10.2.3(a)(vi)** subject to the limitations set forth therein in lieu of Distributions therefor) and (ii) Investments permitted under **clauses (a)**, **(d)(ii)**, **(i)**, **(j)**, **(k)**, **(l)**, **(m)** and **(n)** of **Section 10.2.4**; (f) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate; (g) the issuance and sale of Equity Interests issued by the Company (other than Disqualified Equity Interests) or the amendment of the terms of any Equity Interests issued by the Company (other than Disqualified Equity Interests); (h) Permitted Intercompany Activities; (i) ~~Specified IPO Event Transactions~~[reserved]; and (j) reasonable and customary fees and compensation to, the reimbursement of reasonable out of pocket costs of, and indemnities provided on behalf of, officers, directors, and employees of the Obligors (or ~~after the occurrence of an IPO Event,~~ Parent) or any Restricted Subsidiary in their capacity as such; provided, that in the case of clauses (b) and (j) for Persons that also provide services on behalf of any Unrestricted Subsidiary, there is a reasonable allocation of any material costs and expenses for such arrangements as between Borrowers and their Restricted Subsidiaries, on the one hand, and the Unrestricted Subsidiaries, on the other hand.

10.2.15 Plans. Become party to any Multiemployer Plan or Foreign Plan, other than any in existence on the Closing Date.

10.2.16 Amendments to Subordinated Debt, Hercules Note Documents or Term Loan Documents. Amend, supplement or otherwise modify (a) the Term Loan Agreement or any other Term Loan Document in each case except to the extent not prohibited by the Intercreditor Agreement ~~or~~, (b) any document, instrument or agreement relating to any Subordinated Debt, if such modification (i) increases the principal balance of such Debt beyond the amount permitted by **Section 10.2.1**, or increases any required payment of principal or interest; (ii) accelerates the date on which any installment of principal or any interest is due, or adds any additional redemption, put or prepayment provisions; (iii) shortens the final maturity date or otherwise accelerates amortization; (iv) increases or adds any recurring fees or charges; (v) modifies any covenant in a manner or adds any covenant or default that is more onerous or restrictive in any material respect for any Obligor or Subsidiary than those set forth in this Agreement, or that is otherwise materially adverse to any Obligor, any Subsidiary or Lenders; or (vi) results in the Obligations not being fully benefited by the subordination provisions thereof, or (c) the Hercules Seller Note, if such modification (i) increases the principal balance of such Debt beyond the amount permitted by **Section 10.2.1(r)**, or increases any required payment of principal or interest; (ii) accelerates the date on which any installment of principal is due, or adds any additional mandatory redemption, put or prepayment provisions; or (iii) shortens the scheduled final maturity date.

10.2.17 Passive Holding Company. ~~After the occurrence of an IPO Event,~~ Obligors shall cause Parent to not:

(a) engage at any time in any business or activity other than (i) direct or indirect ownership of Equity Interests in the Company and other miscellaneous non-material assets, and making of Investments in, and contributions to, the Company, together with activities related thereto (including engaging in Permitted Parent Entity Investments and other Permitted Acquisitions and Investments permitted hereunder and the drop down of assets acquired thereunder to the Company and its Subsidiaries), (ii) paying Taxes, (iii) exchanges, issuances, sales, repurchases and redemptions of its Equity Interests and activities in connection therewith and related thereto, (iv) holding directors' and shareholders' meetings, preparing corporate and similar records and other activities required to maintain its corporate or other legal existence or to participate in tax, accounting or other administrative matters related to the Company and its Subsidiaries, (v) preparing reports to, and preparing and making notices to and filings with, Governmental Authorities, securities exchanges and to its holders of Equity Interests, (vi) receiving, and holding proceeds of, Distributions permitted hereunder and distributing the proceeds thereof, (vii) providing customary indemnification to officers, directors, employees and agents subject to the terms hereof, ~~and~~ (viii) hiring, maintaining and compensating executives and other employees and consultants to the extent required or incidental to owning Equity Interests in the Company~~;~~, (ix) perform its obligations and enforce its rights under the Hercules Acquisition Agreement, and (~~ix~~x) ownership of cash and immaterial properties and assets incidental to the business or activities described in the foregoing clauses of this **Section 10.2.17**, activities incidental to the business or activities described in the foregoing clauses of this **Section 10.2.17** and payment of costs and expenses in connection with the business or activities described in the foregoing clauses of this **Section 10.2.17**;

(b) (i) create, incur, assume or permit to exist any Debt other than (A) tax liabilities ~~and~~, (B) corporate, administrative and operating expenses in the ordinary course of business, (C) with respect to the Parent Entity of the Company that is then a publicly traded company, a guarantee of the Term Loan Debt and the Hercules Seller Note by such Parent Entity and (D) customary indemnity, reimbursement and similar obligations incurred in connection with any Permitted Parent Entity Investments, including in connection with the Hercules Acquisition, or (ii) grant any consensual Lien encumbering any of its properties or assets; or

(c) fail to maintain in full force and effect its legal existence.

10.2.18 Other Amendments. Amend, supplement or otherwise modify the terms and conditions of the Major Material Contracts except to the extent that any such amendment, supplement, modification or change would not reasonably be expected to (i) adversely affect the interests of the Agent or the Lenders in any material respect or (ii) result in a Material Adverse Effect. For the avoidance of doubt, this section shall not prohibit or restrict the expiration or termination of a Major Material Contract in accordance with the terms thereof.

10.3 Fixed Charge Coverage Ratio. As long as any Commitment or Obligations are outstanding, Obligors shall maintain a Fixed Charge Coverage Ratio as of the last day of each four Fiscal Quarter period of at least 1.0 to 1.0 while a Covenant Trigger Period is in effect, measured for the most recent four Fiscal Quarter period ending on the last day of the most recently ended Fiscal Quarter for which financial statements were delivered hereunder prior to the Covenant Trigger Period and each four Fiscal Quarter period ending thereafter until the Covenant Trigger Period is no longer in effect.

Section 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT.

11.1 Events of Default. Each of the following shall be an "Event of Default" if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Borrower fails to pay (i) any principal on any Loan or any Letter of Credit reimbursement (to the extent such Letter of Credit reimbursement obligation is not refinanced with the proceeds of Base Rate Loans in accordance with **Section 2.2.2(a)** at a time when the conditions in **Section 6.2** are satisfied) when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any interest, any fee or any other amount (other than an amount referred to in subclause

(i) above) payable under any Loan Document when due and such failure under this subclause (ii) continues unremedied for a period of five (5) Business Days;

(b) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) An Obligor or Restricted Subsidiary (or, in the case of **Section 10.2.17**, Parent) breaches or fails to perform any covenant contained in (i) **Section 7.4.1**, **7.5**, **7.7**, **8.2.4**, **8.2.5**, **8.5**, **10.1.1**, **10.1.3**, **10.1.9**, **10.1.11**, **10.2** or **10.3** or (ii) **Section 7.3.2**, **8.1**, **8.2.1**, **8.3.1** or **10.1.2** and such failure under this clause (ii) shall continue unremedied for a period of five Business Days (provided, that if a Trigger Period is then in effect, the grace period under this clause (ii) with respect to **Section 8.1**, **8.2.1** and **8.3.1** shall be reduced to two Business Days);

(d) An Obligor or Restricted Subsidiary breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor or Restricted Subsidiary has knowledge thereof or receives notice thereof from Agent, whichever is sooner;

(e) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; an Obligor or third party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; it is unlawful for an Obligor to perform any of its obligations under a Loan Document; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);

(f) Any Security Document after delivery thereof shall cease to create a valid and perfected Lien of the priority required thereby on any Collateral having a Fair Market Value in excess of $10,000,000 and that is purported to be encumbered thereby (other than as a result of the acts or omissions of the Agent), except to the extent permitted by the terms of this Agreement or any other Loan Document, or any Obligor or any of their Subsidiaries shall so state in writing;

(g) (i) Any Obligor or Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Debt or any Term Loan Debt, when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace or (ii) (A) any event or condition occurs that results in any Material Debt or any Term Loan Debt becoming due prior to its scheduled maturity or (B) any event or condition occurs that enables or permits (after giving effect to all applicable notice and cure periods) the holder or holders of any Material Debt or Term Loan Debt or any trustee or agent on its or their behalf to cause any Material Debt or Term Loan Debt to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require any Obligor or Restricted Subsidiary to make an offer in respect thereto;

(h) (i) one or more final judgments for the payment of money in an aggregate amount in excess of ~~$25,000,000~~40,000,000 (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage) or (ii) any one or more final non-monetary judgments that have resulted in, or would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, in either case, shall be rendered against any Obligor or any of its Restricted Subsidiaries or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed (by reason of a pending appeal or otherwise), or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor or Restricted Subsidiary to enforce any such judgment;

(i) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Obligor or Restricted Subsidiary or any of their debts, or of a substantial part of any of their assets, under any Debtor Relief Law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Obligor or Restricted Subsidiary or for a substantial part of any of their assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(j) Any Obligor or Restricted Subsidiary shall (i) voluntarily commence any Insolvency Proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in **Section 11.1(i)**, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Obligor or Restricted Subsidiary or for a substantial part of any of their assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(k) Any Obligor or Restricted Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(l) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan, in an aggregate amount for all events exceeding $~~25,000,000~~40,000,000; or

(m) A Change of Control occurs.

11.2 Remedies upon Default. If an Event of Default under **Section 11.1(i)** or **(j)** occurs with respect to any Obligor or Parent, then to the extent permitted by Applicable Law, all Obligations (including Secured Bank Product Obligations only to the extent provided in applicable agreements) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Obligors to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment or adjust the Borrowing Base;

(c) require Obligors to Cash Collateralize LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and

payable, and if Obligors fail to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Obligors' expense, and make it available to Agent at a premises owned or leased by an Obligor designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

11.3 License. Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of Obligors, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Obligor's rights and interests under Intellectual Property shall inure to Agent's benefit.

11.4 Setoff. At any time during an Event of Default, Agent, Issuing Bank, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against the Obligations, whether or not Agent, Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

11.5 Remedies Cumulative; No Waiver

11.5.1 Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent, Issuing Bank and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2 Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent, Issuing Bank or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent, Issuing Bank or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

11.6 Right to Cure.

11.6.1 Notwithstanding anything to the contrary contained in **Sections 11.1** through **11.5**, in the event that the Obligors fail to comply with the requirements of **Section 10.3**, the Company shall have the right, during the period beginning at the end of the last Fiscal Quarter of the applicable test period and until the tenth (10th) Business Day after the date on which financial statements with respect to such test period for which such covenant is being measured are required to be delivered pursuant to **Section 10.1.2** (such date, the "**Cure Deadline**"), to include the cash proceeds of an equity contribution to, or the cash proceeds of an issuance of common Equity Interests of, the Company (or other Equity Interests reasonably acceptable to Agent), in each case, received by the Company in cash after the last day of such test period and prior to the Cure Deadline (the "**Cure Right**") in EBITDA for the purposes of calculating the Fixed Charge Coverage Ratio under **Section 10.3**, and upon the receipt by the Company of such cash proceeds pursuant to the exercise of the Cure Right (the "**Cure Amount**"), the Fixed Charge Coverage Ratio shall be recalculated, giving effect to a pro forma increase to EBITDA for such test period in an amount equal to such Cure Amount; provided that such pro forma adjustment to EBITDA shall be given solely for the purpose of determining the existence of a Default or an Event of Default under **Section 10.3** with respect to any period that includes the Fiscal Quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document (including any other use of the Fixed Charge Coverage Ratio).

11.6.2 If, after the receipt of the Cure Amount and the recalculations pursuant to **Section 11.6.1** above, the Obligors shall then be in compliance with the requirements of **Section 10.3** as of the last day of the applicable Fiscal Quarter, the Obligors shall be deemed to have satisfied the requirements of **Section 10.3** as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Event of Default that had occurred shall be deemed cured; provided that (a) the Cure Right may be exercised on no more than five (5) occasions, (b) in each four Fiscal Quarter period, there shall be at least two Fiscal Quarters in respect of which no Cure Right is exercised, (c) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause the Obligors to be in compliance with **Section 10.3**, (d) all Cure Amounts shall be disregarded for purposes of determining any baskets or ratios with respect to the covenants contained in the Loan Documents and (e) there shall be no pro forma reduction in Debt (by netting or otherwise) or Consolidated Interest Expense with the proceeds of any Cure Amount for determining compliance with **Section 10.3** for the test period for which such Cure Amount is deemed applied.

11.6.3 Prior to the Cure Deadline if Borrower Agent notifies Agent of its intent to cure, neither Agent nor any Lender shall exercise any rights or remedies under **Section 11** (or under any other Loan Document available during the continuance of any Default or Event of Default) solely on the basis of any actual or purported failure to comply with **Section 10.3** unless such failure is not cured by the Cure Deadline (it being understood that this sentence shall not have any effect on the rights and remedies of the Agent or the Lenders with respect to any other Default or Event of Default pursuant to any other provision of any Loan Document other than breach of **Section 10.3**); provided, that the Agent and the Lenders shall have no obligation to make any Loans, and the Issuing Banks shall have no obligation to issue any Letters of Credit, prior to receipt of the Cure Amount or such Default or Event of Default is otherwise cured or waived.

Section 12. AGENT.

12.1 Appointment, Authority and Duties of Agent.

12.1.1 Appointment and Authority. Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent in accordance with the provisions of the Loan Documents, and the exercise by Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. Agent alone is authorized to determine eligibility and applicable advance rates under the Borrowing Base in accordance with the terms of this Agreement, whether to impose or release any reserve, or whether any conditions to funding or issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment.

12.1.2 Duties. The title of "Agent" is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction, even if a Default exists. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3 Agent Professionals. Agent may perform its duties through employees and agents. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4 Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could expose any Agent Indemnitee to potential liability.

12.2 Agreements Regarding Collateral and Borrower Materials

12.2.1 Lien Releases; Care of Collateral. Secured Parties authorize Agent to release any Lien on any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition or Lien that Borrower Agent certifies in writing is a Permitted Disposition or a Permitted Lien entitled to priority over Agent's Liens (and Agent may rely conclusively on such certificate without further inquiry); (c) that does not constitute a material part of the Collateral; (d) subject to **Section 14.1**, with the consent of Required Lenders; or (e) constituting real property interests upon the occurrence of a Release Event with respect thereto. Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral. To the extent required under the laws of any foreign jurisdiction, each Secured Party hereby grants to Agent any required power of attorney to take any action with respect to Collateral or to execute any Loan Document on the Secured Party's behalf.

12.2.2 Possession of Collateral. Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.3 Reports. Agent shall promptly provide to Lenders, when complete, any field examination, audit, appraisal or consultant report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders by posting them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrowers' books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Platform or otherwise.

12.3 Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any Communication (including those by telephone, telex, telegram, telecopy, e-mail or other electronic means) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Agent shall have a reasonable and practicable amount of time to act on any Communication and shall not be liable for any delay in acting.

12.4 Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations) or assert any rights relating to any Collateral. Agent is hereby authorized to file a proof of claim and vote claims for the Obligations in any proceeding under the Bankruptcy Code. At any foreclosure or other realization event with respect to the Collateral (including any 363 sale pursuant to the Bankruptcy Code), Agent shall be entitled to credit bid the Obligations and establish vehicles and procedures therefor.

12.5 **Ratable Sharing**. If any Secured Party obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Secured Party shall forthwith purchase from the other Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.5.2**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Secured Party, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Secured Party shall set off against a Deposit Account without Agent's prior consent.

12.6 **Indemnification**. **EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT).** In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.

12.7 **Limitation on Responsibilities of Agent**. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.8 **Successor Agent and Co-Agents**.

12.8.1 Resignation; Successor Agent. Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrower Agent. Required Lenders may appoint a successor that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Default or Event of Default exists) Borrower Agent. If no successor is appointed by the effective date of Agent's resignation, then on such date, Agent may appoint a successor acceptable to it in its discretion (which shall be a Lender unless no Lender accepts the role) or, in the absence of such appointment, Required Lenders shall automatically assume all rights and duties of Agent. The successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. The retiring Agent shall be discharged from its duties hereunder on the effective date of its resignation, but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or Claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including indemnification under **Sections 12.6** and **14.2**, and all rights and protections under this **Section 12**. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.8.2 Co-Collateral Agent. If appropriate under Applicable Law, Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

12.9 **Due Diligence and Non-Reliance**. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. No act by Agent, including any consent, amendment, acceptance of assignment or due diligence by Agent, shall be deemed to constitute a representation by Agent to any Secured Party as to any matter, including whether Agent has disclosed material information in its possession. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates. Each Lender represents and warrants that (a) the Loan Documents set forth the terms of a commercial lending facility, and (b) it is engaged in making, acquiring or holding commercial loans in the ordinary course, is sophisticated with respect to making such decisions and holding such loans, and is entering into this Agreement for the purpose of making, acquiring or holding commercial loans and providing other facilities as set forth herein, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument. Each Lender agrees not to assert any claim in contravention of the foregoing.

12.10 **Remittance of Payments and Collections**.

12.10.1 Remittances Generally. Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand and request for payment is made by Agent by 1:00 p.m. on a Business Day, then payment shall be made by the Secured Party by 3:00 p.m. on such day, and if request is made after 1:00 p.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.2 Recovery of Erroneous Payments. Without limitation of any other provision herein, if at any time Agent makes a payment hereunder in error to any Secured Party, whether or not in respect of an Obligation due and owing by Borrowers at such time, where such payment is a Rescindable Amount, then in any such event each

Secured Party receiving a Rescindable Amount severally agrees to repay to Agent forthwith on demand the Rescindable Amount received by such Secured Party in immediately available funds in the currency so received, with interest thereon for each day from and including the date such Rescindable Amount is received by it to but excluding the date of repayment to Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation. Each Secured Party irrevocably waives any and all defenses, including any defense of discharge for value (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. Agent shall inform each Secured Party promptly upon determining that any payment made to such Secured Party was comprised, in whole or in part, of a Rescindable Amount.

12.10.3 Distributions. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, **on demand**, its share of the amounts required to be returned.

12.11 Individual Capacities. As a Lender, Bank of America shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include Bank of America in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

12.12 Titles. Each Lender, other than Bank of America, that is designated in connection with this credit facility as an "Arranger," "Bookrunner" or "Agent" of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

12.13 Certain ERISA Matters.

12.13.1 Lender Representations. Each Lender represents and warrants, as of the date it became a Lender party hereto, and covenants, from the date it became a Lender party hereto to the date it ceases being a Lender party hereto, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of Obligors, that at least one of the following is and will be true: (a) Lender is not using "plan assets" (within the meaning of ERISA Section 3(42) or otherwise) of one or more Benefit Plans with respect to Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments or Loan Documents; (b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents; (c)(i) Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (ii) such Qualified Professional Asset Manager made the investment decision on behalf of Lender to enter into, participate in, administer and perform the Loans, Letters of Credit, Commitments and Loan Documents, (iii) the entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (iv) to the best knowledge of Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents; or (d) such other representation, warranty and covenant as may be agreed in writing between Agent, in its discretion, and Lender.

12.13.2 Further Lender Representation. Unless **Section 12.13.1(a)** or **(d)** is true with respect to a Lender, such Lender further represents and warrants, as of the date it became a Lender hereunder, and covenants, from the date it became a Lender to the date it ceases to be a Lender hereunder, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of any Obligor, that Agent is not a fiduciary with respect to the assets of such Lender involved in its entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents (including in connection with the reservation or exercise of any rights by Agent under any Loan Document).

12.14 Bank Product Providers. Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including **Sections 5.5**, **12**, **14.3.3** and **14.17**, and agrees to indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations.

12.15 No Third Party Beneficiaries. This **Section 12** is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This **Section 12** does not confer any rights or benefits upon Obligors or any other Person. As between Obligors and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

Section 13. BENEFIT OF AGREEMENT; ASSIGNMENTS.

13.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Obligors, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor may assign or delegate its rights or obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

13.2 Participations.

13.2.1 Permitted Participants; Effect. Subject to **Section 13.3.3**, any Lender may sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents; provided that no participation may be sold to a Defaulting Lender or one or more natural persons (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person). Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. Borrowers agree that each Participant shall be entitled to the benefits of **Sections 3.7**, **3.9** and **5.8** (subject to the requirements and limitations therein, including the requirements under **Section 5.9** (it being understood that the documentation required under **Section 5.9** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.3**; provided that such Participant (i) agrees to be subject to the provisions of **Section 13.4** as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.3**; and (ii) shall not be entitled to receive any greater payment under **Section 3.7** or **5.8**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a

Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of **Section 13.4** with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 11.4** as though it were a Lender; provided that such Participant agrees to be subject to **Sections 5.5** and **12.5** as though it were a Lender.

13.2.2 Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases any Borrower, Guarantor or substantially all Collateral.

13.2.3 Participant Register. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in Commitments, Loans (and stated interest) and LC Obligations (the "**Participant Register**"). Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code.

13.2.4 Benefit of Setoff. Each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

13.3 Assignments.

13.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of $5,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of $1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least $5,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver an Assignment to Agent for acceptance and recording. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledgee or assignee for such Lender as a party hereto.

13.3.2 Effect; Effective Date. Upon delivery to Agent of a fully executed and completed Assignment accompanied by a processing fee of $3,500 (unless otherwise agreed by Agent in its discretion), the assignment specified therein shall be effective as provided in the Assignment as long as it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.9** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3 Certain Assignees. No assignment or participation may be made to Parent, an Obligor, an Affiliate of an Obligor or Parent (including Bud Brigham and the Brigham Family), a Defaulting Lender or one or more natural persons (or a holding company, investment vehicle or trust for, or owned and operating for the primary benefit of, a natural person). Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents. Any assignment by a Defaulting Lender must be accompanied by satisfaction of its outstanding obligations under the Loan Documents in a manner satisfactory to Agent, including payment by the Defaulting Lender or Eligible Assignee of an amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Agent in its discretion) to satisfy all funding and payment liabilities of the Defaulting Lender. If any assignment by a Defaulting Lender (by operation of law or otherwise) does not comply with the foregoing, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.

13.3.4 Register. Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names, addresses and Commitments of, and the Loans, interest and LC Obligations owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.

13.4 Replacement of Certain Lenders. If a Lender (a) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) is a Defaulting Lender, or (c) within the last 180 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.8** (and has not designated a different Lending Office pursuant to **Section 3.8**), then Agent or Borrower Agent may, upon 10 days' notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.

Section 14. MISCELLANEOUS.

14.1 Consents, Amendments and Waivers

14.1.1 Amendment. No Modification of a Loan Document shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, that:

(a) without the prior written consent of Agent, no Modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of Issuing Bank, no Modification shall alter **Section 2.2** or any other provision in a Loan Document that relates to Letters of Credit or any rights, duties or discretion of Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no Modification shall (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2** and excluding any waiver of the Default Rate of interest); (iii) extend the Termination Date applicable to such Lender's Obligations; (iv) change **Section 5.5.2** or any other provision hereof in a manner that alters the ratable reduction of Commitments or the pro rata sharing of payments; or (v) amend this clause (c);

(d) without the prior written consent of all Lenders (except any Defaulting Lender), no Modification shall (i) alter this **Section 14.1.1**; (ii) amend the definition of (A) Pro Rata, (B) Required Lenders, or (C) ~~Borrowing Base, Accounts Formula Amount or Inventory Formula Amount (or any defined term used in such definitions) if the effect of such amendment is to increase borrowing availability~~ Super Majority Lenders; (iii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Debt or other obligation; (iv) subordinate, or have the effect of subordinating, the Liens on the ABL Priority Collateral securing the Obligations to Liens securing any other Debt or other obligation; (v) release all or substantially all Collateral; (vi) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release any Obligor from liability for any Obligations; or (vii) change any Loan Document provision requiring consent or action by all Lenders;

(e) without the prior written consent of the Super Majority Lenders, (i) increase the advance rates set forth in the definition of Accounts Formula Amount, Inventory Formula Amount or Hercules Formula Amount or add new categories of eligible assets included in the Borrowing Base or (ii) otherwise amend the definition of Borrowing Base, Accounts Formula Amount, Inventory Formula Amount or Hercules Formula Amount (or the defined terms therein) if the effect of such amendment is to increase borrowing availability; and

(f) ~~(e)~~ if Real Estate secures any Obligations, no Modification of a Loan Document shall add, increase, renew or extend any credit line hereunder until the completion of flood diligence and documentation as required by Flood Laws or as otherwise satisfactory to all Lenders. Each Lender shall promptly notify Agent of the completion of its flood diligence.

14.1.2 Limitations. Notwithstanding anything in any Loan Document to the contrary, Agent may make or adopt Conforming Changes from time to time in consultation with Borrower Agent and any amendment or notice implementing such changes will become effective without further action or consent of any other party; provided, that Agent shall post or otherwise provide same to Borrowers and Lenders reasonably promptly after it becomes effective. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for Modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to Modification of any Loan Document. Any waiver or consent granted by Agent, Issuing Bank or Lenders hereunder shall be effective only if in writing and only for the matter specified. Each Lender irrevocably authorizes the Agent of its behalf, and without further consent of any Lender (but with the consent of Borrowers and the Agent), to amend and restate this Agreement and other Loan Documents if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have been terminated, such Lender shall have no other commitment or other obligation hereunder and shall have be paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement and the other Loan Documents.

14.1.3 Corrections. Without action or consent by any other party to this Agreement, (a) Agent and Borrower Agent may amend a Loan Document to cure an ambiguity, omission, mistake, typographical error, or other defect in any provision, schedule or exhibit thereof; and (b) Agent may revise **Schedule 1.1** to reflect changes in Commitments from time to time.

14.2 Indemnity. **EACH OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE**. Notwithstanding the foregoing, in no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee. The Obligors' obligations under this **Section 14.2** shall be subject to the Legal Expenses Limitation. This **Section 14.2** shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

14.3 Notices and Communications

14.3.1 Notice Address. Subject to **Section 14.3.2**, all Communications by or to a party hereto shall be in writing and shall be given to any Obligor, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. In addition, a Communication from Agent to Lenders or Obligors may, to the extent permitted by law, be delivered electronically (i) by transmitting the Communication to the electronic address specified to Agent in writing by the applicable Lender or Borrower Agent from time to time, or (ii) by posting the Communication on a website and sending the Lender or Borrower Agent notice (electronically or otherwise) that the Communication has been posted and providing instructions (at such time or prior to delivery of such Communication) for viewing it. Each Communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged; or (d) if provided electronically by Agent to Lenders or Obligors, when the Communication (or notice advising of its posting to a website) is sent to the Lender's or Borrower Agent's electronic address. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4**, **2.2**, **3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written Communication not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Obligors.

14.3.2 Communications. Electronic and telephonic Communications (including e-mail, messaging, voice mail and websites) may be used only in a manner acceptable to Agent and Borrower Agent. Agent makes no assurance as to the privacy or security of electronic or telephonic Communications. E-mail and voice mail shall not be effective notices under the Loan Documents except as expressly provided herein.

14.3.3 Platform. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if requested by Agent) to an electronic system maintained by it ("Platform"). Borrower Agent shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Communications and other information relating to this credit facility may be made available to Secured Parties on the Platform. The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. No Agent Indemnitee shall have any liability to Obligors, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform, including any unintended recipient, nor for delivery of Borrower Materials and other information via the Platform, internet, e-mail, or any other electronic platform or messaging system except to the extent that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Agent Indemnitee. Agent may, but is not obligated to, make Communications available to Obligors and Lenders by posting them on IntraLinks™, DebtDomain, SyndTrak, ClearPar or other electronic platform.

14.3.4 Public Information. Obligors and Secured Parties acknowledge that "public" information may not be segregated from material non-public information on the Platform. Secured Parties acknowledge that Borrower Materials may include Obligors' material non-public information, which should not be made available to personnel who do not wish to receive such information or may be engaged in trading, investment or other market-related activities with respect to an Obligor's securities.

14.3.5 Non-Conforming Communications. Agent and Lenders may rely on any Communication purportedly given by or on behalf of an Obligor even if it is not made in a manner specified herein, incomplete or not confirmed, or if the terms thereof, as understood by the recipient, vary from an earlier Communication or later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any Communication purportedly given by or on behalf of any Obligor, except to the extent that such liabilities, losses, costs or expenses are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

14.3.6 Reliance on Communications. No Secured Party shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with an Electronic Signature transmitted by telecopy, emailed .pdf or other electronic means). Secured Parties may rely on, and shall incur no liability under or in respect of any Loan Document by acting on, any Communication (which may be a fax, electronic message, internet or intranet website posting, or other distribution, or signed by an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof). Agent shall be entitled to rely on the e-mail addresses and telephone numbers provided by Obligors, Lenders and their authorized representatives. Each Obligor hereby waives (a) any argument, defense or right to contest the legal effect, validity or enforceability of any Loan Document or other Communication based solely on the lack of a paper original copy thereof, and (b) waives any claim against any Indemnitee for liabilities arising from its reliance on or use of Electronic Signatures, including liabilities relating to an Obligor's failure to use a security measure in connection with execution, delivery or transmission of an Electronic Signature.

14.4 Performance of Obligors' Obligations. Agent may, in its discretion at any time and from time to time, at Obligors' expense, pay any amount or do any act required of an Obligor under any Loan Documents (to the extent such Obligor has failed to do so on or prior to the date required for such performance) to (a) after the occurrence and during the continuation of an Event of Default, enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or, after the occurrence and during the continuation of an Event of Default, realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All documented out-of-pocket payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Obligors, within one Business Day of written demand therefor, with interest from the date of Agent's demand therefor until paid in full, at the rate applicable to Base Rate Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.5 Credit Inquiries. Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

14.6 Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7 Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.8 Execution; Electronic Records. Any Loan Document, including any required to be in writing, may (if agreed by Agent) be in the form of an Electronic Record and may be executed using Electronic Signatures. An Electronic Signature on or associated with any Communication shall be valid and binding on each Obligor and other party thereto to the same extent as a manual, original signature, and any Communication entered into by Electronic Signature shall constitute the legal, valid and binding obligation of each party, enforceable to the same extent as if a manually executed original signature were delivered. A Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. The parties may use or accept manually signed paper Communications converted into electronic form (such as scanned into pdf), or electronically signed Communications converted into other formats, for transmission, delivery and/or retention. Agent and Lenders may, at their option, create one or more copies of a Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of the Person's business, and may destroy the original paper document. Any Communication in the form or format of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything herein, (a) Agent is under no obligation to accept an Electronic Signature in any form unless expressly agreed by it pursuant to procedures approved by it; (b) each Secured Party shall be entitled to rely on any Electronic Signature purportedly given by or on behalf of an Obligor without further verification and regardless of the appearance or form of such Electronic Signature; and (c) upon request by Agent, any Loan Document using an Electronic Signature shall be promptly followed by a manually executed original counterpart.

14.9 Entire Agreement. This Agreement shall be effective when executed by Agent and when Agent has received counterparts hereof that, taken together, bear the signature of each other party hereto. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

14.10 Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

14.11 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Obligors and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Obligors have consulted their own legal, accounting, regulatory, tax and other advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Obligors, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.12 Confidentiality. Each of Agent, Lenders and Issuing Bank shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, auditors, advisors, attorneys, consultants, service providers and other representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information is (i) publicly available other than as a result of a breach of this Section, (ii) available to Agent, any Lender, Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrowers, or (iii) independently discovered or developed by a party hereto without utilizing any Information or violating this Section; (h) on a confidential basis to a provider of a Platform; or (i) with the consent of Borrower Agent. Agent and Lenders may disclose information regarding this Agreement and the credit facility hereunder to market data collectors, similar service providers to the lending industry, and service providers to Agent and Lenders in connection with the Loan Documents and Commitments. As used herein, "Information" means information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

14.13 [Reserved].

14.14 GOVERNING LAW. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

14.15 Consent to Forum

14.15.1 Forum. **EACH PARTY HERETO CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN NEW YORK COUNTY, NEW YORK, OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH OBLIGOR IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1**. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

14.15.2 Other Jurisdictions. Nothing herein shall limit the right of Agent to bring proceedings against any Obligor in any other court Agent deems necessary or appropriate in order to realize on the Collateral or other security for the Obligations or enforce any judgment, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.16 Waivers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OBLIGOR WAIVES (A) PRESENTMENT, DEMAND, PROTEST, NOTICE OF PRESENTMENT, DEFAULT, NON-PAYMENT, MATURITY, RELEASE, COMPROMISE, SETTLEMENT, EXTENSION OR RENEWAL OF ANY COMMERCIAL PAPER, ACCOUNTS, DOCUMENTS, INSTRUMENTS, CHATTEL PAPER AND GUARANTIES AT ANY TIME HELD BY AGENT ON WHICH AN OBLIGOR MAY IN ANY WAY BE LIABLE, AND HEREBY RATIFIES ANYTHING AGENT MAY DO IN THIS REGARD; (B) NOTICE PRIOR TO TAKING POSSESSION OR CONTROL OF ANY COLLATERAL; (C) ANY BOND OR SECURITY THAT MIGHT BE REQUIRED BY A COURT PRIOR TO ALLOWING AGENT TO EXERCISE ANY RIGHTS OR REMEDIES; (D) THE BENEFIT OF ALL VALUATION, APPRAISEMENT AND EXEMPTION LAWS; AND (E) NOTICE OF ACCEPTANCE HEREOF. EACH OBLIGOR ACKNOWLEDGES THAT THE FOREGOING WAIVERS ARE A MATERIAL INDUCEMENT TO AGENT, ISSUING BANK AND LENDERS ENTERING INTO THIS AGREEMENT AND THAT THEY ARE RELYING UPON THE FOREGOING IN THEIR DEALINGS WITH OBLIGORS. EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES IN ANY WAY RELATING TO THE LOAN DOCUMENTS OR THE TRANSACTIONS RELATING HERETO (BUT WITHOUT LIMITATION TO THE INDEMNITEES ABILITY TO REQUEST INDEMNIFICATION FOR SUCH DAMAGES INCURRED BY INDEMNITEES AS PART OF A THIRD PARTY CLAIM) (iii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OF COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS

CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 14.16. Each party hereto has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

14.17 Acknowledgement Regarding Supported QFCs To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

14.17.1 Covered Party. If a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regimes if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. If a Covered Party or BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regimes if the Supported QFC and Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

14.17.2 Definitions. As used in this Section, (a) "BHC Act Affiliate" means an "affiliate," as defined in and interpreted in accordance with 12 U.S.C. §1841(k); (b) "Default Right" has the meaning assigned in and interpreted in accordance with 12 C.F.R. §§252.81, 47.2 or 382.1, as applicable; and (c) "QFC" means a "qualified financial contract," as defined in and interpreted in accordance with 12 U.S.C. §5390(c)(8)(D).

14.18 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an Affected Financial Institution, any liability of such Secured Party arising under a Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority, and each party hereto agrees and consents to, and acknowledges and agrees to be bound by, (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liability which may be payable to it by such Secured Party; and (b) the effects of any Bail-in Action on any such liability, including (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of any Write-Down and Conversion Powers.

14.19 Patriot Act Notice. Agent and Lenders hereby notify Obligors that pursuant to the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies each Obligor, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding any personal guarantor and may require information regarding Obligors' management and owners, such as legal name, address, social security number and date of birth. Obligors shall, promptly upon request, provide all documentation and other information as Agent, Issuing Bank or any Lender may request from time to time for purposes of complying with any "know your customer," anti-money laundering or other requirements of Applicable Law, including the Patriot Act and Beneficial Ownership Regulation.

14.20 Intercreditor Agreement.

14.20.1 Acknowledgment. Each of the Lenders hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof as if such Lender was a signatory thereto. Each Lender (and each Person that agrees to become a Lender pursuant to **Section 13**) hereby authorizes and directs Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that Agent, in its capacity thereunder, may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement.

14.20.2 General. Notwithstanding anything to the contrary herein, Agent's Liens and the exercise of any right or remedy by Agent under this Agreement or any other Loan Document against the Collateral are subject to the provisions of the Intercreditor Agreement. In the event of a conflict between this Agreement or any other Loan Document and the Intercreditor Agreement, the Intercreditor Agreement will control.

14.21 NO ORAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

[Remainder of Page Intentionally Left Blank; Signatures Begin on Following Page]

SCHEDULE 1.1(a)
to
Loan, Security and Guaranty Agreement

COMMITMENTS OF LENDERS

Lender	Commitment
Bank of America, N.A.	$ 75,000,000

Goldman Sachs Bank USA	$	25,000,000
Barclays Bank PLC	$	25,000,000
TOTAL:	$	125,000,000

Exhibit 10.2

Execution Version

FIRST AMENDMENT TO CREDIT AGREEMENT

This **FIRST AMENDMENT TO CREDIT AGREEMENT** (this "First Amendment"), dated as of February 26, 2024 (the "First Amendment Effective Date"), is by and among ATLAS SAND COMPANY, a Delaware limited liability company (the " Borrower"), the Guarantors (as defined in the Amended Credit Agreement referenced below), the banks and financial institutions listed on the signature pages hereof as lenders (the "Lenders"), and STONEBRIAR COMMERCIAL FINANCE LLC, a Delaware limited liability company, as Administrative Agent and as Initial Lender.

BACKGROUND

A. The Borrower, the Initial Lender, the Lenders and the Administrative Agent are parties to that certain Credit Agreement, dated as of July 31, 2023 such agreement, as amended, restated, amended and restated, supplemented, extended, refinanced or otherwise modified prior to the effectiveness of the Amendment, the "Existing Credit Agreement"). Capitalized terms used herein without definition shall have the meanings assigned to such terms in the Amended Credit Agreement (as defined below) as set forth on Annex I.

B. The Borrower has requested that the Lenders amend the Existing Credit Agreement to provide for an incremental delayed draw term facility of $150,000,000.00 and to make certain other amendments thereto, as more fully set forth herein (the Existing Credit Agreement, as amended hereby, the "Amended Credit Agreement").

C. The Initial Lender has agreed to provide the incremental delayed draw term facility in accordance with the terms and conditions set forth in this First Amendment and in the Amended Credit Agreement.

NOW THEREFORE, in consideration of the covenants, conditions and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are all hereby acknowledged, the parties hereto covenant and agree as follows:

§1. Amendment to Existing Credit Agreement. Effective as of the First Amendment Effective Date, the Existing Credit Agreement (including the Exhibits thereto) is hereby amended in its entirety to read as set forth in Annex I attached hereto. On the First Amendment Effective Date, all of the Indebtedness incurred under the Existing Credit Agreement shall, to the extent outstanding on the First Amendment Effective Date, continue to be outstanding under the Amended Credit Agreement and shall not be deemed to be paid, released, discharged or otherwise satisfied by the execution of this First Amendment, and this First Amendment shall not constitute a substitution or novation of such Indebtedness or any of the other rights, duties and obligations of the parties thereunder. For the avoidance of doubt, nothing in this First Amendment amends or modifies the Schedules to the Credit Agreement.

§2. Representations and Warranties; No Event of Default. By its execution and delivery hereof, Borrower represents and warrants that, as of the date hereof, after giving effect to the amendments in Section 1 hereof:

(a) all representations and warranties of each of the Loan Parties in the Loan Documents signed by such Loan Party are true, correct, and complete in all material respects with the same effect as though such representations and warranties had been made on the date hereof (it being understood and agreed that any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects as of such date), except (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, such representations and warranties shall continue to be true and correct in all material respects (with duplication of any applicable materiality qualification) as of such specified earlier date and (ii) that the representations and warranties contained in Sections 4(c) of the Amended Credit Agreement shall be deemed to refer to the most recent financial statements furnished pursuant to Section 5(d)(i) and (ii) of the Amended Credit Agreement;

(b) no event has occurred and is continuing which constitutes a Default or Event of Default;

(c) (i) the Borrower has full power and authority to execute and deliver this First Amendment, (ii) this First Amendment has been duly executed and delivered by the Borrower and (iii) this First Amendment, the Amended Credit Agreement, and each of the other Loan Documents to which the Borrower is or will be a party, when delivered hereunder or thereunder, will be the legal, valid and binding obligations of the Borrower, enforceable against Borrower in accordance with such Loan Document's terms, subject to applicable bankruptcy laws and subject to general principals of equity, regardless of whether considered in a proceeding in equity or at law; and

(d) the execution, delivery and performance by the Borrower of this First Amendment, the Amended Credit Agreement and each of the other Loan Documents to which it is a party, are within the powers of the Borrower, do not contravene the organizational documents of the Borrower, and do not (i) violate any law or regulation, or any order or decree of any court or Governmental Authority, (ii) conflict with or result in a breach of, or constitute a default under, any material indenture, mortgage or deed of trust or any material lease, agreement or other instrument binding on the Borrower or any of its properties, or (iii) require the consent, authorization by or approval of or notice to or filing or registration with any Governmental Authority or other Person, except (A) such as have been obtained or made and are in full force and effect, (B) the recording and filing of the Security Instruments and Uniform Commercial Code financing statements as required by the Loan Documents and (C) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder and would not reasonably be expected to result in a Material Adverse Effect.

§3. Conditions of Effectiveness. The effectiveness of this First Amendment shall be subject to the satisfaction of the following conditions:

(a) the Administrative Agent shall have received counterparts of this First Amendment executed by the Initial Lender, each other Lender, the Borrower, each other Loan Party and the Parent Guarantor;

(b) the representations and warranties set forth in Section 2 of this First Amendment shall be true and correct in all material respects (without duplication of any applicable materiality qualification);

(c) the Administrative Agent shall have received a certificate of each Loan Party dated as of the First Amendment Effective Date signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party authorizing the execution, delivery and performance of this First Amendment, and (ii) certifying that, before and after giving effect to this First Amendment, (A) no Default or Event of Default has occurred and is continuing or would occur as a result of the execution, delivery and performance of this First Amendment, (B) all representations and warranties of each of the Loan Parties in the Loan Documents signed by such Loan

Party are true, correct, and complete in all material respects with the same effect as though such representations and warranties had been made on the date hereof (it being understood and agreed that any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects as of such date), except (x) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, such representations and warranties shall continue to be true and correct in all material respects (with duplication of any applicable materiality qualification) as of such specified earlier date and (y) that the representations and warranties contained in Sections 4(c) of the Credit Agreement shall be deemed to refer to the most recent financial statements furnished pursuant to Section 5(d)(i) and (ii) of the Credit Agreement;

(d) the Administrative Agent shall have received a reaffirmation of the ABL/Term Loan Intercreditor Agreement in form and substance reasonably satisfactory to the Administrative Agent and executed by the ABL Agent and the Loan Parties;

(e) the Administrative Agent shall have received an executed copy of an amendment to the ABL Credit Agreement, which shall permit the incurrence of the Additional Delayed Draw Term Loan in an aggregate principal amount of up to $150,000,000 and otherwise be in form and substance reasonably satisfactory to the Administrative Agent;

(f) the Administrative Agent shall have received an executed copy of the material Hercules Acquisition Documents certified by the Borrower to be true, complete and correct, as of the First Amendment Effective Date;

(g) subject to the Legal Expenses Limitation, unless waived by the Administrative Agent, the Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent directly to such counsel to the extent invoiced at least one (1) Business Day prior to the First Amendment Effective Date;

(h) since December 31, 2022, no Material Adverse Effect has occurred; and

(i) the organizational structure and capital structure of Parent Guarantor and its Subsidiaries both before and immediately after giving pro forma effect to the Hercules Acquisition shall be reasonably satisfactory to the Administrative Agent.

§4. Guarantor's Acknowledgment. By signing below, each Guarantor (i) acknowledges, consents and agrees to the execution, delivery and performance by the Borrower of this First Amendment, (ii) ratifies and confirms all of its obligations and liabilities under the Guaranty and the Loan Documents to which it is a party and ratifies and confirms that such obligations and liabilities extend to and continue in effect with respect to, and continue to guarantee and secure the Obligations (as increased by this First Amendment); (iii) acknowledges and agrees that its obligations in respect of its Guaranty are not released, diminished, waived, modified, impaired or affected in any manner by this First Amendment, or any of the provisions contemplated herein, (iv) acknowledges and agrees that as of the date hereof, such Guarantor (a) does not have any known claim or cause of action against the Administrative Agent or any Lender (or any of their respective directors, officers, employees, agents, attorneys or other representatives) under or in connection with its Guaranty and the other Loan Documents to which it is a party and (b) has no offsets against, or defenses or counterclaims to, its Guaranty.

§5. Reference to the Credit Agreement.

(a) Upon and during the effectiveness of this First Amendment, each reference in the Amended Credit Agreement to "this Agreement", "hereunder", or words of like import shall mean and be a reference to the Credit Agreement, as amended by this First Amendment. This First Amendment shall be a Loan Document.

(b) Except as expressly set forth herein, this First Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights or remedies of the Administrative Agent or the Lenders under the Existing Credit Agreement or any of the other Loan Documents, and, except as expressly set forth herein, shall not alter, modify, amend, or in any way affect the terms, conditions, obligations, covenants, or agreements contained in the Existing Credit Agreement or the other Loan Documents, all of which are hereby ratified and affirmed in all respects and shall continue in full force and effect.

§6. Costs and Expenses. The Borrower shall be obligated to pay the reasonable and documented out-of-pocket costs and expenses of the Administrative Agent in connection with the preparation, reproduction, execution and delivery of this First Amendment and the other instruments and documents to be delivered hereunder (including, subject to the Legal Expenses Limitation, the reasonable and documented out-of-pocket attorneys' fees and legal expenses of counsel for the Administrative Agent with respect thereto).

§7. Execution in Counterparts. This First Amendment may be executed in any number of counterparts (electronic delivery accepted) and by different parties in separate counterparts, each of which, when so executed, shall be deemed to be an original and all of which, taken together, shall constitute one integrated agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart.

§8. Governing Law; Jurisdiction; Waiver of Jury Trial, Etc. This First Amendment shall in all respects be governed by and construed in accordance with the laws of the State of Texas, and the provisions of Sections 9(f), 9(g) and 9(h) of the Credit Agreement shall apply to this First Amendment as if set forth in full herein, *mutatis mutandis*. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby.

§9. Headings. Section headings in this First Amendment are included herein for convenience of reference only and shall not constitute a part of this First Amendment for any other purpose.

§10. ENTIRE AGREEMENT. THE AMENDED CREDIT AGREEMENT, AS AMENDED BY THIS FIRST AMENDMENT, AND THE OTHER LOAN DOCUMENTS, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have duly executed this First Amendment as of the date first set forth above.

BORROWER:

ATLAS SAND COMPANY, LLC

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ADMINISTRATIVE AGENT:

STONEBRIAR COMMERCIAL FINANCE LLC

By: /s/ Jeffrey L. Wilkison
Name: Jeffrey L. Wilkison
Title: Senior Vice President

INITIAL LENDER:

STONEBRIAR COMMERCIAL FINANCE LLC

By: /s/ Jeffrey L. Wilkison
Name: Jeffrey L. Wilkison
Title: Senior Vice President

GUARANTORS:

ATLAS ENERGY SOLUTIONS INC.,
a Delaware corporation

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS SAND EMPLOYEE COMPANY, LLC,
a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS SAND EMPLOYEE HOLDING COMPANY, LLC,
a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole member

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS SAND CONSTRUCTION, LLC,
a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole member

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS OLC EMPLOYEE COMPANY, LLC,
a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ATLAS CONSTRUCTION EMPLOYEE COMPANY, LLC,
a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD LOGISTICS, LLC,
a Delaware limited liability company

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD LOGISTICS EMPLOYEE COMPANY, LLC,
a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD TRANSPORTATION SERVICES, LLC,
a Delaware limited liability company

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

FOUNTAINHEAD EQUIPMENT LEASING, LLC, a Delaware limited liability company

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

OLC KERMIT, LLC, a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

OLC MONAHANS, LLC, a Texas limited liability company

By: Atlas Sand Company, LLC,
its sole manager

By: /s/ John Turner
Name: John Turner
Title: President and Chief Financial Officer

ANNEX I

[See Attached]

Annex I to First Amendment
Execution Version

CREDIT AGREEMENT

This **CREDIT AGREEMENT**, dated as of July 31, 2023, is made by and among **ATLAS SAND COMPANY, LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "**Borrower**"), the Lenders from time to time party hereto, and **STONEBRIAR COMMERCIAL FINANCE LLC**, a Delaware limited liability company, as Administrative Agent and as Initial Lender.

WHEREAS, Borrower has applied to Initial Lender for term loans, and Initial Lender has agreed to extend (a) an initial term loan to Borrower in an aggregate principal amount of $180,000,000.00 (the "**Maximum Initial Term Loan Principal Amount**"), (b) a delayed draw term loan to Borrower in an aggregate principal amount of up to $100,000,000.00 (the "**Maximum Delayed Draw Term Loan Principal Amount**") and (c) an additional delayed draw term loan to Borrower in an aggregate principal amount of up to $150,000,000.00 (the "**Maximum Additional Delayed Draw Term Loan Principal Amount**").

NOW, THEREFORE, in consideration of the premises, agreements, provisions and covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS; CONSTRUCTION. In addition to terms that are defined elsewhere in this Agreement, capitalized words and terms used in this Agreement shall have the meanings specified therefor in **Exhibit A** attached hereto. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement that are defined in the Uniform Commercial Code shall have the meanings attributed to such terms in the Uniform Commercial Code. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to Administrative Agent hereunder shall be prepared in accordance with GAAP applied on a consistent basis except for changes in which the Borrower's independent certified public accountants concur and which are disclosed to Administrative Agent on the next date on which financial statements are required to be delivered to Administrative Agent pursuant to Section 5(d); *provided* that, unless Borrower and Administrative Agent shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein are computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods. Notwithstanding any changes in GAAP after December 31, 2017 any lease of Borrower or its Subsidiaries that would be characterized as an operating lease under GAAP in effect on December 31, 2017 (whether such lease is entered into before or after December 31, 2017) shall not constitute a Capital Lease under this Agreement or any other Loan Document as a result of such changes in GAAP unless otherwise agreed to in writing by Borrower and Required Lenders (it being understood and agreed that, for the avoidance of doubt, any future effectiveness of ASC 842 after December 31, 2017 shall be disregarded for purposes of this Agreement). Borrower and the Lenders agree to negotiate in good faith to amend such computation or determination to preserve the original intent in light of the change in GAAP. References herein to any Section, Schedule or exhibit shall be to a Section of, or a Schedule or an exhibit to, this Agreement, unless otherwise specifically provided, and the words "**herein**," "**hereof**" and "**hereunder**," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof. The words "**include**," "**includes**" and "**including**" shall be deemed to be followed by the phrase "**without limitation.**" The word "**will**" shall be construed to have the same meaning and effect as the word "**shall.**"

2.TERM. This Agreement shall be effective as of the date hereof, and shall continue in full force and effect until such time as all of the Indebtedness and other Obligations of Borrower under the Loans have been indefeasibly paid and satisfied in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges required to be paid pursuant to the terms of the Loan Documents.

3. LOANS AND TERMS OF PAYMENT; ADVANCE PROVISIONS.

(a) **The Loans.**

(i). **The Initial Term Loan**. Subject to the terms and conditions set forth in this Agreement and in the other Loan Documents (including, for avoidance of doubt, satisfaction of the conditions precedent set forth in **Exhibit B** attached hereto), the Initial Lender agrees to make an initial term loan to Borrower in an amount equal to the Maximum Initial Term Loan Principal Amount (the "**Initial Term Loan**"), which Initial Term Loan shall be funded in a single Advance made on the Closing Date and repaid in accordance with the terms of this Agreement and the Initial Term Loan Note. The Initial Term Loan will be evidenced by the Initial Term Loan Note in the Maximum Initial Term Loan Principal Amount. Borrower agrees to borrow and repay the Initial Term Loan, with interest, in accordance with the Initial Term Loan Note, this Agreement, and the other Loan Documents. **The obligation of Borrower to repay the Initial Term Loan, together with interest as provided in this Agreement and in the Initial Term Loan Note, shall commence upon the funding of the Initial Term Loan on the Closing Date and shall be unconditional**. Borrower hereby accepts the Initial Term Loan on the Closing Date, subject to and upon the terms and conditions set forth herein.

(ii). **Delayed Draw Term Loans**. Subject to the terms and conditions set forth in this Agreement and in the other Loan Documents (including, for avoidance of doubt, satisfaction of the conditions precedent set forth in **Exhibit B** attached hereto on the Closing Date and **Exhibit E** attached hereto on the applicable Delayed Draw Funding Date), the Initial Lender agrees to make delayed draw term loans to Borrower at any time and from time to time during the Availability Period (each, a "**Delayed Draw Term Loan**" and collectively, the "**Delayed Draw Term Loans**"); *provided* that the aggregate principal amount of all Delayed Draw Term Loan Notes shall not exceed the Maximum Delayed Draw Term Loan Principal Amount. Delayed Draw Term Loans may be funded at Borrower's request in multiple Advances made during the Availability Period and repaid in accordance with the terms of this Agreement and each Delayed Draw Term Loan Note. Whenever Borrower desires to incur a Delayed Draw Term Loan hereunder, Borrower shall give Administrative Agent at least five (5) Business Days' (or such shorter period agreed to by Administrative Agent in its sole discretion) prior written notice of such Delayed Draw Term Loan to be incurred hereunder specifying the principal amount of such Delayed Draw Term Loan to be incurred and the date of such Advance (which shall be a Business Day). Each Delayed Draw Term Loan will be evidenced by a Delayed Draw Term Loan Note appropriately completed in accordance with the terms of the form of Delayed Draw Term Loan Note attached hereto as **Exhibit G** to include the applicable interest rate and required amortization payments; provided that the aggregate principal amount of all Delayed Draw Term Loan Notes shall not exceed the Maximum Delayed Draw Term Loan Principal Amount. Interest on each Delayed Draw Term Loan shall accrue commencing on the Delayed Draw Funding Date for such Delayed Draw Term Loan at a per annum rate equal to the Term SOFR Rate plus 5.95%. Borrower agrees to repay the Delayed Draw Term Loans, with interest, in accordance with the Delayed Draw Term Loan Notes, this Agreement, and the other Loan Documents. **The obligation of Borrower to repay the Delayed Draw Term Loans, together with interest as provided in this Agreement and in**

each Delayed Draw Term Loan Note, shall commence upon the funding of each Delayed Draw Term Loan on the Delayed Draw Funding Date for such Delayed Draw Term Loan and shall be unconditional. Borrower hereby accepts each Delayed Draw Term Loan requested by Borrower on the Delayed Draw Funding Date for such Delayed Draw Term Loan, subject to and upon the terms and conditions set forth herein.

(iii). **Additional Delayed Draw Term Loan**. Subject to the terms and conditions set forth in this Agreement and in the other Loan Documents (including, for avoidance of doubt, satisfaction of the conditions precedent set forth in **Exhibit I** attached hereto on the Additional Delayed Draw Funding Date), the Initial Lender agrees to make a delayed draw term loan to Borrower on any date during the Additional Availability Period (the "**Additional Delayed Draw Term Loan**") in a principal amount not to exceed the Maximum Additional Delayed Draw Term Loan Principal Amount. The Additional Delayed Draw Term Loan may be funded at Borrower's request in one Advance made during the Additional Availability Period and repaid in accordance with the terms of this Agreement and the Additional Delayed Draw Term Loan Note. Whenever Borrower desires to incur the Additional Delayed Draw Term Loan hereunder, Borrower shall give Administrative Agent at least three (3) Business Days' (or such shorter period agreed to by Administrative Agent in its sole discretion) prior written notice of such Additional Delayed Draw Term Loan to be incurred hereunder specifying the principal amount of such Additional Delayed Draw Term Loan to be incurred and the date of such Advance (which shall be a Business Day). The Additional Delayed Draw Term Loan will be evidenced by the Additional Delayed Draw Term Loan Note appropriately completed in accordance with the terms of the form of the Additional Delayed Draw Term Loan Note attached hereto as **Exhibit J** to include the applicable interest rate and required amortization payments. Interest on the Additional Delayed Draw Term Loan shall accrue commencing on the Additional Delayed Draw Funding Date at a per annum rate equal to the rate set forth in the Additional Delayed Draw Term Loan Note. Borrower agrees to repay the Additional Delayed Draw Term Loan, with interest, in accordance with the Additional Delayed Draw Term Loan Note, this Agreement, and the other Loan Documents. **The obligation of Borrower to repay the Additional Delayed Draw Term Loan, together with interest as provided in this Agreement and in the Additional Delayed Draw Term Loan Note, shall commence upon the funding of the Additional Delayed Draw Term Loan on the Additional Delayed Draw Funding Date and shall be unconditional**. Borrower hereby accepts the Additional Delayed Draw Term Loan requested by Borrower on the Additional Delayed Draw Funding Date, subject to and upon the terms and conditions set forth herein.

(b) **Closing Fee; Additional Delayed Draw Term Loan Commitment Fee**. On the Closing Date, Borrower shall pay to Administrative Agent a closing fee equal to $3,700,000.00, which fee shall be fully earned as of the Closing Date and shall not be refundable. On the Additional Delayed Draw Funding Date, Borrower shall pay to Administrative Agent a commitment fee equal to $1,500,000.00 which fee shall be fully earned as of the First Amendment Effective Date and shall not be refundable.

(c) **No Reborrowings**. Amounts borrowed hereunder and that are repaid or prepaid may not be reborrowed.

(d) **Lenders' Records.** Each Lender shall record in its records the date and amount of the Loans and each repayment thereof. The amounts so recorded shall be conclusive evidence, absent manifest error, of the principal amount owing and unpaid with respect to the Loans; *provided, however,* that the failure to so record any such amount or any error in so recording any such amount shall not limit or otherwise affect the obligations of Borrower hereunder or under the Notes or any other Loan Document to repay the principal amount of the Loans together with all interest accruing thereon.

(e) **Use of Proceeds.** Proceeds of the Loans will be used exclusively by Borrower for general corporate purposes (including, e.g., to refinance existing indebtedness, to make permitted distributions, etc.), in each case in accordance with the terms of this Agreement and the other Loan Documents. Proceeds of the Additional Delayed Draw Term Loan will be used by Borrower to consummate the Hercules Acquisition, including the payment of fees and expenses incurred in connection therewith and with the First Amendment. No proceeds of the Loans will be used in violation of any Applicable Law.

(f) **Collateral**. The Loans will be secured by the Collateral. Notwithstanding that the total Obligations may, at any time, exceed the Maximum Principal Amount, the total of all such disbursements and all other Obligations hereunder and under any other Loan Document shall be secured by all of the Collateral. All other sums expended by Administrative Agent and the Lenders pursuant to any Loan Document that are required to be reimbursed by Borrower in accordance with Section 9(c) shall constitute Obligations under the Loan Documents and shall be secured by all of the Collateral.

(g) **Payments.** During the term of the Loans, Borrower shall make payments on each Payment Day as required by each respective Note. Payments of principal, interest and all other amounts due under the Notes and this Agreement shall be made by wire transfer. All such payments shall be payable to Administrative Agent, for the account of the Lenders, as to such account or place as Administrative Agent may designate in writing from time to time. Administrative Agent will promptly distribute to each Lender its ratable share of such payment in like funds as received to such Lender (or otherwise distribute such payment in like funds as received to the Person or Persons entitled thereto as provided herein or in the applicable Note). If an Event of Default has occurred and is continuing, Administrative Agent may apply payments received or collected from Borrower or for the account of Borrower (including, the monetary proceeds of collection or of realization upon any Collateral) to the Indebtedness in such order and manner as Administrative Agent determines in its sole discretion, but subject to the terms of any Intercreditor Agreement. If no Event of Default shall have occurred and be continuing, all payments shall be applied as set forth in this Agreement and the Loan Documents.

(h) **No Deductions or Setoff; Reinstatement of Obligations**. Borrower hereby unconditionally promises to pay to the Lenders all Indebtedness as and when due in accordance with this Agreement and the Loan Documents. Borrower shall make all payments to Administrative Agent, for the account of the Lenders, on the Indebtedness free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restriction or conditions of any kind. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Indebtedness, any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Indebtedness intended to be satisfied by such payment or proceeds shall be reinstated and continue, and this Agreement shall continue in full force and effect as if such payment or proceeds has not been received by such Lender. Borrower shall be liable to pay to each Lender, and does hereby indemnify and hold each Lender harmless for, the amount of any payments or proceeds surrendered or returned. This Section 3(h) shall remain effective notwithstanding any contrary action which may be taken by any Lender in reliance upon such payment or proceeds, and this Section 3(h) shall survive the payment of the Indebtedness and the termination of this Agreement.

(i) **Late Fees**. If Borrower fails to make any payment pursuant to this Agreement, the Notes or any other Loan Document on or before the fifth day after the due date for such payment (other than the payment due at maturity, in which case, if Borrower fails to make such payment on the date such payment is due), then Borrower shall, following Administrative Agent's written request therefor, pay Administrative Agent for the ratable account of the Lenders a late fee on each such applicable payment date equal to 3% of each such past-due payment (not to exceed the lawful maximum). Such late fee will be immediately due and payable and is in addition to any other charges, costs, fees, and expenses that Borrower may owe as a result of the late payment, including the imposition of the Default Rate pursuant to the Notes or this Agreement.

4.REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Administrative Agent and the Lenders, as of the date of this Agreement, as of each Delayed Draw Funding Date and as of the Additional Delayed Draw Funding Date):

(a) **Organization.** Borrower (i) is a "**registered organization**" (as defined in the Uniform Commercial Code) duly organized, validly existing and in good standing under the laws of the State of Delaware, and Borrower's exact legal name is as set forth in the first paragraph of this Agreement; (ii) has the power and authority to own its properties and assets and to transact the businesses in which it is presently, or proposes to be, engaged and (iii) is duly qualified and authorized to do business and is in good standing in every jurisdiction in which the laws of such jurisdiction require Borrower to be so qualified or authorized, except where failure to be so qualified or authorized would not reasonably be expected to result in a Material Adverse Effect.

(b) **Authorization.** The execution, delivery and performance by Borrower hereof and of each of the other Loan Documents to which it is a party are within the powers of Borrower, do not contravene the organizational documents of Borrower, and do not (i) violate any law or regulation, or any order or decree of any court or Governmental Authority, (ii) conflict with or result in a breach of, or constitute a default under, any material indenture, mortgage or deed of trust or any material lease, agreement or other instrument binding on Borrower or any of its properties, or (iii) require the consent, authorization by or approval of or notice to or filing or registration with any Governmental Authority or other Person, except (A) such as have been obtained or made and are in full force and effect, (B) the recording and filing of the Security Instruments and Uniform

Commercial Code financing statements as required by the Loan Documents and (C) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder and would not reasonably be expected to result in a Material Adverse Effect. This Agreement is, and each of the other Loan Documents to which Borrower is or will be a party, when delivered hereunder or thereunder, will be, the legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with such Loan Document's terms, subject to applicable bankruptcy laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) **Financial Information.** All financial statements of the Applicable Reporting Entity, including in each case the related statements and notes, supplied to Administrative Agent on or prior to the Closing Date fairly present in all material respects the financial position of the Applicable Reporting Entity and its subsidiaries for the respective periods so specified and have been prepared in accordance with GAAP except as may be set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). Moreover, Borrower is expressly stating that as of the date of this Agreement there has been no material adverse change in Borrower's financial condition as compared to the condition represented in the audited financial statements of Borrower for the fiscal year ending December 31, 2022. It is understood and agreed for all purposes under the Loan Documents that (i) to the extent any certificate, statement, report, or information furnished by any Loan Party pursuant to or in connection with the Loan Documents was based upon or constitutes a forecast or projection, each Loan Party represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such certificate, statement, report, or information (it being recognized by Administrative Agent and the Lenders, however, that projections as to future events are not to be viewed as facts and that results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that the Loan Parties make no representation that such projections will be realized) and (ii) as to statements, information and reports supplied by third parties after the Closing Date, each of the Loan Parties represents only that it is not aware of any material misstatement or omission therein.

(d) **Hazardous Substances.** Except as disclosed by Borrower and acknowledged by Administrative Agent in writing on or prior to the date hereof or for matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, Borrower represents and warrants that Borrower has no knowledge of (i) any violation of Environmental Laws by Borrower or any other Loan Party or affecting Borrower's or any other Loan Party's property, including the Collateral; (ii) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on any of Borrower's or any other Loan Party's property, including the Collateral, by Borrower, any Loan Party or any prior owners or occupants of any of the such property; or (iii) any litigation or claims of any kind relating to such matters. Any inspections or tests made by Administrative Agent related to the foregoing during the continuance of an Event of Default shall be at Borrower's expense and for Administrative Agent's and Lenders' purposes only. Borrower hereby (A) releases and waives any claims (including any future claims) against Administrative Agent and Lenders for indemnification or contribution in the event Borrower becomes liable for cleanup or other costs in connection with any event described in clauses (i) or (ii) above, and (B) agrees to indemnify, defend and hold harmless Administrative Agent and Lenders against any and all claims, losses, liabilities, damages, penalties, and expenses which Administrative Agent and Lenders may directly or indirectly suffer as a consequence of any event described in clauses (i) or (ii) above or any event similar or related thereto. The provisions of this Section 4(d) shall survive the payment of the Indebtedness and the termination, expiration or other satisfaction of this Agreement and shall not be affected by Administrative Agent's acquisition of any interest in the Collateral, whether by foreclosure or other means.

(e) **Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower, any other Loan Party or the Parent Guarantor is pending or, to Borrower's knowledge, threatened (in writing), and, to Borrower's knowledge, no other event has occurred which may adversely affect Borrower's, any other Loan Party's or Parent Guarantor's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Administrative Agent in writing on or prior to the date hereof or that could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(f) **Taxes.** All of Borrower's, each other Loan Party's and Parent Guarantor's federal tax returns and all other material tax returns required to be filed have been filed by the date of this Agreement, and all material Taxes (other than Contested Taxes) resulting therefrom have been paid in full when due.

(g) **Solvency.** Borrower and the other Loan Parties, on a consolidated basis, are solvent, are paying their debts as they become due and have sufficient capital to conduct their business. The fair salable value of the Loan Parties' assets, on a consolidated basis, is in excess of the total amount of their liabilities (including contingent liabilities) as they become absolute and matured.

(h) **No Defaults or Events of Default.** Neither Borrower nor any other Loan Party is in default under any Major Material Contract to which it is a party or by which it is bound, and Borrower knows of no ongoing dispute regarding any contract or lease of a Loan Party which could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

(i) **Foreign Assets Control Regulations, Etc.** (i) None of the Loan Parties, the Parent Guarantor nor any of their respective Affiliates is (A) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control, United States Department of the Treasury ("**OFAC**" and each such Person, an "**OFAC Listed Person**") (B) an agent, department, or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, (1) any OFAC Listed Person or (2) any Person, entity, organization, foreign country or regime that is subject to any OFAC sanctions program, or (3) otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions (collectively, "**U.S. Economic Sanctions**") (each OFAC Listed Person and each other Person, entity, organization and government of a country described in clause (A), clause (B) or clause (C), a "**Blocked Person**"). (ii) No part of the proceeds from any Loan constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by Borrower or any Affiliate of Borrower, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person, or (B) otherwise in violation of U.S. Economic Sanctions. (iii) None of the Loan Parties, the Parent Guarantor nor any of their respective Affiliates (A) has been found in violation of, charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes under the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the USA PATRIOT Act or any other United States law or regulation governing such activities (collectively, "**Anti-Money Laundering Laws**") or any U.S. Economic Sanctions violations, (B) to Borrower's actual knowledge, after making due inquiry, is under investigation by any Governmental Authority for possible violation of Anti-Money Laundering Laws or any U.S. Economic Sanctions violations, (C) has been assessed civil penalties under any Anti-Money Laundering Laws or any U.S. Economic Sanctions, or (D) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

(j) **Investment Company Act.** None of the Loan Parties is an "investment company" or a company "controlled" by an "investment company," within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

(k) **ERISA**. Each of Borrower, each other Loan Party and the Parent Guarantor is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and no event has occurred or other circumstance now exists with respect to any "employee pension benefit plan" (as defined in Section 3(2) of ERISA, other than a Multiemployer Plan) that, in any case, could reasonably be expected to cause a Material Adverse Effect.

5. COVENANTS. For the term of this Agreement:

(a) **Existence, Compliance with Laws, Fundamental Changes.** Borrower will maintain its existence and its current yearly accounting cycle and will maintain in full force and affect all licenses, bonds, franchises, leases, trademarks, patents, contracts and other rights necessary to the conduct of its business, in each case, except where the failure to do so could not reasonably be expected to cause a Material Adverse Effect. Borrower will comply with all applicable laws and regulations of any applicable Governmental Authority, except for such laws and regulations the violations of which would not, in the aggregate, reasonably be expected to have a Material Adverse Effect on Borrower. Borrower will give Administrative Agent prior written notice of any intent to change Borrower's or any other Loan Party's name, principal address or jurisdiction of formation. Neither Borrower nor any other Loan Party shall amend, restate, supplement, modify or terminate any of its organizational documents in any manner that would reasonably be expected to be materially adverse to the interests of the Lenders without the prior written consent of Administrative Agent in each instance. In the event that

Borrower or any other Loan Party shall amend, restate, supplement, modify or terminate any of its organizational documents in any manner, Borrower or such other Loan Party shall provide Administrative Agent with notice and copies of any and all such amendments, restatements, supplements, modifications or terminations within thirty (30) days following the effective date thereof.

(b) **Merger, Consolidation, Etc**. Without the prior written consent of Administrative Agent (such consent to be granted or withheld at Administrative Agent's sole discretion), no Loan Party will merge or consolidate with any other Person, divide or be divided, amend or modify its capital structure if such amendment or modification could reasonably be expected to result in a Material Adverse Effect, sell or otherwise dispose of all or substantially all of its assets, or otherwise allow a Change of Control; *provided, however,* that so long as no Default or Event of Default is continuing or would occur as a result thereof, (i) any Loan Party shall be permitted to merge into or consolidate with any other Loan Party, *provided*, that in the case of any such merger or consolidation to which the Borrower is a party, the Borrower is the surviving business entity, (ii) any Loan Party (other than the Borrower) shall be permitted to sell or otherwise dispose of any of its assets to any other Loan Party, and (iii) any Person may be consolidated (by merger, liquidation or otherwise) with (A) any Loan Party (other than Borrower), so long as a Loan Party is the surviving business entity or the surviving business entity becomes a Guarantor in accordance with this Agreement and the other Loan Documents and (B) Borrower, so long as Borrower is the surviving business entity.

(c) **Insurance.** Borrower will maintain or will cause to be maintained insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts and covering such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations and which insurance shall be reasonably satisfactory to Administrative Agent (it being understood and agreed that the insurance coverages maintained by Borrower as of the Closing Date are satisfactory to Administrative Agent as of the Closing Date); *provided* that Borrower shall not reduce the insurance coverages maintained by Borrower as of the Closing Date without the prior written consent of Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed. The loss payable clauses or provisions of the insurance policies insuring any of the Collateral (excluding the Title Policy and any business interruption insurance) shall be endorsed to confer lender's loss payable status to Administrative Agent as its interests may appear. All such insurance policies shall contain a clause requiring (or shall be endorsed to require) the insurer to give Administrative Agent at least thirty (30) days' prior written notice (or ten (10) days' prior written notice of cancellation for non-payment of premium) of any material change in the terms or cancellation of the policy and shall include a waiver of subrogation as respects Administrative Agent's insurance policies. At Administrative Agent's reasonable request, true copies of all original insurance policies (with endorsements) are to be promptly delivered to Administrative Agent. All liability policies shall name Administrative Agent, its affiliates and its and their successors and assigns as additional insureds. If Borrower fails to maintain such insurance, Administrative Agent may arrange for (at Borrower's expense and without any responsibility on Administrative Agent's part for) obtaining the insurance required by this Agreement. Unless Administrative Agent will otherwise agree with Borrower in writing, during the continuance of an Event of Default and subject to any Intercreditor Agreement, Administrative Agent will have the sole right, in the name of Administrative Agent, Lenders or Borrower, to file claims under any insurance policies, to receive and give acquittance for any payments that may be payable thereunder, and to execute any endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies; *provided* that, subject to the two immediately following sentences, so long as no Event of Default under Sections 7(a), (e), (f) or (g) has occurred and is continuing, the Loan Parties shall be entitled to receive and reinvest all insurance proceeds in the business and Properties of the Loan Parties. The Loan Parties shall deposit all cash proceeds of any Casualty Event in a Term Cash Collateral Account that is subject to a Control Agreement in favor of Administrative Agent. The Loan Parties may only withdraw and use funds in such account to (i) pay costs and expenses incurred in connection with the repair or replacement of the Property that was subject to the applicable Casualty Event or (ii) repay all or a portion of the Indebtedness. **COLLATERAL PROTECTION INSURANCE NOTICE**. (A) BORROWER IS REQUIRED TO: (i) KEEP THE COLLATERAL INSURED AGAINST DAMAGE AS SPECIFIED IN THIS AGREEMENT; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME ADMINISTRATIVE AGENT AS A PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) BORROWER MUST, IF REQUIRED BY ADMINISTRATIVE AGENT IN ACCORDANCE WITH THIS AGREEMENT, DELIVER TO ADMINISTRATIVE AGENT A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS THEREFOR; AND (C) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSES (A) OR (B) HEREOF, ADMINISTRATIVE AGENT MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE.

(d) **Financial Statements & Records; Other Information.** Until the payment and satisfaction in full of all Obligations, Borrower will deliver to Administrative Agent (and Administrative Agent shall promptly provide the same to the Lenders) the following financial information:

(i).as soon as available, but not later than 120 days after the end of each fiscal year of the Applicable Reporting Entity and its consolidated subsidiaries, the consolidated balance sheet, income statement and statements of cash flows and shareholders equity for the Applicable Reporting Entity and its consolidated subsidiaries (the "**Financial Statements**") for such year, prepared in accordance with GAAP and certified by independent certified public accountants of recognized standing selected by Borrower;

(ii). as soon as available, but not later than 60 days after the end of each of the first three fiscal quarters in any fiscal year of the Applicable Reporting Entity and its consolidated subsidiaries, the Financial Statements for such fiscal quarter, together with a certification duly executed by the chief financial officer of Borrower that such Financial Statements have been prepared in accordance with GAAP and presenting fairly in all material respects the financial condition and results of operations of Applicable Reporting Entity and its consolidated subsidiaries (subject to normal year-end audit adjustments and the absence of footnotes);

(iii). as soon as practicable, and in any event within five Business Days after Borrower or any other Loan Party learns of any of the following, Borrower will give written notice to Administrative Agent of (A) the occurrence of any Default or Event of Default, together with a statement of the action which Borrower has taken or proposes to take with respect thereto, (B) the occurrence of any material loss or damage with respect to any material Collateral with a fair market value in excess of $20,000,000, or (C) the occurrence of any other development or event which could reasonably be expected to result in a Material Adverse Effect together with a statement of the action which Borrower has taken or proposes to take with respect thereto;

(iv). concurrently with any delivery of Financial Statements under subclause (i) above, an annual budget of Borrower and its consolidated subsidiaries in form and detail reasonably satisfactory to Administrative Agent and forecasts prepared by Borrower in the form of consolidated balance sheets and income statements for the Applicable Reporting Entity and its consolidated subsidiaries on a quarterly basis for the first year following the year for which such Financial Statements are then being delivered;

(v).promptly, but in any event within five (5) Business Days, after the execution or furnishing, as applicable, thereof, copies of (i) any amendment to, or waiver or consent with respect to any provision of, any ABL Loan Document or Hercules Seller Note Document entered into by any Loan Party, (ii) any notice of default or notice of the commencement of a Trigger Period (as defined in the ABL Credit Agreement), in either case, furnished by any Loan Party to the ABL Agent under, and pursuant to the terms of, any ABL Facility and (iii) any notice of an Event of Default (under and as defined in the Hercules Seller Note) furnished by any Loan Party to the Hercules Seller Noteholder under, and pursuant to the terms of, any Hercules Seller Note Document; and

(vi).promptly following Administrative Agent's reasonable request therefor, any other information regarding the operations, business affairs and financial condition of the Parent Guarantor or any Loan Party or compliance with the terms of this Agreement or any other Loan Document (e.g., purchaser lists, extraction reports, reserves reports, copies of material contracts, copies of investor presentations, copies of certificates or other notices provided to the holders of any Material Other Indebtedness); *provided* that, notwithstanding the foregoing or anything to the contrary herein, neither the Borrower nor any other Loan Party shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (A) constitutes non-financial trade secrets or nonfinancial proprietary information, (B) in respect of which disclosure to Administrative Agent or Lenders (or their respective representatives or contractors) is prohibited by any Applicable Law or (C) is subject to attorney-client or similar privilege or constitutes attorney work-product.

Financial statements, opinions of independent certified public accountants and other certificates and information required to be delivered by Borrower pursuant to subclauses (i) or (ii) above shall be deemed to have been delivered if the Applicable Reporting Entity shall have timely filed an SEC Form 10-Q or Form 10-K, satisfying the requirements of such subclauses, as the case may be, with the SEC or EDGAR; or such financial statements are timely posted by or on behalf of Applicable Reporting Entity on a website to

which Administrative Agent has free access, *provided, however,* that the Borrower shall have given Administrative Agent prior written notice of such posting or filing in connection with each delivery, *provided further*, that upon request of Administrative Agent to receive paper copies of such deliverables, Borrower will promptly deliver such paper copies to Administrative Agent.

(e) **Notices of Claims and Litigation**. Borrower will inform Administrative Agent in writing of all existing or threatened (in writing) litigation, claims, investigations, administrative proceedings or similar actions affecting Parent Guarantor, Borrower or any other Loan Party which would reasonably be expected to have a Material Adverse Effect.

(f) **Further Assurances.** Subject to the exceptions, thresholds and limitations set forth herein and the other Loan Documents, Borrower will, and will cause each other Loan Party to, promptly upon the reasonable request of Administrative Agent, execute and deliver or use commercially reasonable efforts to obtain any document reasonably required by Administrative Agent (including, *e.g.,* warehouseman or processor disclaimers, mortgagee waivers, landlord disclaimers, or subordination agreements with respect to the Indebtedness and the Collateral), give any notices, execute (if applicable) and file any financing statements or other documents (all in form and substance reasonably satisfactory to Administrative Agent), and take any other actions that are necessary or, in the reasonable opinion of Administrative Agent, desirable to perfect or continue the perfection and the required priority of Administrative Agent's security interest in the Collateral, to protect the Collateral against the rights, claims, or interests of any Persons (other than holders of Permitted Liens), or to effect the purposes of this Agreement or any other Loan Documents. Borrower hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relating to all or any part of the Collateral. All costs incurred in connection with any of the foregoing shall be for the account of and paid by Borrower.

(g) **Amendments to Hercules Seller Note Documents**. Borrower will not, and will not permit any other Loan Party to, amend, supplement or otherwise modify (i) the Hercules Seller Note, (ii) the Hercules Seller Mortgage or (iii) any other Hercules Seller Note Document, in each case if such modification (i) increases the principal balance of such Debt outstanding under the Hercules Seller Note beyond the amount permitted by clause (xvii) of the definition of Permitted Debt, or increases any required payment of principal or interest; (ii) accelerates the date on which any installment of principal is due, or adds any additional mandatory redemption, put or prepayment provisions; or (iii) extends or postpones the scheduled final maturity date of the Hercules Seller Note beyond January 31, 2026.

(h) **Other Agreements.** Borrower will, and will cause each other Loan Party and Parent Guarantor to, (i) comply with all terms and conditions of all other agreements to which Parent Guarantor, Borrower or such other Loan Party is a party, now existing or later entered into, and (ii) provide written notice to Administrative Agent of any default in connection with any such agreements, except, in the case of both clauses (i) and (ii), for any such defaults or failure to comply that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(i) **Responsibilities.** Borrower will, and will cause each other Loan Party and Parent Guarantor to, perform and satisfy, in a timely fashion, all terms and conditions in this Agreement and in the other Loan Documents, in each case subject to all applicable grace periods.

(j) **Government Requirements.** Borrower will, and will cause each other Loan Party and Parent Guarantor to, comply with all laws, ordinances, and regulations now or hereafter created applicable to Borrower's properties, business and operations, except for such laws, ordinances, and regulations the violations of which would not reasonably be expected to have a Material Adverse Effect on Borrower.

(k) **Use of Collateral; Entry and Inspection.** **The Collateral will not be used or operated for personal, family or household purposes** Borrower will permit Administrative Agent's employees or agents, at reasonable times during normal business hours, at Borrower's expense but at Administrative Agent's sole risk, to inspect any Collateral; *provided* that so long as no Event of Default shall have occurred and be continuing, (i) Administrative Agent shall provide reasonable notice prior to conducting any inspections, (ii) Administrative Agent shall limit the number of inspections to not more than two (2) during any twelve (12) month period, and (iii) not more than one such inspection during any twelve (12) month period shall be at Borrower's expense; *provided*, *further*, that during any such inspection, Administrative Agent and its employees and agents shall comply with Borrower's standard health and safety policies and procedures.

(l) **Taxes.** Borrower will pay, when due, all Taxes, except where the failure to make payment would not reasonably be expected to result in a Material Adverse Effect or result in the seizure or levy of any material Property of Borrower or any other Loan Party or of any Collateral (other than Collateral that, individually or in the aggregate, (i) has a fair market value of less than $5,000,000 and (ii) is not of material importance to the normal operation of the Sand Facilities and the business operations of the Loan Parties). If any Taxes remain unpaid after the date fixed for the payment thereof, or if any lien will be claimed therefor in violation of the immediately preceding sentence, then, without notice to Borrower, but on Borrower's behalf, Administrative Agent may (but is not obligated to) pay such Taxes, and the amount thereof will be included in the Indebtedness immediately upon such payment.

(m) **Fees on Collateral**. Except, in each case, where the failure to do so could not reasonably be expected to result in a Material Adverse Effect or in the seizure, levy or forfeiture of any Collateral (other than Collateral that, individually or in the aggregate, (i) has a fair market value of less than $5,000,000 and (ii) is not of material importance to the normal operation of the Sand Facilities and the business operations of the Loan Parties), Borrower will, and will cause each other Loan Party to, promptly pay, when due, all transportation, storage and warehousing charges and license fees, registration fees, assessments, charges and permit fees which may now or hereafter be imposed upon the ownership, leasing, renting, possession, sale or use of the Collateral.

(n) **No Liens or Disposition of Collateral**. Borrower will not, and will not permit any other Loan Party to, in any way hypothecate or create or permit to exist any Lien in any of the Collateral or in any other Property of Borrower or any other Loan Party, except for Permitted Liens. No Loan Party, except for Permitted Sales, will sell, transfer, assign, pledge, collaterally assign, exchange or otherwise dispose of any the Collateral, including, but not limited to, transfer to any entity with the same or similar name as any Loan Party and organized under the laws of a state other than the state of such Loan Party's organization on the date hereof. In the event the Collateral, or any part thereof, is sold, transferred, assigned, exchanged, or otherwise disposed of in violation of this Section 5(n), the Liens of Administrative Agent will continue in such Collateral or part thereof notwithstanding such sale, transfer, assignment, exchange or other disposition, and Borrower will hold the proceeds thereof in the Term Cash Collateral Account for the benefit of Administrative Agent. Following such a sale in violation of this Section 5(n) and subject to any Intercreditor Agreement, Borrower will transfer such proceeds to Administrative Agent in kind, and all of the Indebtedness will survive until otherwise satisfied in accordance with the terms hereof and under the other Loan Documents.

(o) **No Further Indebtedness**. Neither Borrower nor any other Loan Party shall create, incur, assume, permit to exist, or otherwise become or remain directly or indirectly liable with respect to any Debt other than Permitted Debt.

(p) **Restricted Payments**. The Borrower shall not make any Restricted Payment, except (i) Permitted Payments and (ii) so long as no Event of Default has occurred and is continuing or would occur as a result thereof, other Restricted Payments; provided that, in the case of this clause (ii), immediately after giving pro forma effect thereto, the Applicable Reporting Entity and its consolidated subsidiaries shall have, on a consolidated basis, Liquidity of at least $30,000,000.

(q) **No Limitation on Administrative Agent's Rights**. Borrower will not, and will not permit any other Loan Party to, enter into any contractual obligations which may restrict or inhibit Administrative Agent's rights or ability to sell or otherwise dispose of the Collateral or any part thereof; *provided* that the foregoing shall not apply to (i) any Intercreditor Agreement, (ii) any ABL Loan Document, (iii) any Hercules Seller Note Document, (iv) documents creating Permitted Liens described in (A) clauses (ii), (iv), (v), (vi), (vii), (viii), (x), (xi), (xiv) and (xvi) of the definition of "Permitted Liens" and (B) clauses (c), (e) and (h) of the definition of "Excepted Liens", (v) customary restrictions and conditions with respect to the sale or disposition of Property or Equity Interests not prohibited under Section 5(n) pending the consummation of such sale or disposition, (vi) restrictions on cash and other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business, and (vii) prohibitions

or restrictions imposed by any Governmental Requirement.

(r) **Terrorism Sanctions Regulations**. The Loan Parties will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Money Laundering Laws, or (ii) (A) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is the subject of U.S. Economic Sanctions, or (B) in any other manner that would result in a violation of U.S. Economic Sanctions by any Person (including Administrative Agent and any Lender). Borrower shall, and shall cause Parent Guarantor, each other Loan Party and each Controlled Affiliate of Borrower to, comply in all material respects with all applicable Anti-Money Laundering Laws and not violate applicable U.S. Economic Sanctions.

(s) **Maintenance of Collateral.** Except for such acts or failures to act as could not reasonably be expected to result in a Material Adverse Effect or could otherwise materially diminish the fair market value of a Sand Facility or any other Mortgaged Property (other than Mortgaged Property that (i) is not a Specified Property and (ii), individually or in the aggregate, is not of material importance to the normal operation of the Sand Facilities and the business operations of the Loan Parties), Borrower, at no expense to Administrative Agent or Lenders will, and will cause each other Loan Party to operate all Collateral material to the conduct of its business, or cause such Collateral to be operated, in a careful, workmanlike manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Applicable Law, and consistent with the requirement of every Governmental Authority and otherwise to preserve, maintain and keep in good repair and working order (ordinary wear and tear and obsolescence excepted) all Collateral necessary for the normal operation of the Sand Facilities.

(t) **No Sale-Leasebacks**. No Loan Party shall enter into any arrangement, directly or indirectly, with any Person whereby in a substantially contemporaneous transaction such Loan Party shall sell or transfer all or substantially all of its right, title and interest in a Property and, in connection therewith, rent or lease back the right to use such Property (a "**Sale-Leaseback**"), except the Loan Parties may enter into Stonebriar Sale-Leaseback Transactions.

(u) **Affiliate Transactions**. No Loan Party shall enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate of a Loan Party (other than a Loan Party) involving aggregate payments or consideration in any fiscal year in excess of $500,000 unless such transaction is upon fair terms, as reasonably determined by the Borrower, that are no less favorable to such Loan Party than it would obtain in a comparable arm's length transaction with a Person not an Affiliate or that are otherwise fair to such Loan Party from a financial point of view; provided, however, that the restrictions set forth in this clause shall not apply to (i) the execution and delivery of any Loan Document, (ii) compensation to, and the terms of any employment contracts with, individuals who are employees, officers, managers or directors of the Loan Parties (including, the performance of employment, equity award, equity option or equity appreciation agreements, plans or other similar compensation or benefit plans or arrangements (including vacation plans, health and insurance plans, deferred compensation plans and retirement or savings plans)), (iii) any Restricted Payment permitted pursuant to Section 5(p) and any other payment expressly permitted under this Agreement, (iv) the issuance and sale of Equity Interests in Borrower (other than Disqualified Capital Stock) or the amendment of the terms of any Equity Interests issued by Borrower (other than Disqualified Capital Stock), (v) Permitted Intercompany Activities, (vi) Investments described in clauses (i), (vii), (ix), (xii) (with respect to Debt permitted under clause (ii) of the definition of "Permitted Debt"), (xiv), (xv), (xvi), (xvii) and (xviii) of the definition of "Permitted Investments", and (vii) reasonable and customary fees and compensation to, the reimbursement of reasonable out of pocket costs of, and indemnities provided on behalf of, officers, directors, and employees of the Borrower (or any Parent Entity) or any subsidiary in their capacity as such.

(v) **Subsidiaries**. No Loan Party shall create or acquire any additional Subsidiary unless Borrower gives prompt, but in any event within 10 Business Days after such creation or acquisition, written notice to Administrative Agent of such creation or acquisition, as applicable, and complies with Section 5(w) below. No Loan Party shall sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with Section 5(b) or Section 5(n). No Loan Party shall have any Subsidiary not organized under the laws of the United States of America or any state thereof or the District of Columbia, and each Subsidiary shall be a Wholly-Owned Subsidiary.

(w) **Additional Guarantors**. Borrower shall promptly cause each of its Subsidiaries to unconditionally guarantee, on a joint and several basis, the prompt payment and performance of the Indebtedness pursuant to the Guaranty Agreement. In connection therewith, Borrower shall, or shall cause such Subsidiary to, promptly, but in any event no later than 30 days (or such longer period as Administrative Agent may agree in Administrative Agent's sole discretion) after the formation or acquisition (or similar event) of such Subsidiary, (i) execute and deliver an amendment or a supplement to the Guaranty Agreement in form and substance reasonably acceptable to Administrative Agent, (ii) cause the applicable Loan Party that owns Equity Interests in such Subsidiary to execute and deliver an amendment or supplement to the Security Agreement to confirm the pledge of all of the Equity Interests in such Subsidiary that are owned by such Loan Party (and deliver the original stock or other equity certificates, if any, evidencing the Equity Interests in such Subsidiary owned by it, together with an appropriate undated stock power for each such certificate duly executed in blank by the registered owner thereof), and (iii) execute and deliver such other additional customary closing documents, certificates and legal opinions as shall reasonably be requested by Administrative Agent.

(x) **Additional Collateral**. Subject to the final sentence of this Section 5(x), within 30 days after the consummation of any Material Acquisition (or such longer period as Administrative Agent may agree in Administrative Agent's sole discretion) or thereafter whenever requested by Administrative Agent in Administrative Agent's reasonable discretion, Borrower shall, and shall cause the other Loan Parties to, execute and deliver Security Instruments that will, upon recording or other appropriate action, create in favor of Administrative Agent, first priority (subject to Permitted Liens), perfected Liens on the Property acquired by any Loan Party in connection with the Material Acquisition, excluding any assets or properties excluded as Collateral pursuant to the terms of the Security Instruments. All such Liens will be created and perfected by and in accordance with the provisions of Security Instruments in form and substance reasonably satisfactory to Administrative Agent and in sufficient executed (and acknowledged where necessary or appropriate) counterparts for recording purposes. Notwithstanding anything herein or in any other Loan Document to the contrary, the Liens granted by the Loan Parties under the Security Instruments shall not, and the Loan Parties shall not be required to grant any such Liens that, encumber any real or personal property interests of the Loan Parties excluded as Collateral pursuant to the terms of the Security Instruments.

(y) **Investments and Loans**. Borrower will not, and will not permit any other Loan Party to, make or permit to remain outstanding any Investments in or to any Person other than Permitted Investments.

(z) **Term Cash Collateral Account**. Borrower shall (i) maintain with a depository bank reasonably acceptable to Administrative Agent the Term Cash Collateral Account in which Borrower will only deposit identifiable proceeds of Term Priority Collateral that constitute Term Priority Collateral and (ii) if any Intercreditor Agreement (other than the Hercules Intercreditor Agreement) is then in existence, notify the ABL Agent (as defined in any then existing Intercreditor Agreement) in writing that such Term Cash Collateral Account will be used solely and exclusively for holding identifiable proceeds of Term Priority Collateral. The Loan Parties shall not deposit any funds in the Term Cash Collateral Account other than identifiable proceeds of Term Priority Collateral that constitute Term Priority Collateral. Notwithstanding the foregoing or anything else to the contrary herein, so long as no Event of Default has occurred and is continuing, (x) the Loan Parties shall not be required to deposit proceeds of Term Priority Collateral into the Term Cash Collateral Account and (y) promptly following the request of Borrower therefor, any funds on deposit in the Term Cash Collateral Account shall be transferred to Borrower.

(aa) **Negative Pledge Agreements; Dividend Restrictions**. Borrower will not, and will not permit any other Loan Party to, create, incur, assume or suffer to exist any contract, agreement or understanding (other than this Agreement, the Security Instruments, agreements with respect to purchase money Debt or Capital Leases creating Liens permitted by clause (vi) of the definition of "Permitted Liens", documents creating Liens which are described in clause (c), (e) or (h) of the definition of "Excepted Liens", agreements, instruments, and documents executed in connection with Debt permitted under clause (ix) or (xvii) of the definition of "Permitted Debt", and contracts, agreements and arrangements described in the proviso to Section 5(q)) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien in favor of Administrative Agent with respect to any Collateral or restricts any Subsidiary from paying dividends or making distributions in respect of its Equity Interests to the Borrower or any other Loan Party.

(bb) **Maximum Leverage Ratio.** The Loan Parties shall not permit the Leverage Ratio calculated and tested as of the last day of each fiscal quarter (commencing with the fiscal quarter ending September 30, 2023) to be greater than 4.00 to 1.00.

(cc) **Equity Cure.**

(i).Notwithstanding anything to the contrary in this Agreement, in the event that the Loan Parties fail to comply (or anticipate that they may fail to comply) with the maximum Leverage Ratio covenant contained in this Section 5(bb) (the "**Financial Covenant**") as of the end of any fiscal quarter (the "**Cure Quarter**"), then Borrower shall have the right, during the period (the "**Cure Period**") beginning on the first day of the applicable Cure Quarter until the tenth (10) Business Day after the day on which the financial statements with respect to such test period for which such covenant is being measured are required to be delivered for the applicable Cure Quarter pursuant to Sections 5(d)(i) or 5(d)(ii), as applicable (such financial statements, the "**Applicable Financial Statements**" and such date, the "**Cure Deadline**"), to include an amount equal to the cash proceeds of a Specified Equity Contribution (the "**Cure Amount**") in EBITDA for the purposes of calculating the Financial Covenant (the "**Cure Right**"), and pursuant to the exercise of the Cure Right, the Financial Covenant shall be recalculated, (A) upon the date of receipt if such Specified Equity Contribution is received after the delivery of the Applicable Financial Statements or (B) on the date the Applicable Financial Statements are delivered if such Specified Equity Contribution is received prior to the delivery of the Applicable Financial Statements giving effect to a pro forma increase to EBITDA for such test period in an amount equal to such Cure Amount; provided that such pro forma adjustment to EBITDA shall be given solely for the purpose of measuring the Financial Covenant with respect to any period that includes the fiscal quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document (including any other use of the Financial Covenant).

(ii).If, after the receipt of the Cure Amount and the recalculations pursuant to Section 5(cc)(i) above, the Loan Parties shall then be in compliance with the requirements of the Financial Covenant as of the last day of the applicable fiscal quarter, the Loan Parties shall be deemed to have satisfied the requirements of the Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default that had occurred shall be deemed cured; provided that (A) the Cure Right may be exercised on no more than eight (8) times during the term of this Agreement, (B) in each four fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Cure Right is exercised, (C) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause the Loan Parties to be in compliance with the Financial Covenant, (D) all Cure Amounts shall be disregarded for purposes of determining any baskets or ratios with respect to the covenants contained in the Loan Documents and (E) there shall be no pro forma reduction in Debt (by netting or otherwise) or Consolidated Interest Expense with the proceeds of any Cure Amount for determining compliance with the Financial Covenant for the test period for which such Cure Amount is deemed applied.

(iii).Prior to the Cure Deadline if Borrower notifies the Administrative Agent of its intent to cure, neither Administrative Agent nor any Lender shall exercise any rights or remedies under Section 8 (or under any other Loan Document available during the continuance of any Default or Event of Default) solely on the basis of any actual or purported failure to comply with the Financial Covenant unless such failure is not cured by the Cure Deadline (it being understood that this sentence shall not have any effect on the rights and remedies of the Administrative Agent or the Lenders with respect to any other Default or Event of Default pursuant to any other provision of any Loan Document other than breach of the Financial Covenant); provided, that the Initial Lender shall have no obligation to make any Loans, prior to receipt of the Cure Amount or such Default or Event of Default is otherwise cured or waived.

(dd) **Post-Closing Matters**. The Loan Parties will execute and deliver the documents, take the actions and complete the tasks as set forth in**Exhibit D**, in each case within the applicable time limits specified on such exhibit.

(ee) **First Amendment Post-Closing Matters**. The Loan Parties will execute and deliver the documents, take the actions and complete the tasks as set forth in **Exhibit K**, in each case within the applicable time limits specified on such exhibit.

6. ADMINISTRATIVE AGENT'S EXPENDITURES. During the continuance of an Event of Default, Administrative Agent will have the right at any time to make any payments and do any other acts Administrative Agent may reasonably deem necessary to protect its security interests in the Collateral, including, without limitation, the rights to satisfy, purchase, contest or compromise any encumbrance, charge or lien which, in the reasonable judgment of Administrative Agent, appears to be prior to or superior to the security interests granted hereunder, and appear in and defend any action or proceeding purporting to affect its security interests in, or the value of, any of the Collateral, in each case other than with respect to Permitted Liens. Borrower hereby agrees to reimburse Administrative Agent for all payments made and documented out-of-pocket expenses incurred under this Agreement including reasonable and documented out-of-pocket fees, expenses and disbursements of external attorneys and paralegals engaged by Administrative Agent, including any of the foregoing payments under, or acts taken to protect its security interests in, any of the Collateral, which amounts will be secured under the Security Instruments, and agrees it will be bound by any payment made or act taken by Administrative Agent hereunder absent Administrative Agent's gross negligence or willful misconduct. Administrative Agent will have no obligation to make any of the foregoing payments or perform any of the foregoing acts. This Section 6 shall be subject to the Legal Expenses Limitation.

7. EVENTS OF DEFAULT. The occurrence of any of the following events will constitute an Event of Default hereunder:

(a) failure of Borrower to pay any Indebtedness, whether at stated maturity, by acceleration, or otherwise within five (5) days of the stated due date;

(b)failure of any Loan Party to observe or perform any covenant, condition or agreement contained in Section 5(b), Section 5(c), Section 5(d)(iii), Section 5(g), Section 5(k), Section 5(p) or Section 5(r);

(c) failure of Parent Guarantor, Borrower or any other Loan Party to perform, comply with or observe any other term, covenant or agreement applicable to it contained in any of the Loan Documents and such failure will continue unremedied for a period of thirty (30) days after Administrative Agent's written notice thereof to Parent Guarantor, Borrower or such Loan Party; or if such failure is not reasonably capable of being cured within such thirty (30) day period, but Parent Guarantor, Borrower or any other Loan Party is diligently pursuing such cure within such period, then Parent Guarantor, Borrower and any other Loan Party shall have an additional thirty (30) days to remedy such failure so long as Parent Guarantor, Borrower or any other Loan Party continues to diligently pursue such cure;

(d)any representation or warranty made or deemed made by Parent Guarantor or a Loan Party hereunder, under or in connection with any financial statements provided to Administrative Agent, under any other Loan Document, or under any document, instrument or certificate executed by any of the Parent Guarantor or the Loan Parties in favor of Administrative Agent in connection with the Loan Documents, will prove to have been false, misleading, inaccurate or incorrect in any material respect when made;

(e) the admission in writing by Parent Guarantor or any of the Loan Parties of its inability to pay its debts as they mature;

(f)the voluntary commencement by Parent Guarantor or any of the Loan Parties of any bankruptcy, insolvency, reorganization, receivership or similar proceedings under any Debtor Relief Laws;

(g)the commencement against Parent Guarantor or any of the Loan Parties of any bankruptcy, insolvency, reorganization, receivership or similar proceedings under any Debtor Relief Laws and, either (i) such proceeding remains undismissed or unstayed for sixty (60) days following the commencement thereof, or (ii) Parent Guarantor or any Loan Party takes any action authorizing any such proceedings;

(h)Parent Guarantor or a Loan Party defaults (a) in the payment of principal of or interest on any Material Other Indebtedness beyond any grace period provided with

respect thereto or (b) in the observance or performance of any other agreement or condition relating to any Material Other Indebtedness or contained in any instrument or agreement relating thereto, or any other event will occur or condition exist, the effect of such default or other event or condition is to cause, or to permit the holder or holders of such Material Other Indebtedness to cause, with the giving of notice if required, such Material Other Indebtedness to become due prior to its stated maturity, in each case other than any event requiring prepayment pursuant to customary asset sale or change of control provisions;

(i)any final, non-appealable judgment or judgments for the payment of money in an aggregate amount in excess of $25,000,000 (to the extent not covered by independent third-party insurance) shall be rendered against Parent Guarantor or a Loan Party which shall remain unpaid or is not fully stayed for a period of sixty (60) days;

(j)any material covenant, agreement or obligation of Parent Guarantor or any Loan Party contained in or evidenced by any of the Loan Documents is determined to be unenforceable, in accordance with its terms, except to the extent permitted by the terms thereof; Parent Guarantor or any Loan Party denies or disaffirm its obligations under any of the Loan Documents or any Liens granted in connection therewith; or any Lien granted on any material part of the Collateral is determined to be void, voidable or invalid, is subordinated or is not given the priority contemplated by this Agreement or any other Loan Document (except to the extent permitted by the terms of this Agreement or any other Loan Document or as otherwise agreed in writing by Administrative Agent); or

(k)any event or circumstance occurs with respect to any other agreement between Parent Guarantor, any Loan Party or any Controlled Affiliate of any Loan Party, on the one hand, and Administrative Agent or any Affiliate of Administrative Agent, on the other, pursuant to which any Loan Party pays, receives or incurs liabilities (or could reasonably be expected to pay, receive or incur liabilities) in excess of $20,000,000 in any twelve (12) month period, which, after giving effect to the expiration of any applicable grace period or the giving of notice, or both, provided in such agreement, would entitle any party thereto (other than Parent Guarantor or the applicable Loan Party) to accelerate the obligations under such agreement prior to their stated maturity and such event or circumstance continues unremedied for a period of thirty (30) days after Administrative Agent's written notice thereof to Borrower.

8. REMEDIES. If any Event of Default will have occurred and be continuing beyond all applicable notice and cure periods:

(a) Administrative Agent may, without prejudice to any of its other rights under any Loan Document or applicable law, declare all Indebtedness to be immediately due and payable (except with respect to any Event of Default set forth in Section 7(f) or Section 7(g) hereof, in which case all Indebtedness will automatically become immediately due and payable without necessity of any declaration) without presentment, representation, demand of payment or protest, all of which are hereby expressly waived;

(b)Administrative Agent may, subject to the terms of any Intercreditor Agreement, take possession of the Collateral and, for that purpose may enter, with the aid and assistance of any person or persons, any premises where the Collateral or any part hereof is, or may be placed, and remove the same;

(c)the obligation of Lenders, if any, to make any Advances or give additional (or to continue) financial accommodations of any kind to Borrower will immediately terminate;

(d)subject to the terms of any Intercreditor Agreement, Administrative Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein (or in any other Loan Document) or otherwise available to it, all the rights and remedies of a secured party under the Uniform Commercial Code whether or not the Uniform Commercial Code applies to the affected Collateral and also may (i) require Borrower to, and Borrower hereby agrees that it will at its expense and upon request of Administrative Agent forthwith, use commercially reasonable efforts to assemble all or part of the Collateral (other than real property) as directed by Administrative Agent and make it available to Administrative Agent at a place to be designated by Administrative Agent that is reasonably convenient to both parties and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Administrative Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Administrative Agent may deem commercially reasonable. Borrower agrees that, to the extent notice of sale will be required by law with respect to Collateral consisting of personal property, at least ten days' prior written notice to Borrower of the time and place of any public sale or the time after which any private sale is to be made will constitute reasonable notification. Administrative Agent will not be obligated to make any sale of Collateral regardless of notice of sale having been given. Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned;

(e)all cash proceeds received by Administrative Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of Administrative Agent, be held by Administrative Agent as collateral for, or then or at any time thereafter applied in whole or in part by Administrative Agent against, all or any part of the Indebtedness in such order as Administrative Agent will elect; *provided*, *that*, notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence and during the continuance of an Event of Default, the proceeds of any sale of, or other realization upon, all or any part of the Collateral shall be applied in accordance with the terms of any Intercreditor Agreement. Any surplus of such cash or cash proceeds held by Administrative Agent and remaining after the full and final payment of all the Indebtedness will be paid over to Borrower or to such other Person to which Administrative Agent may be required under applicable law, or directed by a court of competent jurisdiction, to make payment of such surplus; and

(f)Administrative Agent may pursue any other rights or remedies under any other Loan Document or available at law or in equity, including, without limitation, rights or remedies seeking damages, specific performance and injunctive relief, and Administrative Agent shall have the right, in its sole discretion, to exercise any one or more of the remedies described in this Section 8 or otherwise.

Notwithstanding anything to the contrary set forth herein, (i) (A) upon the occurrence and during the continuance of an Event of Default under clauses (e), (f) or (g) of Section 7 or (B) upon the maturity or acceleration of the Indebtedness (to the extent the Indebtedness is not paid in full on the date thereof), and/or (ii) if Required Lenders so elect, upon the occurrence and during the continuance of any other Event of Default, all unpaid and overdue amounts of the Indebtedness (whether or not accelerated) shall bear interest (including post-petition interest in any proceeding under applicable Debtor Relief Laws, whether or not allowed in such a proceeding), at a rate per annum equal to the lesser of (i) a rate per annum equal to (A) the rate otherwise applicable to such amounts *plus* (B) 5.0% per annum and (ii) the highest rate Lenders can legally collect under Applicable Law (such lesser rate, the "**Default Rate**"), and such interest shall be paid by Borrower upon demand.

9. MISCELLANEOUS PROVISIONS.

(a) **Final Agreement.** This Agreement, together with the Loan Documents, constitutes the entire understanding and agreement of the parties hereto as to the matters set forth herein, superseding all proposals and prior agreements, oral or written, and all other communications between the parties with respect to the subject matter hereof. **There are no unwritten oral agreements between the parties hereto**

(b) **Amendments**. Except as otherwise expressly set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower therefrom, shall be effective unless such amendment, waiver or consent is in writing executed by Borrower and the Required Lenders, and acknowledged by Administrative Agent, or by Borrower and Administrative Agent with the consent of the Required Lenders, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that no such amendment, waiver or consent shall:

(i).extend or increase any Commitment of the Initial Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth on **Exhibit A, Exhibit E** or **Exhibit J** or the waiver of any Default shall not constitute an extension or increase of any Commitment of the Initial Lender);

(ii).reduce the principal of, or rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby (*provided* that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive the obligation of the Borrower to pay interest at the Default Rate);

(iii).postpone any date scheduled for any payment of principal of, or interest on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender directly and adversely affected thereby;

(iv).release (A) the Borrower from its Obligations under the Loan Documents or (B) release all or substantially all of the Guarantors from their Guaranty Agreement (except as expressly provided in Section 5(b) or Section 10(h)(i)), or limit their liability in respect of such Guaranty Agreement, in each case, without the written consent of each Lender;

(v).except as expressly provided in Section 10(h)(i), release all or substantially all of the Collateral from the Liens of the Security Instruments without the written consent of each Lender;

(vi).change Section 3(g) in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(vii). waive any condition set forth in **Exhibit A**, **Exhibit E** or **Exhibit J** without the written consent of the Initial Lender; or

(viii).change any provision of this Section or the percentage in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

provided, *further*, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Loan Document of Administrative Agent, unless in writing executed by Administrative Agent, in each case in addition to Borrower and Lenders required above.

(c) **Attorneys' Fees and Expenses.** Borrower agrees to pay within ten (10) days of written demand (i) all of Administrative Agent's reasonable and documented out-of-pocket costs and expenses, including but not limited to Administrative Agent's reasonable and documented out-of-pocket attorneys' fees and legal expenses, incurred in connection with the administration of this Agreement or any of the other Loan Documents and (ii) all of Administrative Agent's and Lenders' documented out-of-pocket costs and expenses, including but not limited to Administrative Agent's and Lenders' documented out-of-pocket attorneys' fees and legal expenses incurred in connection with the enforcement of this Agreement or any of the other Loan Documents. This Section 9(c) shall be subject to the Legal Expenses Limitation.

(d) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to define or interpret this Agreement.

(e) **Assignments.**

(i). Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that none of Borrower, any other Loan Party or Parent Guarantor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent, such consent to be granted at Administrative Agent's sole and absolute discretion. No Lender may assign, sell or transfer all or any portion of its rights or obligations hereunder except (A) to an assignee in accordance with the provisions of paragraph (ii) of this Section 9(e), (B) by way of participation in accordance with the provisions of paragraph (iv) of this Section 9(e), or (C) by way of pledge or assignment of a security interest. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (iv) of this Section 9(e) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(ii). Assignments by Lenders. Any Lender may at any time assign to one or more assignees (other than any Disqualified Lender or any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person)) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(A) the consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) an Event of Default occurred and continued without cure for more than seven (7) Business Days after Administrative Agent's written notice thereof to Borrower or (y) such assignment is to a Lender or a Controlled subsidiary of Stonebriar Finance Holdings LLC; *provided* that, notwithstanding the foregoing clause (A)(x), no Lender shall be permitted to consummate an assignment without the consent of the Borrower until the date that is 30 days after the date that the Administrative Agent has provided Borrower with notice of the termination of Borrower's consent right as a result of the occurrence of an Event of Default;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender;

(C) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption (with a copy to be promptly provided to Borrower);

(D) the Initial Lender may not assign its Delayed Draw Term Loan Commitment or Additional Delayed Draw Term Loan Commitment without the consent of the Borrower; and

(E) no assignment shall be permitted or effective if as a result of such assignment, Stonebriar and its Affiliates would hold less than 50% of the aggregate Credit Exposure of all Lenders without the consent of the Borrower.

Subject to acceptance and recording thereof by Administrative Agent pursuant to paragraph (iii) of this Section 9(e), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (iv) of this Section 9(e).

(iii). Register. Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of Administrative Agent's offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(iv). Participations. Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a Disqualified Lender, a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) Borrower, Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 9(b)(i) – (viii) that affects such Participant. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(v). Subject to Section 9(p), each Lender may provide to any one or more purchasers, or potential purchasers (in each case other than a Disqualified Lender), any information or knowledge about Borrower, the other Loan Parties and the Loans. Borrower additionally waives any and all notices of sales of participation interests, as well as all notices of any repurchase of any participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the economic owners of such interests in the Loans and will have all the rights under the agreement(s) governing the sale of such participation interests or other assignment of any Lender's interests. Borrower unconditionally agrees that a Lender or such purchaser (through a Lender) may enforce Borrower's obligations under the Loans irrespective of the failure or insolvency of any holder of any interest in the Loans. Borrower further agrees that the purchaser or assignee of any such interests may, unless it is a Controlled Affiliate of the selling or assigning Lender, enforce its interests irrespective of any personal claims or defenses that Borrower may have against a Lender.

(vi). Disqualified Lenders.

(A)Notwithstanding anything to the contrary contained herein, no assignment or participation shall be made to any Person that was a Disqualified Lender as of the date (the "**Trade Date**") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person unless (1) Administrative Agent has consented in writing (not to be unreasonably withheld or delayed) and (2) unless an Event of Default has occurred, the Borrower has consented in writing in its sole and absolute discretion to such assignment, in which case such Person will not be considered a Disqualified Lender for the purpose of such assignment or participation. For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Lender after the applicable Trade Date or any Person that the Borrower removes from the DQ List (including as a result of the delivery of a notice pursuant to, or the expiration of the notice period referred to in, the definition of "Disqualified Lender"), (x) any additional designation or removal permitted by the foregoing shall not apply retroactively to any prior or pending assignment or participation, as applicable, to any Lender or Participant and (y) any designation or removal after the Closing Date of a Person as a Disqualified Institution shall become effective three Business Days after such designation or removal. Any assignment or participation in violation of this Section 9(e)(vi)(A) shall not be void, but the other provisions of this Section 9(e)(vi) shall apply. The Borrower shall deliver notices of any designation or removal of a Disqualified Lender to the Administrative Agent.

(B)If any assignment or participation is made to any Disqualified Lender without the Borrower's prior written consent in violation of Section 9(e)(vi)(A) above, or if any Person becomes a Disqualified Lender after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Lender and the Administrative Agent, (A) in the case of outstanding Loans held by Disqualified Lender, purchase or prepay such Loans by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Loans or such participation in such Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder or (B) require such Disqualified Lender to assign, without recourse (in accordance with and subject to the restrictions contained in this Section), all of its interest, rights and obligations under this Agreement to one or more Lenders at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(C)Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (i) will not (x) have the right to receive information, reports or other materials provided to Lenders by Parent Guarantor, any Loan Party, Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of Administrative Agent or the Lenders and (ii) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Lender will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Lenders consented to such matter, and (y) for purposes of voting on any plan of reorganization or similar plan, each Disqualified Lender party hereto hereby agrees (1) not to vote on such plan, (2) if such Disqualified Lender does vote on such plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the applicable bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(D)Administrative Agent shall have the right, and the Borrower hereby expressly authorize Administrative Agent, to provide the DQ List to each Lender requesting the same.

(f) **Governing Law.** This Agreement and the rights and obligations of the parties hereunder will in all respects be governed by, and construed in accordance with, the laws of the State of Texas (without regard to the conflict of laws principles of such state), including all matters of construction, validity and performance, except for any matters that are required by Applicable Law to be governed and construed in accordance with the laws of the jurisdiction where the Sand Facilities are located.

(g) **VENUE.** THE PARTIES HERETO AGREE THAT ANY ACTION OR PROCEEDING ARISING UNDER OR RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY BE COMMENCED IN ANY FEDERAL OR STATE COURT SITTING IN THE EASTERN FEDERAL DISTRICT OF TEXAS, AND BORROWER IRREVOCABLY SUBMITS TO THE JURISDICTION OF EACH SUCH COURT AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR THE TRANSACTION CONTEMPLATED HEREBY MAY NOT BE ENFORCED IN OR BY SUCH COURT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL LIMIT OR RESTRICT ADMINISTRATIVE AGENT'S OR ANY LENDER'S RIGHT TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS LOCATED IN THE STATE IN WHICH THE SAND FACILITIES OR ANY COLLATERAL IS LOCATED TO THE EXTENT ADMINISTRATIVE AGENT OR SUCH LENDER DEEMS SUCH PROCEEDING NECESSARY OR ADVISABLE TO EXERCISE REMEDIES AVAILABLE UNDER ANY LOAN DOCUMENT. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING WILL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(h) **WAIVER OF JURY TRIAL. BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

(i) **No Waiver by Lenders; Cumulative**. No failure or delay by Administrative Agent or any Lender in exercising any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right remedy, power or privilege. The rights, remedies, powers and privileges of Administrative Agent and Lenders hereunder and under the Loan Documents are cumulative and are not exclusive of any rights, remedies, powers or privileges that any such Person would otherwise have. A waiver by Administrative Agent or any Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Administrative Agent's or such Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Administrative Agent or any Lender, nor any course of dealing between Administrative Agent or any Lender and Borrower, or between Administrative Agent or any Lender and any Grantor or any Guarantor, shall constitute a waiver of any of Administrative Agent's or any Lender's rights or of any of Borrower's, any Grantor's or any Guarantor's obligations as to any future transactions. Whenever the consent of Administrative Agent or any Lender is required under this Agreement, the granting of such consent by Administrative Agent or such Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Administrative Agent and the Lenders.

(j) **Notices.** Except as otherwise provided herein, all notices, approvals, consents, correspondence or other communications required or desired to be given hereunder will be given in writing and will be delivered by overnight courier, hand delivery or certified or registered mail, postage prepaid to the addresses stated below. All such notices and correspondence will be effective when received:

> If to Administrative Agent: 5601 Granite Parkway, Suite 1350, Plano, Texas 75024, attention: General Counsel; or such other address as will be designated by Administrative Agent to Borrower; and
>
> If to any Loan Party: 5918 West Courtyard Drive, Suite 500, Austin, Texas 78730, attention: John Turner; or such other address as will be designated by Borrower to Administrative Agent

Borrower and Administrative Agent agree to keep the other informed at all times of Borrower's and Administrative Agent's, as applicable, current address. Unless otherwise provided or required by law, if there is more than one Loan Party, any notice given by Administrative Agent to Borrower is deemed to be notice given to all Loan Parties.

(k) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

(l) **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby. Without limiting the generality of the foregoing, all covenants and agreements by or on behalf of Borrower contained in this Agreement or any Loan Documents shall bind Borrower's successors and permitted assigns and shall inure to the benefit of Administrative Agent, Lenders and their respective successors and assigns.

(m) **Survival of Representations and Warranties**. Borrower understands and agrees that in making the Loan, each Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Administrative Agent in connection with this Agreement or the Loan Documents. Borrower further agrees that regardless of any investigation made by Administrative Agent or any Lender, all such representations, warranties and covenants will survive (as of the date made) the extension of the Loans and delivery to Administrative Agent of the Loan Documents, shall be continuing in nature, shall be deemed made and then dated by Borrower at the time each subsequent Advance (if any) is made, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

(n) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

(o) **Indemnification**. **Borrower agrees to indemnify, hold harmless and defend Administrative Agent (and any sub-agent thereof), each Lender and their respective Affiliates (each, an "Indemnitee") for, from and against all Liabilities that may be imposed on, incurred by or asserted against an Indemnitee in any matter relating to or arising out of: (i) any Loan Document or Obligation (or repayment thereof) or the use of proceeds of the Loans; (ii) Borrower's operations at or relating to the Sand Facilities; (iii) the Collateral, including its design, construction, operation, alteration, maintenance, or use by Borrower or any other Person; (iv) any permitted disclosure of information of any Loan Party not in violation of Section 9(p); (v) any misrepresentation or inaccuracy in any representation or warranty in any Loan Document; (vi) any breach or failure by any Loan Party or the Parent Guarantor to pay or perform the Obligations; (vii) any action taken by Administrative Agent or any Lender pursuant to a request for an Advance or (viii) any other act, event or transaction related, contemplated in or attendant to any of the foregoing, including any actual or prospective investigation, litigation or other proceeding relating to any of the foregoing, whether or not such Indemnitee initiated such investigation, litigation or other proceeding or is a party thereto and without regard to legal theory, including pursuant to Applicable Law, common law, equity, contract, tort, or otherwise (collectively, the "Indemnified Matters"), IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE. Notwithstanding the foregoing, Borrower shall not have any liability hereunder to any Indemnitee with respect to any Indemnified Matter, to the extent such liability has resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Affiliates, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. This Section 9(o) shall not apply to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim. Borrower, Administrative Agent and each Lender agree that, to the extent permissible under applicable law, in no event will any Indemnitee or any Loan Party have any liability to the other for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date); provided that the foregoing shall not relieve Borrower of its obligation to indemnify an Indemnitee for any claims for special, punitive, indirect or consequential damages brought against such Indemnitee by a third party in connection with an Indemnified Matter. This Section 9(o) shall be subject to the Legal Expenses Limitation.**

(p) **Confidentiality**. Each party hereto agrees to treat information concerning the terms of this Agreement and the other Loan Documents confidentially including all information received or obtained hereunder, except to the extent that disclosure is required by Applicable Law. The foregoing constraint shall not include: (i) information that is now in the public domain or subsequently enters the public domain without fault on the part of the disclosing party; (ii) information currently known to the disclosing party from its own sources and not subject to confidentiality obligations; (iii) information that the disclosing party receives from a third party not under any obligation to keep such information confidential; (iv) disclosure made to Affiliates, agents, employees, officers, directors, auditors, lawyers or other professional advisors of the disclosing party (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential); (v) disclosure made in connection with the enforcement of any right or the fulfillment of any obligation pursuant hereto or pursuant to any other Loan Document; (vi) disclosure made to credit rating agencies, bank examiners or other regulatory officials; and (vii) disclosure made to any assignee, potential assignee, participant or potential participant of a Lender and any counsel or other professional advisors of the foregoing respecting the transactions contemplated by this Agreement so long as such recipient shall be informed of the confidential nature of such information and shall agree that by receiving such information such recipient is obligated to maintain the confidentiality of

such information in accordance with the terms hereof.

(q) **Counterparts**. This Agreement and the other Loan Documents may be executed in any number of counterparts (electronic delivery accepted) and by different parties in separate counterparts, each of which, when so executed, shall be deemed an original and all of which, taken together, shall constitute one integrated agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart.

(r) **ABL/Term Intercreditor Agreement**. For so long as the ABL/Term Intercreditor Agreement is in effect, this Agreement and the other Loan Documents are subject to the terms and conditions set forth in the ABL/Term Intercreditor Agreement in all respects and, in the event of any conflict between the terms of the ABL/Term Intercreditor Agreement and this Agreement, the terms of the ABL/Term Intercreditor Agreement shall govern. Upon the expiration or termination of the ABL/Term Intercreditor Agreement, all references to the ABL/Term Intercreditor Agreement in this Agreement shall be of no further force or effect.

(s) **Hercules Intercreditor Agreement**. For so long as the Hercules Intercreditor Agreement is in effect, this Agreement and the other Loan Documents are subject to the terms and conditions set forth in the Hercules Intercreditor Agreement in all respects and, in the event of any conflict between the terms of the Hercules Intercreditor Agreement and this Agreement, the terms of the Hercules Intercreditor Agreement shall govern. Upon the expiration or termination of the Hercules Intercreditor Agreement, all references to the Hercules Intercreditor Agreement in this Agreement shall be of no further force or effect.

10. AGENCY PROVISIONS.

(a) **Appointment and Authority**. Each of the Lenders hereby irrevocably appoints Stonebriar Commercial Finance LLC to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section 10 are solely for the benefit of Administrative Agent and the Lenders, and neither Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by Administrative Agent pursuant to Section 10(e) for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Instruments, or for exercising any rights and remedies thereunder at the direction of Administrative Agent, shall be entitled to the benefits of all provisions of this Section 10 and Section 9(o) as if set forth in full herein with respect thereto.

(b) **Rights as a Lender**. The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its branches and Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to Lenders or to provide notice to or consent of Lenders with respect thereto.

(c) **Exculpatory Provisions**.

(i).Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent:

(A) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing;

(B) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(C) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity.

(ii).Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8 and 9(b)), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to Administrative Agent in writing by Borrower or a Lender.

(iii).Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Instruments or (v) the satisfaction of any condition set forth in **Exhibit A, Exhibit E** or **Exhibit J** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

(iv).The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

(d) **Reliance by Administrative Agent**. Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, Administrative Agent may presume that such condition is satisfactory to such Lender unless Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it

in accordance with the advice of any such counsel, accountants or experts.

(e) **Delegation of Duties**. Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 10 shall apply to any such sub agent and to the Related Parties of Administrative Agent and any such sub-agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(f) **Non-Reliance on Administrative Agent and Other Lenders**. Each Lender expressly acknowledges that Administrative Agent has not made any representation or warranty to it, and that no act by Administrative Agent hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or any warranty by Administrative Agent to any Lender as to any matter, including whether Administrative Agent has disclosed material information in its (or its Related Parties') possession. Each Lender represents to Administrative Agent that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and its Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisal and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire or hold commercial loans, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire or hold such commercial loans, is experienced in making, acquiring or holding such commercial loans.

(g) **Administrative Agent May File Proofs of Claim**. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i).to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and Administrative Agent under Sections 6 and 9(c)) allowed in such judicial proceeding; and

(ii). to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 6 and 9(c).

(h) **Collateral and Guaranty Matters**.

(i).Each of the Lenders irrevocably authorize Administrative Agent, at Administrative Agent's option and in Administrative Agent's discretion and upon the Borrower's request,

(A) to release any Lien on any property granted to or held by Administrative Agent under any Loan Document (i) upon the payment in full of the Indebtedness (other than contingent indemnification obligations for which no claim has been made) and the termination of this Agreement, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) that is reasonably determined by the Administrative Agent to be of immaterial value with respect to the Collateral as a whole or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9(b);

(B) to subordinate any Lien on any property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such property that is subject to a Lien permitted under clause (vi) of the definition of "Permitted Liens"; and

(C) to release any Guarantor from its obligations under the Guaranty Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(ii).Administrative Agent and Lenders agree that upon the incurrence by the Loan Parties of an ABL Facility described in clause (b) of the definition thereof and execution of an Intercreditor Agreement described in clause (b) of the definition thereof, the Liens of the Administrative Agent on all ABL Collateral shall be automatically released without further action by any party.

(iii).Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 10(h). In each case as specified in this Section 10(h), Administrative Agent will, at Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Instruments or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 10(h).

(iv). Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall Administrative Agent be responsible or liable to Lenders for any failure to monitor or maintain any portion of the Collateral.

(i) **Intercreditor Agreements**. REFERENCE IS MADE TO EACH INTERCREDITOR AGREEMENT. EACH LENDER HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF ANY INTERCREDITOR AGREEMENT AND AUTHORIZES AND

INSTRUCTS ADMINISTRATIVE AGENT TO ENTER INTO ANY INTERCREDITOR AGREEMENT IN THE CAPACITY OTHERWISE PERMITTED HEREUNDER AND ON BEHALF OF SUCH LENDER. THE PROVISIONS OF THIS SECTION 10(i) ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO SUCH INTERCREDITOR AGREEMENT TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF SUCH INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER OR AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY INTERCREDITOR AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

BORROWER:

ATLAS SAND COMPANY, LLC

By: /s/ John Turner
Name:John Turner
Title: President and Chief Financial Officer

ADMINISTRATIVE AGENT:

STONEBRIAR COMMERCIAL FINANCE LLC

By: /s/ Jeffrey L. Wilkison
Name:Jeffrey L. Wilkison
Title: Senior Vice President

INITIAL LENDER:

STONEBRIAR COMMERCIAL FINANCE LLC

By: /s/ Jeffrey L. Wilkison
Name:Jeffrey L. Wilkison
Title: Senior Vice President

EXHIBIT A

DEFINITIONS

As used in the Agreement, the following terms shall have the following definitions:

"**ABL Agent**" means the administrative agent under the then extant ABL Facility. As of the Closing Date, the ABL Agent is Bank of America, N.A., together with its successors and assigns in its capacity as administrative agent under the ABL Credit Agreement.

"**ABL Collateral**" means (a) accounts receivable, as extracted sand inventory, credit card receivables, deposit accounts (other than Term Cash Collateral Accounts) and cash (other than identifiable cash proceeds of Collateral) and the proceeds of the foregoing and (b) other customary collateral for an inventory and receivables-based, asset-based revolving credit facility, in the case of this clause (b), as reasonably approved by the Administrative Agent.

"**ABL Credit Agreement**" means that certain Loan, Security and Guaranty Agreement, dated as of February 22, 2023, among the Borrower, each of the lenders and letter of credit issuers from time to time party thereto, and the ABL Agent, as administrative agent and collateral agent, as such agreement may be amended, modified, supplemented or restated from time to time.

"**ABL Facility**" means (a) at any time prior to the Discharge of ABL Obligations, a revolving credit facility which (i) does not have any obligors that are not Loan Parties and (ii) is at all times subject to an Intercreditor Agreement and (b) at any time after the Discharge of ABL Obligations, a revolving credit facility which (i) does not have any obligors that are not Loan Parties, (ii) is not secured by Collateral but is secured solely by ABL Collateral and (iii) is at all times subject to an Intercreditor Agreement.

"**ABL Obligations**" means all Debt and other obligations incurred under the ABL Loan Documents.

"**ABL Loan Documents**" means (a) the "Loan Documents" as defined in the ABL Credit Agreement and (b) any other documents, instruments or agreements entered into by a Loan Party in connection with an ABL Facility.

"**ABL/Term Intercreditor Agreement**" means that certain Second Amended and Restated ABL/Term Intercreditor Agreement dated as of February 22, 2023 and initially entered into among the Borrower, the other Grantors (as defined therein) party thereto, Administrative Agent, ABL Agent, and each additional Representative (as defined therein) that from time to time becomes a party thereto, as amended, amended and restated, supplemented, renewed or otherwise modified from time to time.

"**Additional Availability Period**" means the period from and including the First Amendment Effective Date to April 12, 2024.

"**Additional Delayed Draw Funding Date**" means the date, which shall be a Business Day, on which the Additional Delayed Draw Term Loan is funded hereunder, which shall in no event be after the expiration of the Additional Availability Period.

"**Additional Delayed Draw Term Loan**" has the meaning assigned such term in Section 3(a)(iii).

"**Additional Delayed Draw Term Loan Commitment**" means the Initial Lender's obligation to make an Additional Delayed Draw Term Loan to Borrower hereunder in the amount not to exceed the Maximum Additional Delayed Draw Term Loan Principal Amount.

"**Additional Delayed Draw Term Loan Note**" means a promissory note executed by Borrower in connection with this Agreement in favor of the Initial Lender, in substantially the form of **Exhibit J**, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"**Additional Title Policy**" means any loan policy of title insurance issued by Stewart Title Company, in form and substance reasonably acceptable to and approved by Administrative Agent (as well as the Borrower and Stewart Title Company), insuring that the Hercules Term Loan Mortgage encumbering the Hercules Mortgaged Property constitutes a valid second priority lien (subject to Permitted Liens) upon the Hercules Mortgaged Property. The Additional Title Policy may be subject only to those exceptions which would constitute Excepted Liens described in clauses (c) of the definition thereof and other exceptions which Administrative Agent may approve in writing, and must contain endorsements consistent with the Existing Title Policies, unless otherwise agreed by Administrative Agent.

"**Administrative Agent**" means Stonebriar, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"**Advance**" means a disbursement of a Loan made to Borrower or on Borrower's behalf under the terms and conditions of this Agreement.

"**Affiliate**" means, with respect to a Person, each officer, director, manager, general partner, or joint-venturer of such Person and any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such Person.

"**Agreement**" means this Credit Agreement, as the same may be amended or modified from time to time, together with all exhibits and schedules attached hereto.

"**Anti-Money Laundering Laws**" has the meaning given to such term in Section 4(i).

"**Applicable Law**" means, as to a Person, any law (statutory or common), ordinance, rule, regulation, order, policy, code, other legal requirement, directive or determination of any arbitrator or Governmental Authority, in each case applicable to or binding on such Person or any of its assets or to which such Person or any of its assets is subject.

"**Applicable Reporting Entity**" means the public Parent Entity of the Borrower;*provided* that the calculations of consolidated net income, Consolidated Net Tangible Assets, the Leverage Ratio, Net Indebtedness, Consolidated Interest Expense, EBITDA, and any component of the foregoing shall only include amounts attributable to the Applicable Reporting Entity and its consolidated subsidiaries. For the avoidance of doubt, it is understood and agreed that in the event Atlas Energy Solutions Inc. becomes a subsidiary of a publicly traded company, such publicly traded company shall immediately become the Applicable Reporting Entity for all purposes of this Agreement.

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9(e)), and accepted by the Administrative Agent, in substantially the form of **Exhibit F** or any other form approved by the Administrative Agent.

"**Availability Period**" means the period from and including the Closing Date to the Maturity Date.

"**Board**" means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

"**Bona Fide Debt Fund**" means any bona fide debt fund, investment vehicle, regulated bank entity or non-regulated lending entity (i) that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans or bonds and/or similar extensions of credit in the ordinary course of business, (ii) that has in place customary information barriers between it and (A) any applicable Person referred to in clauses (a) through (c) of the definition of Disqualified Lenders and (B) any Affiliate of such Person that is not primarily engaged in the investing activities described above, (iii) whose managers have fiduciary duties to the investors of such fund independent of and in addition to their duties to such fund and any Affiliate of such fund, and (iv) such Person and investment vehicles managed or advised by such Person that are not engaged primarily in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course do not, either directly or indirectly, make investment decisions for such Person.

"**Borrower**" has the meaning ascribed to such term in the first paragraph of this Agreement.

"**Brigham Family**" means, collectively: (i) the lineal descendants by blood or adoption of Bud Brigham ("**descendants**"), and the spouses and surviving spouses of such descendants, (ii) any estate, trust, guardianship, custodian or other fiduciary arrangement for the primary benefit of any one or more individuals described in clause (i) of this definition, and (iii) any corporation, partnership, limited liability company or other business organization so long as (A) one or more individuals or entities described in clause (i) or (ii) of this definition possess, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation, partnership, limited liability company or other business organization, and (B) substantially all of the ownership, beneficial or other equity interests in such corporation, partnership, limited liability company or other business organization are owned, directly or indirectly, by one or more individuals or entities described in clause (i) or clause (ii) of this definition.

"**Business Day**" means any day of the year that is not a Saturday, Sunday or a day on which banks are required or authorized to close in Austin, Texas, Plano, Texas or Kansas City, Missouri.

"**Capital Leases**" means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable for the payment of rent thereunder.

"**Cash**" means money, currency or a credit balance in any demand or deposit account; provided, however, for purposes of calculating compliance with any requirements set forth herein, "Cash" shall exclude any amounts that would not be considered "cash" under GAAP or "cash" as recorded on the books of the Applicable Reporting Entity and its consolidated subsidiaries.

"**Cash Collateral Accounts**" means any deposit account designated by the Borrower as a "Cash Collateral Account" by written notice to Administrative Agent, in each case maintained for the exclusive purpose of securing Debt in respect of letters of credit permitted under this Agreement.

"**Cash Equivalents**" means Investments described in clauses (iii), (iv), (v) and (vi) of the definition of Permitted Investments.

"**Casualty Event**" means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Borrower or of any other Loan Party having a fair market value in excess of $50,000,000.

"**Change of Control**" means the acquisition by any person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended) that does not include Bud Brigham or the Brigham Family, beneficially or of record, of direct or indirect ownership (as defined in SEC Rules 13(d)-3 and 13(d)-5 under the Securities Exchange Act of 1934, as amended) of 50% or more of the economic and/or voting interest in the equity interests in Borrower or any other Loan Party.

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"**Collateral**" means all property and assets granted as collateral security for the Indebtedness pursuant to the Security Instruments, whether real or personal property, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, or any other security or lien interest whatsoever. It is understood and agreed that "Collateral" shall not include any ABL Collateral from and after the incurrence by the Loan Parties of an ABL Facility described in clause (b) of the definition thereof.

"**Commitment**" means the Initial Lender's Initial Term Loan Commitment, the Initial Lender's Delayed Draw Term Loan Commitment and the Initial Lender's Additional Delayed Draw Term Loan Commitment.

"**Competitor**" means any Person that is an operating company engaged in substantially similar business operations as any of the Loan Parties.

"**Consolidated Interest Expense**" means, for any period of determination, total interest expense of the Applicable Reporting Entity and its consolidated subsidiaries on a consolidated basis with respect to all of the outstanding Debt of the Applicable Reporting Entity and its consolidated subsidiaries (including, to the extent included in interest expense under GAAP: (i) interest paid-in-kind, (ii) amortization of financing fees, (iii) the amortization of original issue discount resulting from the issuance of Debt at less than par, (iv) the interest component of obligations under Capital Leases, and (v) other non-cash interest expense) net of cash interest income.

"**Consolidated Net Tangible Assets**" means, at any date of determination, the total amount of consolidated assets of Applicable Reporting Entity and its consolidated subsidiaries on a consolidated basis (including the Sand Reserves Value of the Loan Parties' Sand Reserves) after deducting, without duplication, therefrom: (a) all current liabilities (excluding (i) any current liabilities that by their terms are extendable or renewable at the option of the obligor thereon to a time more than 12 months after the time as of which the amount thereof is being computed and (ii) current maturities of long-term debt) and (b) the value (net of any applicable reserves) of all goodwill, trade names, trademarks, patents and other like intangible assets, all as set forth, or on a pro forma basis would be set forth, on the consolidated balance sheet of Applicable Reporting Entity and its subsidiaries on a consolidated basis for the most recently completed fiscal quarter, prepared in accordance with GAAP.

"**Contested Tax**" means taxes that are being contested in good faith by Borrower by appropriate proceedings promptly instituted and diligently conducted and (i) for which an adequate reserve is being maintained by Borrower in accordance with GAAP or (ii) so long as Borrower has a reasonable expectation of succeeding in such contest and there is no material risk of any Collateral (other than Collateral that, individually or in the aggregate, (i) has a fair market value of less than $5,000,000 and (ii) is not of material importance to the normal operation of the Sand Facilities and the business operations of the Loan Parties) being seized or forfeited in connection with such contest.

"**Control**" means the sole power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Control Agreement**" has the meaning given such term in the Security Agreement.

"**Controlled Affiliate**" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, is Controlled by such specified Person.

"**Credit Card Agreement**" means all agreements entered into by the Borrower or for the benefit of the Borrower, in each case with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"**Credit Card Issuer**" means any Person (other than any Loan Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Japan Credit Bureau (a/k/a JCB Co.), Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc.

"**Credit Card Processor**" means any servicing or processing agent or any factor or financial intermediary (other than Borrower and its Subsidiaries) who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"**Credit Card Receivables Account**" means one or more deposit accounts established in connection with a Credit Card Agreement.

"**Cure Deadline**" has the meaning assigned such term in Section 5(cc)(i).

"**Cure Period**" has the meaning assigned such term in Section 5(cc)(i).

"**Debt**" means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers' acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services; (d) all obligations of such Person under Capital Leases; (e) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person; (f) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person or in respect of which such Person otherwise assures a creditor against loss of such Debt (howsoever such assurance shall be made, including by means of obligations to pay for goods or services even if such goods or services are not actually taken, received or utilized) to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (g) any Debt (as defined in the other clauses of this definition) of a partnership for which such Person is liable either by agreement or by operation of Applicable Law but only to the extent of such liability; and (h) obligations of such Person with respect to Disqualified Capital Stock; *provided, however,* that "**Debt**" does not include (i) obligations with respect to surety or performance bonds and similar instruments entered into in the ordinary course of business in connection with the operation of the Sand Facilities or with respect to appeal or utility bonds, (ii) accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the ordinary course of business which are not greater than 90 days past the date of invoice or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP, or (iii) endorsements of negotiable instruments for collection. The Debt of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"**Default**" means any event or circumstance that, with the passing of time or the giving of notice, or both, would (if not cured or otherwise remedied during such time)

become an Event of Default.

"**Default Rate**" has the meaning given to such term in Section 8.

"**Delayed Draw Funding Date**" means each date, which shall be a Business Day, on which a Delayed Draw Term Loan is funded hereunder, which shall in no event be after the expiration of the Availability Period.

"**Delayed Draw Term Loan**" has the meaning assigned such term in Section 3(a)(ii).

"**Delayed Draw Term Loan Commitment**" means the Initial Lender's obligation to make Delayed Draw Term Loans to Borrower hereunder in the amount not to exceed the Maximum Delayed Draw Term Loan Principal Amount, as the same may be decreased by the aggregate principal amount of Delayed Draw Term Loans funded by the Initial Lender.

"**Delayed Draw Term Loan Note**" means a promissory note executed by Borrower in connection with this Agreement in favor of the Initial Lender, in substantially the form of **Exhibit G**, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"**Discharge of ABL Obligations**" has the meaning assigned to such term in the ABL/Term Intercreditor Agreement in effect on the Closing Date (without giving effect to any amendments, restatements, supplements or modifications thereto).

"**Discharge of First Lien Obligations**" has the meaning assigned to such term in the Hercules Intercreditor Agreement in effect on the Additional Delayed Draw Funding Date.

"**Disqualified Capital Stock**" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, (i) matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or (ii) is convertible or exchangeable for Debt or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, in each case of clauses (i) and (ii), on or prior to the date that is 91 days after the earlier of (A) the Maturity Date and (B) the date on which all Indebtedness is indefeasibly satisfied in full.

"**Disqualified Lenders**" means (a) those certain banks, financial institutions and other investors designated in writing by the Borrower to Administrative Agent on or prior to the Closing Date as (i) a Disqualified Lender or (ii) a Competitor, (b) any Person clearly identifiable solely on the basis of such Person's name, as an Affiliate of any Person referred to in clause (a)(i) or (a)(ii) above and (c)(i) any Person that is added as a Competitor and (ii) any Person that is clearly identifiable solely on the basis of such Person's name, as an Affiliate of any Person referred to in clause (c)(i), pursuant to a written supplement to the list of Competitors that are Disqualified Lenders, that is delivered by the Borrower after the date hereof to Administrative Agent, which supplement shall become effective one (1) Business Day after the date that such written supplement is delivered to Administrative Agent, but which shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans as permitted herein prior to the date that is one (1) Business Day after delivery of the applicable supplement; provided that "Disqualified Lenders" shall exclude (x) any Person that the Borrower has designated as no longer being a "Disqualified Lender" by written notice delivered to the Administrative Agent from time to time and (y) any other Person (other than a Competitor) at all times after an Event of Default occurred and continued without cure for more than seven (7) Business Days after Administrative Agent's written notice thereof to Borrower. In no event shall a Bona Fide Debt Fund be a Disqualified Lender unless such Bona Fide Debt Fund is identified under clause (a)(i) above (or an affiliate thereof pursuant to clause (b) above).

"**EBITDA**" means, for any period of determination, with respect to the Applicable Reporting Entity and its consolidated subsidiaries, net income for such period, plus the sum of the following items for the same period, all determined on a consolidated basis, without duplication and (except in the case of clause (h) below) to the extent deducted in calculating net income for such period: (a) Consolidated Interest Expense for such period, (b) the sum of federal, state, local and foreign income Taxes and any franchise Taxes, margin Taxes and foreign withholding Taxes accrued or paid during such period (including, without duplication, Permitted Tax Distributions) and any penalties and interest related to such Taxes or arising from any Tax examination, (c) the amount of depreciation, depletion, exploration and amortization expense for such period, (d) any extraordinary, unusual or non-recurring items, (e) transaction costs, expenses and charges, including legal, professional and advisory fees and expenses, (i) with respect to the Transactions incurred prior to or within 90 days of the Closing Date and (ii) incurred in connection with any Investment, acquisition, merger, asset disposition, equity issuance, issuance or modification of any Debt (including any amendment, waiver or modification of the Loan Documents) or similar transactions after the Closing Date, in each case that are permitted hereunder and whether or not such transactions are ultimately consummated, (f) stock-based compensation expense and any other non-cash items, including any non-cash losses or negative adjustments under ASC 815 as a result of changes in the fair market value of derivatives or otherwise resulting from fair value accounting required under GAAP (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), (g) other non-recurring costs and expenses approved by Administrative Agent in its reasonable discretion, and (h) the amount of pro forma "run rate" cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, Investments, dispositions, divestitures, restructurings, operating improvements, cost savings initiatives and other similar initiatives (including the modification and renegotiation of contracts and other arrangements) that are projected by the Borrower in good faith to result from actions that have been taken, are committed to be taken or with respect to which substantial steps have been taken (including prior to the Closing Date), in each case (i) net of the amount of actual benefits realized during such period from such actions, (ii) calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period for which EBITDA is being determined and as if such cost savings, operating expense reductions and synergies were realized on the first day of the applicable period for the entirety of such period and (iii) the pro forma "run rate" being the full benefit associated with any action taken, committed to be taken or with respect to which substantial steps have been taken calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been fully realized on the first day of the applicable period for the entirety of such period; provided that (A) the Borrower reasonably expects to realize such savings, operating expense reductions and/or synergies within 18 months after the consummation of such transaction or the taking of the applicable actions, (B) such cost savings, operating expense reductions and/or synergies are factually supportable and reasonably identified in writing to Administrative Agent and (C) no cost savings, operating expense reductions and/or synergies shall be added pursuant to this clause (h) to the extent duplicative of any expenses or charges otherwise added to EBITDA, whether through a pro forma adjustment or otherwise, for such period; provided further that the aggregate amount added back under this clause (h) shall not exceed 10% of EBITDA, *minus* (without duplication) (i) any extraordinary, unusual or non-recurring items increasing consolidated net income for such period, and (ii) any non-cash items increasing consolidated net income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period). For the purposes of calculating EBITDA for any period, if at any time during such period, the Applicable Reporting Entity or its consolidated subsidiaries shall have made any Material Acquisition or Material Disposition, then EBITDA for such period shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to such Material Acquisition or Material Disposition, are factually supportable, and are expected to have a continuing impact, in each case to be determined by the Borrower in good faith and reasonably acceptable to Administrative Agent) or in such other manner acceptable to the Borrower and Administrative Agent as if any such Material Acquisition, Material Disposition or adjustment occurred on the first day of such period.

"**Environmental Laws**" means any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("**CERCLA**"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("**SARA**"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

"**Equity Interests**" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interest.

"**Event of Default**" means the occurrence of any condition or event set forth in Section 7.

"**Excepted Liens**" means: (a) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution; *provided* that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Borrower or any of the other Loan Parties to provide collateral to the depository institution; (b) Liens in favor of the depository bank arising under documentation governing deposit accounts or in any Control Agreement (as defined in the Security Agreement) or Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC, which Liens secure the payment of returned items, settlement item amounts, bank fees, or similar items or fees; (c) Immaterial Title Deficiencies and easements, restrictions, servitudes, permits, conditions, covenants, exceptions, reservations, zoning and land use requirements in any Property of the Borrower or any of the other Loan Parties for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines and other means of ingress and egress for the removal of gas, oil, coal, other minerals or sand or timber, and other like and/or usual and customary purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, and leases or subleases of real property and any interest or title of a lessee or sublessee under any such lease or sublease, in each case, that do not secure any Debt for borrowed money and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any of the other Loan Parties or materially impair the value of such Property subject thereto; (d) Liens on cash or securities pledged to secure (either directly, or indirectly by securing letters of credit that in turn secure) performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred in the ordinary course of business; (e) title and ownership interests of lessors (including sub-lessors) of Property leased by such lessors to any Loan Party, Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the applicable Loan Party's leasehold interests may be subject or subordinate, in each case whether or not evidenced by UCC financing statement filings or other documents of record, provided that such Liens do not secure Debt for borrowed money of any Loan Party and do not encumber Property of any Loan Party other than the Property that is the subject of such leases and items located thereon; provided, further, that any such Lien referred to in this clause does not materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by the applicable Loan Party or materially impair the value of such Property subject thereto; (f) judgment and attachment Liens not giving rise to an Event of Default; *provided* that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; (g) (i) a Lien on any Property acquired by a Loan Party after the Closing Date that existed on such Property prior to the acquisition thereof or (ii) a Lien existing on any Property of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that, in each case, (A) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as applicable, (B) such Lien shall not apply to any other Property of such Loan Party and (C) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Loan Party, as applicable, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; (h) licenses of intellectual property rights granted in the ordinary course of business, which in the aggregate do not materially impair the use of any Property owned by the Borrower or any of the other Loan Parties for the purposes of which such Property is held by the Borrower or any of the other Loan Parties; and (i) purported Liens evidenced by the filing of UCC financing statements as a precautionary measure in connection with leases of personal property; *provided,* that (x) Liens described in clause (a) shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the Lien granted in favor of Administrative Agent is to be hereby implied or expressed by the permitted existence of such Excepted Liens and (y) the term "Excepted Liens" shall not include any Lien securing Debt for borrowed money other than the Indebtedness.

"**Excluded Account**" has the meaning given such term in the Security Agreement.

"**Existing Credit Agreement**" means that certain Credit Agreement dated as of October 20, 2021, by and between Borrower and Stonebriar, as amended or otherwise modified prior to the Closing Date.

"**Existing Debt**" means Debt of a Loan Party existing on the date hereof and disclosed by Borrower on Schedule 1 hereto.

"**Existing Title Policies**" means the title policies covering the Sand Facilities issued pursuant to the Existing Credit Agreement.

"**First Amendment**" means that certain First Amendment to Credit Agreement, dated as of February 26, 2024 among the Borrower, the Guarantors, Stonebriar, as Administrative Agent and as Initial Lender, and the other Lenders party thereto.

"**First Amendment Effective Date**" means February 26, 2024.

"**Fountainhead MLA Documents**" means, collectively, (a) that certain Master Lease Agreement dated as of May 16, 2022, between Fountainhead Logistics, LLC, as lessee, and Stonebriar, as lessor, (b) that certain Interim Funding Agreement dated as of May 16, 2022, between Fountainhead Logistics, LLC and Stonebriar and (c) each schedule executed in connection with the foregoing.

"**GAAP**" means generally accepted accounting principles, consistently applied.

"**Good Faith Deposit**" means the $1,000,000 deposit provided by Borrower to Stonebriar on July 14, 2023.

"**Governmental Authority**" means any federal, state, municipal, national, supranational or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with the United States of America, any state thereof or the District of Columbia or a foreign entity or government.

"**Governmental Requirement**" means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, rules of common law, authorization or other directive or requirement, whether now or hereinafter in effect, of any Governmental Authority.

"**Grantor**" means each and all Persons granting a Lien in any Collateral to secure the Loan.

"**Guarantor**" means any guarantor, surety, or accommodation party of the Loan or any portion thereof.

"**Guaranty Agreement**" means that certain Guaranty Agreement, dated as of even date herewith, executed by the Guarantors (other than the Parent Guarantor) in favor of Administrative Agent, for the benefit of the Lenders, pursuant to which the Guarantors unconditionally guaranty, on a joint and several basis, payment of the Indebtedness and performance of all other Obligations, as such agreement may be amended, modified, supplemented, restated or replaced from time to time.

"**Hazardous Substances**" means any chemical, material, waste or substance that is prohibited, limited or regulated in any manner by any Governmental Authority or that, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "**Hazardous Substances**" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "**Hazardous Substances**" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

"**HCPS**" means Hi-Crush Permian Sand LLC, a Delaware limited liability company.

"**Hercules Acquisition**" means the direct or indirect Acquisition by Borrower of substantially all of the assets (other than Excluded Assets (as defined in the Hercules Acquisition Agreement)) of Hi-Crush Inc., a Delaware corporation, in accordance with the terms of the Hercules Acquisition Agreement.

"**Hercules Acquisition Agreement**" means that certain Agreement and Plan of Merger dated as of February 26, 2024, among Parent Guarantor, the Borrower, Hi-Crush Inc., HC Minerals Inc., certain stockholders of Hi-Crush Inc., Clearlake Capital Partners V Finance, L.P., solely in its capacity as the stockholder's representative, and the other parties thereto.

"**Hercules Acquisition Documents**" means the Hercules Acquisition Agreement and all other material agreements, documents and instruments delivered in connection therewith, including all annexes, appendices, exhibits and schedules thereto and any side letter executed in connection therewith.

"**Hercules Assets**" means the assets directly or indirectly acquired by the Borrower pursuant to the Hercules Acquisition, together with all present and future additions, parts, accessories, attachments, substitutions, repairs, improvements and replacements thereof or thereto, and any and all proceeds (including insurance proceeds) thereof.

"**Hercules Intercreditor Agreement**" means an Intercreditor Agreement substantially in the form attached as an exhibit to the Hercules Acquisition Agreement (or otherwise reasonably satisfactory to the Administrative Agent) to be dated as of the Additional Delayed Draw Funding Date and initially entered into among Borrower, the other Grantors (as defined therein) party thereto, Administrative Agent, the Hercules Seller Noteholder and the ABL Agent, as amended, amended and restated, supplemented, renewed or otherwise modified from time to time.

"**Hercules Mortgaged Property**" means the Trust Property (as defined in the Hercules Term Loan Mortgage).

"**Hercules Sand Facilities**" means the sand production facilities designated as "K-1" and "K-2", owned as of the First Amendment Effective Date by Hi-Crush Permian Sand LLC, and located in or around Kermit, Texas

"**Hercules Seller Mortgage**" means that certain Deed of Trust, Security Agreement, Financing Statement, Fixture Filings and Assignment of Rents and Leases from HCPS for the benefit of the Seller Noteholder.

"**Hercules Seller Note**" means that certain Secured Seller Note dated as of the date of the Hercules Acquisition in substantially the form attached to the Hercules Acquisition Agreement, by the Borrower in favor of the Hercules Seller Noteholder in the original principal amount of $125,000,000 and which is at all times subject to an Intercreditor Agreement, as amended, restated or otherwise modified from time to time in accordance with the terms of the Hercules Intercreditor Agreement.

"**Hercules Seller Note Documents**" means the Hercules Seller Note, the Hercules Seller Mortgage and the other "Note Documents" or similar term under (and as defined in) the Hercules Seller Note.

"**Hercules Seller Noteholder**" means US Bank, National Association, as agent for the Noteholders (as defined in the Hercules Seller Note).

"**Hercules Subsidiaries**" means all Subsidiaries formed or acquired in connection with the Hercules Acquisition and existing immediately after the consummation thereof.

"**Hercules Term Loan Mortgage**" means that certain Deed of Trust, Security Agreement, Financing Statement, Fixture Filings and Assignment of Rents and Leases from HCPS for the benefit of the Administrative Agent in substantially the form of **Exhibit L** attached to the Agreement.

"**Improvements**" means the buildings and other improvements located or erected on the Sand Facilities, including any and all items of property attached or affixed to such buildings or other improvements (or any portion thereof).

"**Indebtedness**" means the indebtedness created or evidenced by this Agreement, the Notes or any other Loan Document, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Loan Documents.

"**Initial Lender**" means Stonebriar and its successors that have acquired all or substantially all of the assets of Stonebriar.

"**Initial Term Loan**" has the meaning assigned such term in Section 3(a)(i).

"**Initial Term Loan Commitment**" means the Initial Lender's obligation to make an Initial Term Loan to Borrower on the Closing Date in the amount equal to the Maximum Initial Term Loan Principal Amount.

"**Initial Term Loan Note**" means a promissory note executed by Borrower in connection with this Agreement in favor of the Initial Lender, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"**Intercreditor Agreement**" means (a) the ABL/Term Intercreditor Agreement, (b) any other intercreditor agreement in effect from time to time between Administrative Agent and the ABL Agent (i) which is on terms and conditions reasonably satisfactory to Administrative Agent (acting at the direction of the Required Lenders) and (ii) which such ABL Agent, on behalf of the lenders party to any ABL Facility, disclaims all interests whatsoever in the Collateral, (c) the Hercules Intercreditor Agreement, and (d) any other intercreditor agreement in effect from time to time between Administrative Agent, the ABL Agent and the Hercules Seller Noteholder which is on terms and conditions reasonably satisfactory to Administrative Agent (acting at the direction of the Required Lenders).

"**Investment Returns**" means, with respect to any Investment, any return on such Investment received by a Loan Party in cash in the form of dividends, interest, distributions, returns of principal, and/or proceeds of the sale thereof.

"**Investments**" means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests in any other Person or any agreement to make any such acquisition (including, e.g., any "**short sale**" or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Debt of, purchase or other acquisition of any other Debt or equity participation interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding (i) any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business) and (ii) unsecured intercompany loans, advances, or Debt in each case solely among Borrower and its subsidiaries and made in the ordinary course of business; (c) the purchase or acquisition (in one or a series of transactions) of the Property of another Person that constitutes a business unit; or (d) the entering into of any guarantee of, or other surety obligation (including the deposit of any Equity Interests to be sold) with respect to, Debt of any other Person. The amount of any Investment shall be the original cost or amount of such Investment plus the cost or amount of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or writeoffs with respect to such Investment, minus any actual returns received in cash or Cash Equivalents on such Investment.

"**Kermit Facility**" means the sand mine located in or around Kermit, Texas as described within NSR Permit #149761.

"**Legal Expenses Limitation**" means (a) with respect to any obligation in any Loan Document of a Loan Party to pay or reimburse any legal fees or expenses of Administrative Agent, that such obligation shall be limited to the documented out-of-pocket fees and expenses of one primary counsel, one local counsel for each relevant jurisdiction as may be necessary in the reasonable judgment of Administrative Agent, and one specialty counsel acting in each reasonably necessary specialty area as determined in the reasonable judgment of Administrative Agent and (b) with respect to any obligation in any Loan Document of a Loan Party to pay or reimburse any legal fees or expenses of the Lenders or any other Indemnitee (other than Administrative Agent acting in its capacity as such), that such obligation shall be limited to the documented out-of-pocket fees and expenses of one primary counsel (plus one additional counsel in each relevant jurisdiction due to an actual or perceived conflict of interest for each group of similarly affected parties) and one local counsel for each relevant jurisdiction (plus one additional counsel in each relevant jurisdiction due to an actual or perceived conflict of interest for each group of similarly affected parties) for all such Persons taken as a whole.

"**Lender**" means the Initial Lender and each of the Persons that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"**Leverage Ratio**" means, as of any date of determination, the ratio of (i) the outstanding Net Indebtedness to (ii) the EBITDA for the four (4) fiscal quarter period most recently ended, in each case calculated based on the Financial Statements most recently delivered pursuant to Section 5(d)(i) or 5(d)(ii), as applicable.

"**Liabilities**" means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

"**Lien**" means any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise and shall include, for the avoidance of doubt, any easement, restriction, servitude, permit, condition, covenant, exception or reservation where the effect is to secure an obligation owed to, or a claim by, a Person other than the owner of the Property.

"**Liquidity**" means at any time of determination, the sum of (i) the aggregate amount of Cash and Cash Equivalents held by the Applicable Reporting Entity and its consolidated subsidiaries at such time (excluding the proceeds of any Specified Equity Contribution for a period of ninety (90) days after the receipt thereof) *plus* (ii) the undrawn amounts of the Delayed Draw Term Loan Commitment at such time *plus* (iii) to the extent that Borrower is a party to an ABL Facility permitted by Section 5(o) at such time, the aggregate amount available to be borrowed (subject to any borrowing base or similar limitations at such time) by Borrower on the undrawn commitments under such ABL Facility during such month.

"**Loan**" means an Initial Term Loan, a Delayed Draw Term Loan and/or an Additional Delayed Draw Term Loan, as the context may require.

"**Loan Documents**" means this Agreement, the Notes, the Security Instruments, the Parent Guaranty Agreement, the First Amendment, together with all environmental indemnity agreements, guaranties, security agreements, pledge agreements, mortgages, deeds of trust, security deeds, collateral mortgages, subordination agreements, collateral assignments, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with this Agreement.

"**Loan Party**" means Borrower and each Guarantor (other than the Parent Guarantor).

"**Major Material Contract**" means (i) any contract or agreement (other than any Loan Document) entered into in respect of a Sand Facility the breach, nonperformance, cancellation, or failure to renew could reasonably be expected to result in a material adverse effect with respect to such Sand Facility and (ii) any other contract or agreement the breach, nonperformance, cancellation, or failure to renew could reasonably be expected to result in a Material Adverse Effect; *provided, however,* that no such agreement that is permitted to be terminated by any party thereto (absent any breach by any party thereto) within 180 days of such date shall constitute a Major Material Contract during such 180-day period.

"**Material Acquisition**" means any acquisition of Property or series of related acquisitions of Property (including by way of merger or consolidation) that involves the payment of consideration by one or more of the Loan Parties in excess of $25,000,000.

"**Material Adverse Effect**" means a material adverse change in, or material adverse effect on (i) the business, operations, property or financial condition of Borrower and the other Loan Parties taken as a whole, (ii) the ability of (A) Borrower to perform its payment obligations under any Loan Document or (B) the Loan Parties, taken as a whole, to perform any of their obligations under any Loan Document, (iii) the validity or enforceability of any Loan Document or (iv) the rights and remedies of or benefits available to Lenders, taken as a whole, under this Agreement, the Notes or the Security Instruments.

"**Material Disposition**" means any assignment, sale or other transfer of Property or series of related assignments, sales or other transfers of Property that yields gross proceeds to one or more of the Loan Parties in excess of $25,000,000.

"**Material Other Indebtedness**" means Debt (other than the Indebtedness, but including obligations in respect of one or more Swap Agreements) of one or more Loan Parties in an aggregate principal amount exceeding $25,000,000. For purposes of determining Material Other Indebtedness, the "**principal amount**" of the obligations of the Loan Party in respect of any Swap Agreement at any time shall be the Swap Termination Value of such Swap Agreement.

"**Maturity Date**" means the first to occur of (i) July 31, 2030 and (ii) the date, if any, on which the maturity of the Loans shall have been accelerated pursuant to Section 8 hereof.

"**Maximum Additional Delayed Draw Term Loan Principal Amount**" has the meaning ascribed to such term in the second paragraph of this Agreement.

"**Maximum Delayed Draw Term Loan Principal Amount**" has the meaning ascribed to such term in the second paragraph of this Agreement.

"**Maximum Initial Term Loan Principal Amount**" has the meaning ascribed to such term in the second paragraph of this Agreement.

"**Maximum Principal Amount**" means the sum of the Maximum Initial Term Loan Principal Amount plus the Maximum Delayed Draw Term Loan Principal Amount plus the Maximum Additional Delayed Draw Term Loan Principal Amount.

"**Monahans Facility**" means the sand mine located in or around Monahans, Texas as described within PBR Permit #148572.

"**Mortgage**" means each of the mortgages and deeds of trust executed by any Loan Party for the benefit of Administrative Agent covering the Mortgaged Property to secure the Loans as the same may be amended, modified, supplemented, restated or replaced from time to time.

"**Mortgaged Property**" means any Property owned or leased by any Loan Party that is subject to the Liens existing and to exist under the terms of any Mortgage.

"**Net Indebtedness**" means, as of any date of determination, an amount equal to (i) the total outstanding principal amount of Indebtedness of the Applicable Reporting Entity

and its consolidated subsidiaries, *minus* (ii) the aggregate amount of Cash and Cash Equivalents of Applicable Reporting Entity and its consolidated subsidiaries.

"**Note**" means an Initial Term Loan Note, a Delayed Draw Term Loan Note or an Additional Delayed Draw Term Loan Note, as the context may require.

"**Obligations**" means the Indebtedness and all other amounts, obligations, liabilities, covenants and duties of every type and description owing by Borrower, any other Loan Party or the Parent Guarantor to Administrative Agent and Lenders arising out of, under, or in connection with any Loan Document, whether direct or indirect, absolute or contingent, due or to become due, liquidated or not, now existing or hereafter arising, however acquired, and whether or not evidenced by any instrument.

"**Outstanding Amount**" means, with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings, prepayments or repayments of Loans occurring on such date.

"**Parent Entity**" any Person that is or becomes a direct or indirect parent company of the Borrower. For the avoidance of doubt, (a)(i) Atlas Energy Solutions Inc. and (ii) any other Person that is the managing member of or that directly or indirectly owns a majority of the voting Equity Interests of the Borrower, in each case, shall be deemed to constitute a Parent Entity of the Borrower and (b) the term Parent Entity shall exclude (i) the Brigham Family and (ii) any Person that is a parent company to the public entity or that is a direct or indirect non-managing member of the Borrower.

"**Parent Guarantor**" means Atlas Energy Solutions Inc. and its successors and assigns; *provided* that if Atlas Energy Solutions Inc. shall become a subsidiary of a publicly traded company, "Parent Guarantor" shall mean such publicly traded company.

"**Parent Guaranty Agreement**" means a Parent Guaranty Agreement, in the form of **Exhibit H** hereto, executed by the Parent Guarantor in favor of Administrative Agent, for the benefit of the Lenders, pursuant to which the Parent Guarantor unconditionally guarantees on an unsecured basis, payment of the Indebtedness and performance of all other Obligations, as such agreement may be amended, modified, supplemented, restated or replaced from time to time. It is understood and agreed that in the event Atlas Energy Solutions Inc. becomes a subsidiary of a publicly traded company, (a) such publicly traded company shall promptly execute and deliver a parent guaranty agreement in the form of the Parent Guaranty Agreement in effect on the date of this Agreement and (b) upon the effectiveness of such new parent guaranty agreement, such new parent guaranty agreement shall constitute the "Parent Guaranty Agreement" for all purposes under the Loan Documents and Atlas Energy Solutions Inc. shall be released from the Parent Guaranty Agreement in effect on the date of this Agreement.

"**Payment Day**" means the first day of each calendar month.

"**Permitted Debt**" means:

(i) the Indebtedness;

(ii) intercompany Debt between or among the Loan Parties that is subordinated to the Indebtedness as and to the extent provided in the Guaranty Agreement;

(iii) Debt constituting a guaranty by any Loan Party of other Debt permitted to be incurred hereunder;

(iv) Debt constituting purchase money Debt or under Capital Leases (or other equipment financing arrangements for mobile excavation equipment, automobiles, trucks, rental equipment or other personal Property to be used in the ordinary course of business) not to exceed in the aggregate principal amount at any one time outstanding the greater of (i) $25,000,000 and (ii) an amount equal to 5.0% of Borrower's Consolidated Net Tangible Assets (calculated based on the Financial Statements most recently delivered pursuant to this Agreement);

(v) Debt and obligations owing under Swap Agreements;

(vi) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business so long as such Debt is extinguished within two Business Days of its incurrence;

(vii) Debt incurred in respect of insurance premium financing arrangements in the ordinary course of business;

(viii) the Existing Debt and extensions, renewals and replacements of any such Existing Debt and any refinancings, modifications, renewals and extensions of any such Debt so long as (A) the principal amount of such Debt shall not be increased from the principal amount outstanding at the time of such refinancing, renewal or extension plus amounts to fund any original issue discount or upfront fees relating thereto plus amounts to fund accrued interest, fees, expenses and premiums, (B) the maturity of such Debt shall not be shortened and (C) the covenants and events of default governing such refinanced, renewed, modified or extended Debt shall not be, taken as a whole, materially more restrictive to the Loan Parties than those under the Debt being so refinanced, renewed, modified or extended;

(ix) the ABL Obligations and other first lien senior secured Debt incurred pursuant to an ABL Facility in an aggregate principal amount not to exceed $150,000,000 at any one time outstanding; *provided*, that such Debt will be subject to an Intercreditor Agreement;

(x) unsecured Debt arising from loan programs of the Small Business Administration or other Governmental Authorities where the principal thereof is eligible for forgiveness under the applicable program or legislation; *provided* that the Loan Party incurring such Debt meets the requirements and criteria for forgiveness under such program or legislation;

(xi) Debt incurred or assumed in connection with permitted acquisitions (including a permitted acquisition effectuated by a Permitted Parent Entity Investment, but excluding the Hercules Seller Note), including Debt consisting of indemnities, obligations in respect of earn outs or other purchase price adjustments or similar obligations in connection therewith, not to exceed (x) $50,000,000 or (y) an unlimited amount so long as (A) on the date of incurrence or assumption thereof, Borrower would be in compliance on a pro forma basis with a Total Leverage Ratio of no greater than 3.00 to 1.00 as of such time and (B) Borrower has at least five (5) Business Days prior to the incurrence thereof delivered a certificate duly executed by a Responsible Officer of Borrower in form and detail reasonably satisfactory to Administrative Agent demonstrating compliance with such Total Leverage Ratio;

(xii) Debt incurred by the Loan Parties in respect of Credit Card Agreements in the ordinary course of business in an aggregate principal amount not to exceed $2,000,000 at any one time outstanding;

(xiii) Debt in respect of letters of credit in an aggregate face amount not to exceed $25,000,000 at any one time outstanding;

(xiv) other unsecured Debt, *provided that* (A) no Default or Event of Default shall exist or will result immediately after giving effect to the incurrence of such unsecured Debt, (B) the maturity of such unsecured Debt is not prior to, and such unsecured Debt does not require any scheduled amortization or other scheduled payments of principal prior to, the date that is ninety one (91) days after the Maturity Date, (C) the covenants and events of default governing such unsecured Debt shall not be, taken as a whole, materially more restrictive to the Loan Parties than those under this Agreement, (D) on the date of incurrence thereof and after taking into account the incurrence of such Debt, Borrower would be in compliance on a pro forma basis with a Total Leverage Ratio of no greater than 5.00 to 1.00 as of such time and (E) Borrower has at least five (5) Business Days prior to the incurrence thereof delivered a certificate duly executed by a Responsible Officer of Borrower in form and detail reasonably satisfactory to Administrative Agent demonstrating compliance with the conditions set forth in this clause (xiv);

(xv) other Debt not otherwise permitted under the foregoing clauses (i) through (xiv) so long as: (A) no Default or Event of Default shall exist or will result immediately after giving effect to the incurrence of such Debt; (B) on the date of incurrence thereof and after taking into account the incurrence of such Debt, Total Other Debt (including all Debt under this clause (xv)) does not exceed 10% of Consolidated Net Tangible Assets (calculated based on the Financial Statements most recently delivered pursuant to this Agreement) of the Applicable Reporting Entity and its consolidated subsidiaries; (C) on the date of incurrence thereof and after taking into account the incurrence of such Debt, Borrower would be in compliance on a pro forma basis with a Total Leverage Ratio of no greater than 2.00 to 1.00 as of such time and (D) Borrower has at least five (5) Business Days prior to the incurrence thereof delivered a certificate duly executed by a Responsible Officer of Borrower in form and detail reasonably satisfactory to Administrative Agent demonstrating compliance with the conditions set forth in this clause (xv);

(xvi) Debt in respect of any Stonebriar Sale-Leaseback Transaction;

(xvii) Debt outstanding under the Hercules Seller Note in an aggregate principal amount not to exceed, at any one time outstanding, $140,000,000*provided* that the Liens securing such Debt shall be subject to an Intercreditor Agreement; and

(xviii) other unsecured Debt not otherwise permitted under the foregoing clauses (i) through (xvii) in an aggregate amount not to exceed $35,000,000 at any one time outstanding, *provided that* no Default or Event of Default shall exist or will result immediately after giving effect to the incurrence of such unsecured Debt.

"**Permitted Intercompany Activities**" means administrative, overhead, operating, technology or licensing arrangements and related payments or obligations in respect thereof entered into in the ordinary course of business or consistent with customary industry practices between or among the Borrower and its subsidiaries that are, in the good faith judgment of the Borrower, necessary or advisable in connection with the ownership or operation of the business of the Borrower and its subsidiaries.

"**Permitted Investments**" means

(i) Investments existing as of the date of this Agreement which are disclosed on Schedule 2 hereto;

(ii) accounts receivable arising in the ordinary course of business and promissory notes received in settlement of any such accounts receivable;

(iii) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one year from the date of acquisition thereof;

(iv) commercial paper maturing within one year from the date of acquisition thereof having a rating of at least P-1 or A-1 from either Moody's or S&P, respectively;

(v) deposits (including certificates of deposit) maturing within one year from the date of deposit thereof with or issued by any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least $1,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(vi) deposits in money market funds investing not less than 90% of their assets in Investments described in the preceding clauses (iii), (iv) and (v);

(vii) Investments (A) made by the Borrower in or to any of the other Loan Parties including any Person who, contemporaneously with the making of such Investment becomes a Guarantor and (B) made by any Loan Party in or to the Borrower or any other Loan Party;

(viii) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts arising in the ordinary course of business and disputes with, customers and suppliers;

(ix) Investments in any new Subsidiary (whether by formation or acquisition) to the extent such Subsidiary becomes a Guarantor hereunder in accordance with the terms hereof and complies with Section 5(w);

(x) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the ordinary course of business;

(xi) extensions of trade credit in the ordinary course of business;

(xii) Investments constituting Permitted Debt;

(xiii) Investments permitted by Section 5(b);

(xiv) loans or advances to employees, officers or directors in the ordinary course of business of any Loan Party, in each case only as permitted by applicable law, but in any event not to exceed $1,000,000 in aggregate principal amount at any time outstanding except to the extent that the proceeds of such loans are paid to or retained by the Borrower substantially contemporaneously with the making of such loans to fund such employee's, officer's or director's purchase of Equity Interests (other than Disqualified Capital Stock) in the Borrower;

(xv) Investments, including acquisitions, to the extent funded with cash proceeds from contributions to the Borrower's common equity capital or from the sale of its Equity Interests (other than Disqualified Capital Stock) received by the Borrower after the Closing Date and within 90 days of the making of such Investment;

(xvi) to the extent constituting an Investment, Permitted Intercompany Activities;

(xvii) other Investments; *provided* that (A) no Event of Default has occurred and is continuing or would result therefrom and (B) immediately after giving pro forma effect thereto, the Applicable Reporting Entity and its consolidated subsidiaries shall have, on a consolidated basis, Liquidity of at least $30,000,000;

(xviii) other Investments; *provided* that (A) no Event of Default has occurred and is continuing or would result therefrom and (B) the aggregate amount of Investments made pursuant to this clause (xviii) shall not exceed $10,000,000 plus the amount of any Investment Returns in respect of Investments previously made pursuant to this clause (xviii) at any time outstanding; and

(xix) the Hercules Acquisition.

"**Permitted Liens**" means

(i) Liens and security interests in favor of Administrative Agent securing the Indebtedness owed by Borrower to Lenders (collectively, the "**Administrative Agent's Liens**");

(ii) Liens securing Permitted Debt described in (A) clause (ix) of the definition thereof and (B) prior to the Discharge of First Priority Obligations, clause (xvii) of the definition thereof;

(iii) Liens for taxes, assessments, other governmental charges or levies, and Liens in connection with workers' compensation, unemployment insurance, or other social security, old age pension or public liability obligations or similar legislation, in each case which are either not yet overdue by more than 90 days or which are being contested in good faith and for which adequate reserves have been maintained in accordance with GAAP (i.e., "**which are Not Risks**");

(iv) landlords' liens, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or similar Liens, in each case, arising in the ordinary course of business and which are Not Risks;

(v) contractual Liens which arise in the ordinary course of business under real property leases, operating agreements, joint venture agreements, mineral leases, contracts for the sale, transportation or exchange of sand or minerals, area of mutual interest agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, supply agreements, seismic or other geophysical permits or agreements, and other agreements which are or have become usual and customary in the sand extracting, producing, processing, developing and/or marketing business and are for claims which are Not Risks;

(vi) purchase money Liens or purchase money security interests securing Debt permitted under clause (iv) of the definition of "Permitted Debt"; provided that (A) such Liens do not attach to any Property other than the Property leased or financed by such Debt (provided that individual financings of equipment or other Property permitted under clause (iv) of the definition of Permitted Debt provided by one lender may be cross collateralized to other permitted financings provided by such lender) and (B) the principal amount of Debt secured by any such Lien shall at no time exceed 100% of the original purchase price or lease payment amount of such Property at the time it was acquired;

(vii) Liens existing on the date of this Agreement and disclosed in Schedule 3 hereto, so long as any such Lien shall apply only to the Property to which it currently applies and shall secure only those obligations which it secures on the date hereof, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(viii) Liens on insurance proceeds or unearned premiums incurred in the ordinary course of business in connection with the financing of insurance premium permitted pursuant to clause (vii) of the definition of Permitted Debt;

(ix) those Liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets (as determined by Administrative Agent in Administrative Agent's sole reasonable discretion);

(x) Liens on Cash Collateral Accounts that secure Debt in respect of letters of credit permitted under clause (xiii) of the definition of "Permitted Debt" so long as the aggregate amount credited to the Cash Collateral Accounts does not exceed $26,250,000;

(xi) Liens or rights of setoff against credit balances or cash and Cash Equivalents held in a Credit Card Receivables Account of the Borrower or any of its Subsidiaries with Credit Card Issuers or Credit Card Processors to secure obligations described in clause (xii) of the definition of Permitted Debt; *provided, however*, that the aggregate amount of credit balances or cash or Cash Equivalents subject to such Liens and rights of setoff under this clause (xi) shall not exceed $500,000;

(xii) Liens securing Debt and obligations owing under Swap Agreements permitted hereunder; *provided* that at the time of the incurrence thereof, the aggregate outstanding amount of Debt and other obligations secured by Liens under this clause (xii) shall not exceed $10,000,000;

(xiii) Excepted Liens;

(xiv) Liens on assets that are acquired in a permitted acquisition (including a permitted acquisition effectuated by a Permitted Parent Entity Investment), securing Debt permitted by clause (xi) of the definition of Permitted Debt;

(xv) other Liens not otherwise described under clauses (i) through (xiv) above so long as (A) such Liens only secure Permitted Debt and (B) such Liens do not attach to any Sand Facilities, any Specified Property or to any personal property, fixture or improvement constituting Collateral related thereto or used in connection therewith; and

(xvi) other Liens not otherwise described under clauses (i) through (xv) above so long as the outstanding amount of Debt and other obligations secured by Liens under this clause (xv) shall not exceed $2,500,000 in the aggregate at any time.

"**Permitted Parent Entity Investment**" has the meaning give to such term in the definition of "Permitted Payments".

"**Permitted Payments**" means (i) Restricted Payments made by any Loan Party to any other Loan Party; (ii) Permitted Tax Distributions; (iii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, repurchases or redemptions of any Equity Interests that are not Disqualified Capital Stock of the Borrower (or any direct or indirect parent of the Borrower) held by officers, directors or employees (or their transferees, estates or beneficiaries under their estates) of the Borrower (or such direct or indirect parent), including any repurchase, retirement or redemption pursuant to any stock option plans, employee benefit plans or any shareholders' agreement or other agreement or arrangement then in effect or upon their death, disability, retirement, severance or termination of employment or service or to cover such person's payment of withholding taxes in connection therewith, *provided*, that the aggregate cash consideration paid for all such redemptions and payments shall not exceed $10,000,000 in any fiscal year; *provided*, *however*, that any unused amount may be carried over to the subsequent fiscal year; (iv) repurchases of Equity Interests (A) deemed to occur on the exercise of options by the delivery of Equity Interests in satisfaction of the exercise price of such options and (B) in consideration of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or restricted stock units, (v) to the extent constituting Restricted Payments, distributions by the Borrower to any Parent Entity to pay such Parent Entity's overhead costs and expenses incurred in the ordinary course of business (including legal, accounting and other general and administrative expenses) in each case that are reasonable and customary and directly attributable to the ownership or operation of the Borrower and the other Loan Parties and (vi) Restricted Payments by the Borrower to a Parent Entity to finance any Permitted Investment (including any permitted acquisition) (provided that (x) any Restricted Payment under this clause (vi) shall be made substantially concurrently with the closing of such Investment and (y) such Parent Entity shall, promptly following the closing thereof, cause (I) all Property acquired to be contributed to the Borrower or one or more other Loan Parties, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Borrower or one or more other Loan Parties, in order to consummate such Investment in compliance with the applicable requirements of this Agreement as if undertaken as a direct Investment by the Borrower or the relevant Loan Party) (any such Investment or permitted acquisition described in this clause (vii), a "**Permitted Parent Entity Investment**").

"**Permitted Sale**" means (i) the sale of Inventory in the ordinary course of business; (ii) the transfer of Property by means of a transaction permitted under Section 5(b) hereof; (iii) the issuance or transfer of any Equity Interest in a Subsidiary to any Loan Party; (iv) the issuance of Equity Interests (other than Disqualified Capital Stock) in Borrower; (v) the transfer of Property among the Loan Parties; (vi) the sale or transfer of equipment and other personal property that is (A) worn out, obsolete or surplus Property or (B) is replaced by equipment or other personal property of at least comparable value and use; (vii) licensing and cross-licensing arrangements involving any technology or other intellectual property of Borrower or any Subsidiary in the ordinary course of business; (viii) the abandonment of any rights, franchises, licenses, or intellectual property that any Loan Party reasonably determines are no longer necessary in its business or commercially desirable; (ix) the transfer of Property in connection with a Casualty Event; (x) the use, transfer or disposition of cash and Cash Equivalents pursuant to any transaction not prohibited by the terms of the Loan Documents; (xi) any sale of Property by a Loan Party to Stonebriar consummated in connection with a Stonebriar Sale-Leaseback Transaction; (xii) other sales, dispositions or transfers not regulated by the other clauses in this definition of any Properties that are not Specified Properties or personal property, fixtures or improvements constituting Collateral

related to or used in connection with the Sand Facilities or the Specified Properties and which have a fair market value of not more than $25,000,000 in the aggregate during any 12-month period; (xiii) Permitted Liens; and (xiv) the sale, disposition or other transfer of any Properties that are not Specified Properties having a fair market value of not more than $7,500,000 in the aggregate during the term of this Agreement.

"**Permitted Tax Distributions**" without duplication, (i) dividends or distributions by the Borrower to a Parent Entity in an amount required for such Parent Entity to pay franchise, excise and similar taxes, (ii) with respect to any taxable period (or portion thereof) for which the Borrower and any of its subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable foreign, state or local income tax purposes (each, a "**Tax Group**") of which a direct or indirect parent of the Borrower is the common parent, or for which the Borrower is a partnership or disregarded entity for U.S. federal or applicable foreign, state or local income tax purposes that is wholly-owned (directly or indirectly) by an entity that is taxable as a corporation for such income tax purposes, dividends or distributions by the Borrower to any direct or indirect parent of the Borrower in an amount not to exceed the amount of any U.S. federal, foreign, state and/or local income taxes that the Borrower and/or its subsidiaries that are members of the relevant Tax Group, as applicable, would have paid for such taxable period had the Borrower and/or such subsidiaries, as applicable, been a stand-alone corporate taxpayer or a stand-alone corporate group; and (iii) with respect to any taxable period (or portion thereof) for which the Borrower is a passthrough entity (including a partnership or disregarded entity) for U.S. federal income tax purposes and is not wholly owned (directly or indirectly) by an entity that is taxable as a corporation for U.S. federal income tax purposes, dividends or distributions by the Borrower to any member or partner of the Borrower, on or prior to each estimated tax payment date as well as each other applicable due date, on a pro rata basis, such that each such member or partner (or its direct or indirect members or partners, if applicable) receives, in the aggregate for such period, payments or distributions sufficient to equal such member's or partner's U.S. federal, state and/or local income taxes (as applicable) attributable to its direct or indirect ownership of the Borrower and its subsidiaries with respect to such taxable period (assuming that such member or partner is subject to tax at the highest combined marginal U.S. federal, state, and/or local income tax rates (including any tax rate imposed on "net investment income" by Section 1411 of the Code)) applicable to an individual or, if higher, a corporation, resident in New York, New York, determined by taking into account (A) the deductibility of state and local income taxes for U.S. federal income tax purposes (disregarding any deduction that is subject to a dollar limitation), (B) the alternative minimum tax, (C) any U.S. federal, state and/or local (as applicable) loss carryforwards of such member or partner available from losses of such member or partner attributable to its direct or indirect ownership of the Borrower and its subsidiaries for prior taxable periods to the extent such loss is of a character that would allow such loss to be available to reduce taxes in the current taxable period (taking into account any limitations on the utilization of such loss to reduce such taxes and to the extent such loss had not already been utilized), (D) the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income, and (E) any adjustment to such member or partner's taxable income attributable to its direct or indirect ownership of the Borrower and its subsidiaries as a result of any tax examination, audit or adjustment with respect to any period (or portion thereof).

"**Person**" means any natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Prepayment Fee**" has the meaning given to such term in the Notes.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

"**Refinancing**" has the meaning given to such term in the definition of "Transactions."

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"**Required Lenders**" means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Delayed Draw Term Loan Commitments (such aggregate amount with respect to any Lender is referred to herein as such Lender's "**Credit Exposure**").

"**Responsible Officer**" means, as to any Person, the chief executive officer, the president, any financial officer (for purposes of this Agreement, meaning the chief financial officer, principal accounting officer, treasurer or controller of such Person) or any vice president of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property (but excluding dividends paid in Equity Interests)) with respect to any Equity Interests in Borrower or any of the other Loan Parties, or any payment (whether in cash or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in Borrower or any of the other Loan Parties or any option, warrant or other right to acquire any such Equity Interests in Borrower or any of the other Loan Parties.

"**Sale-Leaseback**" has the meaning given to such term in Section 5(t).

"**Sand Facilities**" mean the Kermit Facility, the Monahans Facility and the Hercules Sand Facilities.

"**Sand Reserves**" means, collectively, sand reserves that, in accordance with S-K 1300, are classified as "Probable mineral reserves" or "Proven mineral reserves".

"**Sand Reserves Value**" means, as of any date of determination, the present value of the reasonably estimated future net revenues, discounted at a rate of 9% per annum, from forecasted sales of Inventory during the remaining expected economic lives of the reserves related thereto.

"**Security Agreement**" means that certain Security Agreement, dated as of even date herewith, by the Loan Parties in favor of Administrative Agent, for the benefit of the Lenders, granting Liens and a security interest on each Loan Party's personal property constituting Collateral (as defined therein) in favor of Administrative Agent to secure the Indebtedness, as such agreement may be amended, modified, supplemented, restated or replaced from time to time.

"**Security Instruments**" means the Guaranty Agreement, the Security Agreement, the Mortgages, and each account control agreement, deed of trust, collateral assignment, and other agreement or instrument described or referred to in **Exhibit C** attached hereto, and any and all other agreements or instruments now or hereafter executed and delivered by any Loan Party to provide security for or guarantee the payment or performance of the Indebtedness, the Loans, this Agreement or any other Loan Document, as such agreements or instruments may be amended, modified, supplemented, restated or replaced from time to time.

"**Specified Equity Contribution**" means an equity contribution to, or the cash proceeds of an issuance of common Equity Interests (other than Disqualified Stock) of the Borrower, in each case, (a) received by the Borrower in cash during the applicable Cure Period and on or prior to the applicable Cure Deadline and (b) designated in writing to the Administrative Agent within five (5) Business Days of the receipt thereof as being a "Specified Equity Contribution".

"**Specified Property**" means the Property described on Schedule 5 hereto.

"**Stonebriar**" means Stonebriar Commercial Finance LLC, a Delaware limited liability company.

"**Stonebriar Sale-Leaseback Transaction**" means a Sale-Leaseback between any Loan Party and Stonebriar.

"**subsidiary**" means, with respect to any Person (the "**parent**") at any date, (i) any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, or (ii) any other Person of which (A) Equity

Interests representing more than 50% of the equity or more than 50% of the ordinary voting power (irrespective of whether or not at the time Equity Interests of any other class or classes in such Person shall have or might have voting power by reason of the happening of any contingency) are, or (B) in the case of a partnership, any general partnership interests are, in each case, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"**Subsidiary**" means any subsidiary of the Borrower.

"**Swap Agreement**" means any "swap" within the meaning of Section 1a(47) or Section 2(e) of the Commodity Exchange Act entered into with a Person whose long term senior unsecured debt rating is BBB-/Baa3 or higher by S&P or Moody's, respectively, (or their equivalent) and includes any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; *provided, however,* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of any Loan Party shall be a Swap Agreement.

"**Swap Termination Value**" means, in respect of any Swap Agreement, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreement, (i) for any date on or after the date such Swap Agreement has been closed out and the termination value determined in accordance therewith, such termination value and (ii) for any date prior to the date referenced in clause (i), the amount determined as the mark-to-market value for such Swap Agreement, as determined by (A) the Borrower in good faith, if no Event of Default has occurred and is continuing or (B) Administrative Agent in good faith, if otherwise.

"**Taxes**" means any and all taxes, assessments, claims and other charges lawfully levied or assessed by any Governmental Authority against, in connection with or otherwise with respect to Borrower, the Sand Facilities or any of the Collateral.

"**Term Cash Collateral Account**" means a deposit account in which Borrower will only deposit identifiable proceeds of Term Priority Collateral that constitute Term Priority Collateral.

"**Term Priority Collateral**" has the meaning assigned to such term in the ABL/Term Intercreditor Agreement.

"**Term SOFR Rate**" means, as of any date of determination, the greater of (a) three and one half percent (3.50%) and (b) the rate reported for the 1 Month CME Term SOFR (as published on the CME Group Benchmark Administration website) for the most current date available preceding the date of determination of the applicable Delayed Draw Term Loan interest rate, or a comparable or successor rate as Administrative Agent in its reasonable discretion determines most closely approximates such rate.

"**Title Company**" means Madison Title Agency (and its issuing agent, if and as applicable), issuing the Title Policy.

"**Title Policy**" means a loan policy of title insurance issued by the Title Company, in form and substance reasonably acceptable to and approved by Administrative Agent (as well as the Borrower and the Title Company), insuring that the Mortgage encumbering each Sand Facility constitutes a valid first priority lien upon each Sand Facility subject to such Mortgage. The Title Policy may be subject only to those exceptions set forth in the Existing Title Policies and any others which Administrative Agent may approve in writing, and must contain endorsements consistent with the Existing Title Policies.

"**Total Debt**" means, as of any date of determination, an amount equal to the total outstanding Debt of the Applicable Reporting Entity and its consolidated subsidiaries, minus the aggregate amount of Cash and Cash Equivalents of the Applicable Reporting Entity and its consolidated subsidiaries.

"**Total Leverage Ratio**" means, as of any date of determination, the ratio of (i) Total Debt to (ii) EBITDA for the four (4) fiscal quarter period most recently ended, in each case calculated based on the Financial Statements most recently delivered pursuant to Section 5(d)(i) or 5(d)(ii), as applicable.

"**Total Other Debt**" means, as of any date of determination, an amount equal to the total outstanding Debt of Applicable Reporting Entity and its consolidated subsidiaries, minus (i) the aggregate amount of Cash and Cash Equivalents of the Applicable Reporting Entity and its consolidated subsidiaries and (ii) the outstanding principal amount of the Loans.

"**Total Outstandings**" means the aggregate Outstanding Amount of all Loans.

"**Transactions**" means, collectively, (i) the negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions hereunder and thereunder, including the borrowing of Loans, (ii) the consummation of the repayment in full of all amounts outstanding under the Existing Credit Agreement, the Stonebriar Sale-Leaseback Transaction in existence immediately prior to the Closing Date and the Fountainhead MLA Documents together with the termination and/or release of all commitments, guarantees and Liens in respect thereof (the "**Refinancing**") and the execution and delivery of all documents and instruments related thereto, and (iii) the payment of costs, fees, expenses and premiums related to the foregoing.

"**Uniform Commercial Code**" means the Uniform Commercial Code as in effect in the State of Texas, or, where applicable to specific Property, any other relevant State.

"**U.S. Economic Sanctions**" has the meaning given to such term in Section 4(i).

"**Wholly-Owned Subsidiary**" means any Subsidiary of which all of the outstanding Equity Interests (other than any directors' qualifying shares mandated by applicable law), on a fully-diluted basis, are owned by the Borrower or one or more of the Wholly-Owned Subsidiaries or are owned by the Borrower and one or more of the Wholly-Owned Subsidiaries.

EXHIBIT B

CLOSING CONDITIONS SCHEDULE

The Initial Lender's obligation to close the Initial Term Loan (the "Closing") and to fund the Advance with respect to the Initial Term Loan is subject to Administrative Agent's and Initial Lender's reasonable satisfaction with or waiver of the following conditions, including required deliverables, each at Borrower's expense:

1. Due Diligence. Administrative Agent shall have received and approved all items, documents and information required by Administrative Agent in connection with its credit underwriting and due diligence for the Loans and shall have completed such credit underwriting and due diligence with respect to Borrower, each other Loan Party, the Collateral, and all aspects of the Loans as Administrative Agent deems appropriate, and the results of such underwriting and due diligence are satisfactory to Administrative Agent and the Initial Lender, in their sole discretion.

2. Payments. All costs, expenses and fees to be paid by Borrower on or before the Closing Date shall have been paid in full, including after giving effect to the application of the Good Faith Deposit.

3. No Default; Representations. No Default has occurred and is continuing or would occur as a result of the consummation of the transactions at the Closing. All representations and warranties of each of the Loan Parties in Loan Documents signed by such Loan Party are true, correct, and complete in all material respects.

4. Executed Loan Documents. Administrative Agent shall have received the following Loan Documents, together with all such other documents and instruments as Administrative Agent may require, in each case duly executed and, where appropriate, acknowledged, by all parties thereto, other than Administrative Agent and the Lenders, each in form and substance satisfactory to Administrative Agent:

a. This Agreement;

b. The Initial Term Loan Note;

c. The Security Agreement;

d. The Guaranty;

e. The Reaffirmation of Intercreditor Agreement among the ABL Agent, Administrative Agent, and the persons listed on the signature pages thereto as Grantors;

f. The Unsecured Indemnity Agreement; and

g. A Mortgage for each Sand Facility.

5. Financing Statements. Administrative Agent shall be reasonably satisfied that the Security Instruments listed on Exhibit C will, when properly recorded (or when the applicable financing statements related thereto are properly filed or such other actions needed to perfect are taken) create perfected Liens (subject to Permitted Liens) on all of the Property purported to be encumbered by such Security Instruments.

6. Deliverables. Borrower shall have delivered to Administrative Agent, or Administrative Agent shall otherwise have obtained, and Administrative Agent shall have approved, the following, together with such other information and documentation as Administrative Agent may reasonably require, all at Borrower's expense:

a. Insurance. Evidence that all insurance that Borrower is required to have at Closing has been obtained, is in full force and effect, and complies with the requirements of the Loan Documents.

b. Solvency Certificate. If required by Administrative Agent, a certificate from Borrower, signed by Borrower's chief financial officer or other comparable person certifying to Administrative Agent and the Lenders that, both before and immediately after closing the Initial Term Loan, and giving effect thereto, the Loan Parties, on a consolidated basis, are solvent.

c. KYC. All information requested by Lenders at least five (5) Business Days prior to the Closing Date to verify the representations set forth in Section 4(i) with respect to Borrower and any other Loan Party.

d. Secretary's Certificates. A certificate of the Secretary, an Assistant Secretary or other officer of each Loan Party setting forth (i) resolutions of its board of directors (or comparable governing body) with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and perform its obligations thereunder, (ii) the officers of such Loan Party (y) who are authorized to sign the Loan Documents to which such Loan Party is a party and (z) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the organizational documents of such Loan Party, certified as being true and complete.

e. Existence and Good Standing Certificates. Certificates of the appropriate State agencies with respect to the existence, qualification and good standing of each Loan Party in each jurisdiction where such Loan Party is required to be qualified or in good standing, as applicable, in accordance with Section 5(a).

7. [Intentionally omitted]

8. Environmental. Administrative Agent shall be reasonably satisfied with the environmental condition of the Sand Facilities and such other real property Collateral of the Borrower and the Guarantors and shall have been furnished with all environmental site assessments reports in the possession of Borrower.

9. Due Diligence. Administrative Agent shall have received appropriate UCC search certificates, fixture filing, judgment, tax and county-level real property record search results reflecting no Liens encumbering the Properties of the Loan Parties for each jurisdiction reasonably requested by Administrative Agent, other than those being assigned or released on or prior to the Closing Date or Permitted Liens and bankruptcy and litigation searches.

10. Refinancing. The Refinancing shall have been consummated substantially concurrently with the funding of the Initial Term Loan on the Closing Date. On the Closing Date, after giving effect to the Transactions, none of the Borrower or any of its Subsidiaries shall have any Debt other than the Indebtedness and Permitted Debt.

EXHIBIT C

SECURITY INSTRUMENTS AS OF THE CLOSING DATE

1. Security Agreement.

2. Guaranty Agreement.

3. Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases to be recorded in the Real Property Records of Winkler County, Texas.

4. Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases to be recorded in the Real Property Records of Ward County, Texas.

5. Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases to be recorded in the Real Property Records of Winkler County, Texas.

6. UCC-1 Financing Statement for Atlas Sand Company, LLC, to be filed with the Delaware Secretary of State.

7. UCC-1 Financing Statement for Atlas Sand Employee Company, LLC, to be filed with the Texas Secretary of State.

8. UCC-1 Financing Statement for Atlas Sand Employee Holding Company, LLC, to be filed with the Texas Secretary of State.

9. UCC-1 Financing Statement for Atlas Sand Construction, LLC, to be filed with the Texas Secretary of State.

10. UCC-1 Financing Statement for Atlas Construction Employee Company, LLC, to be filed with the Texas Secretary of State.

11. UCC-1 Financing Statement for OLC Employee Company, LLC, to be filed with the Texas Secretary of State.

12. UCC-1 Financing Statement for Fountainhead Logistics, LLC, to be filed with the Delaware Secretary of State.

13. UCC-1 Financing Statement for Fountainhead Transportation Services, LLC, to be filed with the Delaware Secretary of State.

14. UCC-1 Financing Statement for Fountainhead Logistics Employee Company, LLC, to be filed with the Texas Secretary of State.

15. UCC-1 Financing Statement for OLC Kermit, LLC, to be filed with the Texas Secretary of State.

16. UCC-1 Financing Statement for OLC Monahans, LLC, to be filed with the Texas Secretary of State.

EXHIBIT D

POST-CLOSING MATTERS

Not later than the date that is 30 days following the Closing Date (or such later date as Administrative Agent may agree in its reasonable discretion) the Loan Parties shall have delivered:

1. Control Agreements with respect to each Deposit Account, Securities Account and Commodity Account maintained by the Loan Parties as of the Closing Date (other than Excluded Accounts); and

2. customary collateral access agreements in form and substance reasonably satisfactory to Administrative Agent executed by each of the parties thereto (other than Administrative Agent) from the lessor of each leased property (other than lessors of leases with respect to the Kermit Facility and the Monahans Facility) where a Loan Party maintains original books and records in respect of the Collateral.

Not later than the date that is 15 days following the Closing Date (or such later date as Administrative Agent may agree in its reasonable discretion) the Loan Parties shall have delivered:

1. a Parent Guaranty in the form of Exhibit H hereto executed by Parent Guarantor;

2. a duly completed Annex C to Part II of Exhibit A of the Security Agreement; and

3. a legal opinion of Vinson & Elkins LLP, special counsel to the Loan Parties, in form and substance reasonably satisfactory to Administrative Agent.

Not later than the date that is 90 days following the Closing Date (or such later date as Administrative Agent may agree in its reasonable discretion) the Loan Parties shall have delivered:

1. originals of certificates of title, manufacturer's certificates of origin or other appropriate title documents for all Closing Date Titled Vehicles (as defined in the Security Agreement), together with such executed documents as Administrative Agent may reasonably request to enable Administrative Agent to perfect the Liens in favor of the Administrative Agent on such Collateral.

At Borrower's sole expense, the Borrower shall use commercially reasonable efforts to cause the Title Company to, not later than the date that is 1 day following the Closing Date (or such later date as Administrative Agent may agree in its reasonable discretion), record the Mortgages in favor of Administrative Agent and be unconditionally committed to issue to Administrative Agent a Title Policy with respect to each of (a) the owned property related to the Kermit Facility and (b) the leased property related to the Monahans Facility, in such form and amount and with such endorsements as Administrative Agent may reasonably require, insuring that the Mortgages are in first lien position subject only to Permitted Liens and such recorded easements, covenants, restrictions, encumbrances and other matters of record affecting such properties as approved by Administrative Agent in its reasonable discretion.

EXHIBIT E

DELAYED DRAW TERM LOANS CONDITIONS SCHEDULE

Initial Lender's obligation to fund an Advance with respect to any Delayed Draw Term Loan is subject to Initial Lender's reasonable satisfaction with or waiver of (a) each of the conditions set forth on Exhibit A and (b) each of the following conditions, each at Borrower's expense:

1. No Default; Representations. No Default or Event of Default has occurred and is continuing or would occur as a result of the proposed Advance or from the application of the proceeds therefrom. On each Delayed Draw Funding Date, both immediately before and immediately after giving effect to an Advance of a Delayed Draw Term Loan, all representations and warranties of each of the Loan Parties in Loan Documents signed by such Loan Party are true, correct, and complete in all material respects with the same effect as though such representations and warranties had been made on the date of such Advance (it being understood and agreed that any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects as of such date), except to the extent any such representations and warranties are expressly limited to an earlier date, in which case, such representations and warranties shall continue to be true and correct in all material respects (with duplication of any applicable materiality qualification) as of such specified earlier date.

2. Executed Delayed Draw Term Loan Note. Administrative Agent shall have received an executed Delayed Draw Term Loan Note, duly executed by the Borrower.

3. No Material Adverse Effect. Since December 31, 2022, no Material Adverse Effect has occurred.

EXHIBIT F

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the "Assignor") and the Assignee identified in item 2 below (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignees: _____

3. Borrower: Atlas Sand Company, LLC

4. Administrative Agent: Stonebriar Commercial Finance LLC, as Administrative agent under the Credit Agreement

5. Credit Agreement: The Credit Agreement dated as of July 31, 2023 among Atlas Sand Company, LLC, the Lenders parties thereto and Stonebriar Commercial Finance, LLC, as Administrative Agent

6. Assigned Interest[s]:

Assignor	Assignee	Facility Assigned	Aggregate Amount of Loans for all Lenders	Amount of Loans Assigned	Percentage Assigned of Loans
			$	$	%
			$	$	%
			$	$	%

Effective Date: _____ ___, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____

Name:
Title:

ASSIGNEE[S]

[NAME OF ASSIGNEE]

By: _____
Title:

Consented to and Accepted:

Stonebriar Commercial Finance LLC, as Administrative Agent

By: _____
Name:
Title:

[Atlas Sand Company, LLC, as Borrower

By: _____
Name:
Title:]1

[1] Include if required pursuant to Section 9(e) of the Credit Agreement.

ANNEX 1

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 9(e) of the Credit Agreement (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5(d) thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest and (vii) it is not a Disqualified Lender; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts that have accrued to but excluding the Effective Date and to the Assignee for amounts that have accrued from and after the Effective Date. Notwithstanding the foregoing, Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the Texas.

EXHIBIT G

FORM OF
DELAYED DRAW TERM LOAN PROMISSORY NOTE

Principal: $[●] **Date: [●]**

FOR VALUE RECEIVED, the undersigned **ATLAS SAND COMPANY, LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "**Borrower**"), promises to pay to the order of STONEBRIAR COMMERCIAL FINANCE LLC, a Delaware limited liability company (together with the respective successors,

assigns, and subsequent holders of this Delayed Draw Term Loan Note, "**Lender**"), at 5601 Granite Parkway, Suite 1350, Plano, Texas 75024, or as Lender or the holder hereof may otherwise designate in writing, the principal amount of [●] and No/100 Dollars ($[●])[2] (or so much thereof as shall have been advanced and remain unpaid and outstanding hereunder), with interest (computed on the basis of a 365-day year for the actual number of days elapsed) on the unpaid principal amount hereof from and including the date hereof until paid in full at the rate per annum equal to [●]%[3].

This Delayed Draw Term Loan Note shall be payable in [●] ([●])[4] consecutive monthly installments as follows: [●] ([●])[5] monthly installments of interest only each in the amount of $[●][6] payable on each Payment Day commencing with the Payment Day on [●][7] and continuing on each Payment Day up to and including January 1, 2025; followed by [●] ([●])[8] additional monthly installments of combined principal and interest each in the amount of [●][9] payable on each Payment Day commencing February 1, 2025 and continuing on each Payment Day up to and including August 1, 2030; and then a final installment also payable on August 1, 2030 (the "Stated Maturity Date") equal to $[●][10], together with all other accrued and unpaid interest hereon and all other amounts (if any) then payable hereon or otherwise under the Loan Documents, each such installment to be applied, first, to the payment of interest accrued on the unpaid principal amount hereof to the date of such installment and, second, to the reduction of such unpaid principal amount.[11] All payments hereunder shall be made in lawful money of the United States and in immediately available funds.

This Delayed Draw Term Loan Note is one of the Delayed Draw Term Loan Notes referenced in that certain Credit Agreement, dated as of July 31, 2023 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Borrower, the Lenders from time to time party thereto, and Stonebriar Commercial Finance, LLC, a Delaware limited liability company, as Administrative Agent. Capitalized terms used, but not expressly defined herein that are defined in the Credit Agreement shall have the meanings as set forth in the Credit Agreement.

Borrower shall have the right to voluntarily prepay all or a portion of this Delayed Draw Term Loan Note on any Payment Day, upon thirty (30) days' prior written notice to Administrative Agent, such notice of prepayment being irrevocable unless expressly conditioned upon the occurrence of another transaction, in which case such notice may be revoked in the event such other transaction is not consummated, *provided that* any such prepayment shall be in a minimum principal amount of $1,000,000 (or, if less than $1,000,000, the remaining principal balance of the Delayed Draw Term Loans) and shall be in an integral multiple of $500,000 (such principal amount, the "**Prepayment Amount**"), together with all interest then accrued and unpaid on the principal so prepaid together with the Prepayment Fee (if any) set forth below. Except as otherwise provided in the Credit Agreement (including regularly scheduled payment installments as required by this Delayed Draw Term Loan Note), if Borrower voluntarily prepays or is required to prepay (whether due to permitted acceleration by the Administrative Agent or otherwise) this Delayed Draw Term Loan Note prior to the Stated Maturity Date, Borrower shall pay, on the date of such prepayment (which shall be a Payment Day), a fee (the "**Prepayment Fee**") to Lender in an amount equal to (a) eight percent (8%) of the Prepayment Amount if such prepayment occurs on or prior to December 31, 2024 (b) four percent (4%) of the Prepayment Amount if such prepayment occurs after December 31, 2024 but on or prior to December 31, 2025, (c) three percent (3%) of the Prepayment Amount if such prepayment occurs after December 31, 2025 but on or prior to December 31, 2026 and (d) two percent (2%) of the Prepayment Amount if such prepayment occurs thereafter, provided that the Prepayment Fee shall be charged and paid only to the extent permitted by Applicable Law. Any prepayment pursuant to this paragraph shall be applied to the installments hereof in the inverse order of maturity.

[2] To insert the applicable principal amount

[3] To insert the applicable rate (i.e., the Term SOFR Rate plus 5.95%)

[4] To insert number of months from Delayed Draw Funding Date until the Maturity Date.

[5] To insert number of months from Delayed Draw Funding Date until December 1, 2024.

[6] To insert amount of interest only payments.

[7] To insert first Payment Date occurring after Delayed Draw Funding Date.

[8] To insert number of months from February 1, 2025 until the Maturity Date.

[9] To insert amount of principal and interest payments (to equal 80% of the applicable Delayed Draw Term Loan divided by months remaining until the Maturity Date).

[10] To insert amount of final principal and interest payment (to equal 20% of the applicable Delayed Draw Term Loan).

[11] NTD: If the Note date is after December 31, 2024, there shall be no interest-only period.

Upon the maturity of this Delayed Draw Term Loan Note, the entire unpaid principal amount on this Delayed Draw Term Loan Note, together with all interest, fees and other amounts payable hereon or in connection herewith pursuant to the Loan Documents (the "**Total Obligation**"), shall be immediately due and payable without further notice or demand. In the event Borrower fails to pay in full and in good, immediately available funds the Total Obligation upon the same becoming due and payable (whether at maturity or upon acceleration), then all past due amounts shall bear interest at the Default Rate in accordance with Section 8 of the Credit Agreement, from the due date thereof until all such amounts have been paid in full in good, immediately available funds. If any payment on this Delayed Draw Term Loan Note becomes payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day.

Borrower hereby waives diligence, demand, presentment, protest and notice of any kind, and assents to extensions of the time of payment, release, surrender or substitution of security, or forbearance or other indulgence, without notice. Borrower agrees to pay all amounts under this Delayed Draw Term Loan Note without offset, deduction, claim, counterclaim, defense or recoupment, all of which are hereby waived.

Administrative Agent, Lender, Borrower and any other parties to the Loan Documents intend to contract in strict compliance with applicable usury law from time to time in effect. In furtherance thereof such Persons stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract to pay, for the use, forbearance or detention of money, interest in excess of the maximum amount of interest permitted to be charged by Applicable Law from time to time in effect. Neither Borrower nor any present or future guarantors, endorsers, or other Persons hereafter becoming liable for payment of any Obligation shall ever be liable for unearned interest thereon or shall ever be required to pay interest thereon in excess of the maximum amount that may be lawfully charged under Applicable Law from time to time in effect, and the provisions of this paragraph shall control over all other provisions of the Loan Documents which may be in conflict or apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of any Obligation is accelerated. If (a) the maturity of any Obligation is accelerated for any reason, (b) any Obligation is prepaid and as a result any amounts held to constitute interest are determined to be in excess of the legal maximum, or (c) Lender or any other holder of any or all of the Obligations shall otherwise collect amounts which are determined to constitute interest which would otherwise increase the interest on any or all of the Obligations to an amount in excess of that permitted to be charged by Applicable Law then in effect, then all sums determined to constitute interest in excess of such legal limit shall, without penalty, be promptly applied to reduce the then outstanding principal of the related Obligations or, at Lender's or such holder's option, promptly returned to Borrower upon such determination. In determining whether or not the interest paid or payable, under any specific circumstance, exceeds the maximum amount permitted under Applicable Law, Lender and Borrower (and any other payors thereof) shall to the greatest extent permitted under Applicable Law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread the total amount of interest through the entire contemplated term of this Delayed Draw Term Loan Note in accordance with the amount outstanding from time to time thereunder and the maximum legal rate of interest from time to time in effect under Applicable Law in order to lawfully charge the maximum amount of interest permitted under Applicable Law.

This Delayed Draw Term Loan Note may not be changed, modified or terminated orally, but only by an agreement in writing signed by Borrower and Lender or any holder hereof.

This Delayed Draw Term Loan Note shall be binding upon the successors and assigns of Borrower and inure to the benefit of Lender and its successors, endorsees and assigns; *provided, however,* that Borrower shall not assign this Delayed Draw Term Loan Note or any obligations hereunder without the prior written consent of Lender (such consent to be granted or withheld at Lender's sole discretion), and any purported assignment without such prior written consent shall be null, void and of no effect. If any term or provision of this Delayed Draw Term Loan Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereof shall in no way be affected thereby.

BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS DELAYED DRAW TERM LOAN NOTE AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

THIS DELAYED DRAW TERM LOAN NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF TEXAS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THE PARTIES AGREE THAT ANY ACTION OR PROCEEDING ARISING UNDER OR RELATED TO THIS DELAYED DRAW TERM LOAN NOTE MAY BE COMMENCED IN ANY FEDERAL OR STATE COURT SITTING IN THE EASTERN DISTRICT OF TEXAS AND THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF EACH SUCH COURT AND AGREE NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THE AGREEMENT OR THE SUBJECT MATTER THEREOF OR THE TRANSACTION CONTEMPLATED HEREBY OR THEREBY MAY NOT BE ENFORCED IN OR BY SUCH COURT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS DELAYED DRAW TERM LOAN NOTE OR IN ANY OTHER LOAN DOCUMENT SHALL LIMIT OR RESTRICT LENDER'S RIGHT TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS LOCATED IN THE STATE IN WHICH ANY COLLATERAL IS LOCATED TO THE EXTENT LENDER DEEMS SUCH PROCEEDING NECESSARY OR ADVISABLE TO EXERCISE REMEDIES AVAILABLE UNDER ANY LOAN DOCUMENT. THE PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW**.**

[Signature Page Follows]

IN WITNESS WHEREOF, Borrower has executed or caused this Delayed Draw Term Loan Note to be executed by its duly authorized officer as of the year and day first written above.

BORROWER:

ATLAS SAND COMPANY, LLC,
a Delaware limited liability company

By: _____
Name:John Turner
Title: President and Chief Financial Officer

EXHIBIT H

PARENT GUARANTY AGREEMENT

THIS PARENT GUARANTY AGREEMENT (as it may be amended, restated, supplemented or otherwise modified from time to time, this "**Guaranty**") dated as of August 15, 2023, is made by **ATLAS ENERGY SOLUTIONS INC.**, a Delaware corporation ("**Parent Guarantor**") in favor of **STONEBRIAR COMMERCIAL FINANCE LLC**, a Delaware limited liability company, as administrative agent (in such capacity, "**Administrative Agent**") for the benefit of itself and any one or more other Lenders from time to time party to the Credit Agreement (Administrative Agent and any sub-agent thereof, each Lender, and their respective Affiliates, each a " **Guaranteed Party**" and collectively, the "**Guaranteed Parties**").

PRELIMINARY STATEMENTS

A. On July 31, 2023, Atlas Sand Company, LLC, a Delaware limited liability company (the "**Borrower**"), Administrative Agent and the Initial Lender executed that certain Credit Agreement (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Credit Agreement**") pursuant to which Initial Lender agreed to make extensions of credit to the Borrower for the purposes set forth therein. Capitalized terms used but not defined herein have the respective meanings given to them in the Credit Agreement.

B. Administrative Agent and Initial Lender have required, as a condition to extending credit under the Credit Agreement, that Parent Guarantor execute and deliver this Guaranty to guarantee the payment and performance of the Obligations.

C. Parent Guarantor has determined that valuable benefits will be derived by it as a result of the Credit Agreement and the extensions of credit made by Lenders thereunder.

D. Parent Guarantor has further determined that the benefits accruing to it from the Credit Agreement exceed Parent Guarantor's anticipated liability under this Guaranty.

Accordingly, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Parent Guarantor hereby covenants and agrees in favor of Administrative Agent, for the benefit of the Guaranteed Parties, as follows:

1. Parent Guarantor hereby absolutely, irrevocably and unconditionally guarantees the prompt, complete and full payment when due, no matter how such shall become due, of the Obligations, and further guarantees that Borrower will properly and timely perform the Obligations and other obligations and liabilities of the Loan Parties under the Credit Agreement and other Loan Documents.

2. Parent Guarantor covenants that, so long as any Lender has any Commitment under the Credit Agreement and/or any Obligation remains outstanding under the Credit Agreement or any other Loan Document (other than any contingent indemnification obligation for which no claim has been made), except as otherwise provided in the Credit Agreement or unless Administrative Agent gives its prior written consent to any deviation therefrom, it will fully comply with the conditions, covenants, and agreements set forth in the Credit Agreement and the other Loan Documents which are applicable to Parent Guarantor. Notwithstanding any contrary provision in this Guaranty, Parent Guarantor's maximum liability under this Guaranty is limited, to the extent, if any, required so that its liability is not subject to avoidance under applicable Debtor Relief Laws.

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3. If Parent Guarantor is or becomes liable for any indebtedness owing by Borrower or any other Loan Party to any Guaranteed Party by endorsement or otherwise other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Guaranteed Parties hereunder shall be cumulative of any and all other rights that any Guaranteed Party may ever have against Parent Guarantor. The exercise by Administrative Agent of any right or remedy hereunder or under any other instrument, at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy.

4. All obligations of Parent Guarantor hereunder shall be absolute, irrevocable, and unconditional and continuing irrespective of, and Parent Guarantor hereby knowingly waives any defense arising out of:

(a) any extension, renewal, settlement, compromise, waiver or release in respect of any of the Obligations, by operation of law or otherwise, or any obligation of any other guarantor of any of the Obligations, or any default, failure or delay, willful or otherwise, in the payment or performance of the Obligations;

(b) any lack of validity or enforceability relating to or against the Borrower, any other Loan Party, the Parent Guarantor or any other guarantor of any of the Obligations, for any reason related to the Credit Agreement, any other Loan Document or any other agreement or instrument governing or evidencing any Obligations, or any Applicable Law purporting to prohibit the payment and/or performance of any of the Obligations by the Borrower, any other Loan Party, the Parent Guarantor or any other guarantor of any of the Obligations;

(c) any modification or amendment of or supplement to the Credit Agreement or any other Loan Document;

(d) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument governing or evidencing any Obligations, including any increase or decrease in the amount of any of the Commitments and/or Loans or the rate of interest thereon;

(e) any release, non-perfection or invalidity of any collateral security for any obligation of any Loan Party under the Credit Agreement or any other Loan Document or any obligations of any other guarantor of any of the Obligations, any amendment or waiver of, or consent to departure from, any other guaranty or support document, any exchange, release or non-perfection of any collateral security for the Loan Documents or the Obligations, or any action or failure to act by any Guaranteed Party or any Affiliate of a Guaranteed Party with respect to any collateral securing all or any part of the Obligations;

(f) any change in the legal existence, company structure or ownership of the Borrower, any other Loan Party, the Parent Guarantor or any other guarantor of any of the Obligations, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower, any other Loan Party, the Parent Guarantor or any other guarantor of any of the Obligations, or any of their assets or any resulting release or discharge of any obligation of the Borrower, any other Loan Party, the Parent Guarantor or any other guarantor of any of the Obligations;

(g) any present or future law, regulation, decree or order of any jurisdiction (whether of right or in fact) or of any Governmental Authority thereof or any other event purporting to reduce, amend, restructure or otherwise affect any term of any Loan Document or Obligations, other than payment and performance of the Obligations in full;

(h) any other setoff, defense or counterclaim whatsoever (in any case, whether based on contract, tort or any other theory) with respect to the Credit Agreement, any other Loan Document, any other agreement or instrument governing or evidencing any of the Obligations or the transactions contemplated thereby which might constitute a legal or equitable defense available to, or discharge of, the Borrower or any Guarantor, other than payment and performance of the Obligations in full; or

(i) any other act or omission to act or delay of any kind by the Borrower, any other Loan Party, any other guarantor of any of the Obligations, any Guaranteed Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of Parent Guarantor's obligations hereunder, other than payment and performance of the Obligations in full;

in each case to the extent permitted by Applicable Law, and except in each case to the extent that any written amendment, settlement, compromise, waiver or release expressly modifies or terminates the obligations of Parent Guarantor in accordance with the terms hereof.

5. In the event of the occurrence of an Event of Default by the Borrower or any other Loan Party under Section 7(a) of the Credit Agreement with respect to the failure to pay the Indebtedness, or any part thereof, when such Indebtedness becomes due, either by its terms or as the result of the exercise of any power to accelerate, Parent Guarantor shall, on demand, and without further notice of dishonor and without any notice having been given to Parent Guarantor previous to such demand of the acceptance by Guaranteed Parties, and without any notice having been given to Parent Guarantor previous to such demand of the creating or incurring of such Indebtedness, pay the amount due thereon to Administrative Agent for the benefit of the Guaranteed Parties as set forth in the Credit Agreement. It shall not be necessary for any Guaranteed Party, in order to enforce such payment by Parent Guarantor, first, to institute suit or exhaust its remedies against the Borrower, any other Guarantor or others liable on such Indebtedness, to have the Borrower joined with Parent Guarantor in any suit brought under this Guaranty or to enforce its rights against any collateral security which shall ever have been given to

secure such indebtedness; *provided*, *however*, that in the event Administrative Agent on behalf of Guaranteed Parties elects to enforce and/or exercise any remedies it may possess with respect to any collateral security for the Indebtedness prior to demanding payment from Parent Guarantor, Parent Guarantor shall nevertheless be obligated hereunder for any and all sums still owing to Guaranteed Parties on the Indebtedness and not repaid or recovered incident to the exercise of such remedies.

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6. Notice to Parent Guarantor of the acceptance of this Guaranty and of the making, renewing or assignment of the Obligations and each item thereof are hereby expressly and knowingly waived by Parent Guarantor.

7. Each payment on the Indebtedness shall be deemed to have been made by the Borrower unless express written notice is given to Administrative Agent at the time of such payment that such payment is made by Parent Guarantor as specified in such notice.

8. If all or any part of the Obligations at any time is secured, Parent Guarantor agrees that the Administrative Agent and/or Guaranteed Parties may at any time and from time to time, in their discretion and with or without valuable consideration, allow substitution or withdrawal of collateral or other security and release collateral or other security or compromise or settle any amount due or owing under the Credit Agreement or any other Loan Document or amend or modify in whole or in part, in accordance with the terms thereof, the Credit Agreement or any other Loan Document executed in connection with same without impairing or diminishing the obligations of Parent Guarantor hereunder, except as otherwise expressly provided therein. Parent Guarantor further agrees that if any Loan Party executes in favor of Administrative Agent any collateral agreement, mortgage or other security instrument, the exercise by Administrative Agent of any right or remedy thereby conferred on Administrative Agent shall be wholly discretionary, and that the exercise or failure to exercise any such right or remedy shall in no way impair or diminish the obligation of Parent Guarantor hereunder. Parent Guarantor further agrees that Administrative Agent shall not be liable for its failure to use diligence in the collection of the Obligations (other than in the case of Administrative Agent's gross negligence or willful misconduct) or in preserving the liability of any person liable for the Obligations, and Parent Guarantor hereby waives presentment for payment and notice of nonpayment, dishonor or protest (including notice of acceleration), and diligence in bringing suits against any Person liable on the Obligations, or any part thereof.

9. Parent Guarantor agrees that Administrative Agent (at the direction of the Required Lenders in their discretion), may (i) bring suit against all guarantors (including, without limitation, Parent Guarantor hereunder) of any of the Obligations jointly and severally or against any one or more of them, (ii) compound or settle with any one or more of such guarantors for such consideration as Lenders may deem proper, and (iii) release one or more of such guarantors from liability hereunder, and that no such action shall impair the rights of the Guaranteed Parties to collect the Obligations (or the unpaid balance thereof) from other such guarantors of any of the Obligations, or any of them, not so sued, settled with or released; *provided* that Administrative Agent may not take the actions described in clauses (i) and (ii) above unless an Event of Default shall have occurred and be continuing. Parent Guarantor agrees, however, that nothing contained in this paragraph, and no action by Administrative Agent permitted under this paragraph, shall in any way affect or impair the rights or obligations of such guarantors among themselves.

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10. The representations and warranties in the Credit Agreement, to the extent applicable to Parent Guarantor, are incorporated herein by reference, the same as if stated verbatim herein as representations and warranties made by Parent Guarantor, and Parent Guarantor represents and warrants as of the Closing Date and as of each Delayed Draw Funding Date that each of such representations and warranties are true and correct in all material respects, except that (x) to the extent that such representations and warranties are expressly limited to an earlier date, such representations and warranties shall continue to be true and correct in all material respects as of such specified earlier date and (y) to the extent that any such representation and warranty is qualified by materiality, such representation and warranty (as so qualified) shall continue to be true and correct in all respects. Parent Guarantor further represents and warrants to the Guaranteed Parties that, as of the Closing Date and as of each Delayed Draw Funding Date, (i) Parent Guarantor is a corporation, limited liability company or limited partnership, as applicable, duly organized and validly existing under the laws of the jurisdiction of its incorporation or formation; (ii) Parent Guarantor possesses all requisite authority and power to authorize, execute, deliver and comply with the terms of this Guaranty; (iii) this Guaranty has been duly authorized and approved by all necessary action on the part of Parent Guarantor and constitutes a legal, valid and binding obligation of Parent Guarantor enforceable in accordance with its terms, except as (a) the enforcement thereof may be limited by applicable Debtor Relief Laws, and (b) the availability of remedies may be limited by equitable principles of general applicability; (iv) the execution, delivery and compliance by Parent Guarantor with this Guaranty do not violate any agreement, instrument, Applicable Laws, or order applicable to Parent Guarantor in any material respect; (v) no approval or consent of any person or entity, including but not limited to any court or Governmental Authority, or any filing or registration of any kind is required for the authorization, execution, delivery or compliance by Parent Guarantor with this Guaranty except (A) such as have been obtained or made and are in full force and effect, and (B) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder and could not reasonably be expected to result in a Material Adverse Effect; and (vi) Parent Guarantor has (a) executed and delivered this Guaranty without reliance on any Guaranteed Party or any information received from any Guaranteed Party and based upon such documents and information it deems appropriate, made an independent investigation of the transactions contemplated hereby and the Borrower, the Borrower's business, assets, operations, prospects and condition, financial or otherwise, and any circumstances which may bear upon such transactions, the Borrower or the obligations and risks undertaken herein with respect to the Obligations; (b) adequate means to obtain from the Borrower on a continuing basis information concerning the Borrower; (c) full and complete access to the Loan Documents and any other documents executed in connection with the Loan Documents; and (d) not relied and will not rely upon any representations or warranties of any Guaranteed Party not embodied herein or any acts heretofore or hereafter taken by any Guaranteed Parties (including but not limited to any review by any Guaranteed Party of the affairs of the Borrower).

11. This Guaranty is for the benefit of each Guaranteed Party, their respective successors and permitted assigns, and in the event of a permitted assignment by a Lender (or its successors or permitted assigns) of the Obligations, or any part thereof, made in accordance with Section 9(e) of the Credit Agreement, the rights and benefits hereunder, to the extent applicable to the Obligations so assigned, may be transferred with such Obligations. This Guaranty is binding upon Parent Guarantor and its successors and assigns; provided that Parent Guarantor may not assign or otherwise transfer any of its obligations hereunder without the prior written consent of Administrative Agent.

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12. No modification, consent, amendment or waiver of any provision of this Guaranty, nor consent to any departure by Parent Guarantor therefrom, shall be effective unless the same shall be in writing and signed by the Parent Guarantor and Administrative Agent, on behalf of Lenders, and then shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Parent Guarantor in any case shall, of itself, entitle Parent Guarantor to any other or further notice or demand in similar or other circumstances. No delay or omission by any Guaranteed Party in exercising any power or right hereunder shall impair any such right or power or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such power preclude other or further exercise thereof, or the exercise of any other right or power hereunder. All rights and remedies of Administrative Agent hereunder are cumulative of each other and of every other right or remedy which Administrative Agent may otherwise have at law or in equity or under any other contract or document, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies of any Administrative Agent.

13. No provision herein or in any promissory note, instrument or any other Loan Document executed by the Borrower or any Guarantor evidencing the Obligations shall require the payment or permit the collection of interest in excess of the highest rate Lenders can legally collect under Applicable Law. If any excess of interest in such respect is provided for herein or in any such promissory note, instrument, or any other Loan Document, the provisions of this paragraph shall govern, and neither the Borrower nor any Guarantor shall be obligated to pay the amount of such interest to the extent that it is in excess of the amount permitted by law. The intention of the parties being to conform strictly to any applicable federal or state usury laws now in force, all promissory notes, instruments and other Loan Documents executed by the Borrower or any Guarantor evidencing the Obligations shall be held subject to reduction to the amount allowed under said usury laws as now or hereafter construed by the courts having jurisdiction.

14. If Parent Guarantor should breach or fail to perform any provision of this Guaranty, Parent Guarantor agrees to pay Guaranteed Parties all reasonable and documented out-of-pocket costs and expenses (including court costs and reasonable attorneys' fees) incurred by Guaranteed Parties in the enforcement hereof and the collection of guaranteed amounts. This Section 14 shall be subject to the Legal Expenses Limitation.

15. (a) The liability of Parent Guarantor under this Guaranty shall in no manner be impaired, affected or released by the insolvency, bankruptcy, making of an assignment for the benefit of creditors, arrangement, compensation, composition or readjustment of any Loan Party, or any proceedings affecting the status, existence or assets of any Loan Party or other similar proceedings instituted by or against any Loan Party and affecting the assets of any Loan Party.

(b) Parent Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations, and neither Parent Guarantor nor any Loan Party shall be relieved of any portion of such Obligations on account of such proceeding. Parent Guarantor will, to the extent not prohibited by law from doing so, permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, for the benefit of Lenders, or allow the claim of Administrative Agent, on behalf of Lenders, of any such interest accruing after the date on which such proceeding is commenced.

(c) In the event that all or any portion of the Obligations is paid by any Loan Party, the obligations of Parent Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Guaranteed Party as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

16. Parent Guarantor understands and agrees that any amounts of Parent Guarantor on account with any Lender may, if an Event of Default has occurred and is continuing, be offset to satisfy the obligations of Parent Guarantor hereunder to the extent such obligations are then due and payable (whether by acceleration of the Obligations or otherwise).

17. Parent Guarantor hereby subordinates and makes inferior any and all indebtedness now or at any time hereafter owed by any Loan Party to Parent Guarantor to the Obligations evidenced by the Credit Agreement and the other Loan Documents and agrees, if an Event of Default shall have occurred and be continuing, to the extent permitted by Applicable Law, not to permit any Loan Party to repay, or to accept payment from any Loan Party of, such indebtedness or any part thereof without the prior written consent of Administrative Agent, on behalf of Lenders. Parent Guarantor further agrees that if any payment is received by Parent Guarantor in contravention of this Section 17, such payment shall, at the request of Administrative Agent, be collected, enforced and received by Parent Guarantor as trustee for Administrative Agent, for the benefit of Lenders, and, while an Event of Default is continuing, shall be paid over to Administrative Agent, for the benefit of Lenders, on account of the Obligations but without reducing or affecting in any manner the liability of Parent Guarantor under the other provisions of this Guaranty, except to the extent of such payment.

18. Parent Guarantor hereby agrees that, to the extent that Parent Guarantor shall have paid more than its proportionate share (calculated on the basis of the maximum liability of Parent Guarantor as determined under Section 2 of this Guaranty, relative to the maximum liability of all Guarantors, as so determined) of any payment made hereunder, Parent Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor which has not paid its proportionate share of such payment. Parent Guarantor's right of contribution shall be subject to the terms and conditions of Section 2, Section 17 and Section 19 of this Guaranty. The provisions of this Section 18 shall in no respect limit the obligations and liabilities of Parent Guarantor to any Guaranteed Party, and Parent Guarantor shall remain liable to Guaranteed Parties for the full amount guaranteed by Parent Guarantor hereunder.

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19. Notwithstanding any payment made by Parent Guarantor hereunder or any set-off or application of funds of Parent Guarantor by any Lender, Parent Guarantor shall not be entitled to be subrogated to any of the rights of any Guaranteed Parties against the Borrower or any Guarantor or any collateral security or guaranty or right of offset held by any Guaranteed Party for the payment of the Obligations, nor shall Parent Guarantor seek or be entitled to seek any indemnity, exoneration, participation, contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by Parent Guarantor hereunder, until all amounts owing to Guaranteed Parties by the Loan Parties on account of the Obligations are paid in full (other than contingent indemnification obligations for which no claim has been made) and the Commitments are terminated (such date, the "**Release Date**"). If any amount shall be paid to Parent Guarantor on account of such subrogation rights at any time prior to the Release Date, such amount shall be held by Parent Guarantor in trust for Administrative Agent for the benefit of Lenders, segregated from other funds of Parent Guarantor, and shall, forthwith upon receipt by Parent Guarantor, be turned over to Administrative Agent in the exact form received by Parent Guarantor (duly endorsed by Parent Guarantor to Administrative Agent, if required), to be applied against the Obligations whether matured or unmatured.

20. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable in any jurisdiction, such provision shall be fully severable, and for purposes of such jurisdiction only this Guaranty shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and in all cases the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Guaranty a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

21. (a) **ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN ANY FEDERAL OR STATE COURT SITTING IN THE EASTERN FEDERAL DISTRICT OF TEXAS, AND, BY EXECUTION AND DELIVERY OF THIS GUARANTY, PARENT GUARANTOR HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. PARENT GUARANTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE GUARANTEED PARTIES FROM OBTAINING JURISDICTION OVER PARENT GUARANTOR IN ANY COURT OTHERWISE HAVING JURISDICTION.**

(b) **PARENT GUARANTOR IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT, CARE OF THE BORROWER, AT THE ADDRESS SPECIFIED IN SECTION 9(j) OF THE CREDIT AGREEMENT OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 9(j) OF THE CREDIT AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING (OR AS SOON THEREAFTER AS IS PROVIDED BY APPLICABLE LAW). NOTHING HEREIN SHALL AFFECT THE RIGHT OF ADMINISTRATIVE AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST PARENT GUARANTOR IN ANY OTHER JURISDICTION.**

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22. **THIS GUARANTY AND THE OTHER LOAN DOCUMENTS COLLECTIVELY REPRESENT THE FINAL AGREEMENT BY PARENT GUARANTOR REGARDING THE MATTERS SET FORTH HEREIN AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF ANY GUARANTEED PARTY AND PARENT GUARANTOR. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG ANY GUARANTEED PARTY AND PARENT GUARANTOR.**

23. **(A) ADMINISTRATIVE AGENT AND PARENT GUARANTOR HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN AND (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES, AND (B) PARENT GUARANTOR HEREBY CERTIFIES THAT NONE OF THE GUARANTEED PARTIES NOR ANY REPRESENTATIVE OR AGENT OR COUNSEL FOR ANY GUARANTEED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT GUARANTEED PARTIES WOULD NOT, IN THE EVENT OF LEGAL ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVERS.**

24. **THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.**

25. This Guaranty may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Guaranty by facsimile or other electronic transmission (e.g., .pdf) shall be effective as delivery of a manually executed counterpart of this Guaranty.

26. This Guaranty shall remain in full force and effect until the Release Date.

[Signature page follows]

EXECUTED and effective as of the date first above written.

PARENT GUARANTOR:

ATLAS ENERGY SOLUTIONS INC.,
a Delaware corporation

By: _____
Name: John Turner
Title: President and Chief Financial Officer

EXHIBIT I

ADDITIONAL DELAYED DRAW TERM LOAN CONDITIONS SCHEDULE

Initial Lender's obligation to fund an Advance with respect to the Additional Delayed Draw Term Loan is subject to the satisfaction or waiver by Initial Lender of each of the following conditions, each at Borrower's expense:

1. No Default; Representations. No Default or Event of Default has occurred and is continuing or would occur as a result of the proposed Advance or from the application of the proceeds therefrom. On the Additional Delayed Draw Funding Date, both immediately before and immediately after giving effect to the Advance of the Additional Delayed Draw Term Loan, all representations and warranties of each of the Loan Parties in Loan Documents signed by such Loan Party are true, correct, and complete in all material respects with the same effect as though such representations and warranties had been made on the date of such Advance (it being understood and agreed that any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects as of such date), except to the extent any such representations and warranties are expressly limited to an earlier date, in which case, such representations and warranties shall continue to be true and correct in all material respects (with duplication of any applicable materiality qualification) as of such specified earlier date.

2. No Material Adverse Effect. Since December 31, 2022 no Material Adverse Effect shall have occurred; *provided*, however, the foregoing condition shall not be required to be satisfied if the Additional Delayed Draw Funding Date shall occur on or prior to the date that is ten (10) Business Days following the First Amendment Effective Date.

3. Executed Additional Delayed Draw Term Loan Note. Administrative Agent shall have received an executed Additional Delayed Draw Term Loan Note, duly executed by the Borrower.

4. Executed Loan Modification Memoranda. Administrative Agent shall have received (i) a signed counterpart of a Memorandum of First Amendment of Deed of Trust and Other Loan Documents pertaining to the Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases, dated as of July 31, 2023, and recorded on August 3, 2023 as Document No. C40794 in the Real Property Records of Winkler County, Texas, in form and substance reasonably acceptable to Administrative Agent and executed and acknowledged by Borrower, (ii) a signed counterpart of a Memorandum of First Amendment of Leasehold Deed of Trust and Other Loan Documents pertaining to the Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases, dated as of July 31, 2023, and recorded on August 3, 2023 as Document No. C40795, in the Real Property Records of Winkler County, Texas, in form and substance reasonably acceptable to Administrative Agent and executed and acknowledged by Borrower, and (iii) a signed counterpart of a Memorandum of First Amendment of Leasehold Deed of Trust and Other Loan Documents pertaining to the Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases, dated as of July 31, 2023, and recorded on August 3, 2023 as Instrument No. 2023-2434 in the Real Property Records of Ward County, Texas, in form and substance reasonably acceptable to Administrative Agent and executed and acknowledged by Borrower.

5. Hercules Acquisition. The Hercules Acquisition shall have been consummated, or shall be consummated substantially concurrently with the Additional Delayed Draw Funding Date, in all material respects in accordance with the terms of the Hercules Acquisition Documents, without amendment, modification or waiver thereof or consent thereunder that could reasonably be expected to be material and adverse to the interests of the Administrative Agent and the Lenders, except as consented to in writing by the Administrative Agent.

6. Hercules Seller Note Documents. The Administrative Agent shall have received fully-executed copies of (i) the Hercules Seller Note and (ii) the Hercules Seller Mortgage, which in each case shall be substantially in the forms attached as exhibits to the Hercules Acquisition Agreement (or otherwise in form and substance reasonably satisfactory to the Initial Lender).

7. Hercules Intercreditor Agreement. The Administrative Agent shall have received counterparts of the Hercules Intercreditor Agreement executed by the Hercules Seller Noteholder, the ABL Agent and the Loan Parties.

8. Addition of New Loan Parties. The Loan Parties shall have delivered to the Administrative Agent:

a. customary joinder documents with respect to each Hercules Subsidiary, in form and substance reasonably acceptable to Administrative Agent which shall be limited to (i) an Assumption Agreement in substantially the form of Annex I to the Security Agreement for each Hercules Subsidiary and (ii) an amendment to the Security Agreement in substantially the form attached thereto as Exhibit H executed by the applicable Loan Party that owns Equity Interests in each such Hercules Subsidiary to confirm the pledge of all of the Equity Interests in each Hercules Subsidiary (and deliver the original stock or other equity certificates, if any, evidencing the Equity Interests in each Hercules Subsidiary, together with an appropriate undated stock power for each such certificate duly executed in blank by the registered owner thereof), in each case to the extent required to be delivered pursuant to Section 5(w) of the Agreement;

b. an amendment to the Unsecured Indemnity Agreement updating the definition of "Liable Parties & Address" therein to include each of the Hercules Subsidiaries;

c. an executed copy of the Hercules Term Loan Mortgage in substantially the form attached as**Exhibit L** to the Agreement;

d. all information requested by Lenders on or prior to February 28, 2024 to verify the representations set forth in Section 4(i) of the Agreement with respect to any Hercules Subsidiary;

e. a certificate of the Secretary, an Assistant Secretary or other officer of each Hercules Subsidiary setting forth (i) resolutions of its board of directors (or comparable governing body) with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and perform its obligations thereunder, (ii) the officers of such Loan Party (y) who are authorized to sign the Loan Documents to which such Loan Party is a party and (z) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the organizational documents of such Loan Party, certified as being true and complete;

f. certificates of the appropriate State agencies with respect to the existence, qualification and good standing of each Hercules Subsidiary in each jurisdiction where such Hercules Subsidiary is required to be qualified or in good standing, as applicable, in accordance with Section 5(a) of the Agreement; and

g. UCC-1 financing statements for each Hercules Subsidiary.

9. Other Conditions. The Administrative Agent shall have received:

a. a certificate duly executed by a Responsible Officer of Borrower certifying that (x) all of the conditions to effecting or consummating the Hercules Acquisition set forth in the Hercules Acquisition Documents have been duly satisfied or waived, and the Hercules Acquisition has been consummated substantially in accordance with the Hercules Acquisition Documents and all applicable laws without amendment, modification or waiver thereof or consent thereunder that could reasonably be expected to be material and adverse to the interests of the Administrative Agent and the Lenders, except as consented to in writing by the Administrative Agent, (y) each of the representations and warranties given by the Parent Guarantor or any Loan Party in any Hercules Acquisition Document is true and correct in all material respects as of the Additional Delayed Draw Funding Date (or as of any earlier date to which such representation and warranty specifically relates); *provided* that such materiality qualifier shall not apply to any representations and warranties to the extent already qualified or modified by materiality or similar concept in the text thereof and (z) Borrower has delivered to the Administrative Agent true, correct and complete copies of any amendment, restatement, material supplement or other material modification to or waiver under each Hercules Acquisition Document (including any such modification accomplished via a side letter or any other document);

b. appropriate UCC search certificates, fixture filing, judgment, tax and county-level real property record search results reflecting no Liens encumbering the Hercules Assets for each jurisdiction reasonably requested by Administrative Agent, other than those being assigned or released on or prior to the Additional Delayed Draw Funding Date or Permitted Liens and bankruptcy and litigation searches; and

c. an opinion of counsel to the Borrower in form, scope and substance reasonably satisfactory to the Administrative Agent regarding the First Amendment and such other matters as shall be reasonably requested by the Administrative Agent.

EXHIBIT J

FORM OF
ADDITIONAL DELAYED DRAW TERM LOAN PROMISSORY NOTE

Principal: $[●] **Date: [●]**

FOR VALUE RECEIVED, the undersigned **ATLAS SAND COMPANY, LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "**Borrower**"), promises to pay to the order of STONEBRIAR COMMERCIAL FINANCE LLC, a Delaware limited liability company (together with the respective successors, assigns, and subsequent holders of this Additional Delayed Draw Term Loan Note, "**Lender**"), at 5601 Granite Parkway, Suite 1350, Plano, Texas 75024, or as Lender or the holder hereof may otherwise designate in writing, the principal amount of [●] and No/100 Dollars ($**[●]**)[12] (or so much thereof as shall have been advanced and remain unpaid and outstanding hereunder), with interest (computed on the basis of a 365-day year for the actual number of days elapsed) on the unpaid principal amount hereof from and including the date hereof until paid in full at the rate per annum equal to [●]%[13].

This Additional Delayed Draw Term Loan Note shall be payable in [●] ([●])**[14]** consecutive monthly installments of combined principal and interest each in the amount of [●]**[15]** payable on each Payment Day commencing [●]**[16]**, [2024] and continuing on each Payment Day up to and including August 1, 2030 (the "Stated Maturity Date"), together with all other accrued and unpaid interest hereon and all other amounts (if any) then payable hereon or otherwise under the Loan Documents, each such installment to be applied, first, to the payment of interest accrued on the unpaid principal amount hereof to the date of such installment and, second, to the reduction of such unpaid principal amount. All payments hereunder shall be made in lawful money of the United States and in immediately available funds.

This Additional Delayed Draw Term Loan Note is the Additional Delayed Draw Term Loan Note referenced in that certain Credit Agreement, dated as of July 31, 2023 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Borrower, the Lenders from time to time party thereto, and Stonebriar Commercial Finance, LLC, a Delaware limited liability company, as Administrative Agent. Capitalized terms used, but not expressly defined herein that are defined in the Credit Agreement shall have the meanings as set forth in the Credit Agreement.

From and after December 31, 2024, Borrower shall have the right to voluntarily prepay all of this Delayed Draw Term Loan Note on any Payment Day, upon thirty (30) days' prior written notice to Administrative Agent, such notice of prepayment being irrevocable unless expressly conditioned upon the occurrence of another transaction, in which case such notice may be revoked in the event such other transaction is not consummated, *provided that* any such prepayment shall be in an amount equal to the remaining principal balance of the Delayed Draw Term Loans (such principal amount, the "**Prepayment Amount**"), together with all interest then accrued and unpaid on the principal so prepaid together with the Prepayment Fee (if any) set forth below. Except as otherwise provided in the Credit Agreement (including regularly scheduled payment installments as required by this Additional Delayed Draw Term Loan Note), if Borrower voluntarily prepays or is required to prepay (whether due to permitted acceleration by the Administrative Agent or otherwise) this Additional Delayed Draw Term Loan Note prior to the Stated Maturity Date, Borrower shall pay, on the date of such prepayment (which shall be a Payment Day), a fee (the "**Prepayment Fee**") to Lender in an amount equal to (a) eight percent (8%) of the Prepayment Amount if such prepayment occurs on or prior to December 31, 2024, (b) four percent (4%) of the Prepayment Amount if such prepayment occurs after December 31, 2024 but on or prior to December 31, 2025, (c) three percent (3%) of the Prepayment Amount if such prepayment occurs after December 31, 2025 but on or prior to December 31, 2026 and (d) two percent (2%) of the Prepayment Amount if such prepayment occurs thereafter, provided that the Prepayment Fee shall be charged and paid only to the extent permitted by Applicable Law. Any prepayment pursuant to this paragraph shall be applied to the installments hereof in the inverse order of maturity.

[12] To insert the applicable principal amount

[13] Rate will be 10.50%; provided, however, that such rate is based on an assumed U.S. 2-Year Treasury constant maturity rate of 4.28% and One-Month CME Term SOFR rate of 5.33%. Should either of such indices be higher (as reported by the Federal Reserve Board of Governor's H.15 release or CME Group Benchmark Administration website, as applicable) on the Business Day prior to the date the Additional Delayed Draw Term Loan is to be made, then the interest rate applicable to the Additional Delayed Draw Term Loan will be adjusted by the greater increase. Should both of such indices be lower (as reported by the Federal Reserve Board of Governor's H.15 release or CME Group Benchmark Administration website, as applicable) on the Business Day prior to the date the Additional Delayed Draw Term Loan is to be made, then the interest rate applicable to the Additional Delayed Draw Term Loan will be adjusted downward by the lesser decrease; provided, however, that in no event will the interest rate applicable to the Additional Delayed Draw Term Loan be less than 10.25%.

[14] To insert number of months from Additional Delayed Draw Funding Date until the Maturity Date.

[15] To insert amount of principal and interest payments.

[16] To insert first day of the month following the Additional Delayed Draw Funding Date.

Upon the maturity of this Additional Delayed Draw Term Loan Note, the entire unpaid principal amount on this Additional Delayed Draw Term Loan Note, together with all interest, fees and other amounts payable hereon or in connection herewith pursuant to the Loan Documents (the "**Total Obligation**"), shall be immediately due and payable without further notice or demand. In the event Borrower fails to pay in full and in good, immediately available funds the Total Obligation upon the same becoming due and payable (whether at maturity or upon acceleration), then all past due amounts shall bear interest at the Default Rate in accordance with Section 8 of the Credit Agreement, from the due date thereof until all such amounts have been paid in full in good, immediately available funds. If any payment on this Additional Delayed Draw Term Loan Note becomes payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day.

Borrower hereby waives diligence, demand, presentment, protest and notice of any kind, and assents to extensions of the time of payment, release, surrender or substitution of security, or forbearance or other indulgence, without notice. Borrower agrees to pay all amounts under this Additional Delayed Draw Term Loan Note without offset, deduction, claim, counterclaim, defense or recoupment, all of which are hereby waived.

Administrative Agent, Lender, Borrower and any other parties to the Loan Documents intend to contract in strict compliance with applicable usury law from time to time in effect. In furtherance thereof such Persons stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract to pay, for the use, forbearance or detention of money, interest in excess of the maximum amount of interest permitted to be charged by Applicable Law from time to time in effect. Neither Borrower nor any present or future guarantors, endorsers, or other Persons hereafter becoming liable for payment of any Obligation shall ever be liable for unearned interest thereon or shall ever be required to pay interest thereon in excess of the maximum amount that may be lawfully charged under Applicable Law from time to time in effect, and the provisions of this paragraph shall control over all other provisions of the Loan Documents which may be in conflict or apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of any Obligation is accelerated. If (a) the maturity of any Obligation is accelerated for any reason, (b) any Obligation is prepaid and as a result any amounts held to constitute interest are determined to be in excess of the legal maximum, or (c) Lender or any other holder of any or all of the Obligations shall otherwise collect amounts which are determined to constitute interest which would otherwise increase the interest on any or all of the Obligations to an amount in excess of that permitted to be charged by Applicable Law then in effect, then all sums determined to constitute interest in excess of such legal limit shall, without penalty, be promptly applied to reduce the then outstanding principal of the related Obligations or, at Lender's or such holder's option, promptly returned to Borrower upon such determination. In determining whether or not the interest paid or payable, under any specific circumstance, exceeds the maximum amount permitted under Applicable Law, Lender and Borrower (and any other payors thereof) shall to the greatest extent permitted under Applicable Law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread the total amount of interest through the entire contemplated term of this Additional Delayed Draw Term Loan Note in accordance with the amount outstanding from time to time thereunder and the maximum legal rate of interest from time to time in effect under Applicable Law in order to lawfully charge the maximum amount of interest permitted under Applicable Law.

This Additional Delayed Draw Term Loan Note may not be changed, modified or terminated orally, but only by an agreement in writing signed by Borrower and Lender or any holder hereof.

This Additional Delayed Draw Term Loan Note shall be binding upon the successors and assigns of Borrower and inure to the benefit of Lender and its successors, endorsees and assigns; *provided, however,* that Borrower shall not assign this Additional Delayed Draw Term Loan Note or any obligations hereunder without the prior written consent of Lender (such consent to be granted or withheld at Lender's sole discretion), and any purported assignment without such prior written consent shall be null, void and of no effect. If any term or provision of this Additional Delayed Draw Term Loan Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereof shall in no way be affected thereby.

BORROWER AND, BY ITS ACCEPTANCE HEREOF, LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS DELAYED DRAW TERM LOAN NOTE AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

THIS ADDITIONAL DELAYED DRAW TERM LOAN NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF TEXAS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THE PARTIES AGREE THAT ANY ACTION OR PROCEEDING ARISING UNDER OR RELATED TO THIS ADDITIONAL DELAYED DRAW TERM LOAN NOTE MAY BE COMMENCED IN ANY FEDERAL OR STATE COURT SITTING IN THE EASTERN DISTRICT OF TEXAS AND THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF EACH SUCH COURT AND AGREE NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THE AGREEMENT OR THE SUBJECT MATTER THEREOF OR THE TRANSACTION CONTEMPLATED HEREBY OR THEREBY MAY NOT BE ENFORCED IN OR BY SUCH COURT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS ADDITIONAL DELAYED DRAW TERM LOAN NOTE OR IN ANY OTHER LOAN DOCUMENT SHALL LIMIT OR RESTRICT LENDER'S RIGHT TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS LOCATED IN THE STATE IN WHICH ANY COLLATERAL IS LOCATED TO THE EXTENT LENDER DEEMS SUCH PROCEEDING NECESSARY OR ADVISABLE TO EXERCISE REMEDIES AVAILABLE UNDER ANY LOAN DOCUMENT. THE PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW**.**

[Signature Page Follows]

IN WITNESS WHEREOF, Borrower has executed or caused this Additional Delayed Draw Term Loan Note to be executed by its duly authorized officer as of the year and day first written above.

BORROWER:

ATLAS SAND COMPANY, LLC,
a Delaware limited liability company

By: _____
Name: John Turner
Title: President and Chief Financial Officer

EXHIBIT K

ADDITIONAL DELAYED DRAW FUNDING DATE POST-CLOSING MATTERS

Not later than the date that is 30 days following the Additional Delayed Draw Funding Date (or such later date as Administrative Agent may agree in its reasonable discretion):

1. the Loan Parties shall have delivered such legal opinions in form, scope and substance reasonably acceptable to the Administrative Agent regarding (i) the Hercules Subsidiaries, (ii) the Hercules Term Loan Mortgage and (iii) such other matters as shall be reasonably requested by the Administrative Agent;

2. the Administrative Agent shall have received a reasonably satisfactory appraisal of the material Hercules Mortgaged Property issued by an appraiser selected and engaged by the Initial Lender;[17] and

3. the Administrative Agent shall have reviewed and be reasonably satisfied with the condition of title to the material Hercules Mortgaged Property.

Not later than the date that is 90 days following the Additional Delayed Draw Funding Date (or such later date as Administrative Agent may agree in its reasonable discretion) the Loan Parties shall have delivered:

1. the Loan Parties shall have delivered Additional Title Policies for the real Property acquired by any Loan Party in connection with the Hercules Acquisition comprising the Hercules Mortgaged Property; provided that the Borrower shall use commercially reasonable efforts to cause the Additional Title Policies to be delivered as soon as reasonably practicable on or following the Additional Delayed Draw Funding Date;

2. Administrative Agent shall have received a "nothing further certificate" with respect to the Mortgaged Property (other than the Hercules Mortgaged Property) showing no encumbrance, lien or other matter, other than the Permitted Liens as of the Closing Date and such other recorded easements, covenants, restrictions, encumbrances and other matters of record as may be approved by Administrative Agent in its reasonable discretion.

3. Administrative Agent shall have received (i) a Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases to be recorded in the Real Property Records of Winkler County, Texas, in form and substance reasonably acceptable to Administrative Agent, executed and acknowledged by Borrower, (ii) a Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases to be recorded in the Real Property Records of Ward County, Texas, in form and substance reasonably acceptable to Administrative Agent, executed and acknowledged by Borrower, and (iii) a Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases to be recorded in the Real Property Records of Winkler County, Texas, in form and substance reasonably acceptable to Administrative Agent and executed and acknowledged by Borrower (collectively, the "**Additional Mortgages**").

4. the Loan Parties shall have delivered a legal opinion in form, scope and substance reasonably acceptable to the Administrative Agent regarding the Additional Mortgages;

5. Administrative Agent shall have received a T-38 endorsement to the Title Policy referencing the First Amendment to Credit Agreement;

[17] NTD: Status and timing of appraisal TBD.

6. Administrative Agent shall have received a TLTA loan policy of title insurance issued in the amount of the Additional Delayed Draw Term Loan in form and substance reasonably acceptable to Administrative Agent, issued by the Title Company with respect to the Mortgaged Property (other than the Hercules Mortgaged Property) and insuring the lien of the Additional Mortgages as first priority lien subject only to exceptions set forth in the Title Policy, other exceptions which would constitute Excepted Liens described in clauses (c) of the definition thereof, and such other recorded easements, covenants, restrictions, encumbrances and other matters and other matters of record as may be approved by Administrative Agent in its reasonable discretion, together with such endorsements and affirmative coverage as Administrative Agent may require;

7. control agreements with respect to each Deposit Account, Securities Account and Commodity Account maintained by the Loan Parties as of the First Amendment Effective Date (other than Excluded Accounts); and

8. originals of certificates of title, manufacturer's certificates of origin or other appropriate title documents for all titled vehicles acquired in connection with the Hercules Acquisition excluding vehicles subject to a capital lease or a purchase money security interest permitted under clause (vi) of the definition of "Permitted Lien"), together with such executed documents as Administrative Agent may reasonably request to enable Administrative Agent to perfect the Liens in favor of the Administrative Agent on such Collateral.

EXHIBIT L

FORM OF HERCULES TERM LOAN MORTGAGE

[Attached]

Exhibit L

Atlas Energy Solutions Inc. to Acquire Hi-Crush Inc., Creating the Largest Proppant Producer in the Country and an Industry Leading Logistics Provider

Austin, TX – February 27, 2024 – Atlas Energy Solutions Inc. (NYSE: AESI) ("Atlas" or the "Company") today announced that it has entered into a definitive agreement with Hi Crush Inc. ("Hi-Crush") to acquire all of Hi-Crush's Permian Basin proppant production assets and North American logistics operations in a transaction valued at $450 million [(1)].

The transaction consideration includes $150 million in up-front cash, $175 million in shares of common stock of AESI and $125 million in deferred cash payments in the form of a Seller's Note. Both the up-front cash consideration and the principal amount of the Seller's Note are subject to revision for customary post-closing adjustments.

Acquisition Highlights

- Combination brings together two of the leading innovators in the Permian proppant space, and two of the largest holders of premium giant open dune sand reserves and resources in the Permian
- Pro forma production capacity expected to be ~28 million tons, with ~80% of pro forma 2024 production capacity contracted, accelerating free cash flow generation and shareholder returns
- Adds ~12 mmtpy of production capacity (~5 million tons in Kermit, TX, proximal to Atlas's existing Kermit facilities and ~7 million tons from OnCore's distributed mining network) [(2)]
- We expect the acquired assets to contribute $110-125 million in Adjusted EBITDA in 2024, which implies on a full run-rate basis, a valuation of approximately 3x 2024 Adjusted EBITDA.
- Broadens Atlas's logistics offering through the addition of Pronghorn, a leading multi-basin provider of proppant logistics and wellsite services
- Estimated to be immediately double-digit accretive to CFPS and EPS [(3)]
- Expected to realize more than $20 million in annual synergies by 2026
- Acquisition maintains low and flexible operating cost structure and a strong margin profile
- Combines Atlas's Delaware Basin-leading logistics offering (Dune Express) with Hi-Crush's Midland Basin-leading logistics offerings (Oncore + Pronghorn) to drive significant operational efficiencies
- The transaction is expected to close before the end of the first quarter of 2024

Bud Brigham, Executive Chairman and CEO of Atlas commented, "This is a great day for Atlas and Hi-Crush, we are thrilled to bring these two great organizations together. Both companies have led the industry's innovations to drive efficiencies in proppant and logistics in different but complementary ways, a testament to the high quality people involved. Combining the teams, their technologies and best practices, as well as their complementary geographical footprint, should compound constructively to the benefit of our shareholders. It also furthers our goal to lead the industry in transitioning the Permian, already the premier producing region in the country, to becoming the most efficient and livable energy manufacturing center in the world."

John Turner, President and CFO of Atlas commented, "Over the years both Atlas and Hi-Crush have invested significant capital in their proppant and logistics businesses to drive efficiency gains for our customers at the well site - Atlas with its Dune Express, high efficiency trucking operations, and autonomous trucking and Hi-Crush with its OnCore distributed mining network and Pronghorn logistics platform. These investments have supported a consolidating industry that has quickly scaled. We look forward to continuing to invest to drive innovation and efficiencies at the well site."

(1) The Transaction excludes Hi-Crush's Northern White Sand mining assets, as well as its extensive rail terminal network in the Northeastern United States
(2) Oncore's distributed mining network of mobile proppant production assets currently includes Oncore #1-7, which are currently producing sand and Oncore #8, which is scheduled to open during the second quarter of 2024.
(3) CFPS = Net income plus depreciation, depletion and amortization divided by shares outstanding ; EPS = Earnings per share.

Dirk Hallen, CEO of Hi-Crush commented, "I'm so proud of all that our team has accomplished over the past several years. I thank our employees for their relentless effort restoring Hi-Crush to a leadership position in our industry and thank our partners at Clearlake Capital Group and Whitebox Advisors for their support. I echo Bud and John's excitement in uniting two of the most innovative players in frac sand under Atlas. There is no doubt that this winning combination will be transformative for our industry, employees, customers, and shareholders."

Colin Leonard, Hi-Crush Board Chairman and Partner at Clearlake Capital Group L.P. added, "This transaction represents an important milestone for Hi-Crush after going through a strategic transformation over the past several years in partnership with Dirk and the broader team. The leadership has driven innovation and growth, as well as transformed the operational footprint of the business to address the evolving needs of our customers. Atlas' investment reflects their conviction in the strategy, and we look forward to all that we will accomplish together."

Pro Forma Estimated 2024 Outlook

The transaction has an effective date of February 29, 2024 and as such, Atlas will begin to include Hi-Crush's financial results in its financial results from March 1, 2024 onwards. The guidance below reflects this partial-year ownership of the Hi-Crush assets and will be impacted by the timing of the completion of the Dune Express and additional Oncore deployments.

On a combined basis, we'll have 28 million tons of available production capacity, increasing to about 29 million tons in 2025 with a full year's contribution and the benefit of these additional Oncore deployments. As our contracted volumes and Permian activity levels remain strong, and completions efficiencies continue to compound proppant usage,

we expect to continue to operate at 85% to 90% utilization going forward. Taking into account Hi-Crush's contracts, we expect our sand prices for 2024 to average between $26-$28 per ton. Assuming just over three quarters of contribution from Hi-Crush, we expect 2024 Adjusted EBITDA to range between $425 to $475 million. We expect total capex for 2024 to be between $335 and $360 million. This includes between $285 and $305 million in growth capex, consisting of $220 million for the construction of the Dune Express, between $25 and $45 million for Oncore deployments and another $40 million attributed to other capex. We are forecasting maintenance capex for 2024 will range between $50 and $55 million.

Financing Details

- Our ABL facility has been amended to, among other things increase the maximum borrowing availability to $125 million. Atlas intends to draw ~$50 million at closing
- Our Stonebriar Term Loan has been amended to, among other things install a new $150 million Acquisition Term Loan to be drawn at closing
- Atlas will use a combination of the above debt facilities to fund the cash component of the up-front purchase price and to add cash to the balance sheet to fund capital expenditures associated with Hi-Crush's near-term investments in Oncore #8 and #9
- The number of shares to be issued to the seller at closing will be 9,711,432, as calculated pursuant to a 10-day volume weighted average share price as defined in the Merger Agreement

Advisors

Piper Sandler & Co. is serving as lead financial advisor to Atlas. Goldman Sachs is also advising Atlas. Vinson & Elkins LLP is serving as legal advisor in association with the transaction.

Moelis & Company LLC is serving as exclusive financial advisor to Hi-Crush. Baker Botts LLP is serving as legal advisor in association with the transaction.

Conference Call

The Company will host a conference call to discuss the transaction along with financial and operational results on Tuesday, February 27, 2024 at 8:00am Central Time (9:00am Eastern Time). Individuals wishing to participate in the conference call should dial (877) 407-4133. A live webcast will be available at https://ir.atlas.energy/. Please access the webcast or dial in for the call at least 10 minutes ahead of the start time to ensure a proper connection. An archived version of the conference call will be available on the Company's website shortly after the conclusion of the call.

The Company will also post an updated investor presentation titled "Hi-Crush Acquisition Presentation", at https://ir.atlas.energy/in the "Presentations" section under "News & Events" tab on the Company's Investor Relations webpage prior to the conference call.

About Atlas Energy Solutions

Our company was founded in 2017 by long-time E&P operators and led by Bud Brigham. Our experience as E&P operators, combined with our unique asset base and focus on using technology to deliver novel solutions to our customers' toughest challenges and mission-critical needs differentiates us as the proppant and logistics provider of choice in the Permian Basin.

Atlas is a leader in the proppant and proppant logistics industry and is currently solely focused on serving customers in the Permian Basin of West Texas and New Mexico, the most active oil and natural gas producing regions in North America. Our Kermit, TX and Monahans, TX facilities are strategically located and specifically designed to maximize reliability of supply and product quality, and our deployment of trucking assets and the Dune Express is expected to drive significant logistics efficiencies.

Our core mission is to maximize value for our stockholders by generating strong cash flow and allocating our capital resources efficiently, including providing a regular and durable return of capital to our investors through industry cycles. Further, we recognize that our long-term profitability is maximized by being good stewards of the environments and communities in which we operate. In our pursuit of this mission, we work to improve the processes involved in the development of hydrocarbons, which we believe will ultimately contribute to providing individuals with access to the energy they need to sustain or improve their quality of life in a clean, safe, and efficient manner. We take great pride in contributing positively to the development of the hydrocarbons that power our lives.

About Hi-Crush

Hi-Crush Inc., together with its subsidiaries, is a fully-integrated provider of proppant and logistics services for hydraulic fracturing operations, offering frac sand production, advanced wellsite storage systems, flexible last mile services, and innovative software for real-time visibility and management across the entire supply chain. Hi-Crush's strategic suite of solutions provides US oil and gas operators and service companies with the ability to build safety, reliability, and efficiency into every completion. Clearlake Capital Group L.P. and Whitebox Advisors LLC are the controlling shareholders of Hi-Crush Inc.

Cautionary Statement Regarding Forward-Looking Statements

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Statements that are predictive or prospective in nature, that depend upon or refer to future events or conditions or that include the words "may," "assume," "forecast," "position," "strategy," "potential," "continue," "could," "will," "plan," "project," "budget," "predict," "pursue," "target," "seek," "objective," "believe," "expect," "anticipate," "intend," "estimate" and other expressions that are predictions of or indicate future events and trends and that do not relate to historical matters identify forward-looking statements. Examples of forward-looking statements include, but are not limited to, statements about the anticipated financial performance of Atlas following the transaction; the expected synergies and efficiencies to be achieved as a result of the transaction; expected accretion to free cash flow, cash flow per share, Adjusted EBITDA and earnings per share; expected production volumes; expectations regarding the leverage and dividend profile of Atlas following the transaction; expansion and growth of Atlas's business; Atlas's plans to finance the transaction; and the receipt of all necessary approvals to close the transaction and the timing associated therewith; our business strategy, our industry, our future operations and profitability, expected capital expenditures and the impact of such expenditures on our performance, statements about our financial position, production, revenues and losses, our capital programs, management changes, current and potential future long-term contracts and our future business and financial performance.

Although forward-looking statements reflect our good faith beliefs at the time they are made, we caution you that these forward-looking statements are subject to a number of

risks and uncertainties, most of which are difficult to predict and many of which are beyond our control. These risks include but are not limited to: the completion of the transaction on anticipated terms and timing or at all, including obtaining any required governmental or regulatory approval and satisfying other conditions to the completion of the transaction; uncertainties as to whether the transaction, if consummated, will achieve its anticipated benefits and projected synergies within the expected time period or at all; Atlas's ability to integrate Hi-Crush's operations in a successful manner and in the expected time period; the occurrence of any event, change, or other circumstance that could give rise to the termination of the transaction; risks that the anticipated tax treatment of the transaction is not obtained; unforeseen or unknown liabilities; unexpected future capital expenditures; potential litigation relating to the transaction; the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events; the effect of the announcement, pendency, or completion of the transaction on the parties' business relationships and business generally; risks that the transaction disrupts current plans and operations of Atlas or Hi-Crush and their respective management teams and potential difficulties in retaining employees as a result of the transaction; the risks related to Atlas's financing of the transaction; potential negative effects of this announcement and the pendency or completion of the transaction on the market price of Atlas's common stock or operating results; commodity price volatility, including volatility stemming from the ongoing armed conflicts between Russia and Ukraine and Israel and Hamas; increasing hostilities and instability in the Middle East; adverse developments affecting the financial services industry; our ability to complete growth projects, including the Dune Express, on time and on budget; the risk that stockholder litigation in connection with our recent corporate reorganization may result in significant costs of defense, indemnification and liability; changes in general economic, business and political conditions, including changes in the financial markets; transaction costs; actions of OPEC+ to set and maintain oil production levels; the level of production of crude oil, natural gas and other hydrocarbons and the resultant market prices of crude oil; inflation; environmental risks; operating risks; regulatory changes; lack of demand; market share growth; the uncertainty inherent in projecting future rates of reserves; production; cash flow; access to capital; the timing of development expenditures; the ability of our customers to meet their obligations to us; our ability to maintain effective internal controls; and other factors discussed or referenced in our filings made from time to time with the U.S. Securities and Exchange Commission ("SEC"), including those discussed under the heading "Risk Factors" in our prospectus, dated September 11, 2023, filed with the SEC pursuant to Rule 424(b) under the Securities Act on September 12, 2023 in connection with our recent corporate reorganization, and any subsequently filed Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

Non-GAAP Financial Measures

This press release includes or references certain forward-looking financial measures not prepared in conformity with generally accepted accounting principles ("GAAP"), including free cash flow, cash flow per share, Adjusted EBITDA and earnings per share. Because Atlas provides these measures on a forward-looking basis, it cannot reliably or reasonably predict certain of the necessary components of the most directly comparable forward-looking GAAP financial measures, such as Gross Profit, Net Income, Operating Income, or any other measure derived in accordance with GAAP. Accordingly, Atlas is unable to present a quantitative reconciliation of such forward-looking, non-GAAP financial measures to the respective most directly comparable forward-looking GAAP financial measures. Atlas believes that these forward-looking, non-GAAP measures may be a useful tool for the investment community in comparing Atlas's forecasted financial performance to the forecasted financial performance of other companies in the industry.

No Offer or Solicitation

This press release is for informational purposes only and does not constitute an offer to sell or the solicitation of an offer to buy any securities, or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

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Exhibit 99.2

Atlas
Energy Solutions

Acquisition of Hi-Crush Inc.

February 27, 2024

NYSE: AESI

Disclaimer

Forward-Looking Statements

This Presentation contains "forward-looking statements" of Atlas Energy Solutions Inc. ("Atlas," the "Company," "AESI," "we," "us" or "our") within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Statements that are predictive or prospective in nature, that depend upon or refer to future events or conditions or that include the words "may," "assume," "forecast," "position," "strategy," "potential," "continue," "could," "will," "plan," "project," "budget," "predict," "pursue," "target," "seek," "objective," "believe," "expect," "anticipate," "intend," "estimate," and other expressions that are predictions of or indicate future events and trends and that do not relate to historical matters identify forward-looking statements. Our forward-looking statements include: statements about the anticipated financial performance of Atlas following the transaction; the expected synergies and efficiencies to be achieved as a result of the transaction; expected accretion to earnings per share; expectations regarding the leverage and dividend profile of Atlas following the transaction; expansion and growth of Atlas's business; Atlas's plans to finance the transaction; the receipt of all necessary approvals to close the transaction and the timing associated therewith; our business strategy, industry, future operations and profitability; expected capital expenditures and the impact of such expenditures on our performance; our recent corporate reorganization transaction (the "Up-C Simplification"); our financial position, production, revenues and losses; our capital programs; management changes; current and potential future long-term contracts; and our future business and financial performance.

Although forward-looking statements reflect our good faith beliefs at the time they are made, we caution you that these forward-looking statements are subject to a number of risks and uncertainties, most of which are difficult to predict and many of which are beyond our control. These risks include, but are not limited to: the completion of the transaction on anticipated terms and timing or at all, including obtaining any required governmental or regulatory approval and satisfying other conditions to the completion of the transaction; uncertainties as to whether the transaction, if consummated, will achieve its anticipated benefits and projected synergies within the expected time period or at all; Atlas's ability to integrate Hi-Crush's operations in a successful manner and in the expected time period; the occurrence of any event, change, or other circumstance that could give rise to the termination of the transaction; risks that the anticipated tax treatment of the transaction is not obtained; unforeseen or unknown liabilities; unexpected future capital expenditures; potential litigation relating to the transaction; the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events; the effect of the announcement, pendency, or completion of the transaction on the parties' business relationships and business generally; risks that the transaction disrupts current plans and operations of Atlas or Hi-Crush and their respective management teams and potential difficulties in retaining employees as a result of the transaction; the risks related to Atlas's financing of the transaction; potential negative effects of this announcement and the pendency or completion of the transaction on the market price of Atlas's common stock or operating results; commodity price volatility, including volatility stemming from geopolitical conflicts and events the ongoing armed conflicts between Russia and Ukraine and Israel and Hamas; increasing hostilities and instability in the Middle East; adverse developments affecting the financial services industry; our ability to complete growth projects, including the Dune Express, on time and on budget; the risk that stockholder litigation in connection with our recent corporate reorganization the Up-C Simplification may result in significant costs of defense, indemnification and liability; changes in general economic, business and political conditions, including changes in the financial markets; transaction costs; actions of OPEC+ to set and maintain oil production levels; the level of production of crude oil, natural gas and other hydrocarbons and the resultant market prices of crude oil; inflation; environmental risks; operating risks; regulatory changes; lack of demand; market share growth; the uncertainty inherent in projecting future rates of reserves; production; cash flow; access to capital; the timing of development expenditures; the ability of our customers to meet their obligations to us; our ability to maintain effective internal controls; and other factors discussed or referenced in our filings made from time to time with the U.S. Securities and Exchange Commission ("SEC"), including those discussed in our prospectus, dated September 11, 2023, filed with the SEC pursuant to Rule 424(b) under the Securities Act of 1933, as amended on September 12, 2023 in connection with our Up-C Simplification, and any subsequently filed Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K.

You are cautioned not to place undue reliance on any forward-looking statements, which speak only as of the date of this Presentation. Should one or more of these risks or uncertainties occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements. All forward-looking statements, expressed or implied, are expressly qualified in their entirety by this cautionary statement. This cautionary statement should also be considered in connection with any subsequent written or oral forward-looking statements that we or persons acting on our behalf may issue. Except as otherwise required by applicable law, we disclaim any duty and do not intend to update any forward-looking statements to reflect events or circumstances after the date of this Presentation.

Reserves

This Presentation includes frac sand reserve and resource estimates based on engineering, economic and geological data assembled and analyzed by our mining engineers, which are reviewed periodically by outside firms. However, frac sand reserve estimates are by nature imprecise and depend to some extent on statistical inferences drawn from available drilling data, which may prove unreliable. There are numerous uncertainties inherent in estimating quantities and qualities of frac sand reserves and non-reserve frac sand deposits and costs to mine recoverable reserves, many of which are beyond our control and any of which could cause actual results to differ materially from our expectations. These uncertainties include: geological and mining conditions that may not be fully identified by available data or that may differ from experience; assumptions regarding the effectiveness of our mining, quality control and training programs; assumptions concerning future prices of frac sand, operating costs, mining technology improvements, development costs and reclamation costs; and assumptions concerning future effects of regulation, including the issuance of required permits and taxes by governmental agencies.

Disclaimer (cont'd)

Trademarks and Trade Names

The Company owns or has rights to various trademarks, service marks and trade names that it uses in connection with the operation of its business. This Presentation also contains trademarks, service marks and trade names of third parties, which are the property of their respective owners. The use or display of third parties' trademarks, service marks, trade names or products in this Presentation is not intended to, and does not imply, a relationship with the Company, or an endorsement or sponsorship by or of the Company. Solely for convenience, the trademarks, service marks and trade names referred to in this Presentation may appear without the ®, TM or SM symbols, but such references are not intended to indicate, in any way, that the Company will not assert, to the fullest extent under applicable law, its rights or the rights of the applicable licensor to these trademarks, service marks and trade names.

Industry and Market Data

This Presentation has been prepared by the Company and includes market data and certain other statistical information from third-party sources, including independent industry publications, government publications, and other published independent sources. Although we believe these third-party sources are reliable as of their respective dates, we have not independently verified the accuracy or completeness of this information. Some data is also based on our good faith estimates, which are derived from our review of internal sources as well as the third-party sources described above. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors. These and other factors could cause results to differ materially from those expressed in these third-party publications. Additionally, descriptions herein of market conditions and opportunities are presented for informational purposes only; there can be no assurance that such conditions will actually occur. Please also see "Forward-Looking Statements" disclaimer above.

Non-GAAP Financial Measures

Adjusted EBITDA, Adjusted EBITDA Margin, Net Debt, and Net Leverage are non-GAAP supplemental financial measures used by our management and by external users of our financial statements such as investors, research analysts and others, in the case of Adjusted EBITDA, to assess our operating performance on a consistent basis across periods by removing the effects of development activities, provide views on capital resources available to organically fund growth projects.

These measures do not represent and should not be considered alternatives to, or more meaningful than, net income, income from operations, net cash provided by operating activities, or any other measure of financial performance presented in accordance with GAAP as measures of our financial performance. Adjusted EBITDA has important limitations as an analytical tool because it exclude some but not all items that affect net income, the most directly comparable GAAP financial measure. Our computation of Adjusted EBITDA and Adjusted EBITDA Margin may differ from computations of similarly titled measures of other companies.

Non-GAAP Measure Definitions:

- We define **Adjusted EBITDA** as net income before depreciation, depletion and accretion, interest expense, income tax expense, stock and unit-based compensation, loss on extinguishment of debt, unrealized commodity derivative gain (loss), and non-recurring transaction costs. Management believes Adjusted EBITDA is useful because it allows management to more effectively evaluate the Company's operating performance and compare the results of its operations from period to period and against our peers without regard to financing method or capital structure. We exclude the items listed above from net income in arriving at Adjusted EBITDA because these amounts can vary substantially from company to company within our industry depending upon accounting methods and book values of assets, capital structures and the method by which the assets were acquired.
- We define **Adjusted EBITDA Margin** as Adjusted EBITDA divided by total sales.
- We define **Net Debt** as total debt, net of discount and deferred financing costs, plus right-of-use lease liabilities, less cash and cash equivalents.
- We define **Net Leverage** as Net Debt divided by Adjusted EBITDA.

Because Atlas provides these Non-GAAP measures on a forward-looking basis, it cannot reliably or reasonably predict certain of the necessary components of the most directly comparable forward-looking GAAP financial measures. Accordingly, Atlas is unable to present a quantitative reconciliation of such forward-looking, non-GAAP financial measures to the respective most directly comparable forward-looking GAAP financial measures.

Atlas's Acquisition of Hi-Crush Creates a Leading Proppant Logistics Provider and the Largest Proppant Producer in North America

Acquisition includes Hi-Crush's Permian Basin proppant production assets & Pronghorn Logistics platform [1]

- **Combines the Proppant Industry's Primary Innovators**
- **Unparalleled Portfolio of Proppant & Logistics Assets**
- **Scale and Asset Quality Drive Exceptional Cost Structure, Margins and Growth Profile**
- **Accelerating Free Cash Flow and Shareholder Returns**

(1) Transaction excludes midwestern mining assets and northeastern terminal assets.

Atlas and Hi-Crush are a Compelling Strategic Fit

Acquisition advances Atlas's goal of logistically advantaging our proppant to every Permian wellhead [1]

Atlas Energy Solutions + HCR

1 Combines the proppant industry's primary innovators, creating a clear leader in proppant logistics

- **Dune Express** drives efficiencies by reducing mileage driven to deliver proppant via truck in the Delaware Basin
- **OnCore distributed mining assets** drive efficiencies, primarily in the Midland Basin, through efficient geographic footprint
- **Drop depot / expanded payload model** reduces total mileage driven by increasing payload per delivery
- Combination of Dune Express, Oncore and Pronghorn establish a highly developed proppant logistics network in the Permian
- Addition of Pronghorn approximately doubles Atlas's active crew count and logistics revenue base

2 Creates a premier portfolio of Permian proppant production assets with unmatched scale

- Significant opportunity for operational synergies through consolidation of **giant open dune reserves (~21 mmtpy of capacity)**
- Expands Atlas's leading Permian proppant acreage position to ~45,365 acres
- Increases Atlas's control of available Permian tier-one giant-open dune sand resources to ~85%
- **OnCore adds ~7mmtpy of distributed mining assets producing damp sand** to Atlas's leading dry sand portfolio
- Expands total production to capacity 28 mmtpy [2], creating the largest proppant producer in North America
- Substantially improved geographic profile; increases the % of Permian rigs within 50-miles of an Atlas facility from 60% to **89%**

3 Scale and asset quality drive exceptional cost structure, margins and growth profile

- Maintains Atlas's strong Adj. EBITDA margins, **40%+** Adj. EBITDA Margins [3] expected after the Dune Express comes online
- Hi-Crush Kermit mines can be tied into the Dune Express to meet or exceed the throughput capacity of the conveyor system
- OnCore provides an additional avenue for growth through the ongoing expansion of its distributed mining network
- Pronghorn brings Atlas its first geographic expansion outside the Permian Basin

4 Highly contracted cash flow, conservative financial profile

- ~80% [4] contracted for 2024 on a pro forma production capacity of ~28 mmtpy [2], with an expanded high-quality customer base
- Initial Net Leverage of ~0.5x [3]; debt expected to be methodically reduced to less than $300 million of total debt by YE2026
- Pro forma liquidity of ~$434 million more than sufficient to fund ongoing growth, increased dividends, and debt paydown

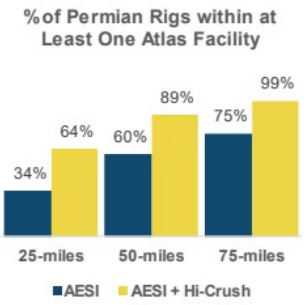
5 Accretive acquisition that accelerates free cash flow and shareholder returns

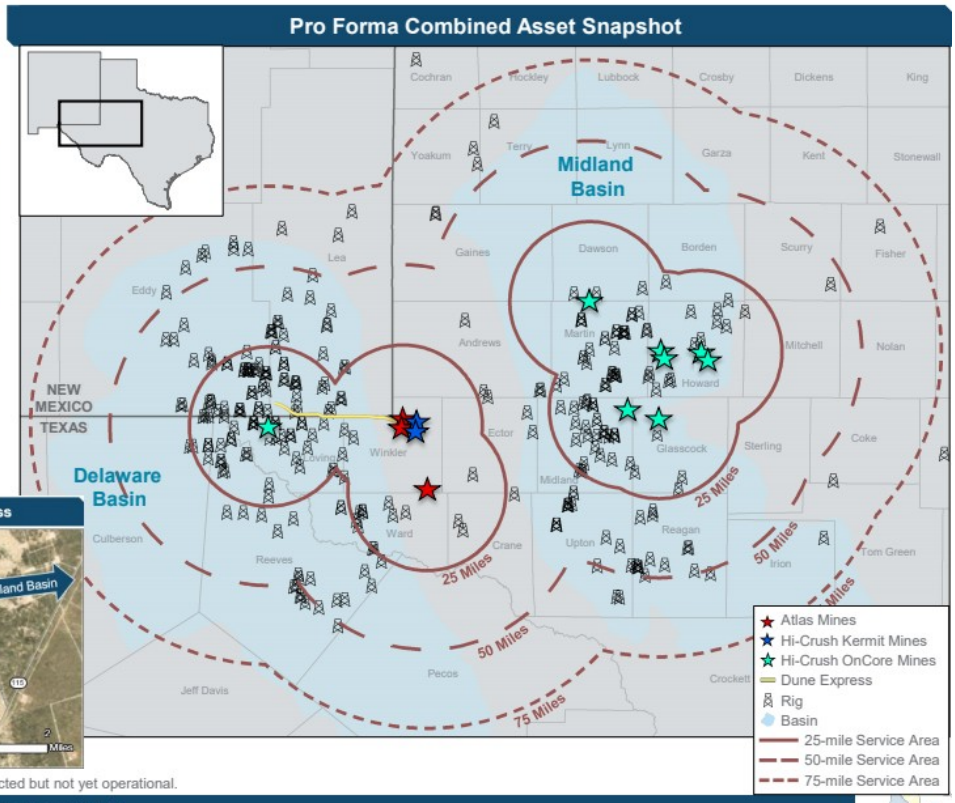
- Compelling transaction value of ~3x Adjusted EBITDA [3]
- Immediately expected to be double-digit accretive to CFPS and EPS [5]
- Accelerates free cash flow and expands capacity for shareholder returns

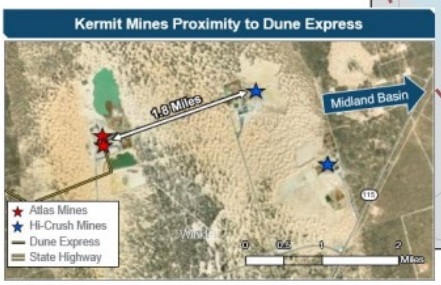
(1) Transaction excludes midwestern mining assets and northeastern terminal assets. (2) Based on annualized pro forma production capacity assuming full contribution from OnCore 8. (3) Non-GAAP financial measure. See disclaimer for definition of non-GAAP measures. (4) Based on realized effective (a) economic contribution & (b) production capacity in 2024. (5) Cash Flow Per Share ("CFPS") defined as (net income plus depreciation and amortization) divided by diluted shares outstanding. Earnings per share ("EPS") defined as net income divided by diluted shares outstanding.

Acquisition Furthers Atlas's Goal of Logistical Superiority, Creating an Advantaged Network of Proppant Production with Superior Logistic Solutions

Adds complementary Midland Basin customer base creating Permian's most extensive proppant supply chain infrastructure







Note: Includes location of OnCore #8 which is contracted but not yet operational.

Transaction Summary

Acquisition Overview	**Atlas to acquire all of Hi-Crush's Permian proppant production and NAM logistics assets:** [1]
HCR Kermit	Two in-basin Permian plants in Kermit, TX add ~5 mmtpy of production capacity
	Kermit mines are capable of producing both dry and damp sand
ONCORE PROCESSING	Eight highly contracted distributed mining units with a ninth unit on order
	~7mmtpy of damp sand capacity today, expanding to ~8 mmtpy by Q3 2024
PRONGHORN NEXSTAGE PROPDISPATCH	Adds ten logistics crews to Atlas's proppant logistics portfolio in the Permian
	Adds four logistics crews in Appalachia and Oklahoma
	Extends Atlas's logistics offering into damp sand logistics
	Acquisition also includes PropDispatch software and 7 NexStage silo systems
Purchase Price and Consideration Mix	**$450 million purchase price, including cash and stock:** — $150 million payable in up-front cash at closing — $125 million in deferred cash consideration secured by a Seller's note — $175 million shares of AESI issued to sellers (~9.7 million shares) [2]
Acquisition Financing Overview	**Source of financing for the $275 million cash consideration for the transaction includes:** — $150 million from a new Acquisition Term Loan (~10.5% rate) under our Stonebriar Credit Facility — $125 million Seller's Note (5% cash rate / 7% PIK rate)
Approvals & Timing	The transaction is expected to be completed during the first quarter of 2024, subject to the satisfaction of certain customary closing conditions, with an effective date of February 29, 2024 All required board, shareholder and regulatory approvals have been obtained

(1) Transaction excludes midwestern mining assets and northeastern terminal assets. (2) Calculated at a 10-day trailing VWAP prior to signing.

Combines the Proppant Industry's Primary Innovators

Strong Strategic Fit Within Existing Offerings

Largest Pure-Play Proppant Supplier in the Permian

Atlas Energy Solutions (16 mmtpy) + HCR (12 mmtpy [1]) = 28 mmtpy of Production Capacity

Efficient and Disruptive Dry and Damp Sand Logistics

Atlas Energy Solutions (11 Crews) + HCR (14 Crews) = 25 Total Crews *for both Dry and Damp Sand (21 in the Permian)*

Highly Contracted Cashflows

Atlas Energy Solutions + HCR = 80% [2] *Pro Forma 2024E* | 50% *Pro Forma 2025E*

Unlocks Significant Synergies

Atlas Energy Solutions + HCR = >$20 million *in annualized synergies expected by 2026*

Acquisition of Hi-Crush Expands the Atlas Advantage

- **Premium Giant Open Dune Geology**
  - — Consolidates the Permian's giant open dune resources
- **Advantaged Water Access**
  - — Giant open dunes hold a natural water access advantage
- **Next Generation Plant Designs**
  - — Adds innovative OnCore distributed mining units advantaged to Midland Basin
  - — Adds two premium giant open dune plants that provide Atlas with synergies
- **Logistically Advantages Atlas to Majority of Permian Wellheads**
  - — Creates a superior geographical network of proppant solutions
  - — Unique state of the art and ever advancing logistics network

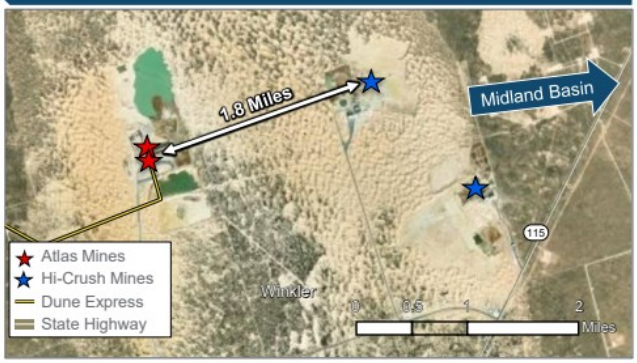
(1) Based on annualized pro forma production capacity assuming full contribution from OnCore 8. (2) Based on realized effective (a) economic contribution & (b) production capacity in 2024.

Transforms Atlas into the Largest Proppant Producer in North America

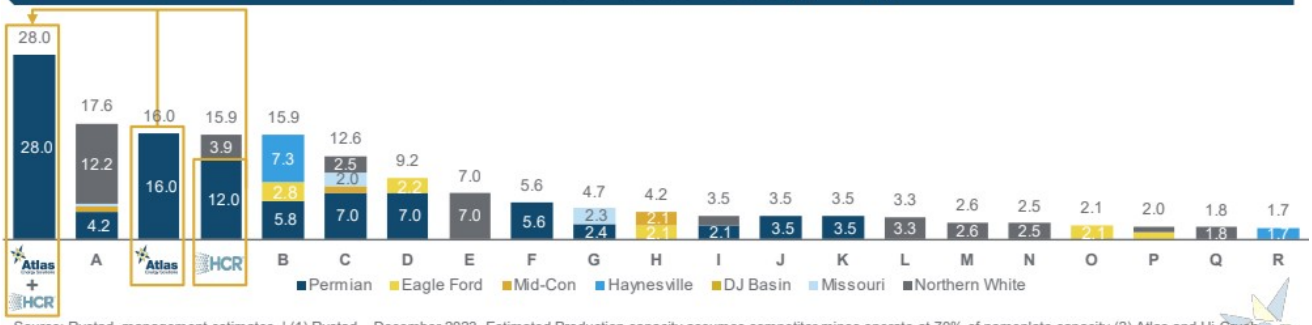
Differentiates Atlas with the scale, throughput capacity & innovative advantaged logistics solutions to match up with growing scale of Permian operators

- The combination creates over 28 mmtpy of pro forma Permian capacity yielding the largest proppant provider across North America
- Strategically adjacent location of Kermit mines to Atlas's existing Kermit mines supports the long-term capacity expansion plans of the Dune Express project slated for 2024
  - Hi-Crush's Kermit mines are located approximately 1.8 miles east of the starting point for the Dune Express
- Distributed mining assets in the Midland Basin add complementary Midland Basin customers benefitting from OnCore's geographic proximity

Kermit Mines Proximity to Dune Express



Pro Forma Combined Production Capacity (mmtpy) (1)(2)



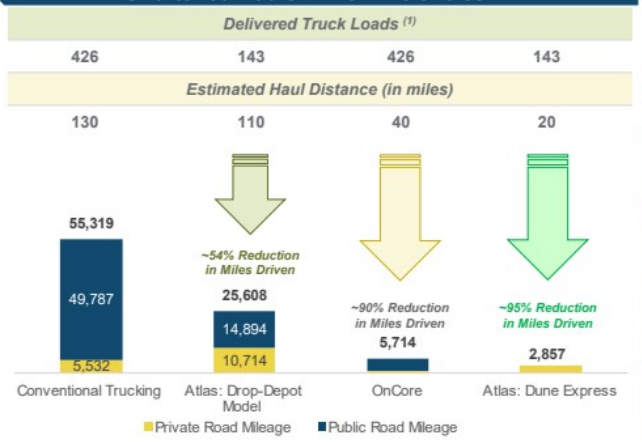
Source: Rystad, management estimates. | (1) Rystad – December 2023. Estimated Production capacity assumes competitor mines operate at 70% of nameplate capacity (2) Atlas and Hi-Crush volumes as provided. Hi-Crush based on annualized pro forma production capacity assuming full contribution from OnCore 8.

The Dune Express, OnCore and Pronghorn Create a Unique and Highly Differentiated Logistics Platform

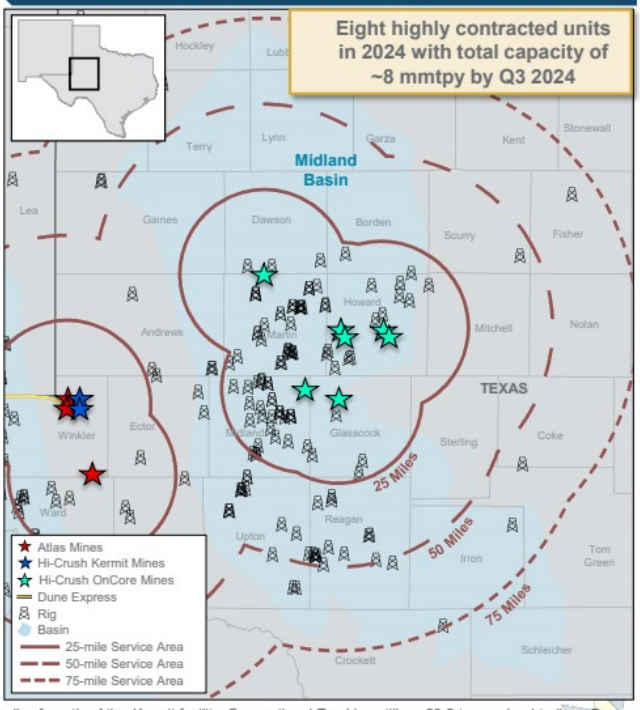
Atlas's significant logistics advantages in the Delaware Basin via the Dune Express & high-capacity trucking are complemented by OnCore and Pronghorn's significant coverage of the Midland Basin

- Although different in approach, the Dune Express and OnCore each positively disrupt the legacy Permian trucking model by reducing road traffic and emissions through:
  - Shortened hauls from the Dune Express in the Delaware
  - Shortened hauls due to OnCore's proximity to wellsite activity
  - Both Dune Express and OnCore reduce emissions by avoiding fuel usage

Atlas's Increased Payloads and Shortened Hauls Drive Efficiencies (1)

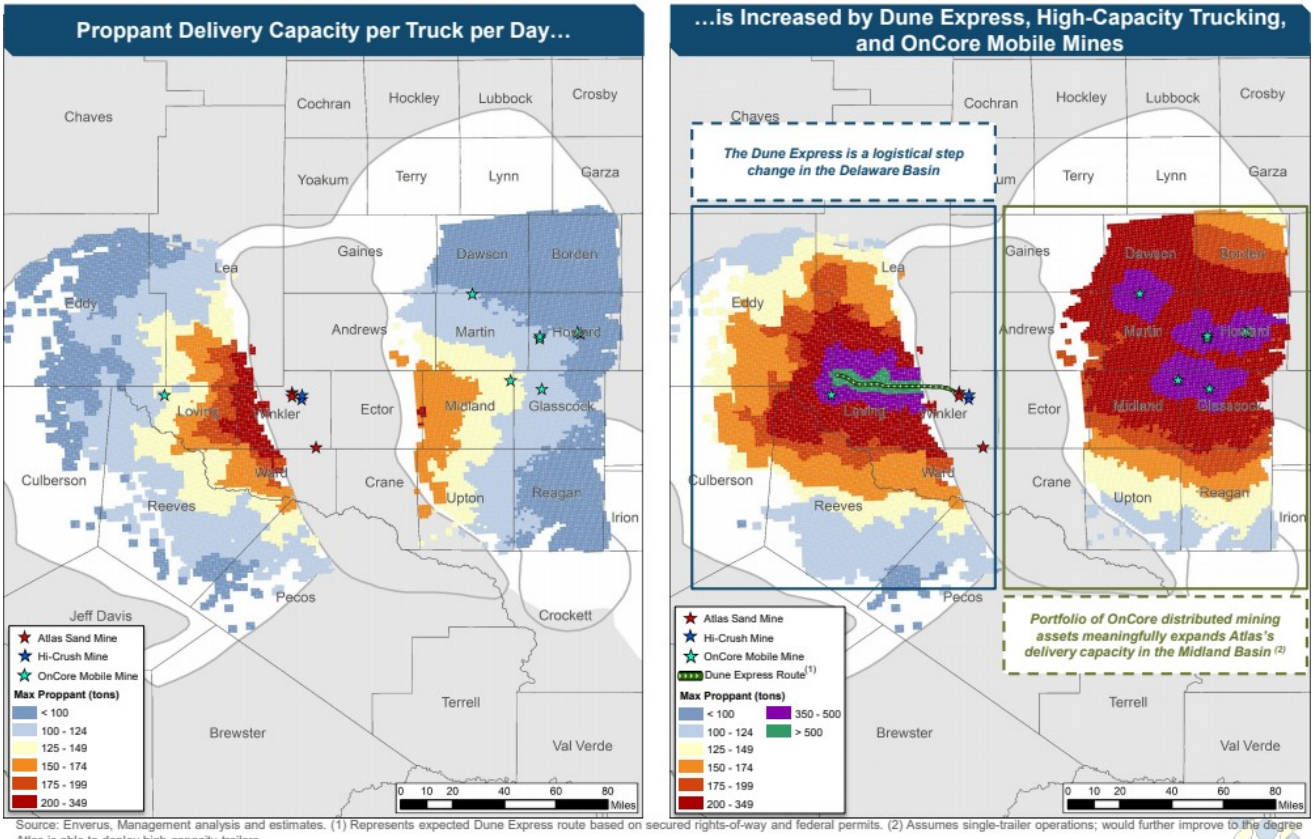


OnCore Midland Basin Operating Footprint (2)



(1) Assumes a Permian well requires 10,000 tons of sand for completion and represents a well ~60 miles from the Atlas Kermit facility. Conventional Trucking utilizes 23.5-ton payload trailers. Drop-Depot and Dune Express utilize high-capacity Atlas double-trailers with 70-ton payloads. (2) Includes location of OnCore 8 which is contracted but not yet operational.

The Dune Express and Distributed Mining Assets Drive Efficiency Gains



Source: Enverus, Management analysis and estimates. (1) Represents expected Dune Express route based on secured rights-of-way and federal permits. (2) Assumes single-trailer operations; would further improve to the degree Atlas is able to deploy high-capacity trailers.

Innovative Logistics Platform – Constructive Disruption to Drive Growth

Historically ~60-70% of logistics costs are labor, impacting opex and reliability. The Dune Express (midstream asset), high-capacity trucking with drop depots and OnCore all drive labor intensity and opex down, along with emissions, while enhancing reliability and safety

Atlas Energy Solutions | Dune Express

+

PRONGHORN™

- Consolidated & integrated logistics platform provide end-to-end services from the mine to the wellsite with dry or damp sand
- Acquisition of Hi-Crush's adjacent giant open dune Kermit plants supplements Atlas existing Kermit production to fully supply the Dune Express deliveries into the Delaware Basin
- High-capacity trailers & multi-trailer configurations enable Atlas to leapfrog industry standard payloads by 3x – 4x
- Superior in-field customer service from Atlas's remote command center delivers the industry's fastest response times
- Enhances optionality and redundancy by providing additional storage options during transport and at the wellsite
- Synergies and cross application of best practices should compound Atlas's performance to the benefit of customers and shareholders

Dune Express Proppant Logistics Infrastructure

High-Efficiency, Expanded Payload Wellsite Delivery Assets

Transaction Enhances Atlas Energy Solutions Investment Profile

- Combines the proppant industry's primary innovators
- Unparalleled portfolio of proppant & logistics assets
- Creates a clear leader in proppant logistics
- Scale and asset quality drive exceptional cost structure, margins and growth profile
- Highly contracted cash flow, conservative financial profile
- Accretive acquisition that accelerates free cash flow and shareholder returns
- Enhances sustainable environmental and social progress ("SESP") leadership

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