As filed with the U.S. Securities and Exchange Commission on February 8, 2023

Registration No. 333-269488

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

Amendment No. 1
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Atlas Energy Solutions Inc.
(Exact name of registrant as specified in its charter)

Delaware	1400	88-0523830
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

5918 W. Courtyard Drive, Suite 500
Austin, Texas 78730
(512) 220-1200
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

John Turner
President and Chief Financial Officer
5918 W. Courtyard Drive, Suite 500
Austin, Texas 78730
(512) 220-1200
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Douglas E. McWilliams Thomas G. Zentner Vinson & Elkins L.L.P. 200 West 6th Street, Suite 2500 Austin, Texas 78701 (512) 542-8400	David J. Miller Monica E. White Latham & Watkins LLP 301 Congress Avenue, Suite 900 Austin, Texas 78701 (737) 910-7300

Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☐
		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 7(a)(2)(B) of the Securities Act. ☐

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the U.S. Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

This Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-269488) is being filed solely to amend each of Item 13 and Item 16 of Part II thereof and to transmit certain exhibits thereto. This Amendment No. 1 does not modify any provision of the preliminary prospectus contained in Part I or Items 14, 15 or 17 of Part II of the Registration Statement. Accordingly, this Amendment No. 1 does not include a copy of the preliminary prospectus.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth an itemized statement of the amounts of all expenses (excluding underwriting discounts and commissions) payable by us in connection with the registration of the common stock offered hereby. With the exception of the SEC registration fee, FINRA filing fee and the NYSE listing fee, the amounts set forth below are estimates.

SEC registration fee	$ 11,020
FINRA filing fee	14,850
NYSE listing fee	*
Accounting fees and expenses	*
Directors' & officers' liability insurance premiums	*
Legal fees and expenses	*
Printing and engraving expenses	*
Transfer agent and registrar fees	*
Miscellaneous	*
Total	$ *

* To be provided by amendment

Item 14. Indemnification of Directors and Officers.

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (referred to as the "DGCL") empowers a corporation to indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in

subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and the indemnification provided for by Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person's heirs, executors and administrators. Section 145 also empowers the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145.

Section 102(b)(7) of the DGCL provides that a corporation's certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation will provide for indemnification of its directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and our bylaws will provide for indemnification of its directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law.

In addition, we will enter into indemnification agreements with each of our directors and officers. These agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. We intend to enter into indemnification agreements with its future directors.

The proposed form of underwriting agreement, to be filed as Exhibit 1.1 to this registration statement provides for indemnification of our directors and officers by the underwriters against certain liabilities arising under the Securities Act or otherwise in connection with this offering.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or person controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 15. Recent Sales of Unregistered Securities.

In connection with our incorporation on February 3, 2022 under the laws of the State of Delaware, we issued 1,000 shares of our Class A common stock to Atlas LLC for an aggregate purchase price of $10.00. These securities were offered and sold by us in reliance upon the exemption from the registration requirements provided by Section 4(a)(2) of the Securities Act. These shares will be redeemed for nominal value in connection with our reorganization.

Further, pursuant to the terms of certain reorganization transactions that will be completed prior to the closing of this offering, as described in further detail under "Corporate Reorganization," we will

issue shares of Class B common stock to certain of the Legacy Owners. Such issuances will not involve any underwriters, underwriting discounts or commissions or a public offering, and we believe that each such issuance will be exempt from registration requirements pursuant to Section 4(a)(2) of the Securities Act.

Item 16. Exhibits and Financial Statement Schedules.

Exhibit Number	Description
+1.1	Form of Underwriting Agreement.
+2.1	Form of Master Reorganization Agreement.
**3.1	Certificate of Incorporation of Atlas Energy Solutions Inc.
*3.2	Form of Amended and Restated Certificate of Incorporation of Atlas Energy Solutions Inc.
**3.3	Bylaws of Atlas Energy Solutions Inc.
*3.4	Form of Amended and Restated Bylaws of Atlas Energy Solutions Inc.
**4.1	Form of Class A Common Stock Certificate.
+4.2	Form of Registration Rights Agreement.
**5.1	Form of Opinion of Vinson & Elkins L.L.P. as to the legality of the securities being registered.
+10.1†	Form of Atlas Energy Solutions Inc. Long Term Incentive Plan.
*10.2	Form of Indemnification Agreement.
+10.3	Form of Stockholders' Agreement.
+10.4	Form of Amended and Restated Limited Liability Company Agreement of Atlas Sand Operating, LLC.
+10.5	ABL Credit Agreement, dated as of December 14, 2018, among Atlas Sand Company, LLC, as borrower, the lender parties thereto and Barclays Bank PLC, as Administrative Agent and Collateral Agent.
+10.6	Limited Waiver and First Amendment to the ABL Credit Agreement, dated as of June 4, 2019, among Atlas Sand Company, LLC, as borrower, the lender parties thereto and Barclays Bank PLC, as Administrative Agent and Collateral Agent.
+10.7	Second Amendment to the ABL Credit Agreement, dated as of October 22, 2019, among Atlas Sand Company, LLC, as borrower, the lender parties thereto and Barclays Bank PLC, as Administrative Agent and Collateral Agent.
+10.8	Third Amendment to the ABL Credit Agreement, dated as of April 13, 2020, among Atlas Sand Company, LLC, as borrower, the lender parties thereto and Barclays Bank PLC, as Administrative Agent and Collateral Agent.
+10.9	Fourth Amendment to the ABL Credit Agreement, dated as of March 23, 2021, among Atlas Sand Company, LLC, as borrower, the lender parties thereto and Barclays Bank PLC, as Administrative Agent and Collateral Agent.
+10.10	Fifth Amendment to the ABL Credit Agreement, dated as of October 20, 2021, among Atlas Sand Company, LLC, as borrower, the lender parties thereto and Barclays Bank PLC, as Administrative Agent and Collateral Agent.

Exhibit Number	Description
**10.11	Credit Agreement, dated October 20, 2021 by and between Atlas Sand Company, LLC, as borrower, and Stonebriar Commercial Finance, LLC as lender.
*10.12#	Mining Lease Agreement, dated as of December 15, 2017, by and between the Sealy & Smith Foundation and Atlas Sand Company, LLC.
*21.1	List of subsidiaries of Atlas Energy Solutions Inc.
**23.1	Consent of Ernst & Young LLP, independent registered public accounting firm to Atlas Energy Solutions Inc.
**23.2	Consent of Ernst & Young LLP, independent registered public accounting firm to Atlas Sand Company, LLC.
**23.3	Consent of Vinson & Elkins L.L.P. (included as part of Exhibit 5.1 hereto).
**23.4	Consent of John T. Boyd Company, independent mining engineers and geologists.
**23.5	Consent of Stacy Hock.
**23.6	Consent of Gayle Burleson.
**23.7	Consent of Mark P. Mills.
**23.8	Consent of Robb L. Voyles.
**23.9	Consent of Gregory M. Shepard.
**23.10	Consent of Douglas G. Rogers.
**23.11	Consent of A. Lance Langford.
**23.12	Consent of Stephen C. Cole.
**24.1	Power of Attorney (included on the signature page of the initial filing of the Registration Statement).
**99.1	John T. Boyd Company Summary of Reserves at December 31, 2021.
**107	Calculation of Filing Fee Table.

* Filed herewith.
** Previously filed.
\+ To be filed by amendment.
† Compensatory plan or arrangement
\# Certain portions of this exhibit have been omitted because they are both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than

the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

For the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

For the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(1) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(2) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(3) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(4) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, State of Texas, on February 8, 2023.

ATLAS ENERGY SOLUTIONS INC.

By: /s/ Ben M. Brigham
Name: Ben M. Brigham
Title: Executive Chairman, Chief Executive Officer and Director

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities indicated below on February 8, 2023.

Name	Title
/s/ Ben M. Brigham Ben M. Brigham	Executive Chairman, Chief Executive Officer and Director (Principal Executive Officer)
/s/ John Turner John Turner	President and Chief Financial Officer (Principal Accounting and Financial Officer)

Exhibit 3.2

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ATLAS ENERGY SOLUTIONS INC.

Atlas Energy Solutions Inc. (the "***Corporation***"), a corporation organized and existing under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (as it currently exists or may hereafter be amended, the "***DGCL***"), hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation (the "***Original Certificate of Incorporation***") was filed with the Secretary of State of the State of Delaware on February 3, 2022.

2. This Amended and Restated Certificate of Incorporation, which restates, integrates and also further amends the Original Certificate of Incorporation, has been declared advisable by the board of directors of the Corporation (the "***Board***"), duly adopted by the stockholders of the Corporation and duly executed and acknowledged by an authorized officer of the Corporation in accordance with Sections 103, 228, 242 and 245 of the DGCL. References to this "***Certificate of Incorporation***" herein refer to this Amended and Restated Certificate of Incorporation, as amended, restated, supplemented and otherwise modified from time to time (including by any Preferred Stock Designation as defined in this Certificate of Incorporation).

3. The Original Certificate of Incorporation is hereby amended, integrated and restated in its entirety to read as follows:

ARTICLE I
NAME

SECTION 1.1. Name. The name of the Corporation is Atlas Energy Solutions Inc.

ARTICLE II
REGISTERED AGENT

SECTION 2.1. Registered Agent. The address of its registered office in the State of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808. The name of the Corporation's registered agent at such address is Corporation Services Company.

ARTICLE III
PURPOSE

SECTION 3.1. Purpose. The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL, and the Corporation shall have the power to perform all lawful acts and activities.

ARTICLE IV
CAPITALIZATION

SECTION 4.1. Number of Shares.

(A) The total number of shares of stock that the Corporation shall have the authority to issue is 2,000,000,000 shares of stock, classified as:

(i) 500,000,000 shares of preferred stock, par value $0.01 per share ("***Preferred Stock***");

(ii) 1,000,000,000 shares of Class A common stock, par value $0.01 per share ("***Class A Common Stock***"); and

(iii) 500,000,000 shares of Class B common stock, par value $0.01 per share ("***Class B Common Stock***" and, together with the Class A Common Stock, the "***Common Stock***").

(B) Subject to the rights of the holders of any outstanding series of Preferred Stock, the number of authorized shares of Preferred Stock, Class A Common Stock or Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding or reserved for the exercise of outstanding options or warrants or conversion of any authorized and outstanding convertible securities) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of stock of the Corporation entitled to vote irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of either Preferred Stock, Class A Common Stock or Class B Common Stock voting separately as a class shall be required therefor. For purposes of this Certificate of Incorporation, beneficial ownership of shares shall be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended.

SECTION 4.2. Provisions Relating to Preferred Stock.

(A) Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such designations and powers, preferences, privileges and rights, and qualifications, limitations and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board as hereafter prescribed (a "***Preferred Stock Designation***").

(B) Subject to any limitations prescribed by law and the rights of any series of the Preferred Stock then outstanding, if any, authority is hereby expressly granted to and vested in the Board to authorize the issuance of Preferred Stock from time to time in one or more series, and with respect to each series of Preferred Stock, to fix and state by the Preferred Stock Designation the designations and powers, preferences, privileges and rights, and qualifications, limitations and restrictions relating to each series of Preferred Stock, including, but not limited to, the following:

(i) whether or not the series is to have voting rights, full, special or limited, or is to be without voting rights, and whether or not such series is to be entitled to vote as a separate series either alone or together with the holders of one or more other classes or series of stock;

(ii) the number of shares to constitute the series and the designation thereof;

(iii) the preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to any series;

(iv) whether or not the shares of any series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable or issuable in the form of cash, notes, securities or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

(v) whether or not the shares of a series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the annual amount thereof, and the terms and provisions relative to the operation thereof;

(vi) the dividend rate, whether dividends are payable in cash, stock of the Corporation or other property, the conditions upon which and the times when such dividends are payable, the

preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;

(vii) the preferences, if any, and the amounts thereof which the holders of any series thereof shall be entitled to receive upon the voluntary or involuntary liquidation, dissolution or winding up of, or upon any distribution of the assets of, the Corporation;

(viii) whether or not the shares of any series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into or exchangeable or redeemable for, the shares of any other class or classes or of any other series of the same or any other class or classes or series of stock, securities or other property of the Corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such exchange or redemption may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and

(ix) such other powers, preferences, privileges and rights, protective provisions and qualifications, limitations and restrictions with respect to any series as may to the Board seem advisable.

(C) The shares of each series of Preferred Stock may vary from the shares of any other series thereof in any or all of the foregoing respects. The Board may increase the number of shares of the Preferred Stock designated for any existing series by a resolution adding to such series authorized and unissued shares of the Preferred Stock not designated for any other series. Unless otherwise provided in the Preferred Stock Designation, the Board may decrease the number of shares of the Preferred Stock designated for any existing series by a resolution subtracting from such series authorized and unissued shares of the Preferred Stock designated for such existing series, and the shares so subtracted shall become authorized, unissued and undesignated shares of the Preferred Stock.

SECTION 4.3. Provisions Relating to Common Stock.

(A) Except as may otherwise be provided in this Certificate of Incorporation, each share of Common Stock shall have identical rights and privileges in every respect. Common Stock shall be subject to the express terms of Preferred Stock and any series thereof. Except as may otherwise be provided in this Certificate of Incorporation or by applicable law, the holders of shares of Common Stock shall be entitled to one vote for each such share on all matters to which stockholders are entitled to vote, the holders of shares of Common Stock shall have the exclusive right to vote for the election of directors and on all other matters upon which stockholders are entitled to vote, and the holders of Preferred Stock shall not be entitled to vote at or receive notice of any meeting of stockholders, other than as provided in any Preferred Stock Designation. Each holder of Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law on all matters put to a vote of the stockholders of the Corporation. Except as otherwise required in this Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, the holders of Common Stock shall vote together as a single class on all actions to be taken by the stockholders of the Corporation (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, the holders of Common Stock and the Preferred Stock shall vote together as a single class).

(B) Notwithstanding the foregoing, except as otherwise required by applicable law, holders of Class A Common Stock or Class B Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) or pursuant to the DGCL.

(C) Subject to the prior rights and preferences, if any, applicable to shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive ratably in proportion to the number of shares of Class A Common Stock held by them such dividends (payable in

cash, stock or otherwise), if any, as may be declared thereon by the Board at any time and from time to time out of any funds of the Corporation legally available therefor. Dividends shall not be declared or paid on the Class B Common Stock unless (i) the dividend consists of shares of Class B Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable or redeemable for shares of Class B Common Stock paid proportionally with respect to each outstanding share of Class B Common Stock and (ii) a dividend consisting of shares of Class A Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable or redeemable for shares of Class A Common Stock on equivalent terms is simultaneously paid to the holders of Class A Common Stock. If dividends are declared on the Class A Common Stock or the Class B Common Stock that are payable in shares of Common Stock, or securities convertible or exercisable into or exchangeable or redeemable for Common Stock in accordance with this Section 4.3(C), the dividends payable to the holders of Class A Common Stock shall be paid only in shares of Class A Common Stock (or securities convertible or exercisable into or exchangeable or redeemable for Class A Common Stock), the dividends payable to the holders of Class B Common Stock shall be paid only in shares of Class B Common Stock (or securities convertible or exercisable into or exchangeable or redeemable for Class B Common Stock), and such dividends shall be paid in the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively (or securities convertible or exercisable into or exchangeable or redeemable for the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively). In no event shall the shares of either Class A Common Stock or Class B Common Stock be split, subdivided, combined or reclassified unless the outstanding shares of the other class shall be concurrently proportionately split, subdivided, combined or reclassified in a manner that maintains the same proportionate equity ownership between the holders of the outstanding Class A Common Stock and Class B Common Stock on the record or effective date for such split, division or combination or reclassification; *provided, however*, that shares of one such class may be split, subdivided, combined or reclassified in a different or disproportionate manner if such split, subdivision, combination or reclassification is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class.

(D) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock or any series thereof, and subject to the right of participation, if any, of the holders of shares of Preferred Stock in any dividends, the holders of shares of Class A Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Class A Common Stock held by them. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. A dissolution, liquidation or winding-up of the Corporation, as such terms are used in this paragraph (D), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange or conveyance of all or a part of the assets of the Corporation.

(E) Shares of Class B Common Stock may be issued or transferred only in connection with the simultaneous issuance or transfer of an identical number of Units (as defined below). Any purported issuance or transfer of shares of Class B Common Stock not accompanied by an issuance or transfer of the identical number of Units shall be null and void and of no force or effect. For this purpose "Unit" means a membership interest of Atlas Sand Operating, LLC, a Delaware limited liability company, or any successor entity, that constitutes a "Unit" as defined in the in the Amended and Restated Limited Liability Company Agreement of Atlas Sand Operating, LLC dated as of [●], 2023, or the limited liability company agreement or other similar document of such successor entity, as the relevant agreement may be further amended, restated, supplemented or otherwise modified from time to time (the "***LLC Agreement***"). The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, such number of shares of Class A Common Stock that shall from time to time be sufficient

to effect the redemption of all outstanding Units that are subject to the Redemption Right (as defined in the LLC Agreement) for shares of Class A Common Stock; provided that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such redemption by delivery of cash in lieu of shares of Class A Common Stock in the amount permitted by and provided in the LLC Agreement or shares of Class A Common Stock which are held in the treasury of the Corporation. All shares of Class A Common Stock that shall be issued upon any such redemption will, upon issuance in accordance with the LLC Agreement, be validly issued, fully paid and non-assessable.

(F) No stockholder shall, by reason of the holding of shares of any class or series of capital stock of the Corporation, have any preemptive or preferential right to acquire or subscribe for any shares or securities of any class or series, whether now or hereafter authorized, which may at any time be issued, sold or offered for sale by the Corporation, unless specifically provided for in a Preferred Stock Designation.

ARTICLE V
DIRECTORS

SECTION 5.1. Term and Classes.

(A) The business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

(B) The directors, other than those who may be elected by the holders of any series of Preferred Stock as specified in the related Preferred Stock Designation, shall be divided, with respect to the time for which they severally hold office, into three classes designated as "***Class I Directors***," "***Class II Directors***" and "***Class III Directors***," as nearly equal in number as is reasonably possible, with the initial term of office of the Class I Directors to expire at the first annual meeting of stockholders following the time at which the initial classification of the Board becomes effective, the initial term of office of the Class II Directors to expire at the second annual meeting of stockholders following the time at which the initial classification of the Board becomes effective, and the initial term of office of the Class III Directors to expire at the third annual meeting of stockholders following the time at which the initial classification of the Board becomes effective, with each director to hold office until such director's successor shall have been duly elected and qualified, subject, however, to such director's earlier death, resignation, disqualification or removal, and the Board shall be authorized to assign members of the Board, other than those directors who may be elected by the holders of any series of Preferred Stock, to such classes. At each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until their successor shall have been duly elected and qualified, subject, however, to such director's earlier death, resignation, disqualification or removal.

SECTION 5.2. Vacancies. Subject to applicable law, the rights of the holders of any series of Preferred Stock then outstanding and the terms of the Stockholders' Agreement among the Corporation and certain of its stockholders, dated as of [●], 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "***Stockholders' Agreement***"), any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, resignation, retirement, disqualification or removal of any director or from any other cause shall, unless otherwise required by law, be filled solely by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of such director's predecessor, or if it is a newly created directorship, shall be included in the class as designated by the Board and shall hold office until the first meeting of

stockholders held after their election for the purpose of electing directors of that class and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal from office. No decrease in the number of authorized directors constituting the Board shall shorten the term of any incumbent director.

SECTION 5.3. Removal. Subject to the rights of the holders of shares of any series of Preferred Stock, if any, to elect additional directors pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) and subject to the terms of the Stockholders' Agreement, (A) prior to the Trigger Date (as defined below), any director may be removed from office with or without cause, upon the affirmative vote of the holders of at least a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors and (B) from and after the Trigger Date, any director may be removed only for cause, upon the affirmative vote of the holders of at least 66 2/3% of the voting power of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors.

SECTION 5.4. Additional Preferred Stock Directors. During any period when the holders of one or more series of Preferred Stock have the separate right to elect additional directors as provided for or fixed pursuant to the provisions of this Certificate of Incorporation (including any Preferred Stock Designation), and upon commencement and for the duration of the period during which such right continues: (A) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such number of directors that the holders of any series of Preferred Stock have a right to elect, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions; and (B) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to such additional director's earlier death, resignation, disqualification or removal. Except as otherwise provided for or fixed pursuant to the provisions of this Certificate of Incorporation (including any Preferred Stock Designation), whenever the holders of one or more series of Preferred Stock having a separate right to elect additional directors cease to have or are otherwise divested of such right pursuant to said provisions, the terms of office of all such additional directors elected by the holders of such series of Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such additional director shall cease to be qualified as a director and shall cease to be a director) and the total authorized number of directors of the Corporation shall be automatically reduced accordingly.

SECTION 5.5 Number. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, if any, and the terms of the Stockholders' Agreement, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by the affirmative vote of a majority of the Whole Board. Unless and except to the extent that the bylaws of the Corporation so provide, the election of directors need not be by written ballot. For purposes of this Certificate of Incorporation, the term "***Whole Board***" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

SECTION 5.6. Committees. The Board may designate and appoint from among its members one or more committees, which may have one or more members, and may designate one or more of its members as alternate members, who may, subject to any limitations imposed by the Board, replace absent or disqualified members at any meeting of such committee. The stockholders of the Corporation shall have no power to appoint or remove directors as members of committees of the Board, nor to abrogate the power of the Board to establish any such committees or the power of any such committee to exercise the powers and authority of the Board.

ARTICLE VI
STOCKHOLDER ACTION

SECTION 6.1. Stockholder Consents.

(A) Prior to the date on which the stockholders party to the Stockholders' Agreement (collectively, the "***Principal Stockholders***") and their respective Affiliates (as such term is defined in Section 10.2) no longer collectively beneficially own more than a majority of the outstanding shares of Common Stock (the

“***Trigger Date***”), any action required or permitted to be taken at any annual meeting or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents, setting forth the action so taken, is or are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and such consent or consents are delivered to the Corporation.

(B) On and after the Trigger Date, subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent of such stockholders.

ARTICLE VII
SPECIAL MEETINGS

SECTION 7.1. Special Meetings. Special meetings of stockholders of the Corporation, and any proposals to be considered at such meetings, may be called and proposed only by the Executive Chairman, the Chief Executive Officer or, pursuant to a resolution adopted by the affirmative vote of a majority of the Whole Board, by the Board; *provided*, *however*, that prior to the Trigger Date, special meetings of the stockholders of the Corporation may also be called by the Secretary of the Corporation at the request of the holders of record of a majority of the outstanding shares of Common Stock. The Board shall fix the date, time and place, if any, of such special meeting. On and after the Trigger Date, subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation shall not have the power to call or request a special meeting of stockholders of the Corporation. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting. The Board may postpone, reschedule or cancel any special meeting of the stockholders previously.

ARTICLE VIII
BYLAWS

SECTION 8.1. Bylaws. In furtherance of, and not in limitation of, the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend or repeal the bylaws of the Corporation. Any adoption, amendment or repeal of the bylaws of the Corporation by the Board shall require the approval of a majority of the Whole Board. Stockholders shall also have the power to adopt, amend or repeal the bylaws of the Corporation; *provided*, *however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the bylaws of the Corporation may be adopted, altered, amended or repealed by the stockholders of the Corporation only (A) prior to the Trigger Date, by the affirmative vote of holders of not less than a majority of the voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class, and (B) on and after the Trigger Date, by the affirmative vote of holders of not less than 66 2/3% in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. Notwithstanding the foregoing, nothing in the bylaws of the Corporation shall be deemed to limit the ability of the parties to the Stockholders’ Agreement to amend, alter or repeal any provision of the Stockholders’ Agreement pursuant to the terms thereof, provided that no amendment to the Stockholders’ Agreement (whether or not such amendment modifies any provision of the Stockholders’ Agreement to which the bylaws of the Corporation are subject) shall amend the bylaws of the Corporation. The bylaws of the Corporation shall not contain any provision inconsistent with this Certificate of Incorporation. No bylaws hereafter made or adopted, nor any repeal of or amendment thereto, shall invalidate any prior act of the Board that was valid at the time it was taken.

ARTICLE IX
LIMITATION OF DIRECTOR AND OFFICER LIABILITY

SECTION 9.1. Limitation of Director and Officer Liability. No director or officer of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, as applicable, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as it now exists or may hereafter be amended. Any amendment, repeal or modification of this Article IX that purports to limit the liability of a director or officer shall be prospective only and shall not affect any limitation on liability of a director or officer, as applicable, for acts or omissions occurring prior to the date of such amendment, repeal or modification.

ARTICLE X
CORPORATE OPPORTUNITY

SECTION 10.1.

(A) Designated Parties (defined below) may own substantial equity interests in other entities and may make investments and enter into advisory service agreements and other agreements from time to time. Certain Designated Parties may also serve as employees, partners, officers or directors of other companies and, at any given time, certain Designated Parties may be in direct or indirect competition with the Corporation and/or its subsidiaries. The Corporation renounces, to the maximum extent permitted by law and in accordance with Section 122(17) of the DGCL, all interest and expectancy that it otherwise would be entitled to have in, and all rights to be offered an opportunity to participate in, any business opportunity that from time to time may be presented to the Designated Parties. To the maximum extent permitted by law, no Designated Party shall have any obligation to refrain from: (A) engaging in or managing the same or similar activities or lines of business as the Corporation or any of its subsidiaries or developing or marketing any products or services that compete (directly or indirectly) with those of the Corporation or any of its subsidiaries; (B) investing in or owning any (public or private) interest in any Person engaged in the same or similar activities or lines of business as, or otherwise in competition with, the Corporation or any of its subsidiaries (including any Designated Party, a "***Competing Person***"); (C) developing a business relationship with any Competing Person; or (D) entering into any agreement to provide any service(s) to any Competing Person or acting as an officer, director, member, manager or advisor to, or other principal of, any Competing Person, regardless (in the case of each of (A) through (D)) of whether such activities are in direct or indirect competition with the business or activities of the Corporation or any of its subsidiaries (the activities described in (A) through (D) are referred to herein as "***Specified Activities***"). To the maximum extent permitted by law, if any Designated Party acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity both for such Designated Party or any of his or her respective Affiliates, on the one hand, and for the Corporation or its subsidiaries, on the other hand, such Designated Party shall have no duty to communicate or offer such transaction or business opportunity to the Corporation or its subsidiaries and such Designated Party may take any and all such transactions or opportunities for itself or offer such transactions or opportunities to any other Person. Notwithstanding the foregoing, this Section 10.1(A) shall not apply to any potential transaction or business opportunity that is expressly offered to a director, officer or employee of the Corporation or its subsidiaries, solely in his or her capacity as a director, officer or employee of the Corporation or its subsidiaries.

(B) Neither the amendment nor repeal of this Article X, nor the adoption of any provision of this Certificate of Incorporation, nor, to the fullest extent permitted by Delaware law, any modification of law, shall eliminate, reduce or otherwise adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

(C) If any provision or provisions of this Article X shall be held to be invalid, illegal or unenforceable as applied to any circumstance or any reason whatsoever, (i) the validity, legality and enforceability of such provisions in any other circumstance and the remaining provisions of this Article X (including, without limitation, each portion of any paragraph of this Article X containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible,

the provisions of this Article X (including, without limitation, each such portion of any paragraph of this Article X containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by applicable law.

(D) To the fullest extent permitted by applicable law, any Person purchasing or otherwise acquiring or holding any interest in any shares of capital stock of the Corporation shall be deemed to have notice of, and to have consented to, the provisions of this Article X. This Article X shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the bylaws of the Corporation or any applicable law.

SECTION 10.2. Definitions. For purposes of this Article X, the following terms have the following definitions:

(A) "***Affiliate***" means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such specified Person; with respect to any Designated Party, an "Affiliate" shall include (i) any Person who is the direct or indirect ultimate holder of "equity securities" (as such term is described in Rule 405 under the Securities Act of 1933, as amended) of such Designated Party, and (ii) any investment fund, alternative investment vehicle, special purpose vehicle or holding company that is directly or indirectly managed, advised or controlled by such Designated Party.

(B) "***control***," including the terms "***controlling***," "***controlled by***" and "***under common control with***," 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 the then-outstanding shares of stock entitled to vote, by contract, or otherwise. A person who is the owner of 20% or more of the then-outstanding shares of stock entitled to vote of the Corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds the then-outstanding shares of stock entitled to vote, in good faith and not for the purpose of circumventing this Section 10.2, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(C) "***Designated Parties***" means the Principal Stockholders and any member of the Board who is not at the time an officer of the Corporation, and their respective Affiliates (other than the Corporation) and all of their respective interests in other entities (existing and future) that participate in the energy industry, as applicable.

(D) "***Person***" means any individual, corporation, partnership, limited liability company, joint venture, firm, association, trust, estate or other entity.

ARTICLE XI
BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS

SECTION 11.1. Business Combinations with Interested Stockholders. The Corporation shall not be governed by Section 203 of the DGCL (or any successor provision thereto) ("***Section 203***"), and the restrictions contained in Section 203 shall not apply to the Corporation, until immediately following the time at which both of the following conditions exist (if ever): (a) Section 203 by its terms would, but for the provisions of this Article XI, apply to the Corporation; and (b) none of the Principal Stockholders own (as defined in Section 203) shares of capital stock of the Corporation representing at least fifteen percent (15%) of the voting power of all the then outstanding shares of capital stock of the Corporation, and the Corporation shall thereafter be governed by Section 203 if and for so long as Section 203 by its terms shall apply to the Corporation.

ARTICLE XII
AMENDMENT OF CERTIFICATE OF INCORPORATION

SECTION 12.1. Amendments.

(A) The Corporation shall have the right, subject to any express provisions or restrictions contained in this Certificate of Incorporation, from time to time, to amend this Certificate of Incorporation or any provision hereof in any manner now or hereafter provided by applicable law, and all rights and powers of any kind conferred upon a director or stockholder of the Corporation by this Certificate of Incorporation or any amendment hereof are subject to such right of the Corporation.

(B) Notwithstanding any other provision of this Certificate of Incorporation (and in addition to any other vote that may be required by applicable law or this Certificate of Incorporation), on and after the Trigger Date, the affirmative vote of the holders of at least 66 2/3% in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to amend, alter or repeal any provision of this Certificate of Incorporation; *provided*, *however*, that the amendment, alteration or repeal of Section 4.1 shall only require the affirmative vote of the holders of a majority in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class.

(C) Notwithstanding any other provision of this Certificate of Incorporation (and in addition to any other vote that may be required by applicable law or this Certificate of Incorporation), prior to, on and after the Trigger Date, the affirmative vote of the holders of at least [75]% in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to (i) amend, alter or repeal any provision of this Certificate of Incorporation to (a) include a provision authorized by Section 362(a)(1) of the DGCL (or any successor provision thereof) in order for the Corporation to become a “public benefit corporation” (as defined in Section 362(a) of the DGCL (or any successor provision thereof)) or (b) otherwise cause or allow the Corporation to become a “public benefit corporation” or similar entity; (ii) merge or consolidate with or into, or convert into, another entity if, as a result of such merger, consolidation or conversion, any class or series of capital stock of the Corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign “public benefit corporation” or similar entity; or (iii) amend, alter or repeal (by merger, consolidation, conversion or otherwise) this Section 12.1(C).

(D) Notwithstanding the foregoing, nothing in this Certificate of Incorporation shall be deemed to limit the ability of the parties to the Stockholders’ Agreement to amend, alter or repeal any provision of the Stockholders’ Agreement pursuant to the terms thereof, provided that no amendment to the Stockholders’ Agreement (whether or not such amendment modifies any provision of the Stockholders’ Agreement to which this Certificate of Incorporation is subject) shall amend this Certificate of Incorporation.

ARTICLE XIII
FORUM SELECTION

SECTION 13.1. Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, the Superior Court of the State of Delaware, or, if the Superior Court of the State of Delaware does not have jurisdiction, the United States District Court for the District of Delaware, in each case, subject to that court having personal jurisdiction over the indispensable parties named defendants therein) shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (A) any derivative action or proceeding brought on behalf of the Corporation,

(B) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (C) any action asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or by the bylaws of the Corporation (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, this Certificate of Incorporation or bylaws of the Corporation or (D) any action asserting a claim governed by the internal affairs doctrine. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XIII. If any provision or provisions of this Article XIII shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XIII (including, without limitation, each portion of any sentence of this Article XIII containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of [●], 2023.

ATLAS ENERGY SOLUTIONS INC.

By: ______________________________
Name:
Title:

Signature Page to Amended and Restated Certificate of Incorporation

Exhibit 3.4

AMENDED AND RESTATED BYLAWS
OF
ATLAS ENERGY SOLUTIONS INC.

Date of Adoption: [●], 2023

ARTICLE I
OFFICES AND RECORDS

SECTION 1.1. Registered Office. The registered office of Atlas Energy Solutions Inc. (the "***Corporation***") in the State of Delaware shall be as set forth in the Certificate of Incorporation of the Corporation, as it may be amended, restated, supplemented and otherwise modified from time to time (the "***Certificate of Incorporation***"), and the name of the Corporation's registered agent at such address is as set forth in the Certificate of Incorporation. The registered office and registered agent of the Corporation may be changed from time to time by the board of directors of the Corporation (the "***Board***") in the manner provided by applicable law.

SECTION 1.2. Other Offices. The Corporation may have such other offices, either within or outside of the State of Delaware, as the Board may designate or as the business of the Corporation may from time to time require.

SECTION 1.3. Books and Records. The books and records of the Corporation may be kept outside the State of Delaware at such place or places as may from time to time be designated by the Board.

ARTICLE II
STOCKHOLDERS

SECTION 2.1. Annual Meetings. If required by applicable law, an annual meeting of the stockholders of the Corporation shall be held for the election of directors at such date, time and place, if any, either within or outside of the State of Delaware, as may be fixed by the Board, the Chairman of the Board, the Chief Executive Officer or the President, as the case may be, and stated in the notice of the meeting or in a duly executed waiver of notice of such meeting. The Board may postpone, recess, adjourn, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board. Any other proper business may be transacted at the annual meeting.

SECTION 2.2. Special Meetings. Special meetings may be called in the manner as specified in the Certificate of Incorporation.

SECTION 2.3. Record Date.

(A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by applicable law, not be more than 60 nor less than ten days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, exchange or redemption of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action without a meeting is fixed by the Board, (i) when no prior action of the Board is required by applicable law, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by applicable law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

SECTION 2.4. Stockholder List. The Corporation shall prepare, no later than the tenth day before every meeting of stockholders, a complete list of stockholders entitled to vote at any meeting of stockholders (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder. Nothing contained in this section shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days ending on the day before the meeting date, either on a reasonably accessible electronic network (*provided* that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. Except as otherwise required by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of the stockholders.

SECTION 2.5. Notice of Meeting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, notice shall be given not less than ten days nor more than 60 days before the date of the meeting, to each stockholder of record entitled to vote at such meeting. The notice shall specify (A) the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), (B) the place, if any, date and time of such meeting, (C) the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, (D) in the case of a special meeting, the purpose or purposes for which such meeting is called and (E) such other information as may be required by applicable law or as may be deemed appropriate by the Board, the Chairman of the Board, the Chief Executive Officer or the Secretary of the Corporation. If the stockholder list referred to in Section 2.4 of these Bylaws is made accessible on an electronic network, the notice of meeting must indicate how the stockholder list can be accessed. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his or her address as it appears on the stock transfer books of the Corporation. The Corporation may also provide stockholders with notice of a meeting including by electronic transmission in accordance with the requirements of Section 232 of the General Corporation Law of the State of Delaware (the "***DGCL***"). Such further notice shall be given as may be required by applicable law. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the notice of meeting.

SECTION 2.6. Quorum and Adjournment of Meetings.

(A) Except as otherwise required by applicable law, the Certificate of Incorporation or these Bylaws, the holders of a majority of the voting power of all of the outstanding shares of stock of the Corporation entitled to vote at the meeting, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the voting power of all of the outstanding shares of such class or series, represented in person or by proxy, shall constitute a quorum of such class or series for the transaction of such business. For the avoidance of doubt, abstentions shall be treated as present for purposes of determining the presence or absence of a quorum. The presiding person at the meeting may adjourn the meeting from time to time for any reason, whether or not there is such a quorum. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(B) Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the date, time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken or are provided in any other manner permitted by the DGCL; *provided, however,* that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting.

SECTION 2.7. Proxies. At all meetings of stockholders, a stockholder may vote by proxy. The authorization of a person to act as proxy may be documented, signed and delivered in accordance with Section 116 of the DGCL provided that such authorization shall set forth, or be delivered with information enabling the Corporation to determine the identity of the stockholder granting such authorization. Any copy, facsimile transmission or other reliable reproduction of the document (including any electronic transmission) created pursuant to this section may be substituted or used in lieu of the original document for any and all purposes for which the original document could be used, *provided* that such copy, facsimile transmission or other reproduction shall be a complete reproduction of the entire original document. No proxy may be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy is revocable at the pleasure of the stockholder executing it unless the proxy states that it is irrevocable and applicable law makes it irrevocable.

SECTION 2.8. Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(i) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders at an annual meeting of stockholders may be made only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board or any authorized committee thereof, (c) by any stockholder of the Corporation who (1) was a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the annual meeting, (2) is entitled to vote at the meeting and (3) complies with the notice procedures and other requirements set forth in these Bylaws and applicable law, or (d) by stockholders of the Corporation who are given such rights or abilities under the Stockholders' Agreement, among the Corporation and certain of its stockholders, dated as of [●], 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "***Stockholders' Agreement***"), pursuant to the terms of the Stockholders' Agreement. Sections 2.9(A)(i)(c)

and (d) of these Bylaws shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under and in compliance with Rule 14a-8 or Rule 14a-19 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), as applicable, and included in the Corporation's notice of meeting, annual meeting proxy statement and proxy card) before an annual meeting of the stockholders. In addition, if the proposal is made on behalf of a beneficial owner other than the stockholder of record, such beneficial owner must be the beneficial owner of stock of the Corporation both at the time of giving notice provided for in this Section 2.8(A)(i) and at the time of the annual meeting.

(ii) For any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.8(A)(i)(c) of these Bylaws, (x) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (y) such other business must otherwise be a proper matter for stockholder action under the DGCL and (z) the record stockholder and the beneficial owner, if any, on whose behalf any such proposal or nomination is made, must have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by these Bylaws. To be timely, a stockholder's notice must be received by the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting (which date shall, for purposes of the Corporation's first annual meeting of stockholders after its shares of Class A common stock, par value $0.01 per share (such stock, the "***Class A Common Stock***") are first publicly traded, be deemed to have occurred on [•]),*provided*, *however*, that subject to the following sentence, in the event that the date of the annual meeting is scheduled for a date that is more than 30 days before or more than 60 days after such anniversary date or in the event that no annual meeting was held in the prior year (other than with respect to the Corporation's first annual meeting of stockholders after its shares of Class A Common Stock are first publicly traded), notice by the stockholder to be timely must be so received not later than the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment, recess or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting.

To be in proper form, a stockholder's notice (whether given pursuant to thisSection 2.8(A)(ii) or Section 2.8(B)) to the Secretary of the Corporation must:

(a) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (1) the name and address of such stockholder, as they appear on the Corporation's books, and of any such Stockholder Associated Person (as defined in Section 2.8(C)(ii)), if any, (2) (A) the class or series and number of shares of the Corporation that are, directly or indirectly, owned beneficially and of record by such stockholder and such Stockholder Associated Person, (B) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of stock of the Corporation or otherwise (a "***Derivative Instrument***"), directly or indirectly owned beneficially by such stockholder or by any Stockholder Associated Person and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation held by such stockholder or by any Stockholder Associated Person, (C) a complete and accurate description of any agreement, arrangement or understanding between or among such

stockholder and any Stockholder Associated Person and any other person or persons in connection with such stockholder's director nomination or other proposed business and the name and address of any other person(s) or entity or entities known to the stockholder to support such nomination or business, including any agreements, arrangements or understandings relating to any compensation or payments to be paid to any such proposed nominee(s), pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), (D) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote, directly or indirectly, any shares of any security of the Corporation, (E) any short interest in any security of the Corporation held by such stockholder or any Stockholder Associated Person (for purposes of these Bylaws, a person shall be deemed to have a "short interest" in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (F) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder or by any Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation, (G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (H) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such stockholder's or any Stockholder Associated Person's immediate family sharing the same household, (3) any other information relating to such stockholder and any Stockholder Associated Person, if any, that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for, as applicable, the proposal or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (4) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting, (5) a representation as to whether or not such stockholder or any Stockholder Associated Person intends or is a party of a group which intends (x) to deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding stock required to approve or adopt the proposal or, in the case of a nomination or nominations, at least the percentage of the voting power of the Corporation's outstanding stock reasonably believed by the stockholder or Stockholder Associated Person, as the case may be, to be sufficient to elect such nominee or nominees, (y) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination and/or (z) to solicit proxies in support of any proposed nominee in accordance with Rule 14a-19 promulgated under the Exchange Act (such representation, a "***Solicitation Statement***"), (6) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such stockholder or beneficial owner has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the Corporation, (7) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such stockholder or beneficial owner that are separated or separable from the underlying shares of the Corporation, (8) any performance-related fees (other than an asset based fee) to which such stockholder or beneficial owner, directly or indirectly, is entitled based on any increase or decrease in

the value of shares of any class or series of capital stock of the Corporation or any Derivative Instruments and (9) the names and addresses of other stockholders (including beneficial owners) known by any of the stockholders giving the notice to support such nominations or other business proposal(s), and to the extent known the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s);.

(b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (1) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and Stockholder Associated Person, if any, in such business, (2) the exact text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment) and (3) a complete and accurate description of all agreements, arrangements and understandings between or among such stockholder and such stockholder's Stockholder Associated Person, if any, and the name and address of any other person(s) or entity or entities in connection with the proposal of such business by such stockholder;

(c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board (1) all information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the Corporation's proxy statement as a nominee and to serving as a director if elected), (2) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and Stockholder Associated Person, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant, and (3) a representation that such person intends to serve a full term, if elected as director; and

(d) with respect to each nominee for election or reelection to the Board, include (1) a completed and signed questionnaire, representation and agreement in a form provided by the Corporation, which form the stockholder must request from the Secretary of the Corporation in writing with no less than seven days advance notice and (2) a written representation and agreement (in the form provided by the Secretary of the Corporation upon written request) that such person (A) is not and will not become a party to (i) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "***Voting Commitment***") that has not been disclosed to the Corporation or (ii) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been

disclosed therein and (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(iii) A stockholder providing notice of a nomination or proposal of other business to be brought before a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to clauses (A)(ii)(a)(1)-(4) and (6)-(9) and clauses (A)(ii)(b)-(c) shall be true and correct (a) as of the record date for the meeting and (b) as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than seven business days prior to the date for the meeting or any postponement or adjournment thereof, if practicable (or, if not practicable, on the first practicable date prior to any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof)).

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to a notice of meeting (i) by or at the direction of the Board or any committee thereof (or stockholders if permitted pursuant to Article VII of the Certificate of Incorporation and Section 2.2 of these Bylaws) or (ii) if the Board (or stockholders if permitted pursuant to Article VII of the Certificate of Incorporation and Section 2.2 of these Bylaws) has determined that directors shall be elected at such meeting, (a) by any stockholder of the Corporation who (1) is a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the special meeting, (2) is entitled to vote at the meeting and (3) complies with the notice procedures set forth in these Bylaws and applicable law or (b) by a stockholder of the Corporation who is given such rights or abilities under the Stockholders' Agreement pursuant to the terms of the Stockholders' Agreement. In the event a special meeting of stockholders is called pursuant to Article VII of the Certificate of Incorporation or Section 2.2 of these Bylaws for the purpose of electing one or more directors to the Board, a stockholder pursuant toclause (ii)(a) of this Section 2.8(B) may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder delivers notice with the information required by Section 2.8(A)(ii)(a) and Section 2.8(A)(ii)(c) (with the updates required by Section 2.8(A)(iii)) of these Bylaws with respect to any nomination and the completed and signed questionnaire, representations and agreements required by Section 2.8(A)(ii)(d) of these Bylaws. Such notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting at which directors are to be elected. In no event shall any adjournment, recess or postponement or the announcement thereof of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The number of nominees a stockholder may nominate for election at the special meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting.

(C) General.

(i) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in these Bylaws and applicable law shall be eligible to serve as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws and applicable law. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, the presiding person at of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and applicable law and, if any proposed nomination or business is not in compliance with these Bylaws and applicable law, to declare that such defective proposal or nomination shall be disregarded.

(ii) For purposes of these Bylaws, "***public announcement***" shall mean disclosure in a press release reported by Dow Jones News Service, the Associated Press, or any other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder, and "***Stockholder Associated Person***" shall mean, for any stockholder, (a) any person or entity controlling, directly or indirectly, or acting in concert with, such stockholder, (b) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder or (c) any person or entity controlling, controlled by or under common control with any person or entity referred to in the preceding clauses (a) or (b).

(iii) Notwithstanding the foregoing provisions of these Bylaws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in these Bylaws; *provided*, *however*, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 2.8(A) or Section 2.8(B) of these Bylaws. Nothing in these Bylaws shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act; (b) of stockholders to include the names of persons validly nominated for election as a director of the Corporation in the Corporations proxy card in compliance with Rule 14a-19 of the Exchange Act; or (c) of the holders of any series of preferred stock of the Corporation ("***Preferred Stock***") if and to the extent provided for under applicable law, the Certificate of Incorporation or these Bylaws. Notwithstanding anything to the contrary in these Bylaws, unless otherwise required by law, if any stockholder or Stockholder Associated Person, if any, (1) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act with respect to any proposed nominee and (2) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such stockholder or such Stockholder Associated Person has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence), then the nomination of each such proposed nominee shall be disregarded, notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded). Upon request by the Corporation, if any stockholder or Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such stockholder or such Stockholder Associated Person shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(iv) Unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) making a nomination or proposal under this Section 2.8 does not appear at a meeting of stockholders to present such nomination or proposal, the nomination shall be disregarded and the proposed business shall not be transacted, as the case may be, notwithstanding

that proxies in favor thereof may have been received by the Corporation. For purposes of this Section 2.8, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(v) Notwithstanding anything to the contrary contained in this Section 2.8, for so long as the Stockholders' Agreement remains in effect with respect to any Principal Stockholder, Ben M. Brigham (so long as Ben M. Brigham has the right to designate one or more nominees for election to the Board pursuant to the Stockholders' Agreement) shall not be subject to this Section 2.8 with respect to any annual or special meeting of stockholders.

SECTION 2.9. Conduct of Business. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of a meeting of stockholders as it shall deem appropriate in its sole discretion. The Chairman of the Board, if one shall have been elected, or in the Chairman of the Board's absence, the Chief Executive Officer or, in the Chief Executive Officer's absence or if one shall not have been elected, the director or officer designated by the majority of the Whole Board (as defined below), shall preside at all meetings of the stockholders. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over the meeting shall have the right and authority to convene and for any or no reason to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the presiding person at the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person at the meeting, may include, without limitation, the following: (A) the establishment of an agenda or order of business for the meeting; (B) rules and procedures for maintaining order at the meeting and the safety of those present; (C) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine; (D) restrictions on entry to the meeting after the time fixed for the commencement thereof; (E) limitations on the time allotted to questions or comments by participants; and (F) restrictions of the use of audio or visual recording devices. The person presiding over the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting, and if such presiding person at the meeting should so determine, such presiding person at the meeting shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. For purposes of these Bylaws, the term "***Whole Board***" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

SECTION 2.10. Required Vote. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, at any meeting at which directors are to be elected, so long as a quorum is present, directors shall be elected by a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote in such election. Unless otherwise provided in the Certificate of Incorporation, cumulative voting for the election of directors shall be prohibited. Unless a different or minimum vote is required by applicable law, the rules and regulations of any stock exchange applicable to the Corporation, any law or regulation applicable to the Corporation or its securities, the Certificate of Incorporation or these Bylaws, in which such different or minimum vote shall be the applicable vote on the matter, in all matters other than the election of directors and certain non-binding advisory votes described below, the affirmative vote of the holders of a majority of the voting power of the outstanding shares of stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders. In non-binding advisory matters with more than two possible vote choices, the plurality of the votes cast by the holders of outstanding shares of stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the recommendation of the stockholders.

SECTION 2.11. Treasury Stock. Shares of the Corporation's capital stock shall neither be entitled to vote nor counted for quorum purposes if such shares being to (A) the Corporation, (B) any other corporation, if a majority of shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly by the Corporation, or (C) any other entity, if a majority of the voting power of such other entity is held, directly or indirectly, by the Corporation or if such other entity is otherwise controlled, directly or indirectly, by the Corporation; *provided, however,* that the foregoing shall not limit the right of the Corporation or such other corporation, to vote stock of the Corporation held in a fiduciary capacity.

SECTION 2.12. Inspectors of Elections. The Corporation may, and when required by applicable law, shall, appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders and the appointment of an inspector is required by applicable law, the presiding person at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by applicable law.

ARTICLE III
BOARD OF DIRECTORS

SECTION 3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. The directors shall act only as a Board or as a committee thereof, and the individual directors shall have no power as such.

SECTION 3.2. Number, Election, Tenure and Voting Power. Subject to applicable law, the Stockholders' Agreement and the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, if any, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by the affirmative vote of a majority of the Whole Board; provided that the initial number of directors shall be nine. The election, term and voting power of directors shall be as set forth in the Certificate of Incorporation.

SECTION 3.3. Regular Meetings. Subject to Section 3.5, regular meetings of the Board shall be held on such dates, and at such times and places, if any, as are determined from time to time by resolution of the Board. Notice of such regular meetings shall not be required.

SECTION 3.4. Special Meetings. Special meetings of the Board shall be called at the request of the Chairman of the Board, the Chief Executive Officer or a majority of the Board then in office. The person or persons authorized to call special meetings of the Board may fix the place, if any, date and time of the meetings. Any business may be conducted at a special meeting of the Board.

SECTION 3.5. Notice. Notice of any special meeting of directors shall be given to each director at his or her business or residence in writing by hand delivery, first-class or overnight mail, courier service or facsimile or electronic transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile or electronic transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 24 hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least 24 hours prior to the time set for the meeting and shall be confirmed by facsimile or electronic transmission that is sent promptly thereafter. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with these Bylaws.

SECTION 3.6. Action by Consent of Board. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be are filed with the minutes of proceedings of the Board or committee in the same paper or electronic form as the minutes are maintained. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of the State of Delaware.

SECTION 3.7. Remote Meetings. Members of the Board or any committee thereof may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 3.8. Quorum. A majority of the Whole Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board there shall be less than a quorum present, a majority of the directors present may, to the fullest extent permitted by law, adjourn the meeting from time to time without further notice unless (A) the date, time and place, if any, of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of Section 3.5 of these Bylaws shall be given to each director, or (B) the meeting is adjourned for more than 24 hours, in which case the notice referred to in clause (A) shall be given to those directors not present at the announcement of the date, time and place, if any, of the adjourned meeting. Except as otherwise expressly required by law, the Certificate of Incorporation or these Bylaws, all matters shall be determined by the affirmative vote of a majority of the directors present at a meeting at which a quorum is present.

SECTION 3.9. Vacancies. Any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, retirement, disqualification or removal of any director or from any other cause shall be filled in accordance with the Certificate of Incorporation.

SECTION 3.10. Removal. Directors of the Corporation may be removed in the manner provided in the Certificate of Incorporation and applicable law.

SECTION 3.11. Records. The Board shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

SECTION 3.12. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have authority to fix the compensation of directors, including fees and reimbursement of expenses. The Corporation will cause each non-employee director serving on the Board to be reimbursed for all reasonable out-of-pocket costs and expenses incurred by him or her in connection with such service.

SECTION 3.13. Regulations. To the extent consistent with applicable law, the Certificate of Incorporation and these Bylaws, the Board may adopt such rules and regulations for the conduct of meetings of the Board and for the management of the affairs and business of the Corporation as the Board may deem appropriate.

SECTION 3.14. First Meeting. Each newly elected Board may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of stockholders. Notice of such meeting shall not be required.

ARTICLE IV
COMMITTEES

SECTION 4.1. Designation; Powers. Subject to the terms of the Stockholders' Agreement, the Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the fullest extent permitted by applicable law and to the extent provided in the resolution(s) of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SECTION 4.2. Procedure; Meetings; Quorum. Any committee designated pursuant to Section 4.1 shall choose its own chairman in the event the chairman has not been selected by the Board by a majority vote of the members then in attendance at a meeting of the committee so long as a quorum is present, shall keep regular minutes of its proceedings, and shall meet at such times and at such place or places as may be provided by the charter of such committee or by resolution of such committee or resolution of the Board. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting where a quorum is present shall be necessary for the adoption by it of any resolution. A committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to such subcommittee any or all of the powers of such committee. The Board shall adopt a charter for each committee for which a charter is required by applicable laws, regulations or stock exchange rules, may adopt a charter for any other committee, and may adopt other rules and regulations for the governance of any committee not inconsistent with the provisions of the Certificate of Incorporation, these Bylaws or any such charter. Unless the Certificate of Incorporation, these Bylaws, any charter for such committee or the Board otherwise provide, any such committee or subcommittee may make rules for the conduct of its business, but unless otherwise provided by the Board or such rules, its meetings shall be called, notice given or waived, its business conducted or its action taken as nearly as may be in the same manner as is provided in these Bylaws with respect to meetings or for the conduct of business or the taking of actions by the Board. The Board shall have power at any time to fill vacancies in, change the membership of, or discharge any such committee. The Secretary of the Corporation shall act as Secretary of any committee or subcommittee, unless otherwise provided by the Board or such committee or subcommittee.

SECTION 4.3. Substitution of Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of the absent or disqualified member.

ARTICLE V
OFFICERS

SECTION 5.1. Officers. The Board shall elect the officers of the Corporation which may include, if the Board so elects, a Chairman of the Board, a Chief Executive Officer, a President, Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, a Secretary, a Treasurer and such other officers as the Board from time to time may deem proper. If elected, the Chairman of the Board shall be chosen from among the directors. All officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article V. Such officers shall also have such powers and duties as from time to time may be conferred by the Board or by any duly authorized committee thereof or, with respect to any Executive Vice President, Senior Vice President, Vice Presidents, Treasurer or Secretary, by the Chairman of the Board, Chief Executive Officer or President, if any. The Board or any committee thereof may from time to time elect, or the Chairman of the Board, Chief Executive Officer or President, if any, may appoint, such other officers (including a Chief Financial Officer, Chief Operating Officer and one or more Senior Vice Presidents, Vice Presidents, Assistant Secretaries and Assistant Treasurers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these Bylaws or as may be prescribed by the Board or such committee thereof or by the Chairman of the Board, Chief Executive Officer or President, as the case may be. Any number of offices may be held by the same person. Except for the Chairman of the Board, if any, no officer need be a director. None of the officers need be a stockholder of the Corporation.

SECTION 5.2. Election and Term of Office. Each officer shall hold office until his or her successor shall have been duly elected or appointed and shall have qualified or until his or her death or until he or she shall resign, but any officer may be removed from office at any time by the affirmative vote of a majority of the Board or, except in the case of an officer or agent elected by the Board, by the Chairman of the Board, Chief Executive Officer or President, if any. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his or her successor, his or her death, resignation or removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

SECTION 5.3. Chairman of the Board. The Chairman of the Board, if elected, shall perform all duties incidental to his or her office that may be required by law and all such other duties as are properly required of him or her by the Board. The Chairman of the Board may also serve as Chief Executive Officer, if so elected by the Board. The Chairman of the Board may also have the title of Executive Chairman if the Chairman of the Board is also an officer of the Corporation.

SECTION 5.4. Chief Executive Officer. The Chief Executive Officer, if any, shall be responsible for the general management of the affairs of the Corporation and shall act in a general executive capacity subject to the oversight of the Chairman of the Board in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The Chief Executive Officer shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and all other documents and instruments in connection with the business of the Corporation. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer, if also a director, shall preside when present at all meetings of the Board.

SECTION 5.5. President. The President, if any, shall have such powers and shall perform such duties as shall be assigned to him or her by the Board. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President, if any and if he or she shall be a director, shall preside when present at all meetings of the Board.

SECTION 5.6. Executive Vice Presidents, Senior Vice Presidents and Vice Presidents. Each Executive Vice President, Senior Vice President and Vice President, if any, shall have such powers and shall perform such duties as shall be assigned to him or her by the Board or the Chairman of the Board, the Chief Executive Officer or the President, if any.

SECTION 5.7. Treasurer. The Treasurer, if any, shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Treasurer shall cause the funds of the Corporation to be deposited in such banks as may be authorized by the Board, or in such banks as may be designated as depositaries in the manner provided by resolution of the Board. He or she shall have such further powers and duties and shall be subject to such directions as may be granted or imposed upon him or her from time to time by the Board, the Chairman of the Board, the Chief Executive Officer or the President, if any.

SECTION 5.8. Secretary. The Secretary, if any, shall keep or cause to be kept in one or more books provided for that purpose, the minutes of all meetings of the Board, the committees of the Board and the stockholders; he or she shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by applicable law; he or she shall be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal; and he or she shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board may direct; and in general, he or she shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board, the Chairman of the Board, the Chief Executive Officer or the President, if any.

SECTION 5.9. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term at any

meeting of the Board. Any vacancy in an office appointed by the Chairman of the Board, the Chief Executive Officer or the President, if any, because of death, resignation, removal or otherwise may be filled by the Chairman of the Board, the Chief Executive Officer or the President, if any.

SECTION 5.10. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board, the Chief Executive Officer or any officer authorized by the Chairman of the Board, the Chief Executive Officer or the President, shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation or entity in which the Corporation may hold securities and otherwise to exercise any and all rights and powers that the Corporation may possess by reason of its ownership of securities in such other corporation.

SECTION 5.11. Delegation. The Board may from time to time delegate the powers and duties of any officer to any other officer or agent, notwithstanding any provision hereof.

SECTION 5.12. Compensation. The salaries or other compensation of the officers of the Corporation shall be fixed from time to time by the Board, a committee of the Board or an officer of the Corporation designated by the Board or a committee of the Board, subject to applicable law and the rules or regulations of any stock exchange applicable to the Corporation.

ARTICLE VI
STOCK CERTIFICATES AND TRANSFERS

SECTION 6.1. Stock Certificates and Transfers. The interest of each stockholder of the Corporation evidenced by certificates for shares of stock shall be in such form as the appropriate officers of the Corporation may from time to time prescribe, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. The shares of the stock of the Corporation shall be entered in the books of the Corporation as they are issued and shall exhibit the holder’s name and number of shares. Subject to the provisions of the Certificate of Incorporation, the shares of the stock of the Corporation shall be transferred on the books of the Corporation, which may be maintained by a third-party registrar or transfer agent, by the holder thereof in person or by his or her attorney, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require or upon receipt of proper transfer instructions from the registered holder of uncertificated shares and upon compliance with appropriate procedures for transferring shares in uncertificated form, at which time the Corporation shall issue a new certificate to the person entitled thereto (if the stock is then represented by certificates), cancel the old certificate and record the transaction upon its books.

Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation (it being understood that each of the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary shall be an authorized officer for such purpose), certifying the number of shares owned by such holder in the corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

SECTION 6.2. Lost, Stolen or Destroyed Certificates. No certificate for shares or uncertificated shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board or any financial officer may in its or their discretion require.

SECTION 6.3. Ownership of Shares. The Corporation shall be entitled to treat the holder of record of any share or shares of stock of the Corporation as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

SECTION 6.4. Regulations Regarding Certificates. Subject to applicable law, the Board shall have the power and authority to make all such rules and regulations concerning the issue, transfer and registration or the replacement of certificates for shares of stock of the Corporation. The Corporation may enter into additional agreements with stockholders to restrict the transfer of stock of the Corporation in any manner not prohibited by the DGCL.

ARTICLE VII
MISCELLANEOUS PROVISIONS

SECTION 7.1. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the 31st day of December of each year or as otherwise determined by the Board.

SECTION 7.2. Dividends. Except as otherwise provided by law or the Certificate of Incorporation, the Board may from time to time declare, and the Corporation may pay, out of funds legally available therefor, dividends on its outstanding shares of stock, which dividends may be paid in either cash, property or shares of stock of the Corporation. A member of the Board, or a member of any committee designated by the Board, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

SECTION 7.3. Seal. The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

SECTION 7.4. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board or committee thereof need be specified in any waiver of notice of such meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 7.5. Resignations. Any director or any officer, whether elected or appointed, may resign at any time by giving notice in writing or by electronic transmission, of such resignation to the Chairman of the Board, the Chief Executive Officer, the President, if any, or the Secretary, and such resignation shall be deemed to be effective when said notice is received by the Chairman of the Board, the Chief Executive Officer, the President, if any, or the Secretary, or at such later time as is specified therein unless otherwise provided in the notice of resignation. No formal action shall be required of the Board or the stockholders to make any such resignation effective.

SECTION 7.6. Indemnification and Advancement of Expenses.

(A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action,

suit or proceeding, whether civil, criminal, administrative or investigative (a "***proceeding***") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was or has agreed to become a director or officer of the Corporation or, while serving as a director or officer of the Corporation, is or was serving or has agreed to serve at the request of the Corporation as a director, officer, trustee, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or non-profit entity, including service with respect to an employee benefit plan (a "***Covered Person***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, trustee, employee or agent, or in any other capacity while serving or having agreed to serve as a director, officer, trustee, employee or agent, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding.

(B) The Corporation shall, to the fullest extent not prohibited by applicable law as it presently exists or may hereafter be amended, pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition; *provided*, *however*, that to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right to appeal (hereinafter, a "***final adjudication***") that the Covered Person is not entitled to be indemnified under this Section 7.6 or otherwise.

(C) The rights to indemnification and advancement of expenses under this Section 7.6 shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, trustee, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 7.6, except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

(D) If a claim for indemnification under this Section 7.6 (following the final disposition of such proceeding) is not paid in full within 60 days after the Corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Section 7.6 is not paid in full within 30 days after the Corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim, or a claim brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, to the fullest extent permitted by applicable law. In any such action, the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law. In (i) any suit brought by a Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Section 7.6 or otherwise shall be on the Corporation.

(E) The rights conferred on any Covered Person by this Section 7.6 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, law (common or statutory), any provision of the Certificate of Incorporation, these Bylaws, any agreement or vote of stockholders or disinterested directors or otherwise.

(F) This Section 7.6 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

(G) Any Covered Person entitled to indemnification and/or advancement of expenses, in each case pursuant to this Section 7.6, may have certain rights to indemnification, advancement and/or insurance provided by one or more persons with whom or which such Covered Person may be associated (including, without limitation, any Principal Stockholder). The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with respect to any proceeding, expense, liability or matter that is the subject of this Section 7.6, (ii) the Corporation shall be primarily liable for all such obligations and any indemnification afforded to a Covered Person in respect of a proceeding, expense, liability or matter that is the subject of this Section 7.6, whether created by law, organizational or constituent documents, contract or otherwise, (iii) any obligation of any persons with whom or which a Covered Person may be associated (including, without limitation, any Principal Stockholder) to indemnify such Covered Person and/or advance expenses or liabilities to such Covered Person in respect of any proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify each Covered Person and advance expenses to each Covered Person hereunder to the fullest extent provided herein without regard to any rights such Covered Person may have against any other person with whom or which such Covered Person may be associated (including, without limitation, any Principal Stockholder) or insurer of any such person and (v) the Corporation irrevocably waives, relinquishes and releases any other person with whom or which a Covered Person may be associated (including, without limitation, any Principal Stockholder) from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder.

(H) The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or non-profit entity, including service with respect to an employee benefit plan, shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, other enterprise, non-profit entity or employee benefit plan.

(I) The Corporation may maintain insurance, at its expense, to protect itself and any person who is or was serving as a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or non-profit entity, including service with respect to an employee benefit plan, against any expense, liability or loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement), whether or not the Corporation would have the power to indemnify such person against any such expense, liability or loss under the DGCL.

(J) Any repeal or modification of the provisions of this Section 7.6 shall not adversely affect any right or protection hereunder of any Covered Person in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to the time of such repeal or modification.

SECTION 7.7. Notices. Except as otherwise specifically provided herein or required by applicable law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in

every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by commercial courier service, or by facsimile or other electronic transmission, provided that notice to stockholders by electronic transmission shall be given in the manner provided in Section 232 of the DGCL. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively, notice to any stockholder shall be deemed given: (A) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (B) if by electronic mail, when directed to such stockholder's electronic mail address (unless the stockholder has notified the corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL) in accordance with the DGCL; (C) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; (D) if by any other form of electronic transmission, when directed to the stockholder; and (E) if by mail, when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

SECTION 7.8. Facsimile and Electronic Signatures. In addition to the provisions for use of facsimile or electronic signatures elsewhere specifically authorized in these Bylaws, facsimile or electronic signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof, the Chairman of the Board, the Chief Executive Officer or President, if any.

SECTION 7.9. Time Periods. Except as otherwise set forth in these Bylaws, in applying any provision of these Bylaws that require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

SECTION 7.10. Reliance Upon Books, Reports and Records. Each member of the Board, each member of any committee designated by the Board and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

SECTION 7.11. Severability. Whenever possible and to the fullest extent permitted by law, each provision or portion of any provision of these Bylaws will be interpreted in such manner as to be effective and valid under applicable law, but if any provision or portion of any provision of these Bylaws is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such provision or portion of any provision shall be severable and the invalidity, illegality or unenforceability will not affect any other provision or portion of any provision in such jurisdiction, and these Bylaws will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

ARTICLE VIII
AMENDMENTS

SECTION 8.1. Amendments. In furtherance of, and not in limitation of, the powers conferred by the laws of the State of Delaware, and subject to the provisions in the Certificate of Incorporation, the Board is expressly authorized to adopt, amend or repeal these Bylaws. Any adoption, amendment or repeal of these Bylaws by the Board shall require the approval of a majority of the Whole Board. Stockholders shall also have the power to adopt, amend or repeal these Bylaws; *provided*, *however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, these Bylaws may be adopted, altered, amended or repealed by the stockholders of the Corporation only (i) prior to the Trigger Date, by the affirmative vote of holders of not less than a majority in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class, and (ii) on and after the Trigger Date by the affirmative

vote of holders of not less than 662/3% in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. No Bylaws hereafter made or adopted, nor any repeal of or amendment thereto, shall invalidate any prior act of the Board that was valid at the time it was taken.

Exhibit 10.2

FORM OF INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("**Agreement**") is made as of [●], 2023 by and between Atlas Energy Solutions Inc., a Delaware corporation (the "**Company**"), and the individual identified as the Indemnitee on the signature page hereto ("**Indemnitee**").

RECITALS:

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Company (as may be amended, the "**Bylaws**") require indemnification of the officers and directors of the Company, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**") and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Company (as may be amended, the "**Certificate of Incorporation**") and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Company without adequate protection, (iii) the Company desires Indemnitee to serve in such capacity and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. **Definitions**. (a) As used in this Agreement:

"**Agreement**" shall have the meaning set forth in the Preamble.

"**Board**" shall have the meaning set forth in the Recitals.

"**Bylaws**" shall have the meaning set forth in the Recitals.

“**Certificate of Incorporation**” shall have the meaning set forth in the Recitals.

“**Company**” shall have the meaning set forth in the Preamble.

“**Corporate Status**” describes the status of a person who is or was a director, officer, partner, general partner, manager, managing member, employee or agent of (i) the Company or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other Enterprise which such person is or was serving at the request of the Company.

“**Delaware Court**” shall have the meaning set forth in Section 20.

“**DGCL**” shall have the meaning set forth in the Recitals.

“**Disinterested Director**” shall mean a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“**Enterprise**” shall mean the Company and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, partner, general partner, manager, managing member, employee, trustee, agent or fiduciary.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Expenses**” shall mean all reasonable costs, expenses, fees and charges of any type or nature, including, without limitation, attorneys’ fees, document and e-discovery costs, litigation expenses, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedes bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“**Indemnitee**” shall have the meaning set forth in the Preamble.

“**Indemnity Obligations**” shall mean all obligations of the Company to Indemnitee under this Agreement, including the Company’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“**Independent Counsel**” shall mean a law firm of national reputation in the United States, or a partner or member of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“**Liabilities**” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without

limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

"**Person**" shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

"**Proceeding**" shall mean any threatened, pending or completed action, claim, suit, arbitration, mediation, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Company or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, potential party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any actual or alleged action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or inaction) on Indemnitee's part while acting as director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, partner, general partner, manager, managing member, trustee, employee or agent of another corporation, limited liability company, partnership, joint venture, trust, employe benefit plan or other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, partner, general partner, manager, managing member, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner such Person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

"**Sarbanes-Oxley Act**" shall have the meaning set forth in Section 7(c).

"**Submission Date**" shall have the meaning set forth in Section 9(a).

Section 2. **Indemnity in Third-Party Proceedings**. The Company shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee's behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Company to procure a judgment in its favor, which is provided for in Section 3 below), or any claim, issue or matter therein.

Section 3. **Indemnity in Proceedings by or in the Right of the Company**. The Company shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee's behalf in connection with any Proceeding brought by or in the right of the Company to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 4. **Indemnification for Expenses of a Party Who is Wholly or Partly Successful**. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any

other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. **Indemnification For Expenses of a Witness**. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or otherwise a participant, including by a request to respond to discovery requests, receipt of a subpoena or similar demand for documents or testimony, in any Proceeding to which Indemnitee is not a party and is not threatened to be made a party, Indemnitee shall be indemnified against all Expenses suffered or reasonably incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee's behalf in connection therewith.

Section 6. **Additional Indemnification**. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) by reason of Indemnitee's Corporate Status against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. **Exclusions**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee, or, in the case of (a) and (d), to advance Expenses to Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Company or any other indemnity provision, except with respect to any excess beyond the amount paid under such insurance policy or such other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Corporation, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the Corporation of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements) or in respect of claw-back provisions promulgated under the rules and regulations of the Securities and Exchange Commission pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act;

(d) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee, against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law or (iii) such Proceeding is being brought by Indemnitee to assert, interpret or enforce Indemnitee's rights under this Agreement (for the avoidance of doubt, Indemnitee shall not be deemed, for purposes of this subsection, to have initiated or brought any claim by reason of (A) having asserted any affirmative defenses in connection with a claim not initiated by Indemnitee or (B) having made any counterclaim (whether permissive or mandatory) in connection with any claim not initiated by Indemnitee); or

(e) if a final decision by a court having jurisdiction in the matter that is not subject to appeal shall determine that such indemnification is not lawful.

Section 8. **Advancement**. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Company shall advance, to the extent not prohibited by applicable law, the Expenses and Liabilities reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined by final judicial decision from which there is no further right to appeal that the Indemnitee is not entitled to be indemnified by the Company. Nothing in this Section 8 shall limit Indemnitee's right to advancement pursuant to Section 12(d) of this Agreement. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Sections 7(a) or (d) hereof.

Section 9. **Procedure for Notification and Defense of Claim**.

(a) Indemnitee shall promptly notify the Company in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof (the date of such notification, the "**Submission Date**"). The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding, including any appeal therein. Any delay or failure by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel (including local counsel) selected by Indemnitee and approved by the Company to defend Indemnitee in such Proceeding, at the sole expense of the Company (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Company assume the defense of Indemnitee in such Proceeding, in which case the Company shall assume the defense of such Proceeding with counsel selected by the Company and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the

Company's receipt of written notice of Indemnitee's election to cause the Company to do so. If the Company is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Company shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Company (and any other party or parties entitled to be indemnified by the Company with respect to such matter) unless, in the reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Company (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Company (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. If the Company has responsibility for defense of a Proceeding, the Company shall provide the Indemnitee and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Company shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Company or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. The Company may not settle or compromise any Proceeding without the prior written consent of Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

Section 10. **Procedure Upon Application for Indemnification**.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Company is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Company holding a majority of the securities of the Company present at a meeting of the stockholders and entitled to vote; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall, to the fullest extent permitted by law, be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Company within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Company), (ii) the Company shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection

is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (A) thirty (30) days after the Submission Date and (B) ten (10) days after the final disposition of the Proceeding, including any appeal therein, each of the Company and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel.

Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. **Presumptions and Effect of Certain Proceedings**.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(d) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification required under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Company's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; provided further, however, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Company.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) **Reliance as Safe Harbor**. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, officers, partners, general partners, managers or managing members of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) **Actions of Others**. The knowledge or actions, or failure to act, of any director, officer, partner, general partner, manager, managing member, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. **Remedies of Indemnitee**.

(a) Subject to Section 12(d) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been timely made pursuant to Section 10(a) of this Agreement within sixty (60) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the third to the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other Person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Company shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Company under this Agreement or the Bylaws, or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding, including any appeal therein; provided that, in absence of any such determination with respect to such Proceeding, the Company shall advance Expenses with respect to such Proceeding.

Section 13. **Non-Exclusivity; Survival of Rights; Insurance; Subrogation**.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. The Company shall not adopt any amendment or alteration to, or repeal of, the Certificate of Incorporation or the Bylaws, the effect of which would be to deny, diminish or encumber the Indemnitee's rights to indemnification pursuant to this Agreement, the Certificate of Incorporation, the Bylaws or applicable law relative to such rights prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change as of the effective date of this Agreement, to the fullest extent permitted by applicable law. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. **The Company hereby acknowledges and agrees that (i) the Company shall be the indemnitor of first resort with respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Company shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnitee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee or advance Expenses or Liabilities to Indemnitee in respect of any Proceeding shall be secondary to the obligations of the Company hereunder, (iv) the Company shall be required to indemnify Indemnitee and advance Expenses or Liabilities to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person and (v) the Company irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Company hereunder.** In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Company or payable under any Company insurance policy, the payor shall have a right of subrogation against the Company or its insurer or insurers for all amounts so paid which would otherwise be payable by the Company or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnitee may be associated or their insurers affect the obligations of the Company hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnitee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnitee may be associated with respect to any liability arising as a result of Indemnitee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Company or valid and any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Company under this Agreement.

(c) The Company shall maintain an insurance policy or policies providing liability insurance providing reasonable and customary coverage as compared with similarly situated companies (as determined by the Board in its reasonable discretion) for directors, officers, employees, trustees or agents

of any Enterprise, and Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee, trustee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnitee may be entitled from one or more Persons with whom or which Indemnitee may be associated to the same extent as the Company's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company shall be subrogated to the rights of recovery of Indemnitee, including rights of indemnification provided to Indemnitee from any other person or entity with whom Indemnitee may be associated; provided, however, that the Company shall not be subrogated to the extent of any such payment of all rights of recovery of Indemnitee with respect to any Person with whom or which Indemnitee may be associated.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnitee.

Section 14. **Duration of Agreement; Not Employment Contract**. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnitee shall have ceased to serve as director, officer, employee or agent of the Company or any other Enterprise, (ii) one (1) year after the date of final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder and of any proceeding, including any appeal, commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto or (iii) the expiration of all statutes of limitation applicable to possible Proceedings to which Indemnitee may be subject arising out of Indemnitee's Corporate Status. The indemnification provided under this Agreement shall continue as to the Indemnitee even though he or she may have ceased to be a director or officer of the Company or of any of the Company's direct or indirect subsidiaries or to have Corporate Status. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. The Company shall require and cause any successor, and any direct or indirect parent of any successor, whether direct or indirect by purchase, merger, consolidation or otherwise, to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any other Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Company, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. **Severability**. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. **Enforcement**.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, partner, general partner, manager, managing member, employee or agent of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. **Modification and Waiver**. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. **Notices**. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(i) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Company.

(ii) If to the Company to

Atlas Energy Solutions Inc.
5918 W. Courtyard Drive, Suite 500
Austin, TX 78730
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Company.

Section 19. **Contribution**. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any Proceeding, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (a) the relative benefits received by the Company and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (b) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. **Applicable Law**. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (c) consent to service of process at the address set forth in Section 18 of this Agreement with the same legal force and validity as if served upon such party personally within the State of Delaware, (d) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (e) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement. Execution and delivery of this Agreement by exchange of facsimile or other electronically transmitted counterparts bearing the signature of a Party shall be equally as effective as delivery of a manually executed counterpart by such Party.

Section 22. **Miscellaneous**. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date first above written.

ATLAS ENERGY SOLUTIONS INC.	INDEMNITEE
By: ______________________	By: ______________________
Name:	Name:
Title:	Title:
	Address:

SIGNATURE PAGE TO INDEMNIFICATION AGREEMENT

<u>Portions of this exhibit have been redacted in accordance with Item 601(b)(10) of Regulation S-K. The information is not material and would cause competitive harm to the registrant if publicly disclosed. [***] indicates that information has been redacted. **</u>**

MINING LEASE AGREEMENT

This Mining Lease Agreement ("**Lease**") is made and entered into effective as of December 15, 2017 (the '**Effective Date**") by and between the Sealy & Smith Foundation, a Texas corporation (hereinafter called "**Lessor**"), and Atlas Sand Company, LLC, a Delaware limited liability company (hereinafter called "**Lessee**").

1. Description of Leased Premises. "**Leased Premises**" means the lands in Winkler County and Ward County, Texas, described in Exhibit A, attached hereto.

2. Scope of Operations. Subject to the terms of this Lease, Lessor does hereby lease the Leased Premises unto Lessee for the purpose of prospecting, exploring, developing, mining, excavating, operating, treating, stockpiling, transporting, hauling, drilling, and producing, by any lawful method or methods deemed desirable by Lessee (including strip mining, open pit mining, shaft mining or any other lawful mining or extraction method, but specifically excluding the use of explosives), the silica sand and other sand, and other substances mixed with such sand deemed by Lessee to be commercially usable or saleable (but no such other substances may be sold separately from sand) (the "**Materials**") in, on or under the Leased Premises (the "**Permitted Use**"), together with the following rights:

   (a) the right to sell, move, store, transport, market, treat, process, ship and otherwise deal with the Materials on the Leased Premises (whether such Materials are derived from sources on or off the Leased Premises),

   (b) the right to use, consume, or deplete the surface and subsurface of the Leased Premises as may be necessary or convenient in conducting operations under this Lease,

   (c) the right to construct on the Leased Premises and to maintain, operate, and use (once constructed by Lessee) improvements, control and maintenance buildings, facilities, and structures (including, without limitation, erosion control facilities, buildings, machinery, pipelines, power and/or telecommunication and data lines, washing and/or screening facilities, ponds, ditches, roads, laydown areas, maintenance yards, signs, fences, other safety and protection facilities, gates and other ingress/egress access points, and other infrastructure, and improvements and equipment related to or associated with Lessee's Materials business, but specifically excluding railroad tracks, loop tracks, spurs, or any similar components associated with rail activity and traffic), and all such facilities and structures constructed by Lessee will be owned by Lessee during the Term,

   (d) the right to drill water wells and to extract and use water from the Leased Premises as reasonably necessary in conducting operations under this Lease; however,

(i) Lessee's right to use such water shall be limited to Lessee's operations actually conducted on the Leased Premises (i.e., such water may not be transported or removed from the Leased Premises, other than water contained in the Materials),

(ii) if Lessee determines, in its reasonable business judgment and after drilling at least three (3) wells per sand processing facility into the Santa Rosa Aquifer (the "**SRA**"), that the flow rate and quality from the SRA is sufficient for Lessee's commercial sand mining operations, then Lessee will extract and use water only from the SRA; and Lessee will give preference to non-potable water sources; but if at any time during the Term and after drilling the requisite number of wells into the SRA, Lessee determines that the flow rate or quality from the SRA is not sufficient or that non-potable water sources are not available in suitable locations and with sufficient flow rates or quality for Lessee's commercial sand mining operations, Lessee may, to the extent Lessee deems it to be commercially reasonable, thereafter extract and use water from other sources on or under the Leased Premises (and shall notify Lessor if and when such extraction commences), including more shallow sources, but only for the purpose of supplementing the flow and quality from the SRA, and other non-potable water sources, which must be used first, and

(iii) notwithstanding the provisions of Section 2(d)(ii) above, the restrictions contained therein with respect to water wells being limited to the SRA shall not apply to any additional mine developed by Lessee within a five (5) mile radius of the initial mine developed by Lessee on the Leased Premises and Lessee, to the extent Lessee deems it commercially reasonable, may extract water for its commercial mining operations from any available source.

(iv) Lessee's "reasonable business judgment" as to whether flow rate and/or quality of SRA water is sufficient under this Section 2(d) must be exercised in accordance with prevailing standards and practices in the sand mining industry. Specifically, if the flow rate and quality of any well in question would be acceptable to a reasonably prudent third-party sand mining operator using equipment substantially equivalent to Lessee's, the flow and quality shall be deemed sufficient for purposes of this Section 2.

(e) the right to locate all equipment and materials, on and/or in the Leased Premises as may be necessary or convenient in connection with operations under this Lease or in connection with the same or similar operations on adjoining lands or from other mines operated by Lessee whether or not located on the Leased Premises, and

(f) a non-exclusive easement (which Lessor hereby grants to Lessee) for vehicular ingress and egress on land owned by Lessor between the Leased Premises and any public road for the Term (which easement will be expressly set forth in the Memorandum of Lease described in Section 21 below), and the nonexclusive right to use existing roadways located on the Leased Premises for purposes of ingress

and egress to and from the Leased Premises and transportation of Materials from the Leased Premises; provided, however, that any roadway constructed by Lessee shall be for the exclusive use of Lessee, and to the extent rights do not already exist in favor of a third party, Lessor will not grant an easement to or for the benefit of any competitor of Lessee on any existing roadways located on unreleased portions of the Leased Premises.

3. Initial Payment: Payment of Royalties.

(a) Lessee agrees to pay to Lessor, during the Term (as defined in Section 5 below), the following (in addition to any other amounts payable by Lessee pursuant to the terms of this Lease): (x) a one-time Initial Payment, and (y) periodic Royalty Payments, as such terms are defined below.

(ii) "**Initial Payment**" means [***], and Lessee will pay the Initial Payment to Lessor within thirty (30) days after the Effective Date.

(iii) "**Royalty Payment**" means, for each month during the Term (defined in Section 5 below), an amount equal to [***] ("**Gross Sales**") for Materials that are mined and removed from the Leased Premises ("**Sold Materials**"):

- [***]

(b) It is expressly agreed and acknowledged by Lessor that Lessee may from time to time pre-sell volumes of the Materials and receive payment for such pre-sales prior to the actual production and delivery of the Materials to the purchaser or purchasers. Notwithstanding anything in this Lease to the contrary, [***]. For purposes of calculating the royalty due to Lessor pursuant to Section 3(a) of this Lease on Materials subject to a pre-sale, [***].

(c) For the avoidance of doubt, for each month during the Term, Lessee shall pay the Royalty Payment payable for such month before the last day of the immediately following month. *For example,* [***].

(d) If the total Royalty Payment does not equal or exceed One Million Dollars ($1,000,000.00) (the "**Minimum Annual Royalty Payment**") in any Lease Year following the Capital Event (defined below), then Lessee shall pay to Lessor the difference between the total Royalty Payments for such Lease Year and the Minimum Annual Royalty Payment within thirty (30) days after the end of the Lease Year. "**Lease Year**" means (i) the period beginning on the effective date of the Capital Event and ending twelve (12) months thereafter; and (ii) each consecutive 12-month period thereafter. "**Capital Event**" has the meaning given to it in the Second Amended and Restated Limited Liability Company Agreement of Atlas Sand Company, LLC. The amount of the Minimum Annual Royalty Payment shall automatically increase by [***], effective the first day of every tenth (10th) Lease Year during the Term.

(e) In the event of termination of the Lease by Lessee for convenience, monthly Royalty Payments will be prorated and the Minimum Annual Royalty Payment must be paid in full for the year during which termination occurs.

(f) All Materials removed from the Leased Premises shall be weighed by Lessee on certified scales in the same manner as Lessee is weighing the Materials being sold by Lessee that are being calculated for purposes of charging purchasers. On a periodic basis Lessee, in accordance with industry standard, will have the accuracy of such scales verified by third parties and will submit the results of such verifications to Lessor. Lessor and its employees may be present at any time to observe the loading and weighing of Materials, but Lessor will not interfere with Lessee's activities on the Leased Premises. In addition, Lessor may, at its sole cost and expense, install remote cameras or other monitoring technology on the Leased Premises as reasonably necessary to monitor vehicles transporting Materials from the Leased Premises, and Lessee will cooperate reasonably with Lessor in allowing for direct access by Lessor to Lessee's systems that monitor and record the number and weights of vehicles transporting Materials from the Leased Premises (but Lessor will not have the right to access confidential or proprietary information). Lessor acknowledges that Lessee may import Materials and other substances to the Leased Premises for blending, processing, and other purposes. Lessee agrees to maintain accurate records of any Materials imported to the Leased Premises, provided, however, Lessee shall not be obligated to make any Royalty Payment to Lessor on substances or Materials not mined on the Leased Premises which are mixed with Materials mined on the Leased Premises as long as Lessee can demonstrate the proportion of substances and Materials which were not mined on the Leased Premises as a percentage of Materials mined, removed, sold, and shipped from the Leased Premises.

(g) On or before the last day of each calendar month during the Term, Lessee shall deliver to Lessor a statement detailing the calculation of the Royalty Payment for the preceding month and setting forth the information reasonably required to verify the accuracy of such calculation. Such statement shall, at a minimum, reflect the amounts of (i) Materials mined, removed and sold (including sale price per ton for each transaction, tonnage for each transaction, and gross sales) from the Leased Premises, and, to the extent comingled with Materials mined, removed and sold from the Leased Premises, (ii) Materials and substances imported to the Leased Premises during the preceding calendar month, if any. Lessor shall have the right, during Lessee's normal business hours and upon reasonable written notice of not less than thirty (30) days, at the expense of Lessor, to examine the accounting records of Lessee pertaining to Lessee's operations at the Leased Premises, but only to the extent reasonably pertaining to the calculation of the Royalty Payments. Lessee agrees to keep and maintain all accounting records concerning this Lease and Lessee's operations at the Leased Premises for a period of seven (7) years following the end of each accounting year during the Term, and for a period of at least four (4) years following termination of this Lease. Lessor will execute a commercially reasonable confidentiality agreement in connection with any review by Lessor of Lessee's confidential accounting records or other confidential

information. Lessor understands and agrees that it is not entitled to review any information about Lessee's customers or other confidential or proprietary information, and Lessee may, at its sole option, redact all customer-related information from any documents or statements made available to Lessor. Lessor may cause statements delivered by Lessee in accordance with this section to be audited by a third-party auditor reasonably acceptable to Lessee; and such auditor will be entitled to review information regarding the identity of Lessee's customers to the extent necessary to accurately complete any such audit, if such auditor executes a commercially reasonable confidentiality agreement in connection with such audit, and agrees not to disclose the identity of Lessee's customer's to Lessor. If Lessor's review reveals an underpayment to Lessor of more than five (5%) during the period under review, Lessee shall reimburse to Lessor the reasonable out-of-pocket cost of the review paid to third parties, not to exceed $20,000.

(h) Royalty Payments and other payments, if any, which may be required to be made to Lessor hereunder shall be made by Lessee's check (or by wire transfer or such other method as the parties may hereafter agree) and shall be considered to have been paid, if paid by check, when actually received at Lessor's address for notice under this Lease.

(i) Unless either party hereto shall give written notice to the other of a question regarding a particular Royalty Payment within twenty four (24) months from the date the same is made to Lessor, such Royalty Payment shall be deemed to have been correctly computed and paid and shall not be subject to audit.

(j) Lessee shall have the right to use any Materials and/or dirt, caliche, and gravel obtained from the Leased Premises to build roads or other sites on the Leased Premises to facilitate the removal of Materials therefrom [***].

(k) In the event Lessee fails to pay to Lessor any Royalty Payment before such payment is delinquent hereunder, the amount of such unpaid Royalty Payment shall bear interest at the lesser of twelve percent (12%) per annum or the highest rate permitted by applicable law, commencing on the day such Royalty Payment became delinquent and continuing until such Royalty Payment is paid. If a Royalty Payment is delivered by mail, such payment will be considered timely if the mail is postmarked no later than three (3) days before the day that such Royalty Payment is due.

(l) For the avoidance of doubt, Royalty Payments due under this Lease are for the physical Materials mined, sold, and removed from the Leased Premises and for which payment has been received by Lessee. Lessor shall not be entitled to Royalty Payments on any revenue generated by Lessee relating to any non-physical financial transaction engaged in by Lessee pertaining to or measured by the volumes of Materials mined from the Leased Premises that do not involve the removal of the Materials from the Leased Premises. This includes, without limitation, futures transactions, option transactions, or any price hedging or forward sales that are limited to notional quantiles of Materials but do not give the purchaser the right to take possession of or receive the physical quantities of Materials mined or capable of being mined from the Leased Premises.

(m) For purposes of calculating Gross Sales, if Lessee or an Affiliate of Lessee is providing transportation of Sold Materials, the transportation charges deducted from Gross Sales shall be limited to reasonable charges measured by prevailing third party transportation charges to the locations where the Sold Materials are being delivered.

4. Insurance and Indemnity. Lessee shall provide and maintain during the Term insurance as described below with insurers ratedA-, Class VII or better by A.M. Best Company.

(a) The following insurance is required:

(i) Texas Workers' Compensation insurance with statutory limits to the extent required by law.

(ii) Commercial General Liability insurance on an occurrence basis with a minimum of (i) $3,000,000 per occurrence limit for personal injury, (ii) $500,000.00 per occurrence limit for property damage, (iii) $3,000,000 per occurrence limit for personal and advertiser's injury, (iv) $3,000,000 aggregate limit for products/completed operations and (v) $5,000,000 general aggregate limit. This Commercial General Liability insurance shall include Blanket Contractual Liability, Property Damage, Sudden and Accidental Pollution and Independent Contractors coverage. Excavation work shall not be excluded. The required limits can be achieved through a combination of primary and excess/umbrella liability coverage.

(iii) Business Automobile Liability insurance for injury, including death and property damage with a minimum combined single limit of $2,000,000 per occurrence including coverage for owned, non-owned and hired vehicles. If hauling hazardous materials, both the MCS-90 endorsement and the endorsement CA 9948 or equivalent, providing transportation related pollution coverage must be included. The required limit can be achieved through a combination of primary and excess/umbrella liability coverage.

(b) All policies shall be written on an occurrence basis and shall be endorsed to include the following:

(c) All policies, except Workers Compensation, shall name Lessor as an Additional Insured.

(d) All policies shall grant a waiver of subrogation in favor of Lessor and shall be primary andnon-contributory to other insurance available to Lessor, to the extent of the liabilities assumed by Lessee under this Lease.

(e) Prior to Lessee's entry onto the Leased Premises, Lessee shall provide a certificate of insurance evidencing the above coverage. The certificate shall indicate that the

said insurance shall not be canceled without at least thirty (30) days prior written notice to Lessor (ten (10) days for non-payment of premiums). If excess/umbrella coverage is used to satisfy the requested limits, the certificate shall indicate which lines of coverage apply to the excess/umbrella policy. At Lessor's request, Lessee shall provide certified copies of each insurance policy and all endorsements.

(f) By requiring insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee. The purchase of appropriate insurance coverage by Lessee or the furnishing of certificate of insurance shall not release Lessee from its respective obligations or liabilities under this Lease. Lessor reserves the right to require increases in the above limits of liability insurance not more often than every ten (10) years during the Term, in order to account for changes in the CPI-U from the Effective Date.

(g) Lessee agrees to indemnify, defend (with counsel acceptable to Lessor) and hold Lessor, its directors, officers, employees, agents, affiliates, successors and assigns (the "**Lessor Group**") harmless from and against any and all claims, demands, causes of action, liabilities, costs and expenses ("**Claims**") arising out of or resulting from Lessee's operations on the Leased Premises or the presence of Lessee, its agents, invitees, contractors, customers, employees and others associated with Lessee or its operations on the Leased Premises, and/or the sale of Materials therefrom. THE FOREGOING INDEMNITY, DEFENSE AND HOLD HARMLESS OBLIGATIONS SHALL APPLY AND BE ENFORCED REGARDLESS OF WHETHER SUCH CLAIMS ARE CAUSED IN WHOLE OR PART BY THE NEGLIGENCE (BUT NOT THE ACTIVE NEGLIGENCE, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT) OF LESSOR OR ANYONE IN THE LESSOR GROUP. "**Active Negligence**" with respect to any person or entity in the Lessor Group, means the negligent conduct on the Leased Premises (and not mere omissions) by such person or entity in a manner that proximately causes bodily injury or property damage. If Lessee provides legal defense to or indemnifies any person or entity in the Lessor Group for a claim as required by this subsection, and a court of law determines in a trial on the merits of such claim (after all appeals, if any, have been concluded) that the indemnified party was negligent, and sets forth the percentage of the indemnified party's negligence in a judgment, order, or ruling (the "**indemnitee's percentage**"), then (i) the indemnified party will be responsible for (and Lessee's indemnity obligations will not apply to) the indemnitee's percentage of the damages payable on account of such Claim, (ii) to the extent that Lessee has already paid all or any part of the indemnified party's share of such damages, the indemnified party will promptly reimburse Lessee, and (iii) the indemnified party will promptly reimburse Lessee for the indemnitee's percentage of the cost of the legal defense provided by Lessee in connection with such Claim.

5. Term of Lease and Termination.

(a) The initial term of this Lease (the "**Initial Term**") shall commence on the Effective Date and end at the end of the second (2) Lease Year, or such earlier date on which this Lease is terminated in accordance with its terms.

(b) Following the expiration of the Initial Term, this Lease will continue for the Extension Term if during the Initial Term, Lessee shall have (i) commenced the construction of a commercial mining operation on the Leased Premises with an equipment Nameplate Capacity capable of handling at least Three Million (3,000,000) tons per year, and (ii) initiated the commercial mining operation not later than six (6) months following the expiration of the Initial Term. "**Nameplate Capacity**" means the maximum installed output of all the equipment as designed and engineered by the manufacture under the conditions specified by the manufacturer working together as a cohesive unit. "**Extension Term**" means the period beginning upon the expiration of the Initial Term and ending on first to occur of:

(i) the expiration of ninety-nine (99) years from the Effective Date;

(ii) the third (3rd) anniversary of the date on which all commercial mining operations from the Leased Premises will have ceased (and not been thereafter resumed);

(iii) with respect to portions of the Leased Premises, such earlier dates set forth inSection 5(c); and

(iv) such other earlier date on which this Lease otherwise terminates in accordance with its terms. The word "Term", as used herein, refers to both the Initial Term and any Extension Term.

(c) (i) If by the last day of the seventh (7th) Lease Year Lessee has not developed commercial mining operations with an equipment Nameplate Capacity capable of handling at least an additional Three Million (3,000,000) tons per year, within three (3) months following the expiration of such seventh (7th) Lease Year, Lessee shall prepare a written release (a "**Release**") designating acreage equivalent to twenty-five (25) sections of land comprising the Leased Premises to be released by Lessee from this Lease and all other acreage comprising the Leased Premises shall be retained by Lessee under the Lease.

(ii) If at the end of the fifteenth (15'11) Lease Year Lessee has not developed commercial mining operations with an equipment Nameplate Capacity capable of handling at least an additional Three Million (3,000,000) tons per year, within three (3) months following the expiration of such fifteenth (15th) Lease Year, Lessee shall prepare a Release designating acreage equivalent to ten (10) sections of land comprising the Leased Premises to be released by Lessee from this Lease and all other acreage comprising the Leased Premises shall be retained by Lessee under the Lease.

(d) Lessee may terminate this Lease for Lessee's convenience at any time by providing at least sixty (60) days' advance written notice to Lessor. In the event of such termination, Royalty Payments through the termination date must be paid in accordance with Section 3(e).

(e) Lessor may terminate this Lease by written notice of termination to Lessee at any time that Lessee is in default of its obligations under this Lease beyond the written notice and cure periods set forth in Section 7 of this Lease.

6. Maintenance, Security, and Restoration of the Leased Premises.

(a) Lessee shall maintain the Leased Premises in a neat and orderly condition, free of loose trash and debris, and in keeping with industry standard practices in the sand mining industry. Lessee shall construct and maintain all roads constructed and/or used by Lessee in "all weather" condition such that they are capable of normal use by Lessee and others without significant damage during inclement weather.

(b) To the extent deemed necessary by Lessor, Lessee shall construct and maintain a fence around the perimeter of Lessee's facility (or portions thereof, as set forth in written notice to Lessee) in order to protect livestock belonging to Lessor's grazing tenant(s). Such fences shall be constructed within ninety (90) days after written notice to Lessee. Lessee is solely responsible for the security of Lessee's facility and improvements, but shall provide keys, lock combinations or access cards to Lessor as necessary for Lessor to access Lessee's facility and all parts of the Leased Premises. Lessor may visit the Leased Premises at any time, but will provide at least forty-eight (48) hours' verbal notice to Lessee's on site manager before entering Lessee's gated processing facility.

(c) Lessee shall, within six (6) months after termination of this Lease for any reason, remove all equipment, structures, and other improvements placed by Lessee on the Leased Premises during the Term (including, without limitation, any pipelines), other than any supports placed in openings, any timbers, framework, or fences necessary to the use and maintenance of openings, approaches to operating pit, or dikes, water level control structures, and roads. Lessee further agrees with respect to any Materials stored or stockpiled on unmined portions of the Leased Premises to level such Materials. Notwithstanding the foregoing, after any termination of this Lease, Lessee may, for a period not to exceed six (6) months, and for no additional consideration, store on any unmined portions of the Leased Premises, any equipment and other Materials. Notwithstanding the foregoing, Lessee shall have the right at any time during the Term, or within six (6) months after the expiration of this Lease, to remove any improvements, structures, fixtures, machinery, equipment, supplies and other property and Materials placed by Lessee in, on or under the Leased Premises.

(d) Lessee shall not suffer or permit any mechanics' liens or other liens to be filed against the Leased Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Lessee or to any third party performing

work or supplying materials in connection with Lessee's activities on the Leased Premises that is not being contested in good faith by Lessee (a "**Prohibited Lien**"). If a Prohibited Lien is recorded against the Leased Premises, then upon Lessee obtaining knowledge of such Prohibited Lien, Lessee must promptly notify Lessor in writing of its existence, and must (within ninety (90) days after the date learning of the existence of the Prohibited Lien) cause the Prohibited Lien to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise (and Lessee will not be in default hereunder on account of the filing of a Prohibited Lien against the Leased Premises if Lessee satisfies the requirements of this sentence).

7. Lessee's Default.

(a) With respect to any failure to pay Royalty Payments, Minimum Annual Royalty Payments or other sums of money that is payable by Lessee to Lessor pursuant to this Lease, Lessee shall have thirty (30) days after Lessor provides written notice thereof to cure such default unless the amount in question is the subject of a good faith inquiry or dispute. In the event of such inquiry or dispute, the parties shall have an additional thirty (30) days from the date of such notice to resolve the inquiry or dispute before Lessor may declare Lessee to be in default.

(b) With respect to non-monetary defaults, Lessee shall have a period of sixty (60) days after Lessor's notice thereof to cure same. However, if the default cannot reasonably be cured within such period, Lessee shall not be in default if Lessee initiates cure of the default within such sixty (60) day period, pursues the cure with reasonable diligence, and actually cures the default within ninety (90) days or such longer period as may be reasonably necessary so long as Lessee is diligently pursuing a cure.

(c) It is specifically agreed that this Lease shall not be forfeited, terminated, or cancelled, and that Lessor shall not be entitled to any damages, for failure on the part of Lessee to commence exploration, development or mining operations in, on or under the Leased Premises or to pursue such operations once such operations have been commenced.

8. Assignment or Sublease. Lessee may not assign any interest in or rights under this Lease without Lessor's prior written consent (which shall not be unreasonably withheld, delayed, or conditioned) other than to a wholly owned subsidiary or to an entity in which Lessee owns a majority interest. However, no assignment shall operate to release Lessee from its obligations to Lessor under this Lease unless Lessor consents to such release, in Lessor's sole and absolute discretion. Notwithstanding the foregoing, nothing in this Section 8 shall be deemed to prohibit any mortgage or deed of trust lien to be filed upon the Lease as part of any financing undertaken by Lessee and Lessor consents to the assignment of the Lease to any person or entity pursuant to the foreclosure of such mortgage or deed of trust lien whether by public sale or pursuant to court order or agreement in lieu of foreclosure. Lessor shall not be required to subordinate Lessor's fee interest in the Leased Premises in connection with a mortgage by Lessee.

9. Attorneys' Fees. Should either party hereto institute any action or proceeding to enforce any provision of this Lease, for damages by reason of any alleged breach of any provisions of this Lease, or for any other reason, the prevailing party shall be entitled to receive from the non-prevailing party all fees, costs, and expenses in connection with said action or proceeding including, without limitation, such reasonable fees and expenses of attorneys and accountants including all fees, costs, and expenses of appeals.

10. This Lease shall be binding against and shall inure to the benefit of the parties hereto and their respective heirs, executors, successors, and assigns.

11. Lessor's Warranties and Covenants. Lessor hereby represents and warrants to Lessee that: (i) Lessor is the owner in fee simple of the Leased Premises; (ii) no other persons or entities own any fee interest in the Leased Premises; (iii) to the best of Lessor's knowledge, the Leased Premises are not in violation of any applicable laws, including laws related to health or the environment; (iv) to the best of Lessor's knowledge, there are no currently effective leases, licenses, easements, or other encumbrances affecting all or any part of the Leased Premises that are not of record or that have not been otherwise disclosed to Lessee (any matters recorded or disclosed in writing are referred to hereafter as the "**Exceptions**"). Lessor covenants and agrees that so long as Lessee pays the Royalty Payments and other amounts due hereunder and observes and keeps the covenants, conditions and terms of this Lease, Lessee shall hold, occupy, and enjoy the Leased Premises during the Term without hindrance by Lessor or any persons claiming by, through or under Lessor, except for rights asserted by third parties under the Exceptions, exercise of the power of eminent domain, or exercise of any other rights or powers of any unit of government (including governmental agencies) or other third parties under applicable law.

12. In the event all or any portion of the Leased Premises are taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (each a "**Taking**"), the interests of Lessor and Lessee in the award or consideration for the Taking (the "**Award**") and the effect of the Taking on this Lease shall be as follows:

    (a) If the entire Leased Premises are taken or transferred by a Taking (a "**Total Taking**"), this Lease and all of the rights, title, and interest under this Lease shall cease on the earlier date of condemner taking possession of the Leased Premises or making payment to Lessor and Lessee (the "**Taking Date**"). Lessor and Lessee agree to cooperate in any Total Taking to maximize the Award, and will divide the proceeds in a manner that reflects just compensation to each for the Taking based on the value of each party's estate.

    (b) If only a portion of the Leased Premises is taken or transferred by a Taking, this Lease shall terminate on the Taking Date only as to the portion of the Leased Premises taken or transferred by such Taking, but shall continue in full force and effect as to the portion of the Leased Premises not taken or transferred by such Taking, with a proportionate reduction in the Minimum Annual Royalty Payment based upon a percentage of the part taken as compared to the total Leased Premises.

There will be no abatement in the Royalty Payments due hereunder. Lessor and Lessee agree to cooperate in any partial Taking to maximize the Award, and will divide the proceeds in a manner that reflects just compensation to each for the Taking based on the value of each party's estate.

(c) Lessee shall have the right to intervene and participate in any proceeding regarding a Taking to present its claim and obtain compensation for a Taking of its leasehold estate and property located in, on, or under the Leased Premises, and no Award or settlement shall be made in any such proceeding without Lessee's prior written approval (including approval of both the terms of any Award and, in the case of a partial Taking, the location of the Leased Premises subject to such Taking).

13. Notice.

(a) Any notice, demand, or document which either party hereto is required or may desire to give to the other will be in writing and, except as otherwise provided in this Lease, given by messenger, nationally recognized courier, overnight delivery, facsimile or other electronic transmission, or United States certified mail, postage prepaid, return receipt requested, addressed to the recipient at the location shown below, or at any other address as either party hereto may furnish to the other by notice given in accordance with this provision.

If to Sealy Smith:

The Sealy & Smith Foundation
2200 Market Street, Suite 500
Galveston, Texas 77550
Attn: Executive Director
Email: doug@sealy-smith-fdn.org

If to Atlas:

Atlas Sand Company, LLC
5914 West Courtyard Drive, Suite 200
Austin, Texas 78730
Attn: John Turner, CFO
Email: jturner@atlassand.com

(b) Any notice delivered or made by messenger, facsimile, electronic mail, or United States mail will be deemed to be given on the date of actual delivery as shown by messenger receipt, the sender's facsimile machine confirmation or other verifiable electronic receipt, or the registry or certification receipt.

(c) Notwithstanding Section 13(b), if either party hereto receives from the other any message via electronic mail that purports to be a notice under this Lease but that contains information that is syntactically incorrect, garbled, or otherwise unintelligible, the recipient will promptly (and in any event within one business day) notify the sender. If the recipient so notifies the sender, then the notice will not be deemed to be given until it is successfully delivered (including redelivery by electronic mail) pursuant to this Section 13.

14. Force Majeure. This Lease shall not be terminated, in whole or in part, and the obligations of both parties hereunder will be suspended in the event Lessee's operations are delayed, suspended, prevented or prohibited by any force majeure (hereinafter defined) event. An event of "**force majeure**" shall mean any event of the type listed below which is beyond a party's reasonable control, including, without limitation, the following: an act of God or of the public enemy; a law, ordinance, or other governmental regulation, ruling, finding, or court order not in effect on the Effective Date; wars, blockades, insurrections and riots; epidemics, strikes, lockouts or industrial disturbances; arrests, and restraints of government and people; sabotage; failure of or lack of availability of carriers or manufacturers to transport or furnish transportation, equipment and other materials necessary for facilities; explosion; fire; civil disturbances; earthquakes; storms; floods; or explosions. Lessee shall have the right to determine and settle any strikes, lockouts or industrial disputes in its sole discretion.

15. Applicable Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of Texas excluding any conflict-of-laws rule or principle that might refer the governance or construction of this Lease to the law of another jurisdiction. Venue for any action arising hereunder shall lie exclusively in Galveston County, Texas.

16. Exclusivity.

(a) This Lease is exclusive to Lessee during the Term, for the Leased Premises, for the Permitted Use. However, Lessor reserves the right to continue to use the Leased Premises and to grant to third parties the right to use the Leased Premises during the Term, (i) if such uses do not include the sale, movement, storage, transportation, marketing, treatment, processing, or shipment of the Materials, or otherwise compete with the Permitted Use, and (ii) any such use of the Leased Premises (whether by Lessor or third parties) will be in locations and conducted in a manner that does not unreasonably interfere with Lessee's mining operations on the Leased Premises. Notwithstanding the foregoing, Lessor may grant to any third party the right to use roads existing on the Leased Premises as of the date of this Lease, unless such third parties are engaged in the business of mining or transporting Materials; provided, however, such restriction shall not prohibit road use by parties engaged in providing services to oil and gas producers that have leased acreage from Lessor. Roads constructed by Lessee shall be for Lessee's exclusive use unless Lessee (in Lessee's sole and absolute discretion) agrees otherwise in writing. This exclusivity shall not be interpreted to impede other profitable non-mining activities being carried out on the leased property.

(b) Subject to any rights of third parties under existing oil and gas leases, future oil and gas leases (which Lessor may enter into in its sole discretion, with no necessity of approval by Lessee, and which may include the right to use of the surface of the Leased Premises for production of oil, gas or other subsurface minerals that are part of the mineral estate in a manner consistent with then-existing Texas law governing

the accommodation of surface uses by oil and gas lessees, and any other Exceptions existing as of the Effective Date), Lessor shall obtain consent from Lessee prior to conducting any surface operations (including entering into any future surface leases on the Leased Premises, including but not limited to solar, wind, or other surface use leases) that could reasonably be determined to impact Lessee's mining operations on the Leased Premises. Lessee shall not unreasonably withhold, delay or condition consent to such other leases or surface operations by Lessor, so long as such operations do not violate the exclusive uses described in subsection (a) and will be in locations and conducted in a manner that does not unreasonably interfere with Lessee's projected ten (10) year mining plan of operations on the Leased Premises.

17. Reclamation. It is the intent of the parties that the Leased Premises be mined and continually restored in accordance with the standards of a reasonably prudent operator in the same or similar circumstances as long as the mining progresses. Under no circumstances may Lessee allow more than [***] acres per [***] tons of equipment Nameplate Capacity existing on the lease to remain unrestored at any time during the Term without Lessor's written consent, which may be granted or withheld in Lessor's sole discretion. "**Restoration**" includes performance of the following: depositing overburden and other like materials in to the excavated areas, leveling and contouring the excavated areas and re-seeding with native vegetation. Lessee shall not be required to fill the excavated area to the pre-existing contours that existed prior to mining. All such restoration work shall be completed continually as long as the mining process progresses and be completed as required by this Section 17 within twelve (12) months of the termination of this Lease.

18. Assignment by Lessor. The rights of Lessor may be assigned in whole or in part, and the provisions hereof shall extend to the successors and assigns of Lessor; provided, however, that no change or division in ownership of the Leased Premises or the Royalty Payments payable hereunder, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee hereunder, and no such change or division shall be binding upon Lessee for any purpose until ten (10) days after Lessee shall have been furnished at Lessee's address for notice hereunder, with a copy of a recorded instrument or instruments evidencing same.

19. Waiver of Liability. Lessor waives all claims against Lessee for damages to the Leased Premises arising out of operations conducted pursuant to the terms of this Lease and in accordance with applicable laws, except for damages caused by Lessee's operations to (a) Lessor's fences, gates, cattle guards, water wells, water systems and other improvements, or (b) third parties or to the property of third parties, including Lessor's other tenants.

20. Miscellaneous.

(a) If Lessor or Lessee consists at any time of more than one person or entity, each such person or entity shall be jointly and severally liable for all obligations of Lessor or Lessee hereunder; provided, nothing in this provision shall be interpreted to impose liability on any shareholders, members, or limited partners that own equity in an entity that is a Lessor or Lessee.

(b) A determination that any provision of this Lease is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of provision of this Lease to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances. Such provision shall be deemed to be modified to the extent necessary to render it legal, valid and enforceable, then this Lease shall be construed as if not containing the provision held to invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

(c) Neither this Lease, nor any of the terms hereof, may be waived, discharged, modified, amended, or terminated orally, but only by an instrument in writing signed by the party against whom any such waiver, discharge, modification, amendment or termination is sought. No agreement of any kind relating to the matters covered by this Lease shall be binding upon either party hereto unless and until the same has been made in writing and executed by both parties.

(d) This Lease is solely for the parties hereto and nothing in this Lease is intended, nor shall be deemed, to confer any rights in, or give rise to any obligation to, or any cause of action by, any person or legal entity other than the parties hereto.

(e) This Lease may be executed any number of counterparts with the same effect as if all the parties hereto had signed the same document. All such counterparts shall be deemed and original, shall be construed together and shall constitute one instrument.

(f) This Lease contains the entire agreement of the parties hereto with respect to the subject matter hereof, and there are no representations, inducements, promises, arrangements, undertakings, warranties, covenants or other agreements except as stated or referred to herein. This Lease supersedes all prior contracts or agreements, whether oral or written, with respect to the subject matter hereof

21. Memorandum of Lease. Lessor and Lessee agree to execute and acknowledge a Memorandum of this Lease and to cause the Memorandum to be filed for record in the county or counties in which the Leased Premises are located.

22. Confidentiality. Lessor and Lessee shall keep confidential all Confidential Information. As used in this Contract, '**Confidential Information**" shall mean all information, records, reports, inventions, know-how and data disclosed by one party to the other party, or its respective affiliates or agents, pursuant to this Contract, whether in oral, written, graphic or electronic form and whether in existence as of the Effective Date or developed or acquired in the future, except where such information (i) is public knowledge at the time of disclosure by the disclosing party, (ii) becomes public knowledge through no fault of the receiving party, (iii) was in the possession of the receiving party at the time of

disclosure by the disclosing party as evidenced by proper business records or (iv) is disclosed to the receiving party by a third party, to the extent such third party's disclosure was not in violation of any obligation of confidentiality.

23. Nondisclosure of Contract. Neither party shall disclose any information about this Contract without the prior written consent of the other. Consent shall not be required, however, for (a) disclosures to tax or other governmental authorities, provided, that in connection with such disclosure, each party agrees to use its commercially reasonable efforts to secure confidential treatment of such information, (b) disclosures of information for which consent has previously been obtained, (c) information which has previously been publicly disclosed, (d) disclosures to tax, accounting, legal, and similar ,professional advisors of each party and (e) disclosures to investor and potential investors and lenders and potential lenders, financial advisors and the representatives of Lessee and its affiliates. Each party shall have the further right to disclose the terms of this Contract as required by applicable law.

24. Rights-of-Way and Right of First Refusal.

(a) To the extent such rights are not included in this Lease, Lessor hereby grants to Lessee the continuing right and option during the Term (the "**ROW Option**") to purchase one or more pipeline and utility easements for use by Lessee in transporting water, natural gas, or other materials and substances associated with Lessee's operations (whether on or off the Leased Premises), across the Leased Premises and across any lands adjacent to the Leased Premises owned by Lessor or its affiliates ("**Adjacent Property**"), at locations and of configurations, whether on, above, or below the ground, to be reasonably determined by Lessee, at a price equal to the rates then charged by the University of Texas System for lands owned by the State of Texas Permanent University Fund (and subject to adjustment after any period(s) exceeding the maximum term offered for such easements from time to time by the U.T. System) (each an "**Easement**"). Lessee may exercise the ROW Option at any time and from time to time during the Term by providing written notice thereof to Lessor (an "**Exercise Notice**"), specifying the location and configuration of the proposed Easement. Following Lessee's timely delivery to Lessor of an Exercise Notice, Lessor will review the proposed route and notify Lessee within ten (10) business days after Lessor's receipt of the Exercise Notice whether Lessor has any objection. Lessor shall not unreasonably withhold, condition or delay approval of a proposed route, but may require modification or conditions if reasonably necessary to protect Lessor's interests or those of Lessor's other tenants. Once the proposed route is fixed, Lessor shall execute and deliver to Lessee an easement agreement. If Lessee timely provides Lessor with an Exercise Notice, Lessor shall execute an Easement in a form acceptable to both parties covering the land and in the configuration described in the Exercise Notice. The ROW Option will be coterminous with the Term (but Easements granted pursuant to the terms of this Section 24 will continue until construction of the pipeline or utility for which the Easement is granted has been completed and thereafter until the earlier of (a) the third anniversary of the date on which all use of such pipeline or utility shall have ceased (and not been thereafter resumed)) or (b) the date that is

thirty (30) days after the termination of this Lease. The ROW Option is of a continuing nature, and will continue to apply to of the Adjacent Property during the Term. The ROW Option runs with the land and will be described in the Memorandum of this Lease that is filed for record in accordance with Section 21.

(b) Lessor hereby grants Lessee a continuing right of first refusal to lease the premises adjacent to the Leased Premises owned by Lessor under this Lease which are not leased as of the Effective Date or, if leased, which lease has terminated subsequent to the Effective Date but during the Term (the "**Unleased Premises**") for the Permitted Use. Prior to entering into any lease with a third party for any Permitted Use on Unleased Premises, Lessor shall offer to lease such Unleased Premises to Lessee on the same terms and conditions as being offered to or by a third party. Once Lessee has been notified by Lessor of the right to lease all or any of the Unleased Premises, including the terms and conditions of such lease, Lessee shall respond to Lessor within thirty (30) days after receiving such notification and inform Lessor whether or not Lessee will exercise its right of first refusal. If Lessee elects to lease the Unleased Premises which are the subject of the right of first refusal notice, such election is irrevocable. If Lessee fails or refuses to respond to the notice from Lessor or if Lessee declines to lease the Unleased Premises, Lessor shall be permitted to lease such Unleased Premises to a third party on the terms and conditions offered to Lessee. This right of first refusal runs with the land and will be described in the Memorandum of this Lease that is filed for record in accordance with Section 21.

25. Ad Valorem Taxes. Lessee agrees to pay (or to reimburse to Lessor) all ad valorem taxes and assessments (including rollback taxes) levied, assessed, or payable during the Term against the Leased Premises and all of Lessee's improvements thereto; provided, however, Lessor shall be solely responsible for any ad valorem or similar taxes levied against Lessor's interest in the Royalty Payment or retained mineral rights (including any oil & gas rights) in the Leased Premises. If Lessor constructs new improvements on the Leased Premises after the Effective Date, Lessor will promptly reimburse to Lessee any taxes paid by Lessee attributable to the value of such improvements. Lessor grants to Lessee the right to protest or otherwise challenge ad valorem tax valuations related to the Leased Premises during the Term, and Lessor shall provide reasonable cooperation to Lessee concerning such protests or challenges. Lessor agrees that Lessee, at its option, may discharge any assessment, tax, mortgage or other lien upon the Leased Premises, either in whole or in part, and in such event Lessee shall be subrogated to such lien with the right to enforce same and to apply Royalty Payments and other payments, if any, payable to Lessor hereunder toward satisfying same.

26. Found Property. Any gold, silver, or other precious metals (in any form whatsoever), jewelry, valuables, personal property, artifacts or antiquities unearthed or otherwise found or located by Lessee in, on or under the Leased Premises during the Term shall belong exclusively to Lessor. Lessee shall immediately notify Lessor of any such find and shall immediately turn over possession of such property to Lessor upon Lessor's demand.

27. Capital Event. In the event of a Capital Event, the provisions of this Lease which permit Lessee to (a) store, transport, market, treat, process, ship and otherwise deal with Materials derived from sources off of the Leased Premises on the Leased Premises, (b) locate equipment and Materials used for operations not located on the Leased Premises on the Leased Premises and (c) comingle Materials acquired outside of the Leased Premises with Materials mined on the Leased Premises, as provided in Sections 2(a), 2(e), and 2(f) shall terminate such that no Materials derived from sources off the Leased Premises, and no equipment or materials not used or mined on the Leased Premises may be located on or stored on the Leased Premises and no Materials acquired outside of the Leased Premises may be comingled with Materials mined on the Leased Premises while on the Leased Premises without the written approval and consent of Lessor.

IN WITNESS WHEREOF, this Lease has been executed by the parties below to be effective as of the Effective Date.

[SIGNATURE PAGE FOLLOWS]

LESSOR:

THE SEALY & SMITH FOUNDATION, a Texas corporation

By: /s/ Douglas Rogers
Name: Douglas Rogers
Title: Secretary

LESSEE:

ATLAS SAND COMPANY, LLC, a Delaware limited liability company

By: /s/ Ben M. Brigham
Name: Ben M. Brigham
Title: Manager

EXHIBIT A

LEASED PREMISES

The Leased Premises are located in Ward County, Texas and Winkler County, Texas and include the following Sections of Block A, as depicted on the map below:

5	6	7	8	9	10	11	12	13	14
15									
15	16	19	20	21	22	23	24	25	26
27	28	29	30	31	32	33	34	35	36
37	38	39	44	45	46	47	48	49	50
51	52	53	54	55	56	57	68	69	70

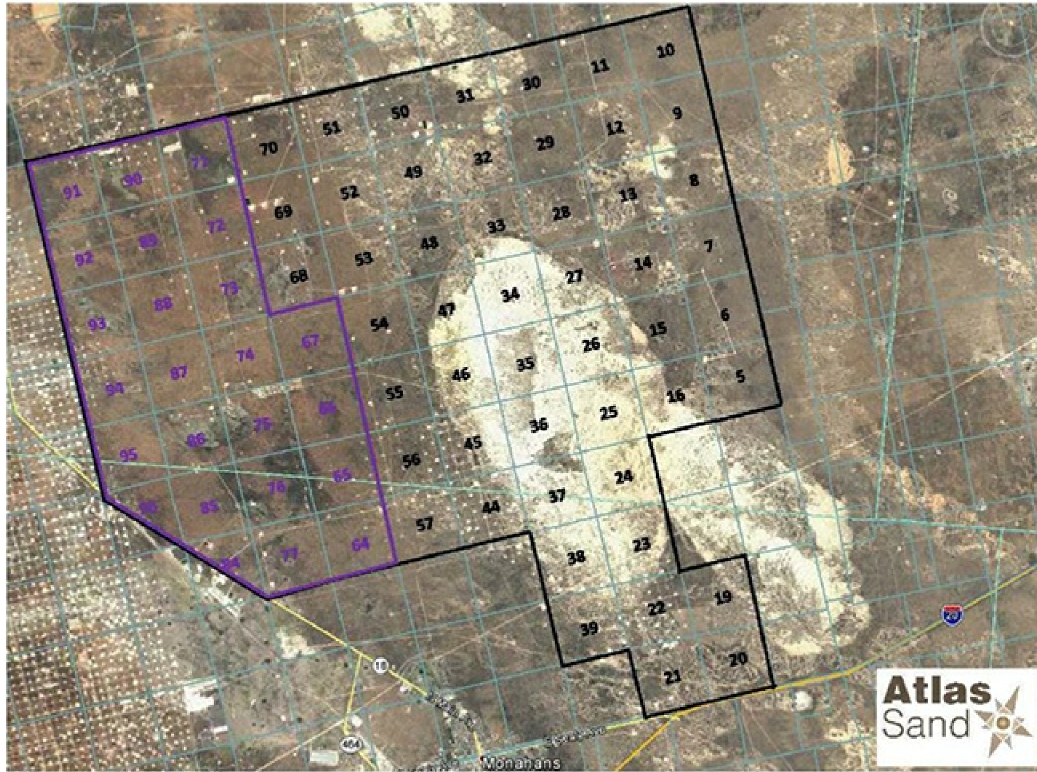

Exhibit A to Mining Lease Agreement

EXHIBIT B

ADJACENT PROPERTY

The Unleased Premises and Adjacent Property, located in Ward County, Texas, and Winkler County, Texas, and on which among other rights, Lessee has been granted rights of ingress and egress, consist of the following Sections of Block A, shown on the map below:

64	65	66	67	71	72
73	74	75	76	77	84 (partial)
85	86	87	88	89	90
91	92	93	94	95	96 (partial)

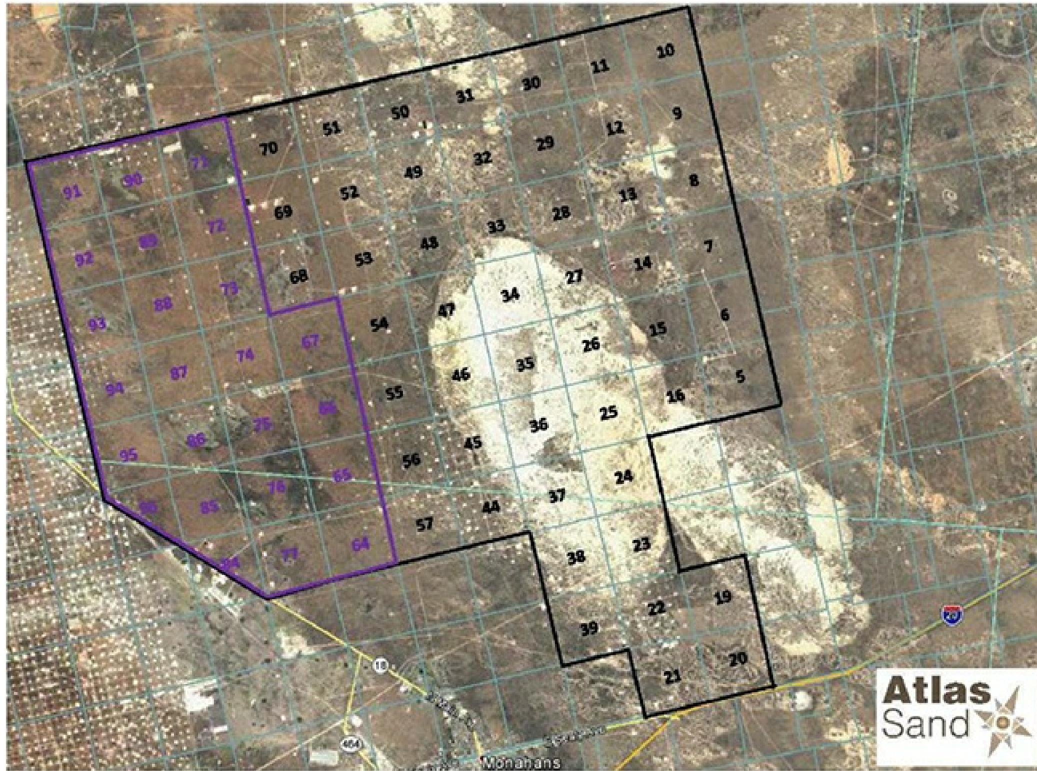

Exhibit B to Mining Lease Agreement

Exhibit 21.1

Atlas Energy Solutions Inc.

List of Subsidiaries

Name	Jurisdiction of Organization
Atlas Construction Employee Company, LLC	Texas
Atlas OLC Employee Company, LLC	Texas
Atlas Sand Company, LLC	Delaware
Atlas Sand Construction, LLC	Texas
Atlas Sand Employee Company, LLC	Texas
Atlas Sand Employee Holding Company, LLC	Texas
Atlas Sand Operating, LLC	Delaware
Fountainhead Logistics, LLC	Texas
Fountainhead Logistics Employee Company, LLC	Texas
OLC Kermit, LLC	Texas
OLC Monahans, LLC	Texas