

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

In re:

Chieftain Sand and Proppant, LLC, *et al.*,

Debtors.¹

Case No. 17- 10064 KG)

Chapter 11

(Jointly Administered)

**DEBTORS' MOTION FOR ORDERS (I)(A) APPROVING BIDDING PROCEDURES
AND AUCTION AND (B) SCHEDULING SALE HEARING AND APPROVING NOTICE
THEREOF; (II) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE
DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS; (III) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

The above-referenced debtors and debtors in possession (collectively, the “**Debtors**”), file this motion (this “**Motion**”) for entry of orders (I)(A) approving bidding procedures and related auction and (B) scheduling a sale hearing and approving notice thereof (the “**Bidding Procedures Order**”); (II) authorizing the sale of substantially all of the Debtors’ assets free and clear of all liens, claims, encumbrances, and other interests; (III) authorizing the assumption and assignment of certain executory contracts and unexpired leases and establishing procedures to determine cure amounts and establishing deadlines for objections with respect thereto; and (IV) granting related relief (the “**Approval Order**”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

¹ The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors’ service address is: 331 27th Street, New Auburn, WI 54757.

District of Delaware dated as of February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirm their consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. The statutory predicates for the relief requested herein are sections 105(a), 363, 364, 365, 503, 507 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 6004-1.

Background

2. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition with the Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. As of the date hereof, no creditors’ committee has been appointed.

3. Factual background relating to the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in detail in *the Declaration of Victor A. Serri in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”) and is incorporated herein by reference.

Facts Specific to the Relief Requested

4. As discussed in detail in the First Day Declaration, Chieftain is a privately owned producer of hydraulic fracturing sand (“**Frac Sand**”), a monocrystalline sand used as a proppant

(a solid material, typically sand, designed to keep an induced hydraulic fracture open) to enhance oil and gas product recovery in petroleum-rich unconventional shale deposits. Prior to the Petition Date, the Debtors, in consultation with their legal, financial, and restructuring advisors, evaluated a broad range of strategic alternatives to address their liquidity pressures and lack of immediately available liquidity. As described in the First Day Declaration, the Debtors, with the assistance of a retained investment banking firm, pursued several marketing and sale processes for substantially all of their assets over a period of approximately seven months prior to the Petition Date.

5. As a result of extensive arm's length, good faith negotiations among Sellers and Buyer and their respective advisors, the Debtors determined that the Asset Purchase Agreement (the "**Agreement**") submitted by Energy Capital Partners Mezzanine Opportunities Fund A., L.P. (the "**Buyer**") represents the best opportunity for the Debtors to maximize the value of their assets and serve as a basis for conducting an auction to seek higher and/or better offers.

6. In order to provide the Debtors with the liquidity needed to accomplish a sale of substantially all of their assets under section 363 of the Bankruptcy Code, Buyer agreed to provide debtor-in-possession financing to the Debtors, and a motion to approve the financing was filed with the Court on the Petition Date. The interim and final orders entered by the Bankruptcy Court authorizing such debtor-in-possession financing is hereinafter referred to as the "DIP Order."

7. The Debtors have negotiated and entered into the Agreement with the DIP Lender (i.e., Buyer), pursuant to which Buyer will acquire the Assets on the terms and conditions specified therein. A copy of the Agreement will be placed in the data room set up by the Debtors for prospective bidders no later than two (2) business days after the Petition Date.

8. The sale transaction pursuant to the Agreement is subject to competitive bidding as set forth herein, the Bidding Procedures, and the Bidding Procedures Order. Pursuant to the terms of the Agreement, Buyer has agreed to purchase the Assets for a purchase price of (i) \$5,000,000 (the “**Credit Bid Amount**”) pursuant to section 363(k) of the Bankruptcy code, plus (ii) an amount in cash sufficient to pay and used to pay in full all Obligations owing under and as defined in, the DIP Credit Agreement, plus (iii) an amount in cash equal to the Undisputed Cure Costs, plus (iv) an amount in cash necessary to fund the wind-down of the Sellers’ estates in accordance with the Approved Wind-Down Budget (as defined in the DIP Order), which shall not exceed \$885,620.

Summary of Relief Requested

9. The Debtors believe that the solicitation of bids and a sale of substantially all of their assets on the timeline proposed herein allow the Debtors to maximize value for all stakeholders while minimizing administrative expenses. During this process, the Debtors will continue to engage with interested parties, and attempt to attract additional interested parties that will participate in a competitive auction process contemplated by the Bidding Procedures (defined below). The Debtors propose that the hearing to approve the Bidding Procedures be held on February 3, 2017 (the “**Bid Procedures Hearing**”), with objections to the Bidding Procedures, if any, to be filed on or before **January 27, 2017 at 4:00 p.m.** prevailing Eastern time (the “**Bid Procedures Objection Deadline**”). The Debtors propose that the bid deadline be set for **March 13, 2017 at 5:00 p.m.** prevailing Eastern time (the “**Bid Deadline**”), and that the auction of the Debtors’ assets (the “**Auction**”), if required, be scheduled for **March 22, 2017 at 10:00 a.m.** prevailing Eastern time. The Debtors propose that the Court hold the hearing to approve the sale and enter the Approval Order (the “**Sale Hearing**”) on **March 24, 2017** with objections to the relief requested in the Approval Order (other than with respect to the conduct of

the Auction), if any, to be filed on or before **March 17, 2017 at 4:00 p.m.** prevailing Eastern time and objections to the conduct of the Auction, if any, to be filed prior to the commencement of the Sale Hearing.

10. In accordance with Local Rule 6004-1, the Debtors respectfully represent the following:

(1) **Sale to an Insider.** The Buyer is an insider of the Debtors. Accordingly, the Debtors and the Buyer have provided for the appointment of a special committee of independent members to oversee all matters related to the Chapter 11 Cases and the Sale (the “**Independent Committee**”). The members of the Independent Committee have and will continue to exercise their respective fiduciary duties in evaluating the Sale and determining whether the Sale is in the best interests of the Debtors, their estates, and their creditors.

(2) **Agreements with Management.** No proposed or prospective buyer has entered into any agreements with management or key employees regarding compensation or future employment.

(3) **Private Sale/No Competitive Bidding.** The Sale is subject to higher or better competing bids and is being conducted pursuant to the competitive bidding process detailed in the Motion.

(4) **Closing and Other Deadlines.** The Agreement provides that the Closing will occur by no later than fifteen (15) days following entry of the Approval Order and contains a number of termination rights as specified in Article 4 of the Agreement.

(5) **Good Faith Deposit.** The Bidding Procedures provide that all bidders (other than Buyer) will be required to post a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the

Debtors, payable to the order of the Debtors in an amount equal to ten (10) percent of the purchase price.

(6) **Interim Agreements with Proposed Buyer.** The Debtors have not entered into any interim agreements with any proposed buyer.

(7) **Use of Proceeds.** Upon Closing, the net sale proceeds shall be, to the extent permitted and appropriate, treated as cash collateral and shall not be used except in accordance with (a) the Approved Budget (as defined in the DIP Order) to meet obligations payable in connection with the Sale, including payment of the DIP loan, or (b) the Approved Wind-Down Budget (as defined in the DIP Order). The Agreement does not provide for a definitive allocation of sale proceeds between or among the Sellers or collateral.

(8) **Tax Exemption.** No tax exemptions under section 1146(a) of the Bankruptcy Code are contemplated in connection with the Sale.

(9) **Record Retention.** The Purchased Assets include Sellers' Documents, which Buyer agrees to retain and make available to Sellers for a period of two years following the Closing Date.

(10) **Sale of Avoidance Actions.** Buyer will purchase all Avoidance Actions related to the Assigned Contracts or the Assumed Liabilities.

(11) **Requested Findings as to Successor Liability.** The Buyer will be undertaking certain Assumed Liabilities pursuant to the terms of the Agreement. The Buyer will be assuming only those liabilities, and all other liabilities not expressly assumed by Buyer under the Agreement, whether or not incurred or accrued on or after the date on which the contemplated transaction is closed, shall be retained by the Debtors.

(12) **Sale Free and Clear of Liens and Encumbrances.** The Debtors are seeking to sell the Assets free and clear of all Liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, unless otherwise provided in the Successful Bidder's purchase agreement.

(13) **Credit Bid.** Buyer shall be permitted to credit bid the full Credit Bid Amount for purposes of the Buyer's initial Qualified Bid and may increase the Credit Bid up to the Credit Bid Cap in submitting any Subsequent Bid.

(14) **Relief from Bankruptcy Rule 6004(h).** As noted in the Motion, the Debtors are requesting relief from the 14-day stay imposed by Rules 6004(h) and 6006(d).

Relief Requested

11. By this Motion, the Debtors seek the entry of two orders:

(a) the Bidding Procedures Order substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 6004, (i) approving the Bidding Procedures attached to the Bidding Procedures Order as Exhibit 1 (the **"Bidding Procedures"**), (ii) approving the notice attached to the Bidding Procedures Order as Exhibit 2 (the **"Notice of Auction and Sale Hearing"**) of the deadline to bid on the Debtors' assets, (iii) setting the time, date and place of the Auction if one or more Qualified Bids (defined below) are presented in a manner that conforms to the Bidding Procedures, (iv) scheduling the Sale Hearing on **March 24, 2017**, to consider the entry of the Approval Order; and (v) approving the notice attached to the Bidding Procedures Order as Exhibit 3 (the **"Notice of Assumption and Assignment"**) of the Debtors' intent to assume, assign, and/or transfer to the Successful Bidder or Back-Up Bidder, the contracts commitments, leases, licenses, permits, purchase orders and any other executory contracts and unexpired leases (collectively, the **"Executory Contracts and Unexpired Leases"**) and the corresponding cure amounts required to be paid in connection with such assumption, assignment and/or transfer;

(b) following the Sale Hearing, the Debtors request the entry of the Approval Order pursuant to Sections 105(a) and 363(b), (f), and (m) of the Bankruptcy Code and Bankruptcy Rule 6004, (i) approving the sale of substantially all of the Debtors' assets to the party holding the highest or otherwise best bid for the assets (the **"Successful Bidder"**) free and clear of all liens, claims, encumbrances, and other interests (other than certain specified assumed liabilities), (ii) authorizing the Debtors to assume and assign to the

Successful Bidder the Executory Contracts and Unexpired Leases; and (iii) granting related and ancillary relief.

12. The Debtors further request that the sale process occur in accordance with the following timeline:²

Action	Deadline
Bid Procedures Objection Deadline	January 27, 2017
Bid Procedures Hearing	February 3, 2017
Sale Objection Deadline and Cure/Assignment Objection Deadline	March 13, 2017
Bid Deadline	March 13, 2017
Auction	March 22, 2017
Sale Hearing	March 24, 2017
Sale Closing Date	March 31, 2017

I. THE PROPOSED BIDDING PROCEDURES AND AUCTION

13. Given the desire to sell the Debtors' business expeditiously and minimize administrative expenses, on the one hand, and their desire to ensure a fair and transparent opportunity for all potentially interested parties to participate in the sale process, on the other hand, the Debtors propose that the Bidding Procedures, and related notice and other procedures set forth herein be implemented in connection with the marketing and sale of their assets.

14. Within three (3) business days after entry of the Bidding Procedures Order, the Debtors (or their agent) will:

- (i) cause the Notice of Auction and Sale Hearing, attached as Exhibit 2 to the Bidding Procedures Order, and a copy of the Bidding Procedures Order to be served by first class mail upon: (a) the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"); (b) counsel to the DIP Agent; (c) all parties who are known to assert a security interest, lien, or claim in any of the assets, if any; (d) all non-Debtor parties to the Executory Contracts and Unexpired Leases and any parties who are

² The Debtors, in the exercise of their business judgment, reserve the right to change these sale-related dates in order to maximize the value of the sale.

known to claim interests therein; (e) all applicable federal, state, and local taxing authorities; (f) all applicable county and state consumer protection agencies; (g) all applicable state attorneys general; (h) all other government agencies required to receive notice under the Bankruptcy Rules; (i) the 20 largest unsecured creditors of the Debtors; (j) the Debtors' insurance providers; (k) all known parties that have expressed interest to the Debtors, within six (6) months prior to the Petition Date and/or since the Petition Date, in purchasing some or all of the Debtors' assets, and (l) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002 collectively, the "**Sale Notice Parties**";

- (ii) serve the Notice of Auction and Sale Hearing on any other party appearing on the Debtors' creditor matrix (to the extent not served as a Sale Notice Party); and
- (iii) provide electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing on the Court's electronic case filing (ECF) website, <http://ecf.deb.uscourts.gov>.

15. The Debtors believe the proposed Bidding Procedures, which are annexed as Exhibit 1 to the Bidding Procedures Order, will maximize value for the benefit of the Debtor's stakeholders. The Bidding Procedures contemplate an auction process pursuant to which bids will be subject to higher or otherwise better offers. The auction process contemplated in the Bidding Procedures takes into account competing offers from bidders to enter into a sale transaction. The following is a summary of the significant terms of the Bidding Procedures:³

Provision	Description of Provision
Participation Requirements See Bidding Procedures at 2 <i>Local Rule 6004-1(c)(i)(A)(3)</i>	In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in entering into a Sale for substantially all of the Assets (a " Potential Bidder ") must first deliver an executed confidentiality agreement in form and

³ This summary is provided in accordance with Rule 6004-1(c)(i) of the Local Rules and is qualified in its entirety by reference to the provisions of the Bidding Procedures. Each capitalized term used and not otherwise defined herein shall have the meaning assigned thereto in the Bidding Procedures. To the extent there exists any inconsistency between this summary and the provisions of the Bidding Procedures, the provisions of the Bidding Procedures shall control.

Provision	Description of Provision
	substance satisfactory to the Debtors and their counsel. ⁴
<p>Bid Requirements</p> <p>See Bidding Procedures at 2-3 <i>Local Rule 6004-1(c)(i)(A)(1)</i></p>	<p>In order to participate in the bidding process and be deemed a “Qualified Bidder,” a Potential Bidder must submit a “Qualified Bid” by the Bid Deadline.</p> <p>To constitute a Qualified Bid, a bid must, among other things:</p> <p>i. provide to the Debtors and their counsel the most current audited and latest unaudited financial statements (collectively, the “Financials”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a transaction with the Debtors, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors that demonstrates the Potential Bidder’s financial ability to consummate a transaction and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with a sale transaction (including being bound by the terms and conditions of the Bidding Procedures); <u>provided</u> that if a Potential Bidder is unable to provide Financials, the Debtors may accept such other information sufficient to demonstrate to the Debtors’ reasonable satisfaction that such Potential Bidder has the financial wherewithal to consummate a sale transaction. Potential Bidders shall not be allowed to review or obtain the Financials of other Potential Bidders;</p>
<p><i>Local Rule 6004-1(c)(i)(A)(1);</i></p> <p><i>Local Rule 6004-1(c)(i)(B)(2)</i></p>	<p>ii. include a cover letter identifying whether the Potential Bidder is interested in purchasing substantially all of the Assets;</p> <p>iii. state that the Potential Bidder offers to</p>

⁴ To the extent any party executed a confidentiality agreement prior to the entry of an order approving these Bidding Procedures, such party does not need to execute another confidentiality agreement in order to comply with the Bidding Procedures or become a Qualified Bidder.

Provision	Description of Provision
<i>Local Rule 6004-1(c)(i)(C)(3)</i>	<p>consummate the sale pursuant to a proposed form of purchase agreement (the “Purchase Agreement”) and enclose a clean signed copy of the proposed Purchase Agreement;</p> <p>iv. include a blackline comparison of the Purchase Agreement to the Agreement, reflecting all of such Potential Bidder’s proposed revisions, modifications, amendments, or other changes to the Agreement;</p> <p>v. if any bid is conditioned on the assumption and assignment of executory contracts and/or unexpired leases, then such Potential Bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid;</p> <p>vi. either (i) be an all-cash bid or (ii) be accompanied by committed financing;</p> <p>vii. provide that the total consideration offered by such bidder under its Purchase Agreement exceeds (a) the consideration offered by the Buyer under the Agreement, including (1) the Credit Bid Amount, (2) the DIP Repayment Amount, (3) the Undisputed Cure Costs, (4) the amount of cash paid to fund the wind-down of the Sellers’ estates, and (5) the value of the Assumed Liabilities, <u>plus</u> (b) \$250,000 (the “Initial Overbid Requirement”);</p> <p>viii. contain a list of the Debtors’ executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from the Debtors;</p> <p>ix. confirm that the offer shall remain open and irrevocable;</p> <p>x. be accompanied with a certified or bank check or wire transfer in an amount equal to ten</p>

Provision	Description of Provision
	<p>percent (10%) of the proposed purchase price set forth in the bid as a minimum good faith deposit (the “Minimum Deposit”), which Minimum Deposit shall be: (a) deposited into an escrow account pursuant to an executed escrow agreement; and (b) used to fund a portion of the purchase price provided for in the bid;</p> <p>xi. indicate whether the Potential Bidder intends to operate the Assets as a going concern;</p> <p>xii. not be conditioned on obtaining financing or the outcome of any due diligence by the Potential Bidder; and</p> <p>xiii. not request or entitle such Potential Bidder to any break-up fee, expense reimbursement, or similar type of payment;</p> <p>xiv. fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.</p>
<p>Bid Deadline</p> <p><i>See Bidding Procedures at 2</i></p> <p><i>Local Rule 6004-11(i)(B)(1)</i></p>	<p>March 13, 2017 at 5:00 p.m. prevailing Eastern Time</p>
<p>Bidding Increments</p> <p><i>See Bidding Procedures at 5-6</i></p> <p><i>Local Rule 6004-1(c)(i)(C)(3)</i></p>	<p>After the Bid Deadline, the Debtors shall determine which Qualified Bid or combination of Qualified Bids represent the then-highest or otherwise best bid for the Assets (the “Starting Qualified Bid”). Prior to the commencement of the Auction, the Debtors shall distribute copies of the Starting Qualified Bid to each Qualified Bidder. The Auction shall commence with the Starting Qualified Bid and then proceed in minimum increments of \$250,000 (the “Overbid Increment”). The Debtors shall not consider any subsequent bid in the Auction unless any bid after the Starting Qualified Bid</p>

Provision	Description of Provision
	exceeds the previous highest bid by at least the Overbid Increment.
Modification of the Bidding Procedures See Bidding Procedures at 6-8 <i>Local Rule 6004-1(c)(i)(D)</i>	<p>All Qualified Bids, the Auction, and the Bidding Procedures are subject to modification and/or additional terms and conditions as are announced by the Debtors and that are not inconsistent with the Bidding Procedures Order.</p> <p>The Debtors reserve the right to modify the Bidding Procedures as they may reasonably determine to be in the best interests of their estates.</p>
Closing with Alternative Backup Bidders See Bidding Procedures at 6-7 <i>Local Rule 6004-1(c)(i)(E)</i>	<p>At the conclusion of the Auction, the Debtors shall announce the bid or combination of bids made pursuant to the Bidding Procedures Order that represents, in the Debtors' discretion, the highest or otherwise best offer for the Assets (the "Successful Bid"). Prior to the entry of the Sale Order, the Debtors shall announce the identity of the Qualified Bidder or combination of Qualified Bidders who submitted the Successful Bid at the Auction (the "Successful Bidder").</p> <p>Following the entry of the Sale Order, if the Successful Bidder fails to consummate the transaction for any reason, the bid of the Qualified Bidder or combination of Qualified Bidders (the "Back-Up Bidder") that submits the next highest or otherwise best bid or combination of bids (the "Back-Up Bid") will be deemed the new Successful Bid, and the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of the Court.</p>
Expense Reimbursement <i>Local Rule 6004-1(c)(i)(C)</i>	None.

16. Any bidder that desires to make a bid will deliver written copies of its bid to (a) counsel for the Debtors, Gibbons P.C., 300 Delaware Avenue, Ste. 1015, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq. (hcohen@gibbonslaw.com)) and (b) proposed investment banker for the Debtors, Tudor, Pickering, Holt & Co., 1111 Bagby, Ste. 4900, Houston, Texas 77002 (Attn: Max Barrett (MBarrett@tphco.com)) (collectively, the “**Bid Notice Parties**”), so as to be received not later than 5:00 p.m. prevailing Eastern time on March 13, 2017. As soon as immediately practicable after the Auction, but no later than one (1) business day after conclusion of the Auction, the Debtors shall provide electronic notice of the results of the Auction on the Court’s docket.

II. NOTICE OF SALE HEARING AND NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

17. The Debtors request that the Court hold the Sale Hearing on March 24, 2017. The Debtors have also requested that the Court establish **March 17, 2017 at 4:00 p.m.** (prevailing Eastern time), or such other date that is five (5) days prior to the Sale Hearing (other than with respect to the conduct of the Auction, with objections to the conduct of the Auction to be filed prior to the commencement of the Sale Hearing), or such later date and time as the Debtors may agree, as the deadline for objections to the sale of the Debtors’ assets or the relief requested in the Motion with respect to the entry of the Approval Order (the “**Sale Objection Deadline**”). Objections to the Motion and entry of the Approval Order must be in writing, conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and be filed with the Bankruptcy Court and served upon (i) counsel for the Debtors, Gibbons P.C., 300 Delaware Avenue, Ste. 1015, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq. (hcohen@gibbonslaw.com)); and (ii) counsel for the DIP Agent, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, (Attn: Mitchell A. Seider, Esq. (mitchell.seider@lw.com))

and Annemarie V. Reilly, Esq. (annemarie.reilly@lw.com)) and Richards Layton & Finger, One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins) (collectively, the “**Objection Notice Parties**”) by the Sale Objection Deadline.

18. In order to facilitate the sale of the Debtors’ assets and the assumption, assignment, and/or transfer of the Executory Contracts and Unexpired Leases to the Successful Bidder contemplated thereunder, within three (3) business days of entry of the Bidding Procedures Order, the Debtors will serve copies of the Bidding Procedures Order and the Notice of Assumption and Assignment substantially in the form attached to the Bidding Procedures Order as Exhibit 3 upon all non-Debtor parties to the Executory Contracts and Unexpired Leases. If the Debtors or Successful Bidder identifies additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or that were not set forth in the original Notice of Assumption and Assignment, the Debtors will promptly send a supplemental notice (a “**Supplemental Notice of Assumption and Assignment**”) to the applicable counterparties to such additional executory contracts and unexpired leases.

19. In the Notice of Assumption and Assignment, the Debtors will identify the calculation of the cure amounts that the Debtors believe must be paid to cure all defaults under the Executory Contracts and Unexpired Leases (the “**Cure Amounts**”). If no amount is listed on the Notice of Assumption and Assignment with respect to an Executory Contract or Unexpired Lease, the Debtors believe that there is no Cure Amount applicable to such Executory Contract or Unexpired Lease.

20. The Debtors request that unless the non-Debtor party to an Executory Contract or Unexpired Lease files an objection (the “**Cure Amount/Assignment Objection**”) to (a) its scheduled Cure Amount and/or (b) to the proposed assumption, assignment and/or transfer of

such Executory Contract or Unexpired Lease by the later of (i) **March 17, 2017 at 4:00 p.m.** (prevailing Eastern time) (or such other date that is five (5) days prior to the Sale Hearing, or such later date and time as the Debtors may agree), or (ii) seven (7) days after service of the relevant Supplemental Notice of Assumption and Assignment (the **“Cure/Assignment Objection Deadline”**) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline by the Objection Notice Parties, then such non-Debtor party shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract or Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure Amount and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease to the Successful Bidder or Back-Up Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder, or Back-Up Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease. Notwithstanding the foregoing, as provided below, each non-Debtor party shall retain the right to object to the assumption, assignment or transfer of its Executory Contract and Unexpired Lease, based solely on the issue of whether the Successful Bidder or Back-Up Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

21. Any objection challenging a Cure Amount must set forth the cure amount being claimed by the objecting party (the **“Claimed Cure Amount”**) and include appropriate documentation in support thereof. Upon receipt of a Cure Amount/Assignment Objection, the Debtors request that it be granted the authority, but not direction, to resolve any Cure

Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection no later than three (3) business days prior to the Sale Hearing, the Debtors will request that the Court resolve such Cure Amount/Assignment Objection at (a) the Sale Hearing or (b) at such other date as the Court may designate, provided that if the subject Executory Contract or Unexpired Lease is assumed and assigned prior to resolution of any Cure Objection, the Claimed Cure Amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be deposited by Successful Bidder to be held in a segregated account maintained by the Debtors or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

22. The Debtors, the Successful Bidder or the Back-Up Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease from the list of Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following the Court's determination. The non-Debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

23. Within one (1) business day after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the "**Notice**") to the non-Debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such

Successful Bid and Back-Up Bid. The Debtors propose that the non-Debtor parties to the Executory Contracts and Unexpired Leases have until the Sale Hearing (the “**Adequate Assurance Objection Deadline**”) to object to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. The Successful Bidder or Back-Up Bidder, as the case may be, shall work with any objecting parties to resolve any disputes and/or concerns regarding the Successful Bidder or Back-Up Bidder’s ability to provide adequate assurance of future performance. If, however, any disputes cannot be resolved within five (5) business days after the Adequate Assurance Objection Deadline, either party may seek a determination from this Court solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

Basis for Relief Requested

I. AUTHORIZING BIDDING PROCEDURES AND AUCTION

24. Section 363(b)(1) of the Bankruptcy Code provides in relevant part that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a) of the Bankruptcy Code, the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

25. Under applicable case law, in this and other circuits, if a debtor’s proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (holding that the following non-exclusive list of factors may be considered by

a court in determining whether there is a sound business purpose for an asset sale: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the effect of the proposed disposition of [sic] the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value”). *See also Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)) (noting that the Court defers to the trustee’s judgment so long as there is a legitimate business justification); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1). Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, No. 89 C 593, 1989 WL 106838, at *3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

26. The “sound business reason” test requires a trustee or debtor in possession to establish four elements: (1) that a sound business purpose justifies the sale of assets outside the

ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the trustee or the debtor in possession has obtained a fair and reasonable price; and (4) that the trustee or debtor in possession acted in good faith. *Abbotts Dairies*, 788 F.2d 143; *Del. & Hudson Ry.*, 124 B.R. at 176; *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); *see also Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *Lionel*, 722 F.2d at 1071.

27. In this case, as set forth more fully herein, the Debtors submit that the decision to proceed with the marketing in accordance with the Bidding Procedures and entry into a sale transaction related thereto is based upon sound business judgment and should be approved. Ample business justification exists to support the decision to sell the Debtors' assets pursuant to the Bidding Procedures, thereby satisfying the first prong of *Abbotts Dairies*. The sale of the Debtors' assets presents the best opportunity to maximize value for their estates, and the process for marketing and selling the assets described in the Bidding Procedures presents the best method by which the Debtors can promote a competitive sale process as well as provide interested parties with accurate and reasonable notice of the sale. The Bidding Procedures allow the Debtors to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction, thereby increasing the likelihood that the Debtors will receive the best possible consideration for their assets.

28. In addition, the notice described herein and in the Bidding Procedures Order is designed to provide adequate notice to all potentially interested parties. Accordingly, the proposed sale of the Debtors' assets satisfies the second prong of the *Abbotts Dairies* standard.

29. The Bidding Procedures are also designed to maximize the value received for the Debtors' assets. The Debtors respectfully submit that the relief sought by this Motion is reasonably calculated to maximize value for the benefit of the Debtors and their stakeholders. The process proposed by the Debtors allows for a timely Auction while providing bidders ample time and information to submit a bid. The Bidding Procedures are designed to ensure that the Debtors' assets will be sold for the highest or otherwise best possible price. The Debtors are permitting prospective purchasers to bid on their assets, thereby subjecting the proposed sale to a market check through the solicitation of competing bids in a court-supervised auction process. Accordingly, the Debtors and all parties in interest can be assured that the consideration received for their assets will be fair and reasonable, and therefore the third prong of the *Abbotts Dairies* standard is satisfied. As discussed below, the "good faith" prong of the *Abbotts Dairies* standard is also satisfied here.

A. The Bidding Procedures Should be Approved

30. As noted above, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales.

31. The Debtors believe that the Bidding Procedures will establish the parameters under which the value of the Purchased Assets may be tested at an auction and through the ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtors' creditors will receive the greatest possible consideration for their assets because they will ensure a competitive and fair bidding process. They also allow the Debtors to undertake an auction in as expeditious and efficient manner as possible, which the Debtors believe is essential to maximizing the value of the Debtors' estate for their creditors.

32. The Debtors also believe that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the best and highest offer reasonably available for the Debtors' assets. In particular, the proposed Bidding Procedures will allow the Debtors to conduct an auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. Further, the Bidding Procedures provide the Debtors with the opportunity to consider all Qualified Bids and to select, in their reasonable business judgment, and after consultation with its professionals and any Official Committee, the highest and best offer(s) for the Assets. Moreover, the Bidding Procedures provide the Debtors with the flexibility to modify the Bidding Procedures, if necessary, to maximize value for the Debtors' estates.

33. At the same time, a prompt sale process is necessary because the Debtors' failure to meet certain "Chapter 11 Milestones" by certain deadlines, including with respect to entry of the Bid Procedures Order, Final DIP Order, and Sale Order are events of default under the DIP Agreement. The process set forth in the proposed Bidding Procedures ensures that the Debtors can comply with such deadlines while providing for a competitive process that maximizes value.

34. In sum, the Debtors believe that the Bidding Procedures will encourage bidding for the Assets and are consistent with the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the proposed Bidding Procedures are reasonable, appropriate, and within the Debtors' sound business judgment

B. The Form and Manner of Notices Should be Approved

35. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify their creditors of the Auction and the sale, including a disclosure of the date, time, and place of the Auction, the terms and conditions of the sale, the date, time, and place of the Sale Hearing, and the deadline for filing any objections to the relief requested herein. Within three (3) days of entry

of the Bidding Procedures Order, the Debtors will serve the Notice of Auction and Sale Hearing by first class mail upon the Sale Notice Parties.

36. The Debtors submit that the form of Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order, is reasonably calculated to provide timely and adequate notice of the proposed Sale, the Bidding Procedures, the Auction, and the Sale Hearing to the Debtors' creditors and all other parties-in-interest that are entitled to notice, as well as those parties that have expressed a bona fide interest in acquiring the Debtors' assets. Accordingly, the Debtors request that the Court approve the notice procedures set forth in this Motion, including the form and manner of service of the Notice of Auction and Sale Hearing, and that no other or further notice of the Sale, the Bidding Procedures or the Auction is required.

II. APPROVAL OF THE SALE IS WARRANTED UNDER SECTION 363 OF THE BANKRUPTCY CODE

37. The Debtors, exercising their business judgment and in consultation with their advisors and key constituents, have determined that it is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest to conduct a sale of their assets. Based on applicable precedent, the Court should authorize the Debtors to do so as set forth herein to stem the losses resulting from continued operations of the assets and to enable the estates to recover as much as possible the liquidation of the assets as a going concern.

A. The Proposed Schedule for the Sale Hearing and Applicable Deadlines is Reasonable and Justified

38. The assets are operating at a significant loss and represent a drain on the Debtors' liquidity. Thus, the sooner the Debtors can consummate a sale of the assets, the sooner the Debtors can eliminate the liquidity burn. Moreover, delays in the sale process described herein

may cause the Debtors to convert to chapter 7 and cease operations – causing their assets to become virtually worthless.

39. The Debtors believe that it is crucial that they consummate the Sale on their proposed timeline to maximize value for the Debtors' estates while minimizing administrative expenses and, pursuant to their post-petition financing agreement, they are obligated to obtain the entry of the Approval Order no later than March 31, 2017. Thus, the Debtors respectfully request that the Court hold the Sale Hearing on March 24, 2017. The Debtors propose to consummate the Sale immediately following the Sale Hearing. Thus, time is of the essence to preserve and maximize the value of the Debtors' assets.

40. In evaluating proposed expedited sales under section 363 of the Bankruptcy Code, courts have considered debtors' dwindling cash positions, whether an expedited sale is necessary to preserve value, and the number of likely potential buyers. *See In re Tempo Tech. Corp.*, 202 B.R. 363, 370 (D. Del. 1996) (upholding a bankruptcy court's authorization of a debtor's sale of assets on an expedited basis where "the expedited sale was necessary to preserve the value of the Debtor's assets," noting the debtor's dwindling liquidity and that there was a single buyer willing to negotiate purchase terms). *See also In re Titusville Country Club*, 128 B.R. 396, 397 (Bankr. W.D. Pa. 1991) (allowing a sale of country club assets on an expedited basis where timing considerations were based on the seasonal nature of the debtor's business).

41. As set forth in the First Day Declaration, ample business reasons exist for conducting the sale on the timeline set forth herein. As previously described to the Court, the Debtors and their advisors have analyzed exhaustively the Debtors' business and various strategic alternatives and determined that a sale of the Debtors' assets provides the most likely path to maximize recoveries for the Debtors' estates, their creditors and other parties-in-interest.

Moreover, a sale of the assets on the timeline set forth herein will maximize the possibility of a recovery for the Debtors' creditors while minimizing the administrative expenses of the estates by ensuring an appropriate post-petition marketing process to reengage prior interested parties (and attempt to identify new interested parties). If the Debtors are required to delay consummation of a sale of the assets, the estates would suffer significant detriment from the resulting delay, added post-petition expenses, and would likely be forced to convert these cases to chapter 7 – eliminating any possibility for a value maximizing going-concern sale of the assets.

B. Sale of Assets Should Be Free and Clear of Liens, Claims and Encumbrances

42. The Debtors request authority to sell the assets free and clear of all liens, claims, encumbrances (other than certain assumed liabilities) and other interests in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, and other interests on or in the assets attaching to the consideration received in the same order or priority and with the same force, validity and effect as such liens, claims, encumbrances, and other interests had with respect to such assets prior to the sale.

43. Section 363(f) of the Bankruptcy Code allows a debtor to sell property “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions is met:

- (a) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (b) the party asserting the lien, claim or interest consents to the sale;
- (c) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property;
- (d) the interest is the subject of a bona fide dispute; or

(e) such entity could be compelled to accept a money satisfaction of such claim.

11 U.S.C. § 363(f); *see also In re Elliott*, 94 B.R. 343, 345 (E.D. Pa 1988) (noting that section 363(f) is written in the disjunctive, thereby allowing sales “free and clear” if any one of the subsections is met).

44. As noted above, the Debtors do not believe any prepetition creditor other than the DIP Agent has a security interest in the assets and the DIP Agent has consented to the sale provided that the Debtors conduct such sale in accordance with milestones contained in the Debtors’ agreement with the DIP Agent, thereby satisfying section 363(f)(2) of the Bankruptcy Code. Furthermore, to the extent there are any entities do have an interest in the assets that have not already consented to the sale, such entity could be compelled to accept a money satisfaction of such interest. Specifically, the Debtors propose that any liens, claims, encumbrances, and other interests asserted against the assets attach to any proceeds realized from the sale of such assets, in the same order of priority and subject to the rights, claims, defenses and objections, if any, of all parties with respect thereto.

C. The Successful Bidder Should be Granted the Protections of Section 363(m) of the Bankruptcy Code

45. As will be set forth in further detail at the Sale Hearing, the Debtors also maintain that the Successful Bidder arising from the Auction, is or would be entitled to the protections afforded by section 363(m) of the Bankruptcy Code.

46. Specifically, section 363(m) of the Bankruptcy Code provides that:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

47. While the Bankruptcy Code does not define “good faith,” the Third Circuit in *Abbotts Dairies* held that:

[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders

788 F.2d at 147 (citations omitted); *see generally* *Marin v. Coated Sales, Inc.* (*In re Coated Sales, Inc.*), No. 89-3704 (KMW), 1990 WL 212899, at * 2 (S.D.N.Y. Dec. 13, 1990) (holding that a party, to show lack of good faith, must demonstrate “fraud, collusion . . . or an attempt to take grossly unfair advantage of other bidders”); *see also* *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (*quoting In re Bel Air Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)); *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining facts of each case, concentrating on “integrity of [an actor’s] conduct during the sale proceedings” (*quoting In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978))).

48. In addition, as will be set forth in further detail at the Sale Hearing, the Debtors will negotiate with the Successful Bidder without collusion, in good faith, and from arm’s-length bargaining positions, with give and take on both sides. Further, neither the Debtors nor the Successful Bidder will engage in any conduct that would cause or permit the Purchase Agreement to be avoided. Under the circumstances, this Court will have a sufficient factual and legal basis to find that the Successful Bidder is entitled to all of the protections of section 363(m) of the Bankruptcy Code.

D. The Court Should Approve Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases

49. The Debtors respectfully submit that the Court should approve procedures relating to the assumption and assignment of Executory Contracts and Unexpired Leases. In assuming and assigning the Executory Contracts and Unexpired Leases, the Debtors intend to comply with the provisions of Bankruptcy Code Section 365(f)(2). Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

The [debtor] may assign an executory contract or unexpired lease of the debtor only if -

(A) the [debtor] assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

50. Under Bankruptcy Code section 365(a), a debtor, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a). Bankruptcy Code section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

51. Section 365(b) of the Bankruptcy Code requires the debtor to cure any defaults under the contract or provide adequate assurance that it will promptly cure such defaults. If there has been a default, the debtor must also provide adequate assurance of future performance under the contract.

52. With respect to adequate assurance of future performance, the meaning of adequate assurance of future performance depends on the facts and circumstances of each case, but should be given practical, pragmatic construction. *See In re Dura Auto. Sys.*, No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *274 (U.S. Bankr. D. Del. Aug. 15, 2007) (“[t]he meaning of adequate assurance of future performance depends on the facts and circumstances of each case, but should be given practical, pragmatic construction”) (internal quotations omitted).

53. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., Dura Auto. Sys.*, No. 06-11202 (KJC), 2007 Bankr. LEXIS at *274; *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance where a debtor’s proposed assignee’s “financial resources” and experience as a successful restaurateur “indicate “that the Landlord is adequately assured that the rent will be paid”).

54. The Debtors will demonstrate facts at the Sale Hearing to show the financial wherewithal and the Successful Bidder’s willingness and ability to perform under the Executory Contracts and Unexpired Leases. The Sale Hearing will therefore provide the Court and the other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Successful Bidder to provide adequate assurance of future performance under the Executory Contracts and Unexpired Leases, as required under Bankruptcy Code section 365(b)(1)(C). The

Court should therefore authorize the Debtors to assume and assign the Executory Contracts and Unexpired Leases as set forth herein.

55. The Debtors also request that the Court include in the Approval Order provisions barring non-Debtor parties to Executory Contracts and Unexpired Leases assumed and assigned under such order, from: (i) asserting any default, loss, or liability against the assignee of such contract based on any event or circumstance arising prior to the date of assignment; or (ii) objecting to the assumption and assignment of its Executory Contract or Unexpired Lease, unless the non-Debtor party timely objects to this Motion.

56. The Debtors believe that the foregoing procedures provide counterparties to affected contracts notice and a reasonable opportunity to protect their individual interests and should be approved.

III. FURTHER RELIEF

57. The Debtors request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above and in the First Day Declaration, time is of the essence and it is imperative that the Debtors be able to consummate a sale on the timeline proposed. In order to maximize the value of the assets and minimize the estates’ unnecessary administrative expenses, the Debtors believe a waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent that they apply, is in the best interest of the Debtors’ estates and stakeholders.

Notice

58. Notice of this Motion will be provided to: (a) the U.S. Trustee; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the DIP

Lender; (d) all known holders of liens upon the Debtors' assets; (e) all known parties that have expressed an interest in purchasing the Debtors' assets; (f) the Internal Revenue Service; (g) the United States Department of Justice; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order and Approval Order, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: January 9, 2017
Wilmington, Delaware

GIBBONS P.C.

By: /s/ Howard A. Cohen
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**PROPOSED ATTORNEYS FOR THE
DEBTORS**

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

In re:

Chieftain Sand and Proppant, LLC, *et al.*Debtors.¹

Case No. 17- 10064 (KG)

Chapter 11

(Jointly Administered)

Re: Docket Nos. _____

ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTORS; (II) SCHEDULING AN AUCTION AND HEARING TO CONSIDER THE SALE OF ASSETS; AND (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a), 363, 365, 503, 506, 507 and 552 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of an order (this “**Bidding Procedures Order**”): (i) approving bidding procedures in connection with the sale of substantially all assets of the Debtors, (ii) scheduling an auction and a hearing to consider the sale of assets, (iii) approving the form and manner of notice thereof; and (iv) granting related relief; and the Court having considered the Motion and all exhibits, objections, and other papers filed in connection therewith; and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the

¹ The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors' service address is: 331 27th Street, New Auburn, WI 54757.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Motion.

record of the hearing on the Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Motion and the transactions contemplated therein pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the Auction and Sale Hearing. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

C. The Debtors' proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the sale of the Debtors' assets, and the Bidding Procedures to be employed in connection therewith.

D. The Debtors have articulated good and sufficient business reasons for this Court to approve the Bidding Procedures, including: (i) the scheduling of a Bid Deadline, Auction, and Sale Hearing for the sale of the Debtors' assets; and (ii) the establishment of procedures to fix the Cure Amounts to be paid under section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases.

³ Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when applicable.

E. The Debtors have demonstrated a compelling and sound justification for authorizing the sale of the Assets and entry into the Agreement as a “stalking horse” sale agreement under the circumstances, timing, and procedures set forth herein, in the Motion, and in the Agreement.

F. Entry into the Agreement, a copy of which is attached to the Motion, is in the best interests of the Debtors and the Debtors’ estates and creditors. The Agreement will enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors’ estates.

G. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Debtors’ assets.

H. The entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:**

1. The Motion is GRANTED as set forth herein.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.
3. The Debtors’ selection of Energy Capital Partners Mezzanine Opportunities Fund A, LP as the Stalking Horse Bidder is approved. The Stalking Horse Bid shall be and hereby is deemed a Qualified Bid for all purposes of the Bidding Procedures and the Stalking Horse Bidder shall be and hereby is deemed a Qualified Bidder for all purposes of the Bidding Procedures.

4. No potential bidder shall be entitled to any breakup fee, overbid fee, termination fee, expense reimbursement, or similar type of payment.

5. The Bidding Procedures, in substantially the form attached hereto as **Exhibit 1**, are hereby incorporated herein and approved, and shall apply with respect to the sale of the Debtors' assets. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

6. As further described in the Bidding Procedures, the deadline for submitting Qualified Bids for the Debtors' assets is **March 13, 2017 at 5:00 p.m.** prevailing Eastern time (the "**Bid Deadline**"). No bid shall be deemed to be a Qualified Bid (as defined in the Bidding Procedures) or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bidding Procedures, provided, however, that the Debtors may waive one or more defects and cause a bid to be deemed a Qualified Bid; provided, further, that the Debtors may not waive the Initial Overbid Requirement (as defined in the Bidding Procedures).

7. The Debtors may sell their assets by conducting an Auction in accordance with the Bidding Procedures. If Qualified Bids are timely received by the Debtors in accordance with the Bidding Procedures, the Auction shall take place on **March 22, 2017 at 10:00 a.m.** prevailing Eastern time at the offices of Gibbons P.C., One Gateway Center, Newark, N.J. 07102, or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held.

8. Each Qualified Bidder participating at the Auction will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the

bidding or the sale. The Auction will be conducted openly. Bidding at the Auction shall be transcribed or videotaped.

9. The Sale Hearing shall be held before this Court on _____, **2017**, at **__:00 __.m. (prevailing Eastern Time)**, or as soon thereafter as counsel and interested parties may be heard.

10. On or before three (3) business days after entry of the Bidding Procedures Order, or as soon thereafter as such parties can be identified, the Debtors will cause a notice in substantially the form annexed hereto as **Exhibit 2** (the “**Notice of Auction and Sale Hearing**”), and a copy of this Bidding Procedures Order, to be sent, by first-class mail, postage prepaid, to the following: (i) the Office of the United States Trustee; (ii) counsel to the DIP Agent; (iii) all parties who are known to assert a security interest, lien, or claim in any of the Assets, if any; (iv) all non-Debtor parties to the Executory Contracts and Unexpired Leases and any parties who are known to claim interests therein; (v) all applicable federal, state, and local taxing authorities; (vi) all applicable county and state consumer protection agencies; (vii) all applicable state attorneys general; (viii) all other government agencies required to receive notice under the Bankruptcy Rules; (ix) the Debtors’ 20 largest unsecured creditors on a consolidated basis; (x) the Debtors’ insurance providers; (xi) all known parties that have expressed interest to the Debtors, within six (6) months prior to the Petition Date and/or since the Petition Date, in purchasing some or all of the Debtors’ assets; and (xii) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002.⁴ In addition to the foregoing, electronic notification of this Motion, the Bidding Procedures Order and the Notice of

⁴ The Notice of Auction and Sale Hearing will direct parties to contact the Debtors’ counsel for more information and will provide that any party in interest that wishes to obtain a copy of any related document, subject to any necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.

Auction and Sale Hearing also will be posted on the Court's electronic case filing (ECF) website, <http://ecf.deb.uscourts.gov>.

11. On or before three (3) business days after entry of this Bidding Procedures Order, the Debtors will (i) serve the Notice of Auction and Sale Hearing on all creditors appearing on the Debtors' creditor matrix (to the extent not already served pursuant to paragraph 10); and (ii) subject to applicable submission deadlines and cost considerations (and consistent with the DIP Order and the Approved Budget).

12. On or before three (3) business days after entry of this Bidding Procedures Order, the Debtors will serve, by first class mail or hand delivery on all non-Debtor parties to the Executory Contracts and Unexpired Leases, a notice of potential assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases in substantially the form annexed hereto as **Exhibit 3** (the "**Notice of Assumption and Assignment**"). The Notice of Assumption and Assignment shall identify the calculation of the cure amounts that the Debtors believe must be paid to cure all defaults under the Assigned Contracts (the "**Cure Amounts**"). If the Debtors, the Successful Bidder, or the Back Up Bidder, as the case may be, identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or that were not set forth in the original Notice of Assumption and Assignment, the Debtors will promptly send a supplemental notice (a "**Supplemental Notice of Assumption and Assignment**") to the applicable counterparties to such additional executory contracts and unexpired leases.⁵

⁵ The inclusion of any contract or unexpired lease of nonresidential real property on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment shall not be an admission by the Debtors or their estates that any such contract or unexpired lease so included is an executory contract. Nor shall the inclusion of any contract or unexpired lease on any Notice of Assumption and Assignment or Supplemental Notice of Assumption and Assignment constitute an admission of liability by the Debtors or their estates or effectuate the assumption or assignment of such contract or lease, absent entry of an order of the Court approving the assumption

13. Unless the non-Debtor party to an Executory Contract or Unexpired Lease files an objection (the “**Cure Amount/Assignment Objection**”) to its scheduled Cure Amount and/or (ii) the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by **March 17, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the “**Cure/Assignment Objection Deadline**”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline on (i) counsel for the Debtors, Gibbons P.C., 300 Delaware Avenue, Ste. 1015, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq. (hcohen@gibbonslaw.com)); and (ii) counsel for the DIP Agent, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, (Attn: Mitchell A. Seider, Esq. (mitchell.seider@lw.com) and Annemarie V. Reilly, Esq. (annemarie.reilly@lw.com)) and Richards Layton & Finger, One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins) (collectively, the “**Objection Notice Parties**”), then such non-Debtor party shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract or Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure Amount and (ii) subject to the procedures for objecting to adequate assurance of future performance as set forth below, be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease to the Successful Bidder or Back-Up Bidder and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or Back-Up Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or

and/or assignment of such contract or lease of nonresidential real property in conjunction or as part of the Approval Order.

additional conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease.

14. Cure Objections shall set forth the cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”), the specific types and dates of the alleged defaults, pecuniary losses and conditions to assignment, and the support therefor and for all other objections to assumption and assignment. Upon receipt of a Cure Amount/Assignment Objection, the Debtors, with the approval of the Successful Bidder, may resolve any Cure Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors, the Successful Bidder or the Back-Up Bidder (as applicable), and any objecting party are unable to consensually resolve any Cure Objection no later than three (3) business days prior to the Sale Hearing, the Debtors shall request that the Court resolve such Cure Objection at the Sale Hearing.

15. The Successful Bidder or the Back-Up Bidder, as the case may be, may determine to add or exclude any Executory Contract or Unexpired Lease from the list of Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement or Stalking Horse Agreement through the Closing Date; provided, however, the non-Debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

16. Any objection by non-Debtor parties to any Executory Contract or Unexpired Lease concerning whether the Stalking Horse Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code (the “**Stalking Horse Adequate Assurance Objection**”) must be filed and served by the Sale Objection Deadline (defined below) and comply with the requirements contained in this Order.

17. Within one (1) business day after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the “**Notice**”) to the non-Debtor parties to the Assigned Contracts that have been identified in such Successful Bid and Back-Up Bid. If the Stalking Horse Bidder is not the Successful Bidder, then any objection by non-Debtor parties to the Assigned Contracts solely concerning the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code (the “**Adequate Assurance Objection**”) must be filed prior to the commencement of the Sale Hearing and must otherwise comply with the requirements set forth herein.

18. Objections to the sale of the Debtors’ assets, adequate assurance of future performance by the Stalking Horse Bidder or the relief requested in the Motion (other than with respect to the conduct of the Auction or adequate assurance of future performance by the Successful Bidder if the Successful Bidder is not the Stalking Horse Bidder) must: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the clerk of the Bankruptcy Court for the District of Delaware, 824 N. Market St., Wilmington, DE 19801, on or before **March 17, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the “**Sale Objection Deadline**”), or such later date and time as the Debtors may agree; and (iv) be served so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the same day upon the Objection Notice Parties. Objections, if any, to the conduct of the Auction, or adequate assurance of future performance by the Successful Bidder if the Successful Bidder is not the Stalking Horse Bidder, must be filed and served prior to the commencement of the Sale Hearing and must otherwise comply with the requirements above. All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

19. The Notice of Auction and Sale Hearing and the Notice of Assumption, and Assignment to be issued in connection with the proposed sales of the Debtors' assets, substantially in the forms annexed hereto as **Exhibit 2** and **Exhibit 3**, respectively, are approved.

20. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or other parties in interest by announcement of said adjournment in open Court.

21. Except as otherwise provided in this Bidding Procedures Order or the Bidding Procedures, the Debtors further reserve the right as they may reasonably determine to be in the best interests of their estates, subject to conformity with the Bidding Procedures, to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid or combination of Qualified Bids is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (c) contrary to the best interests of the Debtors and their estates; (v) remove all or a portion of the Debtors' assets from the sale; (vi) waive terms and conditions set forth herein with respect to all Potential Bidders; (vii) impose additional terms and conditions with respect to all Potential Bidders; (viii) extend the deadlines set forth herein; (ix) upon prior notice to the Stalking Horse Bidder to the extent practicable under the circumstances, adjourn or cancel the Auction and/or Sale Hearing in open court without further notice; (x) modify the Bidding Procedures as the Debtors may determine to be in the best interest of their estates; or (xi) withdraw the Motion at any time prior to the Sale Hearing with or without prejudice.

22. Notwithstanding anything to the contrary in this Order or the Motion, any payment, obligations, or other relief authorized by this Order shall be subject to the terms, conditions, and limitations of the order of this Court approving any debtor in possession financing and cash collateral use, including any budget in connection therewith.

23. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and Bidding Procedures Order shall be effective immediately upon its entry.

24. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Wilmington, Delaware

Date: _____, 2017

The Honorable
United States Bankruptcy Judge

Exhibit 1 (to Bidding Procedures Order)

[Bidding Procedures]

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

In re:

Chieftain Sand and Proppant, LLC, *et al.*,Debtors.¹

Case No. 17-_____()

Chapter 11

(Jointly Administered)

BIDDING PROCEDURES

By motion dated _____, 2017 (the “**Motion**”) filed by the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Cases**”) [Docket No. ____],² the Debtors sought approval of, among other things, the procedures through which they will determine the highest or otherwise best price for the sale of substantially all the assets owned by the Debtors (collectively, the “**Assets**”) to one or more successful bidders.

On _____, 2017, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order (the “**Bidding Procedures Order**”) which, among other things, (i) authorized the Debtors to determine and select the highest or otherwise best bid for the Assets (the “**Successful Bid**”) through the competitive bidding and auction process set forth below (the “**Bidding Procedures**”); and (ii) scheduled _____, 2017 at __: __0 __.m. (**Prevailing Eastern Time**), as the date and time that a hearing before the Court to consider the Debtors’ request for approval of the Successful Bid will be held (the “**Sale Hearing**”). As set forth below and in the Motion, the Debtors reserve the right to modify the Bidding Procedures in accordance with the Bidding Procedures Order.

The sale will be subject to competitive bidding as set forth herein, and approval of the Court pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”).

Assets to be Sold/Free and Clear

The Assets generally constitute substantially all of the assets owned by the Debtors. The Debtors are offering bidders the opportunity to bid on substantially all of the Assets (the “**Sale**”). All of the rights, title and interest of the Debtors in and to the Assets to be acquired will be sold free and clear of all pledges, liens, security interest, encumbrances, claims, charges, options, and interests thereon and there against (collectively, “**Claims and Interests**”) to the extent permitted by sections 363 and 365 of the Bankruptcy Code, and other applicable

¹ The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors' service address is: 331 27th Street, New Auburn, WI 54757.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

law, such Claims and Interests to attach to the net proceeds of the Sale of such Assets, with the same validity and priority as existed immediately prior to the Sale, except, with respect to the Stalking Horse Bidder (as defined below), to the extent otherwise set forth in the Stalking Horse Purchase Agreement or, with respect to a Successful Bidder, to the extent otherwise set forth in the relevant purchase agreement.

Stalking Horse Bidder

Pursuant to the Bidding Procedures Order, the Court approved, among other things, the Debtors' selection of Energy Capital Partners Mezzanine Opportunities Fund A, LP as the proposed stalking horse bidder for the Assets (the "**Stalking Horse Bidder**"), pursuant to that certain Asset Purchase Agreement by and among the Debtors and the Stalking Horse Bidder, dated as of January 9, 2017, and attached as an exhibit to the Proposed Sale Order (the "**Stalking Horse Agreement**").

Participation Requirements

In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in consummating a Sale for substantially all of the Assets must first deliver an executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel, upon which time such person shall become a "**Potential Bidder**." A copy of the Debtors' proposed form of confidentiality agreement may be obtained by contacting Debtors' counsel at the contact information provided in the "Bid Deadline" section below.³

Bid Requirements

In order to participate in the bidding process and be deemed a "**Qualified Bidder**," a Potential Bidder must submit a "**Qualified Bid**" by _____, 2017, at 5:00 p.m. (prevailing Eastern Time) (the "**Bid Deadline**"). The Debtors shall make a determination regarding whether a bid is a Qualified Bid and shall notify bidders whether their bids have been determined to be Qualified Bids by no later than 5:00 p.m. (prevailing Eastern Time) on _____, 2017. For the avoidance of doubt, the Stalking Horse Bidder on account of the Stalking Horse Agreement is a Qualified Bidder and has submitted a Qualified Bid, which Qualified Bid consists of (a) the Credit Bid Amount (as defined in the Stalking Horse Agreement), plus (b) an amount in cash sufficient to pay the DIP Repayment Amount (as defined in the Stalking Horse Agreement), plus (c) an amount in cash equal to the Undisputed Cure Costs (as defined in the Stalking Horse Agreement), plus (d) an amount in cash necessary to fund the wind-down of the Sellers' estates in accordance with the Approved Wind-Down Budget (as defined in the *Interim Order (I) Authorizing Debtors to Obtain Post-Petition Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Scheduling and Final Hearing, and (V) Granting Related Relief* [Docket No. ____] and the proposed Final Order with respect thereto (collectively, the "**Financing Orders**"). Further, subject to the Stalking Horse Agreement, the Stalking Horse Bidder shall have the unqualified

³ To the extent any party executed a confidentiality agreement prior to the entry of an order approving these Bidding Procedures, such party does not need to execute another confidentiality agreement in order to comply with the Bidding Procedures or become a Qualified Bidder.

right to increase the Credit Bid Amount prior to or during the Auction, provided that in no event shall the Credit Bid Amount exceed the Credit Bid Cap (as defined in the Stalking Horse Agreement). The Debtors reserve their right to contact bidders before or after the Bid Deadline to discuss or clarify the terms of their bid and to indicate any terms which may need to be modified in order to conform the bid to a Qualified Bid or otherwise evaluate the bid. If no timely, conforming Qualified Bids are submitted by the Bid Deadline, the Debtors shall not hold the Auction but expressly reserve the right to extend the Bid Deadline. To constitute a Qualified Bid, a bid must, among other things:

- (i) provide to the Debtors and their counsel the most current audited and latest unaudited financial statements (collectively, the “**Financials**”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a transaction with the Debtors, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors that demonstrates the Potential Bidder’s financial ability to consummate a Sale transaction and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with a Sale transaction (including being bound by the terms and conditions of the Bidding Procedures); provided that if a Potential Bidder is unable to provide Financials, the Debtors may accept such other information sufficient to demonstrate to the Debtors’ reasonable satisfaction that such Potential Bidder has the financial wherewithal to consummate a Sale transaction. Potential Bidders shall not be allowed to review or obtain the Financials of other Potential Bidders;
- (ii) include a cover letter identifying whether the Potential Bidder is interested in purchasing substantially all of the Assets;
- (iii) state that the Potential Bidder offers to consummate the Sale pursuant to a proposed form of purchase agreement (the “**Purchase Agreement**”) and enclose a clean signed copy of the proposed Purchase Agreement;
- (iv) include a blackline comparison of the Purchase Agreement to the Stalking Horse Agreement, reflecting all of such Potential Bidder’s proposed revisions, modifications, amendments, or other changes to the Stalking Horse Agreement;
- (v) if any bid is conditioned on the assumption and assignment of executory contracts and/or unexpired leases, then such Potential Bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid;
- (vi) either (i) be an all-cash bid; or (ii) be accompanied by committed financing;

- (vii) provide that the total consideration offered by such bidder under its Purchase Agreement exceeds (a) the consideration offered by the Stalking Horse Bidder under the Stalking Horse Agreement, including (1) the Credit Bid Amount, (2) the DIP Repayment Amount, (3) the Undisputed Cure Costs, (4) the amount of cash paid to fund the wind-down of the Sellers' estates, and (5) the value of the Assumed Liabilities, plus (b) \$250,000 (the "**Initial Overbid Requirement**");
- (viii) contain a list of the Debtors' executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from the Debtors;
- (ix) confirm that the offer shall remain open and irrevocable as provided below;
- (x) be accompanied with a certified or bank check or wire transfer in an amount equal to ten percent (10%) of the proposed purchase price set forth in the bid as a minimum good faith deposit (the "**Minimum Deposit**"), which Minimum Deposit shall be (a) deposited into a segregated account as set forth below; and (b) used to fund a portion of the purchase price provided for in the bid;
- (xi) indicate whether the Potential Bidder intends to operate the Assets as a going concern;
- (xii) not be conditioned on obtaining financing or the outcome of any due diligence by the Potential Bidder;
- (xiii) not request or entitle such Potential Bidder to any break-up fee, expense reimbursement, or similar type of payment; and
- (xiv) fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.

If a bid submitted on or prior to the Bid Deadline fails to meet all the requirements of a Qualified Bid, the Debtors are entitled to work with the bidder in an effort to cure any defects in the bid and to cause such bid to become a Qualified Bid prior to the commencement of the Auction. In addition, the Debtors may waive one or more of the requirements specified in the "Bid Requirements" section above and deem such bid to be a Qualified Bid prior to the commencement of or during the Auction; provided, however, that the Debtors may not waive the Initial Overbid Requirement. The Debtors may aggregate separate bids from unaffiliated Potential Bidders to create one Qualified Bid, provided, however, that all such Potential Bidders shall remain subject to the provisions of section 363(n) of the Bankruptcy Code regarding collusive bidding.

A bid received from a Potential Bidder that meets the requirements set forth above that is timely received will be considered a Qualified Bid if the Debtors believe that such bid would be consummated if selected as a Successful Bid (defined below).

After the Bid Deadline (defined below), the Debtors, employing their business judgment, shall determine which Qualified Bid or combination of Qualified Bids represents the Starting Qualified Bid (defined below). The Debtors shall provide notice to bidders of the Starting Qualified Bid (defined below) by a date no later than one day prior to the Auction.

Bid Deadline

The Bid Deadline for submitting bids on the Assets by a Potential Bidder shall be _____, 2017, at 5:00 p.m. (prevailing Eastern Time), unless such date is extended by the Debtors.

A Potential Bidder that desires to make a bid must deliver written and electronic copies of their bid so that they are actually received prior to the Bid Deadline by (a) proposed counsel for the Debtors, Gibbons P.C., 300 Delaware Avenue, Ste. 1015, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq. (hcohen@gibbonslaw.com)) and (b) proposed investment banker for the Debtors, Tudor, Pickering, Holt & Co., 1111 Bagby, Ste. 4900, Houston, Texas 77002 (Attn: Max Barrett (MBarrett@tphco.com)).

Obtaining Due Diligence Access

The Debtors shall afford each Potential Bidder reasonable due diligence information. Site access shall be provided upon reasonable request to the Debtors at the discretion of the Debtors within their reasonable business judgment. Potential Bidders cannot question the Debtors' employees without the Debtors' consent. The due diligence period will end on the Bid Deadline (and for the avoidance of doubt, as provided above, a Qualified Bid may not be conditioned on obtaining financing or the outcome of any due diligence by the Potential Bidder).

The Debtors shall not be obligated to furnish any information relating to the Debtors, the Assets and/or the Sale to any person except to a Potential Bidder. The Debtors shall give each Potential Bidder reasonable access to all written due diligence information provided to another Potential Bidder.

The Debtors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

The Debtors have designated Tudor, Pickering, Holt & Co. ("**TPH**") to coordinate their responses to all reasonable requests for additional information and due diligence from Potential Bidders. Contact information for TPH is as follows:

Tudor, Pickering, Holt & Co.
Attn: Max Barrett
1111 Bagby, Suite 4900

Houston, Texas 770022

Due Diligence from Potential Bidders

Each Potential Bidder shall comply with all reasonable requests for additional information by the Debtors or their advisors regarding such Potential Bidder's financial wherewithal to consummate and perform obligations in connection with the Sale. Failure by the Potential Bidder to comply with requests for additional information may be a basis for the Debtors to determine that a Potential Bidder is not a Qualified Bidder and that a bid made by a Potential Bidder or a Qualified Bidder is not a Qualified Bid.

"As Is, Where Is"

The Sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or estates, except to the extent set forth in the purchase agreement between the Debtors and the Successful Bidder.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to inspect and examine the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection with the bidding process, in each case except as expressly stated in the marked Purchase Agreement.

The Auction

If more than one Qualified Bid by a Qualified Bidder is received by the Bid Deadline (or if a non-qualified bid received by the Bid Deadline is qualified prior to the commencement of the Auction), other than the bid of the Stalking Horse Bidder, an Auction with respect to a sale of the Assets shall take place on _____, 2017, at __: __ 0 __.m. (**prevailing Eastern Time**), at the offices of Gibbons P.C., One Gateway Center, Newark, N.J. 07102, or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. If, however, no such Qualified Bids other than the bid of the Stalking Horse Bidder are received by the Bid Deadline, or if a non-qualified bid received by the Bid Deadline is not qualified prior to the commencement of the Auction, then the Auction will not be held, the Stalking Horse Agreement shall be designated as the Successful Bid, and the Debtors shall seek approval of the Sale of the Assets to the Stalking Horse Bidder in accordance with the Stalking Horse Agreement at the Sale Hearing.

Auction Rules:

- (i) Only Qualified Bidders who have submitted a Qualified Bid for substantially all of the Assets and their authorized representatives will be eligible to participate at the Auction and to increase their bids. Representatives of the Committee, if any, may attend the Auction. After

the Bid Deadline, the Debtors shall determine which Qualified Bid or combination of Qualified Bids represents the then-highest or otherwise best bid for the Assets (the “**Starting Qualified Bid**”). The Auction shall commence with the Starting Qualified Bid and then proceed in minimum overbid increments of \$250,000 (the “**Overbid Increment**”). The Debtors shall not consider any subsequent bid in the Auction unless any bid after the Starting Qualified Bid exceeds the previous highest bid by at least the Overbid Increment. During the course of the Auction, the Debtors shall inform each participant which Qualified Bid(s) reflects, in the Debtors’ view, after consultation with the Committee, if any, the highest or otherwise best offer or combination of offers.

- (ii) The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to all Qualified Bidders that have submitted a Qualified Bid and counsel for the Committee, if any.
- (iii) Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or Sale; provided, however, in order to obtain the highest and/or otherwise best bid, the Debtors may engage in discussions with one or more Qualified Bidders if they determine that the combination of all or a portion of bids received from such Qualified Bidders would yield the highest and/or otherwise best offer at the Auction.
- (iv) Bidding at the Auction shall be transcribed or videotaped.
- (v) Within two (2) Business Days after the conclusion of the Auction, the Successful Bidder (as defined below) shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtors or their agents shall publish notice of the Auction on the Debtors’ restructuring website maintained by its claims and noticing agent.

Other Terms

All Qualified Bids, the Auction, and the Bidding Procedures are subject to modification and/or additional terms and conditions as are announced by the Debtors solely to the extent not inconsistent with the Bidding Procedures Order or these Bidding Procedures. At the conclusion of the Auction, the Debtors shall announce the bid or combination of bids made pursuant to the Bidding Procedures Order that represents, in the Debtors’ discretion, the Successful Bid and close the Auction. In determining which bid is the Successful Bid, the Debtors shall consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Stalking Horse Agreement

requested by each bidder, and the net benefit to the Debtors' estates. Prior to the entry of the Sale Order (defined below), the Debtors shall announce the identity of the Qualified Bidder or combination of Qualified Bidders who submitted the Successful Bid at the Auction (the "**Successful Bidder**"). If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid at the Auction, (ii) definitive documentation has been executed in respect thereof and (iii) the Court has approved the Sale to the Successful Bidder. Such acceptance by the Debtors is conditioned upon approval by the Court of the Successful Bid and the entry of an order approving such Successful Bid.

Following completion of the Auction, neither the Debtors nor their representatives shall initiate contact with, solicit or encourage submission or any inquiries, proposals or offers by, any person in connection with any sale or other disposition of the Assets.

Irrevocability of Certain Bids

The Successful Bid and the bid of the Qualified Bidder or combination of Qualified Bidders (the "**Back-Up Bidder**") that submits the next highest or otherwise best bid or combination of bids (the "**Back-Up Bid**") shall be irrevocable until the earlier of: (i) sixty (60) days after entry of the Sale Order approving the Successful Bid; and, (ii) closing of the Sale to the Successful Bidder or the Back-Up Bidder. Notwithstanding the foregoing, the Stalking Horse Bidder has the right in its sole and absolute discretion to withdraw as Back-Up Bidder at any time. Following the entry of the Sale Order, if the Successful Bidder fails to consummate the Sale for any reason, the Back-Up Bid will be deemed the new Successful Bid, and the Debtors will be authorized, but not required, to consummate the Sale with the Back-Up Bidder without further order of the Court. In such case, the defaulting Successful Bidder's Minimum Deposit shall be forfeited to the Debtors and, solely to the extent provided for in the applicable Purchase Agreement or Stalking Horse Agreement, the Debtors shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder.

The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing (as defined below) and the Debtors will request certain findings from the Bankruptcy Court regarding the Auction, including, among other things, that (i) the Auction was conducted and the Successful Bidder was selected in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure and (iii) consummation of the Sale contemplated by the Successful Bid will provide the highest or otherwise best value for the Assets and is in the best interests of the Debtors and their creditors.

Sale Hearing

A hearing to consider approval of the Sale of the Assets to the Successful Bidder will take place on _____, 2017, at __:__0 __.m. (**prevailing Eastern Time**), before the Honorable _____ in the United States Bankruptcy Court District of Delaware, 824 N. Market St., Wilmington, DE 19801. If no other Qualified Bid is received by the Debtors and the Stalking Horse Bidder's original Stalking Horse Agreement is the Successful Bid, then the Debtors will seek entry of an order at the Sale Hearing authorizing and approving the Sale (the "**Sale Order**"), including the sale of the Assets to the Stalking Horse Bidder, pursuant to the terms and conditions of the Stalking Horse Agreement. If a different bid is the Successful Bid,

then the Debtors anticipate that they will seek the entry of an order, modified as necessary to reflect the terms of the Successful Bid, authorizing and approving the sale of the Assets to the Successful Bidder.

Return of Deposit

Minimum Deposits shall be held by the Debtors in a segregated account, which account shall be pledged to the DIP Agent for the benefit of the DIP Lenders and which account shall at all times be subject to the perfected lien created by the Financing Orders and in addition a deposit account control agreement in form and substance satisfactory to the DIP Agent. Except as otherwise provided in this paragraph with respect to any Successful Bid and any Back-Up Bid, the Minimum Deposits of all Qualified Bidders that submitted such a deposit under the Bidding Procedures shall be returned upon or within five (5) business days after the conclusion of the Sale Hearing. The Minimum Deposit of the Successful Bidder shall be held until the closing of the Sale of the Assets, as applicable, and applied in accordance with the Successful Bid. The Minimum Deposit of any Back-Up Bidder shall be returned upon or within the earlier of (i) sixty (60) days after entry of the Sale Order (the “**Outside Back-Up Date**”) or (ii) the closing of the Sale of the Assets to the Successful Bidder.

Failure to Close

If the Successful Bidder fails to consummate the transaction in accordance with the terms of the applicable agreement executed by the Successful Bidder by the closing date contemplated in the Purchase Agreement agreed to by the parties for any reason, the Debtors shall: (i) solely to the extent provided for in the applicable Purchase Agreement or Stalking Horse Agreement, retain the Successful Bidder’s Minimum Deposit; (ii) solely to the extent provided for in the applicable Purchase Agreement or Stalking Horse Agreement, maintain the right to pursue all available remedies, whether legal or equitable; and (iii) be free to consummate the proposed transaction with the Back-Up Bidder at the highest price bid by the Back-Up Bidder at the Auction, without the need for an additional hearing or Order of the Court. Notwithstanding the foregoing and subject to the Bidding Procedures Order, nothing herein shall prejudice the rights of the DIP Agent to exercise whatever rights and remedies it may have pursuant to the Financing Orders.

Reservation of Rights

Except as otherwise provided in the Bidding Procedures Order or these Bidding Procedures, the Debtors reserve the right as they may reasonably determine to be in the best interests of their estates to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid or combination of Qualified Bids is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (c) contrary to the best interests of the Debtors and their estates; (v) remove the Assets from the Sale; (vi) waive terms and conditions set forth herein with respect to all Potential Bidders; (vii) impose additional terms and conditions with respect to all Potential Bidders; (viii) extend the deadlines set forth herein; (ix) on prior notice to the Stalking Horse Bidder to the extent

practicable under the circumstances, adjourn or cancel the Auction and/or Sale Hearing in open court without further notice; (x) modify the Bidding Procedures, as the Debtors may determine to be in the best interests of their estates; or (xi) withdraw the Motion at any time prior to the Sale Hearing with or without prejudice.

Expenses

Except to the extent provided for in the Stalking Horse Agreement and the Bidding Procedures Order, any Potential Bidders presenting bids shall bear their own expenses in connection with the proposed Sale, whether or not such Sale is ultimately approved.

DIP Lender's Consent/Consultation Rights

To the extent the DIP Agent informs the Debtors that it is no longer bidding, the Debtors shall consult with the DIP Agent during subsequent rounds of bidding. Further, the Debtors shall establish precautions necessary to safeguard against the DIP Agent receiving information that other Potential Bidders and/or Qualified Bidders are not entitled to receive for so long as the DIP Agent exercises its right to bid.

Exhibit 2 (to Bidding Procedures Order)

[Notice of Auction and Sale Hearing]

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

In re:

Chieftain Sand and Proppant, LLC, *et al.*,Debtors.¹

Case No. 17-_____ ()

Chapter 11

(Jointly Administered)

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE THAT:

1. On _____, 2017, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed a motion (the “Motion”)² [Docket No. __] for entry of orders, among other things (i) approving bidding procedures (the “Bidding Procedures”) in connection with the sale (the “Sale”) of substantially all assets (collectively, the “Assets”) of the Debtors, (ii) scheduling an auction and a hearing (the “Sale Hearing”) to consider approval of the Debtors entering into a Sale, (iii) approving the form and manner of notice thereof and (iv) granting related relief. The Motion additionally requests entry of an order or orders (i) authorizing and approving a Sale free and clear of liens, claims, encumbrances and interests, (ii) approving the assumption and assignment of executory contracts and unexpired leases and (iii) granting related relief.

2. The Debtors are seeking to sell the Assets to the Successful Bidder or Back-Up Bidder. Approval of the sale of assets to either the Successful Bidder or Back-Up Bidder may result in, among other things, the assumption, assignment and/or transfer by the Debtors of certain executory contracts and unexpired leases. If you are a party to an executory contract or lease with one or more of the Debtors, you will receive a separate notice that contains relevant dates and other information that may impact you as a party to an executory contract or lease.

3. On _____, 2017, the United States Bankruptcy Court for the District of Delaware entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, if the Debtors receive any Qualified Bids (as defined in the Bidding Procedures), other than the bid of the Stalking Horse Bidder, the auction for the Assets shall take place on _____, **2017, at 10:00 a.m. (prevailing Eastern Time)**, at the offices of **Gibbons P.C., One Gateway Center, Newark, New Jersey 07102**, or at such other place and time as the Debtors shall notify all Qualified Bidders and other invitees. Only parties that have submitted a Qualified Bid in accordance with the Bidding Procedures, attached to the Bidding Procedures Order as Schedule 1, by no later than _____, **2017, at 5:00 p.m. (prevailing Eastern Time)** (the “Bid

¹ The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors' service address is: 331 27th Street, New Auburn, WI 54757.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Deadline”), may participate at the Auction. Any party that wishes to take part in this process and submit a bid for the Assets must submit its bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

4. The Sale Hearing to consider approval of the Sale of the Assets to the Successful Bidder or Back-Up Bidder free and clear of all liens, claims and encumbrances will be held before the Honorable _____ in the United States Bankruptcy Court District of Delaware, 824 N. Market St., Wilmington, DE 19801 on _____, **2017, at _:_0_.m. (prevailing Eastern Time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

5. Objections, if any, to the Sale, or the relief requested in the Motion (other than with respect to cure amounts and adequate assurance which are subject to a separate notice) must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Clerk of the Bankruptcy Court, 824 N. Market St., Wilmington, DE 19801, on or before _____, **2017 at 4:00 p.m. (prevailing Eastern Time)**; and (d) be served so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the same day, upon (i) counsel for the Debtors, Gibbons P.C., 300 Delaware Avenue, Ste. 1015, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq. (hcohen@gibbonslaw.com)); and (ii) counsel for the DIP Agent, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, (Attn: Mitchell A. Seider, Esq. (mitchell.seider@lw.com) and Annemarie V. Reilly, Esq. (annemarie.reilly@lw.com)) and Richards Layton & Finger, One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins) (collectively, the “Bid and Objection Notice Parties”).

6. UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER HEARING AND NOTICE.

7. This Notice and the Sale Hearing is subject to the complete terms and conditions of the Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict and the Debtors encourage parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets or in obtaining a copy of any related document, subject to any necessary confidentiality agreement, may make a written request to counsel for the Debtors, Gibbons P.C., 300 Delaware Avenue, Ste. 1015, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq. (hcohen@gibbonslaw.com)). In addition, copies of the Motion, the Bidding Procedures Order, and this Notice can be found: (a) on the Court’s website, <http://ecf.deb.uscourts.gov> and (b) with the Clerk of the Bankruptcy Court, 824 N. Market St., Wilmington, DE 19801.

Dated: January ____, 2017
Wilmington, Delaware

GIBBONS P.C.

Howard A. Cohen (DE 4082)
300 Delaware Avenue, Suite 1015
Wilmington DE 19801-1761
Telephone: (302) 518-6330
Facsimile: (302) 429-6294
Email: hcohen@gibbonslaw.com

**PROPOSED ATTORNEYS FOR
THE DEBTORS**

Exhibit 3 (to Bidding Procedures Order)

[Notice of Assumption and Assignment]

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

In re:

Chieftain Sand and Proppant, LLC, *et al.*,Debtors.¹

Case No. 17-_____ ()

Chapter 11

(Jointly Administered)

NOTICE OF ASSUMPTION AND ASSIGNMENT

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On _____, 2017, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”),² pursuant to sections 105(a), 363, 365, 503, 506, 507 and 552 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rule 6004-1, in the chapter 11 cases of the above-captioned debtors and debtors in possession (the “Debtors”) approving, among other things, the fixing of cure amounts (the “Cure Amounts”) related to the Debtors’ assumption, assignment and/or transfer of certain executory contracts, unexpired leases, and other agreements (the “Executory Contracts and Unexpired Leases”) listed on **Exhibit A** annexed hereto in connection with the sale (the “Sale”) of certain of the Debtors’ assets (the “Assets”). The Debtors will assume, assign, and/or transfer the Executory Contracts and Unexpired Leases to the Successful Bidder or Back-Up Bidder for the Assets under the bidding procedures (the “Bidding Procedures”) approved by the Bankruptcy Court and attached to the Bidding Procedures Order as Exhibit 1. A hearing to consider approval of the Sale of the Assets to the Successful Bidder or Back-Up Bidder free and clear of all liens, claims and encumbrances will be held before the Honorable _____ in the United States Bankruptcy Court District of Delaware, 824 N. Market St., Wilmington, DE 19801 on _____, **2017, at __: __.0 __.m. (prevailing Eastern Time)**, or at such other time thereafter as counsel may be heard (the “Sale Hearing”).

2. The Debtors believe that any and all defaults (other than the filing of these Chapter 11 Cases) and actual pecuniary losses under the Executory Contracts and Unexpired Leases can be cured by the payment of the Cure Amounts listed on **Exhibit A** annexed hereto. If no amount is listed on the Notice of Assumption and Assignment with respect to an Executory Contract or Unexpired Lease, the Debtors believe that there is no Cure Amount applicable to such Executory Contract or Unexpired Lease.

¹ The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors' service address is: 331 27th Street, New Auburn, WI 54757.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

3. Any objections to (i) the assumption, assignment and/or transfer of an Executory Contract or Unexpired Lease, or (ii) the amount asserted as the Cure Amount (each, a “Cure Amount/Assignment Objection”), must be in writing and set forth with specificity the nature of the objection and the cure amount that the objecting party believes should be paid in connection with the assumption of the Executory Contract or Unexpired Lease (the “Claimed Cure Amount”). In addition, if the Debtors or the Successful Bidder identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or Back-Up Bidder not set forth in this original Notice of Assumption and Assignment, the Debtors shall promptly send a supplemental notice (a “Supplemental Notice of Assumption and Assignment”) to the applicable counterparties to such additional executory contracts and unexpired leases.

4. Any objection (the “Stalking Horse Adequate Assurance Objection”) concerning whether the Stalking Horse Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code must be in writing and set forth with specificity the nature of the objection.

5. To be considered a timely Cure Amount/Assignment Objection, the Cure Amount/Assignment Objection must be filed with the Bankruptcy Court and served upon (i) counsel for the Debtors, Gibbons P.C., 300 Delaware Avenue, Ste. 1015, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq. (hcohen@gibbonslaw.com)); and (ii) counsel for the DIP Agent, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, (Attn: Mitchell A. Seider, Esq. (mitchell.seider@lw.com) and Annemarie V. Reilly, Esq. (annemarie.reilly@lw.com)) and Richards Layton & Finger, One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins) (collectively, the “Bid and Objection Notice Parties”) by _____, **2017 at 4:00 p.m. (prevailing Eastern Time)** (the “Cure/Assignment Objection Deadline”).

6. To be considered a timely Stalking Horse Adequate Assurance Objection, the Stalking Horse Adequate Assurance Objection must be filed with the Bankruptcy Court and served upon the Bid and Objection Notice Parties by _____, **2017 at 4:00 p.m. (prevailing Eastern Time)** (the “Stalking Horse Adequate Assurance Objection Deadline”).

7. If a Cure Amount/Assignment Objection is timely filed, the Debtors may, with the approval of the Successful Bidder, resolve any Cure Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors, the Successful Bidder, and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection no later than three (3) business days prior to the Sale Hearing, the Debtors will request that the Court resolve such Cure Amount/Assignment Objection at the Sale Hearing.

8. Unless the Cure Amount/Assignment Objection is timely filed and served, the assumption, assignment and/or transfer of the applicable Executory Contracts and Unexpired Leases will proceed without further notice at the Sale Hearing.

9. Parties that fail to file and serve timely Cure Amount/Assignment Objections shall be deemed to have waived and released any and all rights to assert against the Debtors, the

Successful Bidder or Back-Up Bidder cure amounts different from the Cure Amounts listed on **Exhibit A** hereto and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or Back-Up Bidder, or any assignee of any Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or prohibitions or conditions to assignment exist or must be satisfied, under such Executory Contract or Unexpired Lease.

10. The Successful Bidder or the Back-Up Bidder, as the case may be, may determine to add or exclude any Executory Contract or Unexpired Lease from the list of Executory Contracts and Unexpired Leases to be assumed and assigned under the Purchase Agreement or Stalking Horse Agreement through the Closing Date; provided, however, the non-Debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

11. Within one (1) business day after the conclusion of the Auction, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder (the “Notice”) to the non-Debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. If the Stalking Horse Bidder is not the Successful Bidder, then any objection by non-Debtor parties to the Assigned Contracts solely to the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code (the “Adequate Assurance Objection Deadline”) must be filed prior to the commencement of the Sale Hearing and served upon the Bid and Objection Notice Parties.

12. If no Cure Amounts are due under an Executory Contract or Unexpired Lease, or if the non-Debtor Party agrees to the Cure Amounts listed on Exhibit A hereto, and the non-Debtor party to the Executory Contract or Unexpired Lease does not otherwise object to the Debtors’ assumption, assignment and/or transfer of the Executory Contract or Unexpired Lease, no further action needs to be taken on the part of that non-Debtor party.

13. Copies of the Bidding Procedures Order and other relevant documents can be found: (a) on the Court’s website, <http://ecf.deb.uscourts.gov> and (b) with the Clerk of the Bankruptcy Court, 824 N. Market St., Wilmington, DE 19801.

14. The Debtors’ decision to sell, assign and/or transfer to the Successful Bidder or Back-Up Bidder the Executory Contracts and Unexpired Leases is subject to Court approval and the Sale Closing Date. Accordingly, absent such Sale Closing Date, the Executory Contracts and Unexpired Leases shall not be deemed to be sold, assigned and/or transferred, and shall in all respects be subject to further administration under the Bankruptcy Code. The inclusion of any document on the list of Executory Contracts and Unexpired Leases shall not constitute or be deemed to be a determination or admission that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved). Nor shall the inclusion of any document constitute an admission of liability by the Debtors or their estates.

Dated: January ___, 2017
Wilmington, Delaware

GIBBONS P.C.

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**PROPOSED ATTORNEYS FOR THE
DEBTORS**

Exhibit A (to Notice of Assumption and Assignment)

[Executory Contracts and Unexpired Leases]

[To be provided]

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

In re:

CHIEFTAIN SAND AND PROPPANT,
LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-_____(____)

Jointly Administered

Re: Docket No. _____

**ORDER (A) AUTHORIZING AND APPROVING (1) THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES
AND OTHER INTERESTS; AND (2) THE ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION THEREWITH; AND (B) GRANTING RELATED RELIEF**

Upon the motion, dated January 7, 2017 (the "Motion"), of Chieftain Sand and Proppant, LLC ("Chieftain") and its affiliated debtor and debtor-in-possession (together, the "Debtors" or the "Sellers") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), pursuant to sections 105(a), 363, 365, and 503 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for (i) entry of an order (the "Bidding Procedures Order") (a) establishing bidding and auction procedures (the "Bidding Procedures") related to the sale of the Debtors' assets (the "Sale"); (b) scheduling an auction (the "Auction") and a hearing for such Sale; (c) establishing certain notice procedures for determining cure costs for executory contracts and unexpired leases to be assumed and assigned in connection with such Sale (the "Assumption and Assignment Procedures"); and (d) granting certain related relief; and (ii) entry of an order (this "Sale Order") (a) approving the Sale of the Debtors' assets, free and clear of all Interests (as defined below); (b) authorizing the assumption and assignment of certain executory contracts

¹ The Debtors are Chieftain Sand and Proppant, LLC and Chieftain Sand and Proppant Barron, LLC.

and unexpired leases; and (c) granting certain related relief; after holding a hearing on _____, 2017 (the “Bidding Procedures Hearing”), this Court entered the Bidding Procedures Order on _____, 2017 [D.I. ____]; and the Auction having been held on _____, 2017 for the consideration of Qualified Bids and the selection of the Successful Bidder (each as defined in the Bidding Procedures Order); and Energy Capital Partners Mezzanine Opportunities Fund A, LP, in its capacity as administrative agent and collateral agent under the Prepetition Credit Documents (the “Purchaser”) or its designee (the “Purchaser Designee”) having been selected as the Successful Bidder; and upon the Purchaser and the Debtors having entered into that certain Asset Purchase Agreement, dated as of January ____, 2017 (attached hereto as Exhibit A, and as it may be amended, modified, or supplemented in accordance with the terms hereof and thereof, the “Asset Purchase Agreement”);² and this Court having conducted a hearing on the Motion on _____, 2017 (the “Sale Hearing”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Motion, the Asset Purchase Agreement, and this Sale Order; and this Court having reviewed and considered the Motion and all objections thereto, and the arguments of counsel made, and the evidence adduced, at the Bidding Procedures Hearing and the Sale Hearing; and upon the entire record of the Bidding Procedures Hearing and the Sale Hearing, and after due deliberation thereon, and good cause appearing therefor:

² Capitalized terms used, but not otherwise defined, herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement or the Motion, as applicable.

THE COURT HEREBY FINDS THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. On January 9, 2017 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (this “Court”).

B. This Court has core jurisdiction to hear and determine the Motion under 28 U.S.C. §§ 157(b) and 1334. Venue of these Chapter 11 Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 363, 365 and 503 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and the applicable Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

Notice of the Sale, Auction and the Cure Costs

E. Actual written notice of the Sale Hearing, the Auction, the Motion, the Sale, and the assumption, assignment and/or transfer of the Assigned Contracts, and a reasonable

³ The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

opportunity to object or be heard with respect thereto and to the entry of this Sale Order has been afforded to all known interested Persons and entities entitled to receive such notice, including, but not limited to, the following parties: (i) counsel to the Committee, if one is appointed; (ii) counsel to the Sellers; (iii) counsel to the Prepetition Agent and the DIP Agent; (iv) those entities or individuals included on the Debtors' list of 20 largest unsecured creditors on a consolidated basis; (v) the United States Trustee for the District of Delaware (the "United States Trustee"); (vi) all entities (or counsel therefore) known to have asserted any lien, charge, claim or encumbrance on the Acquired Assets; (vii) all federal, state and local regulatory or taxing authorities that are reasonably ascertainable by the Debtors to have a known interest in the Acquired Assets; (viii) known non-debtor counterparties to any unexpired leases or executory contracts that could potentially be assumed and assigned to the Successful Bidder; (ix) those parties who expressed a bona fide interest in acquiring the assets in the six (6) months preceding the date of the Motion; and (x) those parties who have requested notice pursuant to Bankruptcy Rule 2002.

F. The Debtors published notice of the Sale, the Bidding Procedures, the Asset Purchase Agreement, the time and place of the proposed Auction, the time and place of the Sale Hearing and the time for filing an objection to the Motion on the website maintained by the Debtors' Claims and Noticing Agent appointed in these Chapter 11 cases on _____, 2017.

G. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served notice (the "Assumption and Assignment Notice") of the Executory Contract List upon all of the counterparties to the Assigned Contracts setting forth: (i) the contract(s) and/or lease(s) that may be assumed by the Debtors and assigned to the Purchaser; (ii) the name and

address of the non-Debtor counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtors and/or the Purchaser to withdraw such request for assumption and assignment of the Assigned Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtors to be necessary to be paid to cure and compensate for any existing default in accordance with sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “Cure Costs”); (v) a list of any nonmonetary obligations that the Debtors believe must be satisfied; and (vi) the deadlines by which any such counterparty must file an objection to the proposed assumption and assignment of any Assigned Contract.

H. The service of such Assumption and Assignment Notice (i) was good, sufficient and appropriate under the circumstances of these Chapter 11 Cases, (ii) provided such counterparties with a full and fair opportunity to object to such assumption, assignment, or transfer and to the proposed Cure Costs set forth in the Assumption and Assignment Notice; and (iii) was in compliance with the Bidding Procedures Order and applicable provisions of the Bankruptcy Rules and Local Rules. Accordingly, no other or further notice need be given in connection with such assumption, assignment, or transfer or with respect to the amount of Cure Costs.

I. As evidenced by the affidavits of service previously filed with this Court and as approved under the Bidding Procedures Order: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the assumption and assignment of the Assigned Contracts, and the Sale has been provided to all parties-in-interest; (ii) such notice was, and is, good, sufficient and appropriate under the circumstances of these Chapter 11 Cases, provided a fair and reasonable opportunity for parties-in-interest to object, and to be heard, with respect thereto, and was provided in accordance with sections 102(1), 363 and 365 of the

Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, and the applicable Local Rules; and (iii) no other or further notice of with respect to such matters is necessary or shall be required.

Business Judgment

J. The Debtors have demonstrated good, sufficient and sound business purposes and justifications for, and compelling circumstances to promptly consummate, the Sale and other transactions contemplated by the Asset Purchase Agreement and the Ancillary Agreements, including, without limitation, the assumption, assignment, and/or transfer of the Assigned Contracts, (collectively, the “Transactions”) pursuant to sections 363 and 365 of the Bankruptcy Code, prior to and outside of a plan of reorganization, and such action is an appropriate exercise of the Debtors’ business judgment and in the best interests of the Debtors, their estates, and their creditors. Such business reasons include, but are not limited to, the facts that: (i) there is substantial risk of diminution of the value of the Acquired Assets if the Sale is not consummated promptly; (ii) the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Acquired Assets; (iii) the Asset Purchase Agreement and the Closing will present the best opportunity to realize the value of the Debtors on a going concern basis and avoid decline and devaluation of the Debtors’ businesses; and (iv) unless the Sale is concluded expeditiously as provided for in this Sale Order and pursuant to the Asset Purchase Agreement, potential creditor recoveries may be substantially diminished.

Good Faith of the Purchaser; No Collusion

K. The Debtors and the Purchaser (as an Affiliate of the Debtors), have provided for the appointment of a special committee of independent members to oversee all matters related to the Chapter 11 Cases and the Transactions (the “Independent Committee”). The members of the

Independent Committee have exercised their respective fiduciary duties in evaluating the Transactions and have independently determined that the Transactions are in the best interests of the Debtors, their estates, and their creditors. None of the Purchaser, the Purchaser Designee, nor any of their respective Representatives of Affiliates (other than the Debtors) have exercised control over the Debtors, the Independent Committee, or the manner in which the Transactions were approved and authorized by the Debtors and the Independent Committee.

L. The Purchaser and the Purchaser Designee, as applicable, are purchasing the Acquired Assets in good faith, and each is a good faith purchaser, within the meaning of section 363(m) of the Bankruptcy Code, and each is therefore entitled to, and granted pursuant to paragraph 29 below, the full rights, benefits, privileges, and protections of that provision, and each has otherwise proceeded in good faith in all respects in connection with the Transactions in that, *inter alia*: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets; (ii) the Purchaser complied with the provisions in the Bidding Procedures Order; (iii) the Purchaser agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iv) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (v) neither the Purchaser nor the Purchaser Designee has violated section 363(n) of the Bankruptcy Code by any action or inaction; and (vi) the negotiation and execution of the Asset Purchase Agreement and Ancillary Agreements were at arms' length and in good faith.

M. None of the Debtors, the Purchaser, or the Purchaser Designee, or any of their respective Representatives, has engaged in any conduct that would cause or permit the Asset Purchase Agreement or any of the Ancillary Agreements, or the consummation of the

Transactions, to be avoidable or avoided, or for costs or damages to be imposed, under section 363(n) of the Bankruptcy Code, or has acted in bad faith or in any improper or collusive manner with any Person in connection therewith.

Highest and Best Offer

N. The Prepetition Agent and the Prepetition Lenders hold an allowed secured claim against each Debtor in the aggregate principal amount of not less than \$[60,215,797], *plus* all accrued and unpaid interest thereon in the aggregate amount of not less than \$[5,429,624], *plus* any additional fees and expenses, which claim is not subject to avoidance, reduction, disallowance, impairment, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, plus such additional amounts, all to the extent allowed under, and pursuant to, the Prepetition Credit Agreement (the “Prepetition Secured Claim”). On account of the Prepetition Secured Claim, the Prepetition Agent and the Prepetition Lenders are secured creditors of the Debtors, holding valid, binding, enforceable, and perfected security interests in, on and against the Debtors, their estates and property of the estates, arising in connection with, and pursuant to, the Prepetition Credit Agreement. As contemplated under the Asset Purchase Agreement and pursuant to the Bidding Procedures Order, the Prepetition Agent, on behalf of itself and the Prepetition Lenders was authorized to credit bid any or all of the Prepetition Secured Claim under section 363(k) of the Bankruptcy Code.

O. Pursuant to the Asset Purchase Agreement and section 363(b) and 363(k) of the Bankruptcy Code, the Prepetition Agent, on behalf of itself and the Prepetition Lenders, in accordance with the terms of the Prepetition Credit Documents, credit bid a portion of the Prepetition Credit Agreement Indebtedness comprising the Credit Bid Amount, which credit bid was deemed a Qualified Bid (as defined in the Bidding Procedures Order) and was eligible to

participate at the Auction.

P. The Debtors conducted an auction process in accordance with, and have otherwise complied in all material respects with, the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any Person or entity to make a higher or otherwise better offer to purchase the Acquired Assets. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Acquired Assets.

Q. The Asset Purchase Agreement constitutes the highest and best offer for the Acquired Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Asset Purchase Agreement constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

R. The Asset Purchase Agreement represents a fair and reasonable offer to purchase the Acquired Assets under the circumstances of these Chapter 11 Cases. No other Person or entity or group of entities has offered to purchase the Acquired Assets for greater economic value to the Debtors' estates than the Purchaser.

S. Approval of the Motion and the Asset Purchase Agreement, and the prompt consummation of the Transactions contemplated thereby, is in the best interests of the Debtors, their creditors, their estates and other parties-in-interest.

No Fraudulent Transfer; Not a Successor

T. The Asset Purchase Agreement and Ancillary Agreements were not entered into, and the Transactions are not being consummated, for the purpose of hindering, delaying or

defrauding creditors of the Debtors under applicable Law, and none of the Parties to the Asset Purchase Agreement or any of the Ancillary Agreements are consummating the Transactions with any fraudulent or otherwise improper purpose. The Purchase Price for the Acquired Assets constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act and (iii) reasonably equivalent value, fair consideration, and fair value under any other applicable Laws of the United States, any state, territory or possession or the District of Columbia.

U. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities, the Purchaser and the Purchaser Designee shall have no liability, responsibility, or obligations of any kind or nature whatsoever for any Interest (as defined below) of or against the Debtors, or otherwise related to the Acquired Assets, by reason of the transfer of the Acquired Assets to the Purchaser or such Purchaser Designee. The Purchaser and the Purchaser Designee shall not be deemed, as a result of any action taken in connection with the Transactions, to: (1) be a successor (or other such similarly situated party) to any of the Debtors (other than with respect to the Assumed Liabilities as expressly stated in the Asset Purchase Agreement); or (2) have, *de facto* or otherwise, merged or consolidated with or into any of the Debtors. The Purchaser and the Purchaser Designee are not acquiring or assuming any Interest, except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities.

Validity of Transfer

V. Subject to the entry of this Sale Order, the Debtors have full corporate power and authority to (i) perform all of their obligations under the Asset Purchase Agreement and the

Ancillary Agreements, and the Debtors' prior execution and delivery thereof and performance thereunder is hereby ratified in full, and (ii) consummate the Transactions. The Asset Purchase Agreement and Ancillary Agreements, and the Transactions contemplated thereby, have been duly and validly authorized by all necessary corporate action. No further consents or approvals are required for the Debtors to consummate the Transactions or otherwise perform their respective obligations under the Asset Purchase Agreement or the Ancillary Agreements, except in each case as otherwise expressly set forth in the Asset Purchase Agreement or applicable Ancillary Agreements.

W. As of the Closing Date, the transfer of the Acquired Assets to the Purchaser or the Purchaser Designee, including, without limitation, the assumption, assignment and transfer of the Assigned Contracts, will be a legal, valid, and effective transfer thereof, and vests the Purchaser and the Purchaser Designee, as applicable, with all right, title, and interest of the Debtors in and to the Acquired Assets, free and clear of all Interests accruing or arising any time prior to the Closing Date, except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Encumbrances and the Assumed Liabilities.

Section 363(f) Is Satisfied

X. The Purchaser and the Purchaser Designee would not have entered into the Asset Purchase Agreement and would not consummate the Transactions contemplated thereby if the sale of the Acquired Assets, including the assumption, assignment and transfer of the Assigned Contracts, to the Purchaser or the Purchaser Designee, as applicable, were not free and clear of all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Encumbrances and Assumed Liabilities), or if the Purchaser or the Purchaser Designee, any of their respective Subsidiaries or Affiliates (other than

the Debtors), or any of their respective Representatives, would, or in the future could, be liable for any of such Interests.

Y. The Debtors may sell or otherwise transfer the Acquired Assets free and clear of all Interests because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Interests against the Debtors, their estates or any of the Acquired Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Interests, if any, attach to the proceeds of the Sale ultimately attributable to the Acquired Assets in which such creditor alleges or asserts an Interest, in the same order of priority, with the same validity, force and effect, that such creditor had immediately prior to consummation of the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

Z. As used in this Sale Order, the term “Interest” includes, in addition to the types of claims described in paragraph AA below, all of the following, in each case to the extent against or with respect to any of the Debtors or in, on, or against or with respect to any of the Acquired Assets: liens (as defined in section 101(37) of the Bankruptcy Code, and whether consensual, statutory, possessory, judicial or otherwise), claims (as defined in section 101(5) of the Bankruptcy Code), debts (as defined in section 101(12) of the Bankruptcy Code), reclamation claims, Encumbrances, obligations, Liabilities (including Liabilities arising under any Environmental Laws), demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, or interests of any kind or nature whatsoever, whether

known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, Law, equity or otherwise, including, but not limited to, (i) Interests that purport to give to any Person a right or option to effect a setoff against or any forfeiture, modification or termination of the Debtors' interests in the Acquired Assets, or any similar rights; (ii) Interests arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, (iii) Interests that are or constitute, or that arise in connection with or with respect to, any Excluded Liability; (iv) Interests that arise from or in connection with any bulk sales or similar law, and (v) Interests arising under or in connection with any acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors, Affiliates, or Subsidiaries, or any of their respective Representatives, including, but not limited to, Interests arising under any doctrines of successor, transferee, or vicarious liability, violation of the Securities Act of 1933, the Securities Exchange Act of 1934, or other applicable securities laws or regulations, breach of fiduciary duty, or aiding or abetting breach of fiduciary duty, or any similar theories under applicable Law or otherwise.

AA. Except as expressly set forth in the Asset Purchase Agreement with respect to the Assumed Liabilities, and without limiting the nature or scope of paragraph Y above, the transfer of the Acquired Assets, including the assumption, assignment and/or transfer of the Assigned Contracts, to the Purchaser or the Purchaser Designee, as applicable, shall not subject the Purchaser or the Purchaser Designee, or their respective Subsidiaries or Affiliates (other than the Debtors), or any of their respective Representatives to, or subject any Acquired Asset to or

provide recourse for, any Liability or Encumbrance whatsoever with respect to the operation or condition of the Business or any of the Acquired Assets prior to the Closing or with respect to any facts, acts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect thereto prior to the Closing Date, including, without limitation, any Liability or Encumbrance arising from any of the following: (i) any employment or labor agreements, consulting agreements, severance arrangements, change in control agreements or other similar agreements to which any Debtor is or was a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtors, (iii) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs and any obligations with respect thereto that arise from the Employee Retirement Income Security Act of 1974, the Fair Labor Standard Act, Title VII of the Civil rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Americans with Disabilities Act of 1990, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Worker Adjustment and Retraining Notification Act, (iv) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims, (v) environment liabilities, debts, claims or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act or any Environmental Laws, (vi) products liability or warranties, (vii) any bulk sales or similar law, (viii) any litigation by or against the Debtors and (ix) the Laws of the United States, any state, territory or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity, including,

without limitation, any theory of antitrust, products liability, or successor, vicarious or transferee liability. For the avoidance of doubt, the Liabilities and Encumbrances set forth in this paragraph are included in the defined term “Interests” for all purposes of this Sale Order.

Assumption, Assignment and/or Transfer of the Assigned Contracts

BB. The assumption, assignment and/or transfer of the Assigned Contracts to the Purchaser and the Purchaser Designee, as applicable, pursuant to the terms of this Sale Order is integral to the Asset Purchase Agreement and is in the best interests of the Debtors and their estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

CC. To the extent necessary or required by applicable Law, the Debtors have or will have as of the Closing Date: (i) cured, or provided adequate assurance of cure, of any default existing prior to the Closing Date with respect to the Assigned Contracts, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code, and (ii) provided compensation, or adequate assurance of compensation, to any party for any actual pecuniary loss to such party resulting from such default, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The respective amounts set forth in the Executory Contract List attached to the Debtors’ Assumption and Assignment Notice (or any Supplemental Notice of Assumption and Assignment served in accordance with the Assumption and Assignment Procedures) are the sole amounts necessary under sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code to cure all such monetary defaults and pay all actual pecuniary losses under the Assigned Contracts.

DD. The promise of the Purchaser or the Purchaser Designee, as applicable, to perform the obligations first arising under the Assigned Contracts after their assumption and assignment to the Purchaser or the Purchaser Designee, as applicable, constitutes adequate

assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the counterparties to such Assigned Contracts. Any objections to the foregoing, the determination of any Cure Costs, or otherwise related to or in connection with the assumption, assignment or transfer of any of the Assigned Contracts to the Purchaser or the Purchaser Designee are hereby overruled on the merits or otherwise treated as set forth in paragraph 3 below. Those non-Debtor parties to Assigned Contracts who did not object to the assumption, assignment or transfer of their applicable Assigned Contract, or to their applicable Cure Costs, are deemed to have consented thereto for all purposes of this Sale Order.

EE. Pursuant to section 2.8 of the Asset Purchase Agreement, the Purchaser shall maintain certain rights to modify the list of the Assigned Contracts, after the date of this Sale Order and before the Closing Date as set forth in such section. Such modification rights include, but are not limited to, the right of the Purchaser, prior to the Closing Date, to designate a Contract for assumption by the Debtors and assignment to the Purchaser or Purchaser Designee, as well as for rejection by the Debtors. The Purchaser would not have agreed to the Transactions without such modification rights. The notice and opportunity to object provided to non-Debtor counterparties to such Assigned Contracts and to other parties in interest, as set forth in the Assumption and Assignment Procedures contained in the Bidding Procedures Order, fairly and reasonably protects any rights that such counterparties and other parties in interest may have with respect to such Contracts.

Compelling Circumstances for an Immediate Sale

FF. To maximize the value of the Acquired Assets and preserve the viability of the business to which the Acquired Assets relate, and to reduce the amount of postpetition debtor-in-

possession financing borne by the Debtors, it is essential that the Sale of the Acquired Assets occur within the time constraints set forth in the Asset Purchase Agreement. Time is of the essence in consummating the Sale. The Sale must be approved and consummated promptly in order to preserve the viability of the Business as a going concern. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004 and 6006 with regard to the Transactions contemplated by this Sale Order, the Asset Purchase Agreement and the Ancillary Agreements.

GG. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Asset Purchase Agreement, the proposed transfer of the Acquired Assets to the Purchaser or Purchaser Designee, as applicable, constitutes a reasonable and sound exercise of the Debtors' business judgment, is in the best interests of the Debtors, their estates, and their creditors, and should be approved.

HH. The consummation of the Transactions is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105, 363 and 365 of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Transactions.

II. The Sale does not constitute a *de facto* plan of reorganization or liquidation or an element of such a plan for any of the Debtors, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any future plan proposed by the Debtors; (iii) circumvent chapter 11 plan safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code; or (iv) classify claims or equity interests, compromise controversies or extend debt maturities.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:**

General Provisions

1. The Motion and the relief requested therein are granted and approved, and the Transactions contemplated thereby and by the Asset Purchase Agreement and Ancillary Agreements are approved, in each case as set forth in this Sale Order.

2. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, resolved, or otherwise settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court, and all reservations of rights included therein, are hereby denied and overruled on the merits.

Approval of Asset Purchase Agreement; Binding Nature

4. The Asset Purchase Agreement and the Ancillary Agreements, and all of the terms and conditions thereof, are hereby approved.

5. All actions taken by the Prepetition Agent arising from or relating to its exercise of the right to credit bid all or a portion of the Prepetition Credit Agreement Indebtedness were proper. The offer for the Acquired Assets, as embodied in the Asset Purchase Agreement, was deemed a Qualified Bid (as defined in the Bidding Procedures Order) and is the highest and best offer for the Acquired Assets (thereby providing a greater recovery for the Debtors' estates than would be provided by any other available alternative), and the Asset Purchase Agreement and the Ancillary Agreements and all of the terms and conditions thereof, and the Transactions contemplated thereby, including the Prepetition Agent's credit bid, and the application of the

cash portion of the Purchase Price to repayment of the DIP Loan in full, are hereby approved in all respects.

6. The consideration provided by the Purchaser for the Acquired Assets under the Asset Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute reasonably equivalent value, fair value, and fair consideration under the Bankruptcy Code and any other applicable Law, and the Transactions may not be avoided, or costs or damages imposed or awarded, under section 363(n) or any other provision of the Bankruptcy Code.

7. Pursuant to sections 363 and 365 of the Bankruptcy Code, the Debtors are authorized and empowered to, and shall, take any and all actions necessary or appropriate to (a) consummate the Sale and the other Transactions pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement and the Ancillary Agreements, and (b) execute and deliver, perform under, consummate, implement, and take any and all other acts or actions as may be reasonably necessary or appropriate to the performance of their respective obligations as contemplated by the Asset Purchase Agreement and the Ancillary Agreements, in each case without further notice to or order of this Court. The Transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack or purported lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

8. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors, all holders of equity interests in any Debtor, all holders of any Claim(s) (whether known or unknown) against any Debtor, any holders of Interests against, in or on all or any portion of the Acquired Assets, all non-Debtor parties to the Assigned Contracts, the Purchaser, the Purchaser Designee and all successors and assigns of the foregoing, including, without

limitation, any trustee, if any, subsequently appointed in these Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of these Chapter 11 Cases.

Transfer of Acquired Assets Free and Clear of Interests; Injunction

9. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Acquired Assets, including but not limited to the Assigned Contracts, to the Purchaser or the Purchaser Designee, as applicable, on the Closing Date in accordance with the Asset Purchase Agreement and the Ancillary Agreements. Upon and as of the Closing Date, such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets and the Purchaser or the Purchaser Designee, as applicable, shall take title to and possession of such Acquired Assets free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Encumbrances and Assumed Liabilities).

10. All such Interests shall attach solely to the proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Acquired Assets, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. This Sale Order shall be effective as a determination that, on and as of the Closing, all Interests of any kind or nature whatsoever (except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Encumbrances and Assumed Liabilities) have been unconditionally released, discharged and terminated in, on or against the Acquired Assets. The provisions of this Sale Order authorizing and approving the transfer of the Acquired Assets free and clear of Interests shall be self-executing, and neither the Debtors nor the Purchaser (or the Purchaser Designee) shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions

of this Sale Order.

11. Upon the Closing, that portion of the Prepetition Secured Claim equal to the Credit Bid Amount shall be deemed satisfied in accordance with the provisions of the Asset Purchase Agreement. After deducting the Credit Bid Amount, the Prepetition Credit Agreement Indebtedness shall be deemed reduced in such amount, with any remainder thereof an allowed claim in each of these Chapter 11 Cases without further order of this Court. Upon the Closing, the liens on the assets of the Debtors granted under the Prepetition Credit Documents to secure the Prepetition Credit Agreement Indebtedness shall be deemed released solely with respect to the Acquired Assets, as applicable, and the Debtors shall take all actions required under the Asset Purchase Agreement to confirm the removal of any such liens. The Purchase Price shall be allocated to the Purchased Assets in the manner set forth in the Asset Purchase Agreement. In addition, upon the Closing and the receipt by the DIP Agent of the DIP Repayment Amount, all claims against the Debtors and their estates under the DIP Credit Agreement shall be deemed satisfied, and the DIP Agent and the DIP Lenders shall have no further obligation to make any extensions of credit thereunder.

12. Except as expressly permitted by the Asset Purchase Agreement or this Sale Order, all Persons and entities holding Interests (other than the Permitted Encumbrances and Assumed Liabilities) are hereby forever barred, estopped and permanently enjoined from asserting their respective Interests against the Purchaser and the Purchaser Designee, any of their respective Subsidiaries and Affiliates (other than the Debtors), and any of their respective Representatives, and each of their respective property and assets, including, without limitation, the Acquired Assets. On and after the Closing Date, the Purchaser or the Purchaser Designee, as applicable, shall be authorized to execute and file such documents, and to take all other actions

as may be necessary, on behalf of each holder of an Interest to release, discharge and terminate such Interests in, on and against the Acquired Assets as provided for herein, as such Interests may have been recorded or may otherwise exist. On and after the Closing Date, and without limiting the foregoing, the Purchaser or the Purchaser Designee, as applicable, shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect or otherwise notice any Interest that is extinguished or otherwise released pursuant to this Sale Order. This Sale Order constitutes authorization under all applicable jurisdictions and versions of the Uniform Commercial Code for the Purchaser or the Purchaser Designee to file UCC termination statements with respect to all security interests in or liens on the Acquired Assets.

13. On and after the Closing, the Persons holding an Interest (other than a Permitted Encumbrance or an Assumed Liability) shall execute such documents and take all other actions as may be reasonably necessary to release their respective Interests in the Acquired Assets, as such Interests may have been recorded or otherwise filed. The Purchaser or the Purchaser Designee, as applicable, may, but shall not be required to, file a certified copy of this Sale Order in any filing or recording office in any federal, state, county or other jurisdiction in which any Debtor is incorporated or has real or personal property, or with any other appropriate clerk or recorder with any other appropriate recorder, and such filing or recording shall be accepted and shall be sufficient to release, discharge and terminate any of the Interests as set forth in this Sale Order as of the Closing Date. All persons and entities that are in possession of any portion of the Acquired Assets on the Closing Date shall promptly surrender possession thereof to the Purchaser or the Purchaser Designee at the Closing.

14. The transfer of the Acquired Assets to the Purchaser or the Purchaser Designee pursuant to the Asset Purchase Agreement and Ancillary Agreements does not require any consents other than specifically provided for in the Asset Purchase Agreement.

15. This Sale Order is and shall be binding upon and govern the acts of all Persons and entities (including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, and secretaries of state, federal and local officials) who may be required by operation of law, the duties of their office, or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons and entities shall accept for filing any and all of the documents and instruments necessary and appropriate to release, discharge and terminate any of the Interests or to otherwise consummate the Transactions contemplated by this Sale Order, the Asset Purchase Agreement or any Ancillary Agreement.

Assigned Contracts; Cure Costs

16. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing Date, the Debtors' assumption, and assignment and transfer to the Purchaser or Purchaser Designee, of the Assigned Contracts is hereby authorized and approved in full subject to the terms set forth below. The Debtors shall, on or prior to the Closing, pay the Cure Costs (or reserve the Undisputed Cure Costs as set forth below) and cure any and all other defaults and breaches under the Assigned Contracts so that such Contracts may be assumed by the Debtors and assigned to Purchaser or Purchaser Designee on the Closing Date in accordance with this Sale Order, the Asset Purchase Agreement and the Ancillary

Agreements. To the extent any Debtor is responsible for any Cure Costs pursuant to the terms of the Asset Purchase Agreement or Ancillary Agreements, the Purchaser may, upon prior written notice to the Debtors and in its sole discretion, (i) pay such amount(s) on behalf of the Debtors, in which case the Debtors shall have no further responsibility therefor, and (ii) offset such amount(s) against any amount(s) Purchaser may owe the Debtors (including by deducting such amounts, at the Closing, from the Purchase Price).

17. Upon and as of the Closing, the Debtors are authorized and empowered to, and shall, assume, assign and/or transfer each of the Assigned Contracts to the Purchaser or the Purchaser Designee, as applicable, free and clear of all Interests (except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Encumbrances and Assumed Liabilities). The payment of the applicable Cure Costs (if any), or the reservation by the Debtors of an amount of cash that is equal to the lesser of (i) the amount of any cure or other compensation asserted by the applicable non-Debtor counterparty as required under section 365 of the Bankruptcy Code or (ii) the amount approved by order of this Court to reserve for such payment (such lesser amount, the “Alleged Cure Claim”) shall, pursuant to section 365 of the Bankruptcy Code and other applicable Law, (a) effect a cure, or provide adequate assurance of cure, of all defaults existing thereunder as of the Closing Date and (b) compensate, or provide adequate assurance of compensation, for any actual pecuniary loss to such non-Debtor party resulting from such default. Accordingly, on and as of the Closing Date, other than such payment or reservation, none of the Debtors, the Purchaser or the Purchaser Designee shall have any further liabilities or obligations to the non-Debtor parties to the Assigned Contracts with respect to, and the non-Debtor parties to the Assigned Contracts shall be forever enjoined and barred from seeking, any additional amounts or claims (as defined in section 101(5) of the

Bankruptcy Code) that arose, accrued or were incurred at any time on or prior to the Closing Date on account of the Debtors' cure or compensation obligations arising under section 365 of the Bankruptcy Code. The Purchaser or the Purchaser Designee, as applicable, has provided adequate assurance of future performance under the relevant Assigned Contracts within the meaning of section 365(f) of the Bankruptcy Code.

18. To the extent any provision in any Assigned Contract assumed or assumed and assigned (as applicable) pursuant to this Sale Order (including, without limitation, any "change of control" provision) (a) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, such assumption or assignment, or (b) is modified, breached or terminated, or deemed modified, breached or terminated by any of the following: (i) the commencement of these Chapter 11 Cases, (ii) the insolvency or financial condition of any Debtor at any time before the closing of these Chapter 11 Cases, (iii) any Debtor's assumption or assumption and assignment (as applicable) of such Assigned Contract, or (iv) the consummation of the Transactions, then such provision shall be deemed modified so as to not entitle the non-Debtor party thereto to prohibit, restrict or condition such assumption or assignment, to modify or terminate such Assigned Contract, or to exercise any other default-related rights or remedies with respect thereto, including, without limitation, any such provision that purports to allow the non-Debtor party thereto to recapture such Assigned Contracts, impose any penalty thereunder, condition any renewal or extension thereof, impose any rent acceleration or assignment fee, or increase or otherwise impose any other fees or other charges in connection therewith. All such provisions constitute unenforceable anti-assignment provisions that are void and of no force and effect pursuant to sections 365(b), 365(e) and 365(f) of the Bankruptcy Code.

19. All requirements and conditions under sections 363 and 365 of the Bankruptcy

Code for the assumption by the Debtors and assignment to the Purchaser or the Purchaser Designee, as applicable, of the Assigned Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser or the Purchaser Designee, as applicable, shall be fully and irrevocably vested with all right, title and interest of the Debtors in and under the Assigned Contracts, and each Assigned Contract shall be fully enforceable by the Purchaser or the Purchaser Designee, as applicable, in accordance with its respective terms and conditions, except as limited or modified by the provisions of this Sale Order. Upon and as of the Closing, the Purchaser or the Purchaser Designee, as applicable, shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Contracts and, accordingly, the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Contracts.

20. Upon the payment of the applicable Cure Costs or reservation of the Alleged Cure Claim, if any, the Assigned Contracts will remain in full force and effect, and no default shall exist, or be deemed to exist, under the Assigned Contracts as of the Closing Date nor shall there exist, or be deemed to exist, any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

21. The rights of the Purchaser to modify the list of the Assigned Contracts, after the date of this Sale Order and up to the Closing Date as set forth in section 2.8 of the Asset Purchase Agreement are hereby approved.

22. All non-Debtor counterparties to the Assigned Contracts shall be deemed to have consented to such assumption and assignment under section 365(c)(1)(B) of the Bankruptcy Code and the Purchaser or Purchaser Designee shall enjoy all of the Debtors' rights, benefits and privileges under each such Assigned Contract as of the applicable date of assumption and

assignment without the necessity to obtain any non-Debtor parties' written consent to the assumption or assignment thereof.

23. Nothing in this Sale Order, the Motion, or in any notice or any other document is or shall be deemed an admission by the Debtors that any Assigned Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code.

24. The failure of the Debtors, the Purchaser or the Purchaser Designee, as applicable, to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of its respective rights to enforce every term and condition of the Assigned Contracts.

Additional Injunction; No Successor Liability

25. Effective upon the Closing Date and except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Encumbrances and Assumed Liabilities, all Persons and entities are forever prohibited and permanently enjoined from (i) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral or other proceeding), to collect, recover or offset any Interest; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order with respect to an Interest, (iii) creating, perfecting or enforcing any Interest, or (iv) asserting any setoff, right of subrogation or recoupment of any kind with respect to an Interest, in each case as against the Purchaser or the Purchaser Designee, any of their respective Subsidiaries or Affiliates (other than the Debtors), or any of their respective Representatives, or any of their respective property or assets, including the Acquired Assets.

26. The Transactions contemplated by the Asset Purchase Agreement and the

Ancillary Agreements do not cause there to be, and there is not (i) a consolidation, merger, or *de facto* merger of the Purchaser or any Purchaser Designee, on the one hand, with or into the Debtors or the Debtors' estates, on the other hand, or vice versa; (ii) a substantial continuity between the Purchaser or any Purchaser Designee, on the one hand, and the Debtors or the Debtors' estates, on the other hand, (iii) a common identity between the Purchaser or any Purchaser Designee, on the one hand, and the Debtors or the Debtors' estates, on the other hand, or (iv) a mere continuation of the Debtors or their estates, on the one hand, with the Purchaser or any Purchaser Designee, on the other hand.

27. Except as expressly set forth in the Asset Purchase Agreement with respect to the Permitted Encumbrances and Assumed Liabilities, the transfer of the Acquired Assets, including, without limitation, the assumption, assignment and transfer of any Assigned Contract, to the Purchaser or any Purchaser Designee shall not cause or result in, or be deemed to cause or result in, the Purchaser or the Purchaser Designee, any of their respective Subsidiaries or Affiliates (other than the Debtors), or any of their respective Representatives, having any liability, obligation, or responsibility for, or any Acquired Assets being subject to or being recourse for, any Interest whatsoever, whether arising under any doctrines of successor, transferee or vicarious liability, breach of fiduciary duty, aiding or abetting breach of fiduciary duty or otherwise, whether at Law or in equity, directly or indirectly, and whether by payment, setoff, recoupment, or otherwise.

28. For the avoidance of doubt, notwithstanding the consummation of the Transactions and the employment by the Purchaser or Purchaser Designee of certain Persons previously employed by the Debtors, (i) the Purchaser and Purchaser Designees shall not have any obligations or liabilities to any employee of the Debtors or in respect of any employee

benefits owing to any employee of the Debtors by the Debtors or by any plan or program administered by the Debtors or for the benefit of the Debtors' employees, and (ii) any obligations of the Purchaser and Purchaser Designees to any such Person shall be expressly limited to (i) those obligations expressly agreed upon by the Purchaser or Purchaser Designee (if any) with such Person, and (ii) those obligations explicitly assumed by the Purchaser or Purchaser Designee (if any) under the Asset Purchase Agreement.

Good Faith

29. The Transactions contemplated by this Sale Order, the Asset Purchase Agreement and the Ancillary Agreements are undertaken by the Purchaser and the Purchaser Designee without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale and other Transactions shall not alter, affect, limit, or otherwise impair the validity of the Sale or such other Transactions (including the assumption, assignment and/or transfer of the Assigned Contracts), unless such authorization and consummation are duly stayed pending such appeal. Each of the Purchaser and Purchaser Designee is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to, and hereby granted, the full rights, benefits, privileges and protections of section 363(m) of the Bankruptcy Code.

Other Provisions

30. The Debtors and their estates shall not pursue any Avoidance Actions to the extent set forth in section 2.1(m) of the Asset Purchase Agreement.

31. Upon the Closing Date, (a) the DIP Repayment Amount shall be paid to the DIP Agent for application in accordance with the DIP Loan Documents and the DIP Order until the

DIP Loan is Paid in Full and (b) all additional Sale proceeds shall be distributed as follows: (i) *first*, to a segregated account held by the DIP Agent solely in an amount sufficient to fund the wind-down of the Debtors' estates and the closure of the Chapter 11 Cases in accordance with a wind-down budget prepared by the Debtors and acceptable to the DIP Agent in its sole discretion, and (ii) *second*, to the Prepetition Agent for application in accordance with the Prepetition Credit Documents and the DIP Order until the Prepetition Credit Agreement Indebtedness is Paid in Full and the Debtors' obligations in connection with the Prepetition Agent's and the Prepetition Lenders' Adequate Protection are satisfied. Notwithstanding the foregoing, the Debtors shall be permitted to pay all obligations due pursuant to the Approved Budget on or after the Effective Date of the Sale. Capitalized terms used in this paragraph but not otherwise defined herein shall have the meanings ascribed to them in the DIP Order.

32. The Purchaser is hereby authorized, in its discretion, in connection with consummation of the Transactions to allocate the Acquired Assets, Assumed Liabilities, and Assigned Contracts among its Affiliates, Subsidiaries, designees, assignees, and/or successors in a manner as it, in its discretion, deems appropriate and such Person shall be entitled to all of the rights, benefits, privileges and protections of the Purchaser as are accorded to the Purchaser under this Sale Order, and the Debtors shall, to the extent set forth in the Asset Purchase Agreement and the Ancillary Agreements, cooperate with and take all actions reasonably requested by Purchaser to effectuate any of the foregoing. In the event that the Purchaser designates any Purchaser Designee to acquire any Acquired Assets, including, without limitation, any Assigned Contracts, then any reference to the "Purchaser" in this Sale Order shall be deemed to be a reference to "the Purchaser and/or such applicable Purchaser Designee," unless the context requires otherwise.

33. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these Chapter 11 Cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Sale Order. To the extent of any such conflict or derogation, the terms of this Sale Order shall govern.

34. Pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the stays provided in Bankruptcy Rules 6004(h) and 6006(d) are hereby expressly waived and shall not apply. Accordingly, the Debtors are authorized and empowered to close the Sale and other Transactions immediately upon entry of this Sale Order.

35. Nothing in this Sale Order shall modify or waive any closing conditions or termination rights in Articles IV and X of the Asset Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

36. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Transactions.

37. All payment or reimbursement obligations of the Debtors owed to the Purchaser or any Purchaser Designee pursuant to the Asset Purchase Agreement or the Ancillary Agreements shall be paid in the manner provided therein, without further notice to or order of this Court. All such obligations shall constitute allowed administrative claims against each of the Debtors on a joint and several basis, with first priority administrative expense status under sections 503(b) and 507(a)(2) of the Bankruptcy Code. Until satisfied in full in cash, all such obligations shall continue to have the protections provided in this Sale Order, and shall not be

discharged, modified or otherwise affected by any reorganization plan for the Debtors.

38. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Asset Purchase Agreement be authorized and approved in its entirety.

39. The Asset Purchase Agreement and Ancillary Agreements may be modified, amended or supplemented in a writing signed by the parties thereto and in accordance with the terms thereof, without further notice to or order of this Court; provided that any such modification, amendment or supplement shall not have a material adverse effect on the Purchaser, the Purchaser Designee, or the Debtors' estates unless approved by order of this Court.

40. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b), to, among other things, (i) interpret, implement, and enforce the terms and provisions of this Sale Order, the Asset Purchase Agreement, the Ancillary Agreements, and any amendments thereto and any waivers and consents given thereunder, (ii) compel delivery of the Acquired Assets to the Purchaser or Purchaser Designee; (iii) enforce the injunctions and limitations of liability set forth in this Sale Order, and (iv) enter any orders under sections 363 and 365 of the Bankruptcy Code with respect to the Assigned Contracts.

41. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

42. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the provisions of this Sale Order and the terms and conditions of the Asset Purchase Agreement and the Ancillary Agreements.

43. The rules of construction set forth in section 12.14 of the Asset Purchase Agreement shall apply to this Sale Order, *mutatis mutandis*.

44. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion, the terms of this Sale Order shall govern. To the extent there are any inconsistencies between the terms of this Sale Order, on the one hand, and the Asset Purchase Agreement or any Ancillary Agreement, on the other hand, the terms of this Sale Order shall govern.

Dated: _____, 2017
Wilmington, Delaware

HONORABLE _____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Asset Purchase Agreement

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

Energy Capital Partners Mezzanine Opportunities Fund A, L.P.,

as Purchaser,

and

Chieftain Sand and Proppant, LLC

and

Chieftain Sand and Proppant Barron, LLC

as Sellers

Dated as of January 9, 2017

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EXHIBITS

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Assignment and Assumption Agreement

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of January 9, 2017 (the “Execution Date”), by and among Energy Capital Partners Mezzanine Opportunities Fund A, LP, in its capacity as administrative agent and collateral agent under the Prepetition Credit Documents (as defined below) (“Purchaser”), Chieftain Sand and Proppant, LLC, a Delaware limited liability company (“CSP”), and Chieftain Sand and Proppant Barron, LLC, a Wisconsin limited liability company (“CSPB” and, together with CSP, “Sellers”). Certain capitalized terms used herein are defined in Article I.

RECITALS

WHEREAS, Sellers currently conduct the Business and Purchaser desires to acquire the Business;

WHEREAS, Sellers intend to commence cases (the “Chapter 11 Cases”) under Chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, pursuant to the Prepetition Credit Documents, the Purchaser, for itself and on behalf of the other Prepetition Lenders, has a first priority security interest in and continuing lien on all or substantially all of Sellers’ assets and property;

WHEREAS, Sellers will submit a proposed Bidding Procedures Order to the Bankruptcy Court which, when approved, will authorize the Credit Bid of all or a portion of the claims of the First Lien Lenders by Purchaser;

WHEREAS, Purchaser desires to purchase from Sellers, directly and/or, in Purchaser’s sole discretion, through one or more Persons designated by Purchaser in writing to Sellers prior to Closing (collectively, the “Purchaser Designees”), and Sellers desire to sell to Purchaser and/or such Purchaser Designees, the Acquired Assets, and Purchaser desires to assume from Sellers, directly and/or, in Purchaser’s sole discretion, through one or more Purchaser Designees, certain Assumed Liabilities, in each case as more specifically provided herein and in the Sale Order;

WHEREAS, in connection with the Chapter 11 Cases and subject to the terms and conditions contained herein and following the entry of the Sale Order approving the bid memorialized in this Agreement as the highest and best bid by the Bankruptcy Court, Purchaser plans to assign (or cause to be assigned) to the Purchaser Designees, the right to receive the Acquired Assets and to assume the Assumed Liabilities, as well as the rights arising in connection with the Prepetition Credit Agreement Indebtedness under the Prepetition Credit Documents, solely to the extent of the Credit Bid Amount and as related to the Acquired Assets, as specifically provided herein and in the Sale Order; and

WHEREAS, pursuant to the DIP Loan Documents and subject to the terms and conditions contained herein, and following the entry of the Sale Order approving the bid memorialized in this Agreement as the highest and best bid by the Bankruptcy Court, and subject

to the terms and conditions thereof, Purchaser shall (or shall cause the Purchaser Designees to) pay in full, as a portion of the Purchase Price, all obligations owing under the DIP Loan Documents as of the Closing Date.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Purchaser and Sellers hereby agree as follows:

ARTICLE I.

DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms used in this Agreement shall have the respective meanings assigned to them below:

(a) “Accounts Receivable” means (i) any and all accounts receivable, trade accounts and other amounts (including overdue accounts receivable) owed to Sellers relating to, or arising in connection with the operation and conduct of, the Business and any other rights of Sellers to payment from third parties and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of services rendered, in each case owing to Sellers, and any return of premiums or other funds relating to or arising from any insurance policies listed on Schedule 5.20(a) (except with respect to insurance proceeds for which there is an administrative claim against Sellers or with respect to facts, events or circumstances related to Excluded Assets and Excluded Liabilities arising after the Closing); (ii) all other accounts or notes receivable of Sellers and the full benefit of all security for such accounts or notes receivable arising in the conduct of the Business; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case existing on the Execution Date or arising in the Ordinary Course of Business after the Execution Date and in each case that have not been satisfied or discharged prior to the close of business on the day immediately preceding the Closing Date or have not been written off or sent to collection prior to the close of business on the day immediately preceding the Closing Date (it being understood that the receipt of a check prior to the close of business on the day immediately preceding the Closing Date shall constitute satisfaction or discharge of the applicable account or note receivable to the extent of the payment represented thereby).

(b) “Acquired Names” means the Trademarks of Sellers which are exclusively used in connection with the Business.

(c) “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “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 such Person, whether through ownership of voting securities, by contract or otherwise. For purposes hereof, except to the

extent otherwise expressly set forth herein, Purchaser, the Purchaser Designees, and the Prepetition Lenders shall not be deemed to be Affiliates of Sellers.

(d) “Alternative Transaction” means (i) the approval by the Bankruptcy Court of the sale or sales of all or a material portion of the Acquired Assets to a third party other than Purchaser (or an Affiliate of Purchaser), or (ii) the filing of a chapter 11 plan by Sellers or anyone else that does not contemplate the sale of the Acquired Assets to Purchaser (or an Affiliate of Purchaser) in accordance with the terms hereof.

(e) “Ancillary Agreements” means, collectively, the agreements to be executed in connection with the transactions contemplated by this Agreement, including the Bill of Sale, the Assignment and Assumption Agreement, and the trademark and domain name assignment.

(f) “Auction” has that meaning ascribed to such term by the Bidding Procedures Order.

(g) “Avoidance Action” means any and all claims and causes of action of Sellers arising under the Bankruptcy Code or similar federal, state or local laws, including under Chapter 5 of the Bankruptcy Code and similar state laws.

(h) “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

(i) “Bidding Procedures Order” means the Order (I) Approving Bidding Procedures in Connection with Sale of Substantially All Assets of the Debtors; (II) Scheduling an Auction and Hearing to Consider the Sale of Assets; and (III) Approving the Form and Manner of Notice Thereof in form and substance reasonably satisfactory to Purchaser, the DIP Agent and the Prepetition Agent in their respective sole discretion.

(j) “Business” means the business of conducted by Sellers of mining, producing and distributing frac sand.

(k) “Cash and Cash Equivalents” means all of Sellers’ cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents.

(l) “Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

(m) “Code” means the Internal Revenue Code of 1986, as amended.

(n) “Contract” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, license, commitment or instrument or other agreement, arrangement or commitment that is binding upon a Person or its property (excluding any Insurance Policies).

(o) “Credit Bid” means a credit bid of a portion of the Prepetition Credit Agreement Indebtedness in the amounts and in the manner specified in Section 3.1(a)(i).

(p) “Cure Costs” means the amounts necessary to cure all defaults, if any, and to pay all actual pecuniary losses, if any, that have resulted from such defaults, under the Assigned Contracts, in each case as of the Petition Date and to the extent required by Section 365(b) of the Bankruptcy Code and any Order of the Bankruptcy Court approving the assumption and assignment of the Assigned Contracts, which amounts (if not already paid or to be paid in the Ordinary Course of Business pursuant to an Order of the Bankruptcy Court) shall have been identified to Purchaser in writing.

(q) “DIP Agent” means Energy Capital Partners Mezzanine Opportunities Fund A, LP., in its capacity as administrative agent under the DIP Loan Agreement.

(r) “DIP Lenders” means the lenders from time to time party to the DIP Loan Agreement.

(s) “DIP Loan” means the Indebtedness (including principal, interest, fees, premium and any other amounts due or other obligations) of Sellers arising under the DIP Loan Agreement and/or the DIP Loan Documents.

(t) “DIP Loan Agreement” means that certain Credit Agreement, as amended from time to time, dated January 9, 2017, by and among CSP, as borrower, CSPB, as guarantor, the DIP Agent, and the DIP Lenders, as approved by the Bankruptcy Court pursuant to the DIP Orders.

(u) “DIP Loan Documents” means the “Loan Documents” as defined in the DIP Loan Agreement.

(v) “DIP Orders” means the (A) Interim Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, (V) Modifying Automatic Stay, and (VI) Scheduling a Final Hearing and (B) Final Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, and (V) Modifying Automatic Stay, entered by the Bankruptcy Court, in each case in form and substance reasonably satisfactory to the DIP Agent and the Prepetition Agent, in their respective sole discretion.

(w) “Documents” means all of Sellers’ written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test

results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

(x) “Employee” means an individual who, as of the applicable date, is employed by, or engaged to provide services as an employee to, any Seller in connection with the Business.

(y) “Encumbrance” means any lien, encumbrance, Claim, right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interest, title defect, hypothecation, easement, right of way, restrictive covenant, condition, restriction, encroachment, rights of first refusal, preemptive right, judgment, conditional sale or other title retention agreements and other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

(z) “Environmental Laws” means all Laws relating to pollution or protection of health, natural resources or the environment, the restoration of real property, or the generation, use, treatment, storage, handling, transportation or Release of, or exposure to, Hazardous Materials, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.) and other similar U.S. or foreign federal, state, provincial and local statutes.

(aa) “Environmental Permits” means all material Permits issued pursuant to Environmental Laws.

(bb) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any similar foreign Laws.

(cc) “ERISA Affiliate” means any entity which is, or at any relevant time within the past six (6) years was, a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), or (C) an affiliated service group (as defined under Section 414(m) of the Code), any of which includes or included Sellers, but the term ERISA Affiliate does not include Sellers.

(dd) “Final Order” means an Order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in Sellers’ Chapter 11 Cases or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and

as to which no appeal, petition for *certiorari* or motion for new trial, reargument or rehearing shall then be pending or (ii) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such Order was appealed, or *certiorari* shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such Order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing shall have expired, as a result of which such Order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, shall not cause such Order not to be a Final Order.

(ee) “GAAP” means United States generally accepted accounting principles.

(ff) “Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state, provincial or local, or any ministry agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) or any judicial, quasi-judicial or administrative body, or any regulatory body of applicable jurisdiction.

(gg) “Hazardous Materials” means petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos and asbestos containing materials, and any and all materials, substance or waste now or hereafter defined, listed, designated or classified as, or otherwise determined to be, “hazardous wastes,” “hazardous substances,” “toxic substance,” “radioactive,” “solid wastes,” or “toxic” (or words of similar meaning) under or pursuant to or otherwise listed or regulated pursuant to any Environmental Law.

(hh) “Indebtedness” of any Person means, without duplication, (i) the interest in respect of, principal of and premium (if any) in respect of (x) indebtedness of such Person for money borrowed and (y) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property (other than for services and goods acquired in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Encumbrance (other than Permitted Encumbrances), on any property or asset of such Person (whether or not such obligation is assumed by such Person).

(ii) “Intellectual Property Rights” means all intellectual property and proprietary rights of any kind, including the following: (i) Trademarks; (ii) patents, utility models and industrial design registrations (and all continuations, divisionals, continuations in part, provisionals, renewals, reissues, re-examinations and applications for any of the foregoing);

(iii) copyrights and copyrightable subject matter (including any registrations and applications for any of the foregoing); (iv) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, and methodologies; (v) Software; and (vi) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

(jj) “Inventory” means all raw materials, work-in-process, finished goods, supplies, samples (including samples held by sales representatives), components, packaging materials, and other inventories to which Sellers have title that are in the possession or custody of Sellers or, solely with respect to inventories to which Sellers have title, any third party to the extent used or held for use in connection with any of the Acquired Assets or the Business.

(kk) “IRS” means the United States Internal Revenue Service.

(ll) “IT Assets” means all of Sellers’ computers, Software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology equipment and elements, and all associated documentation that are used, or held for use, in connection with the operation of the Business.

(mm) “Knowledge of Sellers” (or “Sellers’ Knowledge”) means the actual knowledge, after reasonable inquiry, of those persons listed on Section 1.1(mm) of the Seller Disclosure Schedule.

(nn) “Laws” means all federal, state, provincial, local or foreign laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, Orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued, promulgated, enforced or entered by, any and all Governmental Bodies, or court of competent jurisdiction, or other legal requirement or rule of law, including common law.

(oo) “Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

(pp) “Liability” means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, including all costs and expenses relating thereto.

(qq) “Material Adverse Effect” means any change, effect, event, occurrence, development, circumstance or state of facts which has had or would reasonably be expected to have a materially adverse effect on the business, properties, operations or condition (financial or otherwise) of the Business or Sellers, taken as a whole, or which would materially impair

Sellers' ability to perform its obligations under this Agreement or have a materially adverse effect on or prevent or materially delay the consummation of the transactions contemplated by this Agreement; provided, however, that changes in the business, properties, operations or condition (financial or otherwise) of the Business or Sellers arising by reason of any of the following shall not be taken into account in determining whether there has been a Material Adverse Effect: (A) the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code or the effect, directly or indirectly, of such filing; (B) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates; (C) factors generally affecting the industries or markets in which Sellers operate; (D) changes in general legal, tax, regulatory, political or business conditions that, in each case, generally affect the geographic regions or industries in which Sellers conduct their business; (E) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement; (F) changes in, or required by, applicable Law or GAAP after the date hereof; and (G) any action by Sellers or their Affiliates (i) taken at the express written request of Purchaser or its Affiliates; or (ii) required to be taken in order to comply with this Agreement or an Ancillary Agreement; except, in the cases of clauses (B), (C), (D), (E), and (F), to the extent that Sellers are disproportionately affected thereby as compared with other participants in the industries in which Sellers operate.

(rr) "Non-Assumed Contracts" means any Contracts to which any Seller is a party but that are not Assigned Contracts, including, without limitation, the Contracts set forth on Schedule 2.2(b).

(ss) "Order" means any order, writ, judgment, injunction, decree, stipulation, determination, decision, verdict, ruling, subpoena, or award entered by or with any Governmental Body (whether temporary, preliminary or permanent).

(tt) "Ordinary Course of Business" means the ordinary and usual course of day-to-day operations of the Business consistent with past practice.

(uu) "Owned Real Estate Leases" means all of Sellers' rights, title and interests under the leases, licenses, or other agreements (written or oral) pursuant to which any Seller conveys or grants to any Person a leasehold interest in, or the right to use or occupy, any Owned Real Property or portion thereof.

(vv) "Permits" means all licenses, permits (including environmental, construction and operation permits), provider numbers, franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, orders and other similar documents and authorizations issued by any Governmental Body and/or any self-regulatory body or organization to or for the benefit of any Seller and used, or held for use, in connection with the operation of the Business or applicable to ownership of the Acquired Assets or assumption of the Assumed Liabilities.

(ww) "Permitted Encumbrances" means: (a) statutory Encumbrances for current Taxes, assessments and other Governmental Body charges that are not yet due and payable; (b) mechanics', materialmen's, warehouseman's and similar Encumbrances that relate to

Assumed Liabilities; (c) such covenants, conditions, restrictions, easements, encroachments or encumbrances, or any other state of facts, that do not materially interfere with the present occupancy or use of the Owned Real Property or the activities conducted thereon which are imposed by any Governmental Body having jurisdiction over real property so long as such use, occupancy, or activities do not interfere with the current use of the Owned Real Property; and (d) a lessor's interest in, and any mortgage, pledge, security interest, Encumbrance (statutory or other) or conditional sale agreement on or affecting a lessor's interest in, property underlying any of the leases for personal property or real property.

(xx) "Person" means an individual, corporation, partnership, limited liability company, unlimited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(yy) "Petition Date" means the date on which Sellers commence the Chapter 11 Cases.

(zz) "Prepetition Agent" means Energy Capital Partners Mezzanine Opportunities Fund A, LP, in its capacity as administrative agent and collateral agent under the Prepetition Credit Agreement.

(aaa) "Prepetition Credit Agreement" means that certain Credit and Security Agreement, dated as of July 25, 2012, by and among CSP, as borrower, CSPB, as guarantor, the Prepetition Agent, and the Prepetition Lenders, as such Prepetition Credit Agreement has been amended, modified, supplemented or restated.

(bbb) "Prepetition Credit Agreement Indebtedness" means all obligations, claims, rights, actions, causes of action, suits, liabilities, damages, debts, costs, expenses and demands whatsoever, in law or in equity, arising under, or otherwise relating to, the Prepetition Credit Agreement.

(ccc) "Prepetition Credit Documents" means the "Credit Documents" as defined in the Prepetition Credit Agreement, as such Credit Documents are amended, modified, supplemented or restated from time to time.

(ddd) "Prepetition Lenders" means Energy Capital Partners Mezzanine Opportunities Fund A, LP, a Delaware limited partnership, Energy Capital Partners Mezzanine Opportunities Fund, LP, a Delaware limited partnership, and Energy Capital Partners Mezzanine Opportunities Fund B, LP, a Delaware limited partnership, collectively, as the lenders party to the Prepetition Credit Agreement.

(eee) "Regulatory Approvals" means any consents, waivers, approvals, Orders, Permits or authorizations of any Governmental Body required in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereunder.

(fff) "Release" means, with respect to any Hazardous Material, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

dumping, disposing or migrating into or through any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air.

(ggg) “Sale Hearing” means the hearing before the Bankruptcy Court to approve this Agreement and seeking entry of the Sale Order.

(hhh) “Sale Motion” means the Motion for entry of (A) the Bidding Procedures Order and (B) the Sale Order in form and substance reasonably satisfactory to the Purchaser, the DIP Agent, and the Prepetition Agent, in their respective sole discretion.

(iii) “Seller Intellectual Property Rights” means all Intellectual Property Rights owned or purported to be owned by Sellers.

(jjj) “Seller Plan” means (i) whether or not they are subject to ERISA, all material “employee benefit plans” (as defined in Section 3(3) of ERISA), including all employee benefit plans which are “pension plans” (as defined in Section 3(2) of ERISA) and any other material written employee benefit arrangements or payroll practices (including, without limitation, severance pay, vacation pay, company awards, salary continuation for disability, critical illness, sick leave, death benefit, hospitalization, welfare benefit, employment insurance, weekly indemnity, supplemental unemployment benefit, group or individual health, dental, medical, life insurance, survivor benefit, deferred compensation, profit sharing, retirement, bonus or other incentive compensation, deferred compensation, equity based compensation arrangements or policies) and (ii) all written employment, termination, bonus, severance, change in control or other similar contracts (other than those just offering at-will employment without severance), in each case with respect to which any Seller has any Liability or obligation with respect to current or former directors, officers, consultants and Employees.

(kkk) “Software” means computer software, programs and databases in any form, including Internet web sites, web content and links, source code, executable code, tools, developers kits, utilities, graphical user interfaces, menus, images, icons and forms, and all versions, updates, corrections, enhancements and modifications thereof, and all related documentation, developer notes, comments and annotations related thereto.

(lll) “Subsidiary” means, with respect to any Person, (a) any other Person that directly, or indirectly through one or more intermediaries, is controlled by such Person; or (b) any other Person where a majority of its equity interests are held, directly, or indirectly through one or more intermediaries, by such Person. For purposes of this definition, “control” (including, with correlative meaning, the terms “controlling” and “controlled”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

(mmm) “Tax” and “Taxes” mean any and all taxes, charges, fees, tariffs, duties, impositions, levies or other assessments (including, without limitation, income, profits, capital gains, windfall profits, franchise, alternative minimum, gross receipts, sales, use, value added, goods and services, ad valorem, production, excise, premium, transfer, real property, personal property, escheat, abandoned and unclaimed property, inventory, capital stock, stamp,

documentary, registration, conveyance, recording, license, social security, payroll, occupation, employment, unemployment, severance, disability, environmental, withholding and estimated tax), imposed by any Laws or Governmental Body, and including any interest, penalties or additional amounts attributable to, imposed upon, or with respect thereto; in each case whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person by Law, by Contract or otherwise.

(nnn) “Tax Period” means any period prescribed by any Laws or Governmental Body for which a Tax Return is required to be filed or a Tax is required to be paid.

(ooo) “Tax Return” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including attachments thereto and amendments thereof.

(ppp) “Trademarks” means trademarks, service marks, trade names, slogans, logos, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, and other similar designations of source or origin, together with all translations, adaptations, derivations, and combinations thereof, all goodwill connected with the use thereof and symbolized thereby, and all registrations and applications to register the foregoing, and all renewals thereof.

(qqq) “WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §2101 et seq., or any applicable similar state, provincial or local law which impose obligations in circumstances of mass termination.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Acquired Assets	2.1
Acquired Intellectual Property Rights	2.1(g)
Acquired Permits	5.4
Agreement	Preamble
Allocation Schedule	11.1(c)
Assigned Contract Assumption Notice	2.8(a)
Assigned Contracts	2.1(e)(iii)
Assignment and Assumption Agreement	4.2(b)
Assumed Liabilities	2.3
Assumed Plan Related Matters	2.1(t)
Assumed Plans	2.1(t)
Audited Financial Statements	5.12
Back-up Bidder	8.1(c)
Balance Sheet Date	5.12
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bill of Sale	4.2(a)

<u>Term</u>	<u>Section</u>
Chapter 11 Cases	Recitals
Closing	4.1
Closing Date	4.1
COBRA Continuation Coverage	7.3
Competing Bid	8.1(b)
Confidentiality Agreements	2.1(e)(iii)
Corporate Records	2.2(i)
Credit Bid Amount	3.1(a)(i)
CSP	Preamble
CSPB	Preamble
Damages	12.10(b)
DIP Repayment Amount	3.1(a)(ii)
Disputed Cure Costs	2.7(c)
Employment Contracts	2.1(d)
Equipment	2.1(c)
Exceptions	5.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Excluded Plans	2.4(f)
Execution Date	Preamble
Executory Contract List	2.7(a)
Financial Statements	5.12
HSR Act	5.3
Improvements	2.1(c)
In-Bound IP Contracts	2.1(e)(iii)
Insurance Policies	5.20(a)
Interim Financial Statements	5.12
IP Contracts	2.1(e)(iii)
Material Contracts	5.7(a)
Other Contracts	2.1(e)(iii)
Out-Bound IP Contracts	2.1(e)(iii)
Outside Back-up Date	8.1(c)
Outside Date	4.4(b)
Prevailing Bidder	8.1(c)
Property Taxes	11.1(b)
Purchase Price	3.1(a)
Purchaser	Preamble
Purchaser Designees	Recitals
Purchaser Disclosure Schedule	ARTICLE VI
Representatives	9.2(a)
Sale Order	8.2
Sellers	Preamble
Seller Broker Fee	5.11
Seller Disclosure Schedule	ARTICLE V
Seller Registered Intellectual Property Rights	5.8

<u>Term</u>	<u>Section</u>
Straddle Period	11.1(b)
Supplier Contracts	2.1(e)(ii)
Support Obligations	9.11
Transfer Tax	11.1(a)
Transferred Employee	7.1
Undisputed Cure Costs	2.7(a)

ARTICLE II.

ACQUISITION AND TRANSFER OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Acquisition and Transfer of Acquired Assets. At the Closing, and upon the terms and conditions set forth herein and in the Sale Order, Sellers shall transfer, assign, convey and deliver to Purchaser or its Purchaser Designees, and Purchaser or its Purchaser Designees shall acquire and accept from Sellers, all of Sellers' rights, title, and interests in, to and under (in each case free and clear of any and all Encumbrances, other than Permitted Encumbrances and Assumed Liabilities) the Acquired Assets. "Acquired Assets" shall mean all property, assets and rights owned, leased or held for use by Sellers, used or useful in or held for use in the Business of every kind, character and description, including all direct or indirect, rights, title, and interests of Sellers in, to and under all the tangible and intangible, real and personal, assets, properties, rents, Claims and contracts of Sellers, to the extent transferable, wheresoever located, whether carried on the books of Sellers or not carried on the books of Sellers, due to expense, full depreciation or otherwise, used or useful in or held for use in the Business, including, without limitation, the following; provided, however, that the Acquired Assets shall not include any Excluded Assets:

(a) all of Sellers' rights, title, and interests in, to, and under all real property owned in fee simple by Sellers (collectively, the "Owned Real Property");

(b) all of Sellers' rights, title and interests under the leases, licenses, or other agreements (written or oral) pursuant to which Sellers convey or grant to any Person a leasehold interest in, or the right to use or occupy, any Owned Real Property or portion thereof, including the right to all security deposits and other amounts and instruments deposited by or on behalf of any tenant or occupier thereunder;

(c) all of: (i) Sellers' rights, title and interests to the buildings, improvements and furnishings, fixtures and equipment now or hereafter located on the Owned Real Property or the Leased Real Property, subject to limitations set forth in the Seller Real Estate Leases (collectively, the "Improvements"); (ii) Sellers' equipment, security devices, furniture, fixtures, tools and other personal property now or hereafter owned or held by Sellers, but excluding any of the foregoing items under leases or similar contracts not constituting Assigned Contracts (collectively, the "Equipment"); and (iii) any rights of Sellers to the warranties and licenses received from manufacturers and sellers of the Equipment, Improvements or any component thereof;

(d) all of Sellers' rights and interests under the employment agreements (to the extent assignable) identified on Schedule 2.1(d) ("Employment Contracts");

(e) all of Sellers' rights and interests under:

(i) Contracts entered into by Sellers with any supplier or vendor and listed on Schedule 2.1(e)(i) ("Supplier Contracts"); provided, that neither Purchaser nor the Purchaser Designees shall have any obligation to assume any such Supplier Contract if the amount payable thereunder as of the Closing exceeds the amount set forth opposite the name of the applicable counterparty on Schedule 2.1(e)(i), except for such amounts incurred in the Ordinary Course of Business after the Petition Date;

(ii) all Contracts (A) granting Sellers any rights, via a license, transfer of ownership, covenant not to sue or otherwise, in or to any Intellectual Property Rights owned or controlled by third parties, including Software ("In-Bound IP Contracts"); provided, that, neither Purchaser nor the Purchaser Designees shall have any obligation to assume any such In-Bound IP Contracts included on Schedule 2.1(e)(iii)(A) if the amount payable thereunder as of the Closing exceeds the amount set forth opposite the name of the applicable counterparty on included on Schedule 2.1(e)(iii)(A), except for such amounts incurred in the Ordinary Course of Business after the Petition Date, (B) granting any third party any rights, via a license, transfer of ownership, covenant not to sue or otherwise, in or to any Intellectual Property Rights owned or controlled by Sellers, including Software ("Out-Bound IP Contracts"), (the Out-Bound IP Contracts together with the In-Bound IP Contracts, the "IP Contracts"); (C) all rights under any existing confidentiality or non-disclosure agreements, including, for the avoidance of doubt, any confidentiality or non-disclosure agreement with Purchaser or its Affiliates ("Confidentiality Agreements"); and (D) all other Contracts listed on Schedule 2.1(e)(ii) (the "Other Contracts" and, together with the Seller Real Estate Leases, the Supplier Contracts, the IP Contracts and the Confidentiality Agreements that Purchaser or the Purchaser Designees are assuming, the "Assigned Contracts");

(f) all of Sellers' rights and interests: (i) in the Inventory; and (ii) in and to the warranties received from vendors or suppliers with respect to such Inventory;

(g) all Seller Intellectual Property Rights (including for the avoidance of doubt the Acquired Names), together with all of Sellers' documentation (in any form or medium) relating thereto, and all of Sellers' physical embodiments thereof (the "Acquired Intellectual Property Rights"); provided that, to the extent that Seller Intellectual Property Rights cannot be transferred to Purchaser or the Purchaser Designees, Sellers shall be deemed to have granted to Purchaser (or the Purchaser Designees) an exclusive, royalty-free right and license to use and otherwise exploit such Intellectual Property Rights from and after the Closing Date, to the fullest extent permitted by applicable law, including the right to sue and otherwise recover for past, present and future infringements, misappropriations, dilutions, and other violations thereof;

(h) all Software owned by Sellers;

(i) all rights and interests of Sellers under any Permits (to the extent transferable);

(j) all of Sellers' instruments, Accounts Receivable (whether current or noncurrent), rebates, refunds, unbilled costs and fees attributable to the Business or the Acquired Assets and all causes of action specifically pertaining to the collection of the foregoing, and any other receivables of Sellers, in each case arising prior to or on the Closing Date;

(k) to the extent permitted by applicable Law, all rights and benefits under Insurance Policies listed on Section 5.20 of the Seller Disclosure Schedule that relate to or arise from the Business, Purchaser, Acquired Assets or Assumed Liabilities, including, without limitation, (i) all proceeds from Insurance Policies except to the extent that such proceeds relate to claims that are Excluded Assets or Excluded Liabilities or relate to any Seller Plans that are not Assumed Plans, and (ii) all claims, demands, proceedings and causes of action asserted by Seller under Insurance Policies that relate to or arise from the Business, Purchaser, Acquired Assets or Assumed Liabilities, and (iii) any letters of credit related thereto;

(l) all Avoidance Actions related to (i) the Assigned Contracts or the Assumed Liabilities;

(m) copies of all Tax Returns and Tax records of Sellers related to Taxes arising in connection with the Leased Real Property or the Owned Real Property;

(n) any claim, right or interest of Sellers in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax Period (or portion thereof) ending on or before the Closing Date;

(o) all security and utility deposits, other deposits, credits, allowance, prepaid assets, or charges, rebates, setoffs, prepaid expenses, and other prepaid items related to the Acquired Assets (except for security deposits relating to (i) the Seller Real Estate Leases which are not Assigned Contracts, (ii) Contracts that are not Assigned Contracts, and (iii) Excluded Assets); and any restricted cash Sellers are required to maintain in connection with Sellers' insurance programs or policies that represent prepayments and similar items arising out of, or relating to, the Acquired Assets or the Business;

(p) all promotional allowances and vendor rebates and similar items;

(q) all office supplies, stationary, forms, labels, shipping materials, brochures, art work, photographs, production supplies, other miscellaneous supplies, equipment, and other tangible property of any kind wherever located, including all property of any kind located in any building, office or other space leased, owned, or occupied by Sellers or in any warehouse where any of Sellers' properties and assets may be situated;

(r) all (i) rights, Claims or causes of action of Sellers against any counterparty to an Assigned Contract for breach of contract or related matters, and (ii) rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers, and contractors relating to products sold, or services provided, to Sellers;

(s) the right to receive and retain mail and other communications;

(t) Seller Plans listed on Schedule 2.1(u) (the “Assumed Plans”), and any associated funding media, assets, reserves, credits and service agreements, and all Documents created, filed or maintained in connection with the Assumed Plans (to the extent transferable in accordance with the existing terms and conditions of the applicable Seller Plan) and any applicable insurance policies related thereto (collectively, the “Assumed Plan Related Matters”);

(u) all goodwill and other intangible assets including correspondence with present or prospective customers and suppliers, advertising materials, software programs, telephone exchange numbers, and other similar intangible assets associated with the Business and the Acquired Assets (to the extent transferable), including customer and supplier lists provided that, to the extent such intangible assets cannot be transferred to Purchaser or the Purchaser Designees, Sellers shall be deemed to have granted to Purchaser or the Purchaser Designees an exclusive, royalty-free right and license to use such intangible assets from and after the Closing Date, to the fullest extent permitted by applicable law and the underlying agreements, as applicable; and

(v) all bank accounts and lock boxes of Sellers.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Acquired Assets are the only properties, rights and assets transferred to, or otherwise acquired by, Purchaser or the Purchaser Designees under this Agreement. Without limiting the generality of the foregoing, the Acquired Assets do not include (i) any right, title, or interest of any Person other than Sellers in any property or asset and (ii) the properties and assets of Sellers listed or described below in this Section 2.2 (all properties and assets not being acquired by Purchaser or the Purchaser Designees are herein collectively referred to as the “Excluded Assets”):

(a) the Purchase Price;

(b) all of Sellers’ rights under the Non-Assumed Contracts, including any Contracts set forth on Schedule 2.2(b);

(c) all Cash and Cash Equivalents, whether on hand, in transit or in banks or other financial institutions, security entitlements, securities accounts, commodity contracts and commodity accounts and including any cash collateral that is collateralizing any letters of credit issued pursuant to the DIP Loan Documents or any other letter of credit, including, without limitation, any Support Obligation or letter of credit issued prior to the Petition Date, or obligation with respect thereto;

(d) all of Sellers’ rights and interests under any Permits that are not Acquired Assets;

(e) any assets and associated Claims or rights arising out of the Excluded Liabilities, including rights relating to prepaid expenses, refunds or adjustments (except to the extent described in Section 2.1(o) or Section 2.1(s)(iv));

(f) all rights of Sellers arising under this Agreement and the Ancillary Agreements;

(g) all (i) Avoidance Actions (other than those described in Section 2.1(l)) and (ii) rights, Claims or causes of action of Sellers against individuals who were officers or directors of Sellers prior to the date hereof;

(h) all good faith or other bid deposits submitted by any third party under the terms of the Bid Procedures Order, including the sales procedures;

(i) any and all privileges of Sellers with any of their professionals including attorneys, accountants, and other advisors, whether related to attorney-client privilege, attorney work product, or otherwise;

(j) all (i) Tax Returns or Tax records (other than those described in Section 2.1(n)), and (ii) seals, minute books, charter documents, stock or equity record books and such other books and records as pertain to the organization, existence, or capitalization of Sellers, as well as any other records or materials relating to Sellers generally and, in each case, not involving or related to the Acquired Assets or the operations of the Business (items (i) and (ii), the “Corporate Records”); provided that, Sellers shall provide Purchaser with reasonable access to, and copies of, any Corporate Records;

(k) all rights and benefits of Sellers under Sellers’ Insurance Policies, subject to Section 9.10;

(l) the stock and other equity interests or securities, including promissory notes, issued by CSPB; and

(m) the sales orders, customer Contracts, distribution agreements, master service agreements, work orders, study agreements, contractor agreements, memorandums of agreement, statements of work, or other similar Contracts entered into by Sellers with its customers.

2.3 Assumption of Liabilities. Subject to the terms and conditions set forth in this Agreement, at the Closing, in consideration for the assignment, conveyance, transfer and delivery of the Acquired Assets to Purchaser or the Purchaser Designees, Purchaser or the Purchaser Designees shall assume the following Liabilities (collectively, the “Assumed Liabilities”):

(a) the Liabilities and executory obligations of Sellers under the Assigned Contracts (specifically excluding the Excluded Assets);

(b) the Liabilities relating to Sellers’ trade payables and other accounts payable arising prior to the Petition Date in the Ordinary Course of Business, solely to the extent set forth on Schedule 2.3(b);

(c) the Liabilities arising in connection with the use and operation of the Leased Real Property or the Owned Real Property from and after the Closing Date;

(d) the Liabilities with respect to Cure Costs (including for Undisputed Cure Costs and Disputed Cure Costs) set forth on Schedule 2.3(d);

(e) the Liabilities and obligations relating to or arising from the Acquired Assets or the operation of the Business relating to or arising from the period commencing after the Closing Date;

(f) the Liabilities of Sellers for Property Taxes to the extent specifically allocated to Purchaser pursuant to Section 11.1(b);

(g) the Liabilities of Sellers for all accrued and unpaid wages and accrued and unused vacation, time-off, bonus, commissions, severance, sick days, and personal days with respect to the Transferred Employees as of the Closing Date;

(h) the Liabilities and obligations relating to or arising from the Assumed Plans or the Assumed Plan Related Matters;

(i) the Liabilities arising out of or relating to the Acquired Permits, including (i) all reclamation Liabilities, (ii) obligations to replace bonds associated with the Acquired Permits, and (iii) regulatory violations and obligations on or in relation to the Acquired Assets or the Acquired Permits arising post-Closing; and

(j) the Liabilities assumed pursuant to Section 7.3 and Section 7.1.

(k) Notwithstanding anything in this Agreement to the contrary, Sellers hereby acknowledge and agree that Purchaser and the Purchaser Designees are not assuming from Sellers, nor is in any way responsible for, the Excluded Liabilities. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against any of Purchaser, the Purchaser Designees, or Sellers as compared to the rights and remedies that such third party would have had against Sellers absent the Chapter 11 Cases had Purchaser or the Purchaser's Designees not assumed such Assumed Liabilities as set out above. Other than the Assumed Liabilities assumed by Purchaser or the Purchaser Designees, Purchaser and the Purchaser Designees are not assuming and shall not be liable for any liabilities or obligations of Sellers.

2.4 Excluded Liabilities. Except for the Assumed Liabilities assumed by Purchaser or the Purchaser Designees, neither Purchaser nor the Purchaser Designees shall assume or be liable for or bound by any Liability of Sellers, including any duties, responsibilities, liabilities, assessments, penalties or obligations of any kind or nature, whether known or unknown, whether asserted or unasserted, whether accrued or unaccrued, whether contingent or non-contingent, presently in existence or arising hereafter, disputed or undisputed, liquidated or unliquidated, at Law or in equity or otherwise, including any Liability based on successor liability theories (herein referred to as the "Excluded Liabilities"), including without limitation the following specific Liabilities to the extent they do not otherwise constitute Assumed Liabilities:

(a) any and all Liabilities of Sellers under any Contract of Sellers that is not an Assigned Contract whether accruing prior to, at, or after the Closing Date (except as set forth in Section 2.7);

(b) any and all Liabilities for Taxes (i) of Sellers or Sellers' Affiliates (including Taxes of any other Person for which Sellers or any of Sellers' Affiliates may be liable as a transferee or successor, by Law, Contract or otherwise) for any Tax Period, (ii) for which Sellers are liable pursuant to this Agreement, including Transfer Taxes allocated to Sellers under Section 11.1(a) and Property Taxes to the extent allocated to Sellers under Section 11.1(b) and (iii) arising from or with respect to the Acquired Assets or the Business for any Tax Period (or any portion thereof) ending on or prior to the Closing Date, including such Taxes (other than Property Taxes) allocable to the portion of a Straddle Period ending on the Closing Date under Section 11.1(b);

(c) any and all Liabilities for any Indebtedness or obligation for borrowed money of Sellers;

(d) except as set forth in Section 2.3(i), any and all Liabilities arising under any Environmental Law or any other Law in connection with any environmental, health, or safety matters, including as a result of any action or inaction of Sellers or of any third party relating to the storage, use, or operation of the Acquired Assets before the Closing Date;

(e) any and all Liabilities for: (i) costs and expenses incurred by Sellers or owed in connection with the administration of the Chapter 11 Cases (including the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants, and other professionals retained by Sellers, and any official or unofficial creditors' committee, the fees and expenses of the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders incurred or owed in connection with the administration of the Chapter 11 Cases); and (ii) all costs and expenses of Sellers incurred in connection with the negotiation, execution, and consummation of the transactions contemplated under this Agreement;

(f) any Liabilities arising from or with respect to each Seller Plan that is not an Assumed Plan (the "Excluded Plans");

(g) except as included in Section 2.3(g) or Section 2.3(h), any and all Liabilities in any way attributable to (i) the employment or service of current or former employees, officers or directors of Sellers who is not a Transferred Employee, regardless of whether such Liability is attributable to the period before, on or after the Closing Date, or (ii) the employment of Employees to the extent attributable to the period at or before the Closing;

(h) any and all Liabilities arising out of related to the Excluded Assets;

(i) any and all Liabilities arising from or related to the operation or condition of the Acquired Assets or the Assumed Liabilities prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect to the Acquired Assets or the Assumed Liabilities prior to the Closing;

(j) any and all Liabilities relating to Sellers' trade payables and other accounts payable, except (i) as set forth on Schedule 2.3(b) and (ii) as described in Section 3.1(a)(i);

(k) any and all Liabilities relating to complaints, causes of action, litigation or similar matters instituted against Sellers relating to or arising out of any actions, omissions, circumstances or conditions or events occurring prior to the Closing Date; and

(l) any Liability not expressly included among the Assumed Liabilities and specifically so assumed.

2.5 Assignment of Contracts and Rights. To the maximum extent permitted by the Bankruptcy Code, the Acquired Assets, including without limitation Assigned Contracts, shall be assumed by Sellers and assigned to Purchaser or the Purchaser Designees pursuant to Section 365 of the Bankruptcy Code as of the Closing Date or such other date as specified in an Order of the Bankruptcy Court.

2.6 Limitations on Assignability.

(a) This Agreement and the instruments and documents executed and delivered herewith will constitute an assignment of all Acquired Assets; provided that neither this Agreement, nor any of the instruments or documents executed and delivered in connection herewith or contemplated hereby, shall constitute an assignment or assumption of any Acquired Asset, or an attempted assignment or an attempted assumption thereof, to the extent that, without the consent of a third party, such assignment or attempted assignment, or assumption or attempted assumption, would constitute a breach thereof or in any way materially and adversely affect the rights of Purchaser (or the Purchaser Designees) or Sellers thereunder, unless otherwise provided under the Bankruptcy Code, the Sale Order or other applicable Law. If, with respect to any Acquired Asset such consent is not obtained or such assignment is not attainable pursuant to the Bankruptcy Code or the Sale Order, then such Acquired Asset shall not be transferred hereunder and the Closing shall proceed with respect to the remaining Acquired Assets without any reduction in the Purchase Price.

(b) With respect to such non-assignable or non-assumable Acquired Assets that are Assigned Contracts, Sellers hereby appoint, effective as of the Closing Date, Purchaser or the Purchaser Designees as Sellers' agent and attorney-in-fact, effective as of the Closing Date, to act for Sellers in obtaining the benefits and performing Sellers' obligations under such Assigned Contracts, but only to the extent any action to obtain such benefits and any such delegation of duties may be made without violation thereof and, in each case, at the sole cost and expense of Purchaser without any liability or obligation of Sellers. In addition, until the impracticalities of assignment referred to in this Section 2.6 hereof are resolved, Sellers shall use their commercially reasonable efforts, at Purchaser's sole cost, to (i) provide Purchaser or the Purchaser Designees the benefits of any Acquired Asset referred to in this Section 2.6, (ii) cooperate in any reasonable and lawful arrangement designed to provide such benefits to Purchaser or the Purchaser Designees, and (iii) enforce, for the account and benefit of Purchaser or the Purchaser Designees, any and all rights of Sellers arising from the Acquired Assets referred to in this Section 2.6 against such issuer thereof and all other parties thereto (including the right to elect to terminate any Contract in accordance with the terms thereof on the request of Purchaser or the Purchaser Designees). Purchaser or the Purchaser Designees shall perform, on behalf of Sellers, for the benefit of the issuer thereof and/or all other parties thereto, the

obligations of Sellers under the Acquired Assets referred to in this Section 2.6 or in connection therewith.

2.7 Executory Contract Designation.

(a) No later than the date of the service of the Executory Contract List upon all necessary parties pursuant to Section 2.7(b) hereof, Sellers shall deliver to Purchaser a true, correct and complete list of all material Contracts that are executory Contracts or unexpired leases related to the Acquired Assets or otherwise used in connection with the Business (the “Executory Contract List”). The Executory Contract List shall list the monetary amounts that Sellers believe are the Cure Costs (“Undisputed Cure Costs”) and such other commercial information related to the Contracts listed thereon as shall be reasonably requested by Purchaser. Sellers shall also provide, together with the Executory Contract List, a list of any nonmonetary obligations that Sellers believe must be otherwise satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Purchaser to take assignment of the Assigned Contracts pursuant to this Agreement.

(b) No later than three (3) business days following the entry of the Bidding Procedures Order, a copy of the Executory Contract List shall be properly served on all necessary parties.

(c) To the extent a counterparty to a Contract objects or otherwise challenges the Undisputed Cure Costs determined by Sellers and asserts a different monetary amount that must be paid and/or nonmonetary obligations that otherwise must be satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Purchaser or the Purchaser Designees to assume such Contract pursuant to this Agreement, the difference between the Undisputed Cure Costs determined by Sellers and such amounts and/or nonmonetary obligations determined by such counterparty shall be referred to as the “Disputed Cure Costs”.

(d) Notwithstanding anything in this Agreement to the contrary, Purchaser may (i) revise any schedule (other than the Seller Disclosure Schedule) setting forth the Acquired Assets and the Excluded Assets to (A) include in the definition of Acquired Assets (pursuant to the applicable schedule) and to exclude from the definition of Excluded Assets, any Contract, Seller Plan or other asset of Sellers not previously included in the Acquired Assets, at any time prior to the Auction and require Sellers to give notice to the parties to any such Contract and (B) exclude from the definition of Acquired Assets (pursuant to the applicable schedule) and to include in the definition of Excluded Assets, any Contract (other than Supplier Contracts), Seller Plan or other asset of Sellers previously included in the Acquired Assets and not otherwise included in the definition of Excluded Assets, at any time on or prior to the Auction and (ii) include in the definition of Assumed Liabilities any Liabilities relating to Sellers’ trade payables and other accounts payable at any time on or prior to the Auction; provided that no such change of a schedule, the definition of the Acquired Assets, the definition of the Excluded Assets, or the definition of Assumed Liabilities shall reduce the amount of the Purchase Price below the amount of the Credit Bid. If any Contract (other than Supplier Contracts), or Seller Plan is excluded from the Acquired Assets as permitted by this Section 2.7(d), all Liabilities to third parties arising under such Contract, or Seller Plan shall be Excluded Liabilities. Without limiting any of Purchaser’s rights pursuant to this Section 2.7(d), in the event that the Sale Order does not

approve the assignment or transfer of one or more of the Assigned Contracts to Purchaser or the Purchaser Designees as Acquired Assets, Purchaser may, in its sole discretion and at any time prior to the Closing Date, exclude any or all of the Assigned Contracts from the Acquired Assets but may not reduce the amount of the Purchase Price.

(e) Purchaser shall be obligated to pay at Closing any Undisputed Cure Costs associated with the assumption of such Assigned Contract. The Disputed Cure Costs shall be paid by Purchaser or the Purchaser Designees at the appropriate time set forth in any Order of the Bankruptcy Court or mutual agreement between Purchaser or the Purchaser Designees and the non-Sellers counterparty to the applicable Assigned Contract.

(f) Notwithstanding anything contained herein to the contrary, Purchaser and the Purchaser Designees shall only take assignment of Contracts designated by Purchaser as Assigned Contracts pursuant to this Section 2.7.

(g) Prior to the Closing, Sellers shall use commercially reasonable efforts to provide Purchaser with access to relevant business records, personnel, equipment, and Purchaser's other reasonable requests in order to allow Purchaser to assist with evaluating the Disputed Cure Costs.

2.8 Additional Assigned Contracts.

(a) Prior to the Closing Date, Purchaser may designate a Non-Assumed Contract to be an Assigned Contract, by one or more written notices to Sellers (each an "Assigned Contract Assumption Notice"). As soon as practicable after receiving any Assigned Contract Assumption Notice, Sellers shall take all actions reasonably necessary to assume and assign to Purchaser or the Purchaser Designees pursuant to Section 365 of the Bankruptcy Code all Non-Assumed Contracts set forth in such Assigned Contract Assumption Notice. The Cure Costs with respect to any Non-Assumed Contract that becomes an Assigned Contract shall be paid by Purchaser or the Purchaser Designees upon the later of (a) as soon as practicable after such Cure Costs are finally determined by the Bankruptcy Court and (b) as soon as practicable after the effectiveness of the assumption and assignment of such Assigned Contract. Sellers and Purchaser acknowledge and agree that the agreements and covenants in this Section 2.8(a) shall survive the Closing. Notwithstanding anything in this Agreement to the contrary, on the date that any Non-Assumed Contract is assumed and assigned to Purchaser or the Purchaser Designees pursuant to this Section 2.8(a), such Non-Assumed Contract shall thereafter be deemed an Assigned Contract for all purposes under this Agreement. Any Non-Assumed Contract for which Purchaser has not provided an Assigned Contract Assumption Notice prior to the Closing Date shall be automatically deemed to be a Non-Assumed Contract, which Sellers may reject or seek to reject without any further consent of Purchaser. The obligations of Sellers under this Section 2.8(a) are subject to Section 365(d)(4) of the Bankruptcy Code and any extension provided or obtained thereunder.

(b) Sellers shall not reject any Non-Assumed Contract until earliest of (x) the Closing Date; and (y) the date on which Purchaser delivers notice to Sellers that it no longer objects to the rejection of such Non-Assumed Contract. A Non-Assumed Contract shall not be

considered an Assigned Contract unless expressly assumed and assigned pursuant to Section 2.8(a).

(c) To the extent that the need for Bankruptcy Court approval delays the assumption or rejection of any Contract, Sellers shall take all commercially reasonable efforts to gain all necessary approvals, including as required under Section 365(d)(4) of the Bankruptcy Code, until the Closing Date with respect to any particular Contract.

ARTICLE III.

CONSIDERATION

3.1 Consideration.

(a) The aggregate consideration (collectively, the “Purchase Price”) to be paid for the acquisition of the Acquired Assets shall be:

(i) the release of Sellers under the Prepetition Credit Agreement of obligations, claims, rights, actions, causes of action, suits, liabilities, damages, debts, costs, expenses and demands whatsoever, in law or in equity, arising under, or otherwise relating to, the Prepetition Credit Agreement in an aggregate amount equal to \$5,000,000 of the Prepetition Credit Agreement Indebtedness outstanding as of the Closing Date (the “Credit Bid Amount”), which amount may be increased in connection with a subsequent bid prior to or during the Auction; provided, however, that in no event shall the Credit Bid Amount exceed \$7,000,000 (the “Credit Bid Cap”); plus

(ii) an amount in cash sufficient to pay and used to pay in full all Obligations owing under, and as defined in, the DIP Credit Agreement (the “DIP Repayment Amount”), and Sellers hereby authorize the Purchaser or the Purchaser Designees to remit at the Closing the DIP Repayment Amount by wire transfer of immediately available funds direct to an account or accounts designated by the DIP Agent for application to the DIP Loans; plus

(iii) an amount in cash equal to the Undisputed Cure Costs (which amounts, if paid to Sellers, shall be held in trust by Sellers and paid over to the intended beneficiaries thereof); plus

(iv) an amount in cash necessary to fund the wind-down of the Sellers’ estates in accordance with a wind-down budget approved by the Prepetition Agent, which amount shall not exceed \$1,135,069, minus an amount equal to all cash and Cash Equivalents, whether on hand, in transit or in banks or other financial institutions, security entitlements, securities accounts, commodity contracts and commodity accounts.

(b) In addition to the foregoing consideration, as consideration for the grant, sale, assignment, transfer and delivery of the Acquired Assets, Purchaser or the Purchaser Designees shall assume and discharge the Assumed Liabilities as set forth in Section 2.3.

(c) The Purchase Price shall be satisfied at the Closing as to:

(i) the Credit Bid by (A) the acknowledgment of satisfaction of the Indebtedness of the Prepetition Agent and the Prepetition Lenders by the Credit Bid Amount and (B) the release by the Prepetition Agent and the Prepetition Lenders of all security interests and liens securing the Prepetition Credit Agreement Indebtedness in the Credit Bid Amount;

(ii) the DIP Repayment Amount by the wire transfer of immediately available funds direct to an account or accounts designated by the DIP Agent for application to the DIP Loans; and

(iii) the amount of the Assumed Liabilities described in Section 2.3, by assuming such Assumed Liabilities pursuant to the Assignment and Assumption Agreement.

3.2 Withholding. Purchaser or the Purchaser Designees shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to Sellers or any other Person such amounts as Purchaser or the Purchaser Designees are required to deduct and withhold under the Code, or any Tax Law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

ARTICLE IV.

CLOSING AND TERMINATION

4.1 Closing. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 hereof or the waiver thereof by the party entitled to the benefit of the applicable condition, the closing of the acquisition and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (or at such other place as the parties may designate in writing) on the date that is no later than the fifteenth (15th) day following the entry of the Sale Order; provided, that, and subject to Section 4.4, to the extent the conditions set forth in Sections 10.1, 10.2 and 10.3 are not so satisfied (other than conditions that by their nature are to be satisfied at the Closing) or so waived on or prior to such date, the period of time within which the Closing shall occur shall be automatically extended until, and the Closing shall occur promptly (but no later than two (2) business days) following, such date as all of the conditions set forth in Sections 10.1, 10.2 and 10.3 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived by the party entitled to waive the applicable condition, unless another time or date, or both, are agreed to in writing by the parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the “Closing Date.” Unless otherwise agreed by the parties in writing, the Closing shall be deemed effective and all right, title and interest of Sellers in the Acquired Assets to be acquired by Purchaser or the Purchaser Designees hereunder shall be considered to have passed to Purchaser or the Purchaser Designees and the assumption of all of the Assumed Liabilities shall be considered to have occurred as of 11:59 p.m. Eastern Time on the Closing Date.

4.2 Closing Deliveries by Sellers. At the Closing, Sellers shall deliver to Purchaser or, at the direction of Purchaser, the Purchaser Designees:

(a) a duly executed bill of sale with respect to the Acquired Assets, substantially in the form attached hereto as Exhibit A (the “Bill of Sale”);

(b) a duly executed assignment and assumption agreement with respect to the Assumed Liabilities, including in recordable form as required by Purchaser, substantially in the form attached hereto as Exhibit B (the “Assignment and Assumption Agreement”);

(c) a true and correct copy of the Sale Order;

(d) a special warranty deed (or local equivalent) for all Owned Real Property, subject to matters of record or apparent;

(e) a duly executed non-foreign-person affidavit of Sellers, dated as of the Closing Date, reasonably satisfactory to Purchaser and prepared in accordance with Treasury Regulations Section 1.1445-2(b)(2), certifying that no Seller is a foreign Person;

(f) the officer’s certificates required to be delivered pursuant to Sections 10.3(b) and 10.3(c);

(g) a list of the Accounts Receivable as of the last day of the fiscal month immediately preceding the month in which the Closing occurs;

(h) duly executed patent, trademark and copyright assignments in form and substance reasonably acceptable to Purchaser and suitable for recording with the United States Patent and Trademark Office, the United States Copyright Office, or the applicable patent, trademark, or copyright office, agency or registrar, together with any other documentation required in order for the assignments to be duly recorded with the applicable patent, trademark, or copyright office, agency, or registrar;

(i) executed documentation in form and substance reasonably acceptable to Purchaser for evidencing and effectuating the assignment of domain names with the applicable domain name registrar; and

(j) all other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by Sellers at or prior to the Closing in connection with the transactions contemplated by this Agreement.

4.3 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or cause the Purchaser Designees to deliver, to Sellers (or to other Persons, at the direction of Sellers):

(a) the Purchase Price (including documentation in form and substance reasonably acceptable to Sellers evidencing reduction of the DIP Loan and the Credit Agreement Indebtedness in the full amount of the Purchase Price);

(b) the Bill of Sale;

(c) the Assignment and Assumption Agreement;

(d) the proof of release of Sellers under the Prepetition Credit Agreement of obligations arising under the Prepetition Credit Agreement in an aggregate amount equal to the Credit Bid amount in accordance with Section 3.1; provided, that the Sale Order may constitute such proof;

(e) the officer's certificates required to be delivered pursuant to Sections 10.2(a) and 10.2(b); and

(f) all other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by Purchaser or the Purchaser Designees at or prior to the Closing in connection with the transactions contemplated by this Agreement.

4.4 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing as follows:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by either Purchaser or Sellers, if the Closing shall not have been consummated prior to May 31, 2017 (the "Outside Date"); provided, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or Sellers, then Purchaser (if Purchaser is in breach) or Sellers (if Sellers is so in breach), respectively, may not terminate this Agreement pursuant to this Section 4.4(b);

(c) by either Purchaser or Sellers, if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the parties hereto shall promptly appeal any such adverse determination which is appealable (and pursue such appeal with reasonable diligence);

(d) by Purchaser, (i) if any Chapter 11 Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of Sellers is appointed in the Chapter 11 Cases, in each case without the consent of Purchaser or (ii) if Sellers' exclusivity as to the proposal of any reorganization plan is terminated or modified;

(e) by Purchaser, if the Sale Order shall not have been entered by the Bankruptcy Court by the close of business on May 31, 2017; provided, however, that the right to terminate this Agreement under this Section 4.4(e) shall not be available to Purchaser if its failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Sale Order to meet this requirement on or before such date;

(f) by Purchaser if, following its entry, the Bidding Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any material respect without the prior written consent of Purchaser and Sellers; provided, however,

that the right to terminate this Agreement under this Section 4.4(f) shall not be available to Purchaser if its failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Bidding Procedures Order to meet this requirement;

(g) by either Sellers or Purchaser if the Bankruptcy Court shall not have entered the Bidding Procedures Order on or before May 31, 2017; provided, however, that the right to terminate this Agreement under this Section 4.4(f) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Bidding Procedures Order to be entered by such date;

(h) by either Sellers or Purchaser if (i) the Auction has occurred and Purchaser was not the Prevailing Bidder, or (ii) the Bankruptcy Court otherwise approves an Alternative Transaction;

(i) by Sellers, if Purchaser has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Section 10.2(a) and Section 10.2(b) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by Purchaser within fifteen (15) days through the exercise of its commercially reasonable efforts, then for so long as Purchaser continues to exercise such commercially reasonable efforts Sellers may not terminate this Agreement under this Section 4.4(i) unless such breach is not cured within fifteen (15) days from written notice to Purchaser of such breach; provided, further, that Sellers is not then in material breach of the terms of this Agreement, and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured;

(j) by Purchaser, if Sellers has breached any representation, warranty, covenant or agreement contained in this Agreement, and as a result of such breach the conditions set forth in Section 10.3(b) and Section 10.3(c) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by Sellers within fifteen (15) days through the exercise of its commercially reasonable efforts, then for so long as Sellers continues to exercise such commercially reasonable efforts Purchaser may not terminate this Agreement under this Section 4.4(j) unless such breach is not cured within fifteen (15) days from written notice to Sellers of such breach; provided, further, that Purchaser is not then in material breach of the terms of this Agreement, and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured;

(k) by Sellers, if all of the conditions set forth in Sections 10.1 and 10.3 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and Purchaser fails to deliver the Purchase Price or the other deliverables required by Section 4.3; or

(l) by Purchaser, if any creditor of Sellers obtain relief from the automatic stay to foreclose on any of the Acquired Assets valued in excess of \$500,000.

4.5 Procedure Upon Termination. In the event of a termination of this Agreement by Purchaser or Sellers, or both, pursuant to Section 4.4, (a) written notice thereof shall be given promptly by the terminating party to the other parties hereto, specifying the provision hereof

pursuant to which such termination is made, (b) except as contemplated by Section 4.6 and Section 8.1 with respect to the obligations of Purchaser to serve as a Back-up Bidder hereunder, this Agreement shall thereupon terminate and become void and of no further force and effect; provided, however that Purchaser shall not be obligated to serve as a Back-up Bidder in the case of a termination pursuant to Section 4.4(j), and (c) the consummation of the transactions contemplated by this Agreement shall be abandoned without further action of the parties hereto. If this Agreement is terminated as provided herein, each party shall redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the party furnishing the same.

4.6 Effect of Termination. In the event that this Agreement is validly terminated pursuant to a right of termination as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to Purchaser or Sellers; provided, however, that Section 4.4, Section 4.5, this Section 4.6, Article XII, the Bidding Procedures Order (if entered) and Purchaser's obligation to serve as a Back-up Bidder hereunder shall survive any such termination and shall be enforceable hereunder. In no event shall any termination of this Agreement relieve any party hereto of any Liability for any willful breach of this Agreement by such party.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the correspondingly numbered Sections of the Seller Disclosure Schedule delivered as of the date hereof by Sellers to Purchaser (the "Seller Disclosure Schedule") (it being understood that any matter disclosed in any Section of the Seller Disclosure Schedule will be deemed to be disclosed in any other Section of the Seller Disclosure Schedule to the extent that it is readily apparent on the face of such disclosure that such disclosure is applicable to such other Section), Sellers hereby represent and warrant to Purchaser as follows:

5.1 Organization. Each Seller is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. Each Seller has all requisite power and authority to own, lease, develop and operate the Acquired Assets and to carry on its business as now being conducted (subject to the provisions of the Bankruptcy Code). Except as would not, individually or in the aggregate, constitute a Material Adverse Effect, each Seller is duly licensed or qualified to do business in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary. Other than with respect to CSP's ownership of 100% of the equity interests of CSPB, no Seller (i) owns, directly or indirectly, any capital stock or other ownership interest in any Person, or any securities convertible into or exchangeable or exercisable for any capital stock or other ownership interests in any Person, (ii) has any obligation to acquire any capital stock or other ownership interests in any Person, or any securities convertible into or exchangeable or exercisable for any capital stock or other ownership interests of any Person, or to make any investment in any Person, or (iii) is a party to any partnership, limited liability company, joint venture or similar agreement.

5.2 Authorization and Validity. Subject to Bankruptcy Court approval, Sellers have all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is or will be a party and to carry out its obligations hereunder and thereunder. Subject to Bankruptcy Court approval, the execution and delivery of this Agreement and the Ancillary Agreements, and the performance by Sellers of their obligations hereunder and thereunder, have been duly authorized by all necessary corporate (or equivalent) action on behalf of Sellers, and no other proceedings on the part of Sellers are necessary to authorize such execution, delivery, and performance. This Agreement has been, and the Ancillary Agreements when delivered will be, duly executed by Sellers, and, subject to Bankruptcy Court approval, constitute the valid and binding obligation, enforceable against Sellers in accordance with the terms herein and therein (subject to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or effecting creditors' rights and to general principles of equity, including principles of commercial reasonableness and good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) (collectively, the "Exceptions")).

5.3 No Conflict. The execution, delivery and performance by Sellers of this Agreement and the Ancillary Agreements does not, and the consummation by Sellers of the transactions contemplated hereby and thereby, upon entry of the Sale Order, will not, (a) conflict with or result in the breach of any provision of the organizational documents of any Seller, (b) conflict with, violate or result in the breach by any Seller of any applicable Law, (c) require any Seller to make any filing with or give notice to, or obtain any consent from, any Governmental Body, other than the Sale Order and, if required, any clearance under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended (the "HSR Act"), (d) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Assigned Contract or Permit, or (e) result in any Encumbrance (except for Permitted Encumbrances) on any of the Acquired Assets; other than, in the case of the foregoing subclauses (d) and (e), any of the foregoing that would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. Except as set forth on Section 5.13 of the Seller Disclosure Schedule, no Seller is a party to, or subject to or bound by, any judgment, injunction or decree of any Governmental Body or agreement which may materially restrict or interfere with the performance by Sellers of this Agreement or Purchaser's or the Purchaser Designees' ability to operate the Business as currently operated.

5.4 Permits. Section 5.4 of the Seller Disclosure Schedule sets forth a true, complete and correct list of all Permits relating to the Acquired Assets held by Sellers as of the date of this Agreement (the "Acquired Permits"). The Acquired Permits constitute all of the Permits necessary for Sellers to lawfully conduct and operate the Business in the manner currently conducted and operated in all material respects. Each Acquired Permit is in full force and effect, Sellers are in compliance in all material respects with their terms and conditions, all required renewal applications have been timely filed, no notice has been received by a Governmental Body to revoke any material Acquired Permit and no proceeding is pending or, to the Knowledge of Sellers, threatened to revoke or limit any Acquired Permit required for the operation of the Business.

5.5 Law and Legal Proceedings. Since January 1, 2013, Sellers have been in compliance with all applicable Laws except for such non-compliance that has not had, or would not reasonably be expected to have, a Material Adverse Effect. As of the date of this Agreement, no Seller has received a written (or, to the Knowledge of Sellers, non-written) notice of any investigation or review by any Governmental Body with respect to the Acquired Assets, the Owned Real Property or the Leased Real Property that is pending, or, to the Knowledge of Sellers, threatened.

5.6 Environmental Matters. The use by the Seller of the Owned Real Property and the Leased Real Property is and for the last three (3) years has been in material compliance with all Environmental Laws. To the Knowledge of Sellers, the Owned Real Property and the Leased Real Property are in compliance with all Environmental Laws, including any Environmental Permits, except for such non-compliance that has not had, or would not reasonably be expected to have, a Material Adverse Effect. As of the date of this Agreement, (a) no Seller is subject to any pending or, to Sellers' Knowledge, threatened Legal Proceeding alleging that a Seller may be in material violation of any Environmental Law or Environmental Permit, or may have any material Liability under any Environmental Law, and to the Knowledge of Sellers there are no facts or circumstances which could give rise to any such material Liability under any Environmental Law and (b) there are no Hazardous Materials present at the Owned Real Property or the Leased Real Property, and no Seller nor, to Seller's Knowledge, any other Person, has stored, treated, disposed of, arranged for disposal or treatment of, transported, handled, manufactured, distributed, or Released any Hazardous Materials on, under or from the Owned Real Property or the Leased Real Property, except in material compliance with Environmental Laws. Sellers have delivered or made available to Purchaser complete and accurate copies of all material environmental reports, audits, and assessments prepared by or for Sellers that are in Sellers's possession, as well as all material correspondence with Governmental Bodies or other Persons relating to environmental conditions or environmental compliance matters at the facilities and the properties of Sellers and concerning the operation of the business of Sellers.

5.7 Material Contracts.

(a) Section 5.7(a)(i) of the Seller Disclosure Schedule sets forth, as of the Execution Date, a true, correct and complete list of Contracts that are currently in effect and to which any Seller is a party which are material to the operations, financial condition, assets or Liabilities of Sellers or the Business and Section 5.7(a)(ii) of the Seller Disclosure Schedule sets forth, as of the Execution Date, a true, correct and complete list of Contracts with any Governmental Body, in both cases reasonably expected to result in payments in excess of \$30,000 that are currently in effect and to which any Seller is a party (collectively, the "Material Contracts").

(b) Except as set forth in Section 5.7(b) of the Seller Disclosure Schedule, since January 1, 2013, (i) there has not been any written (or, to the Knowledge of Sellers, non-written) claim or allegation by any Person that any Seller is in material breach or default under any Material Contract or that there exists an event or condition which (with or without notice or lapse of time or both) would result in a material breach or default by any Seller under any Material Contract, and (ii) to the Knowledge of Sellers, no other party to any Material Contract is

in material breach or default thereunder. As of the date hereof, no party to a Material Contract has provided a Seller with written notice (or, to the Knowledge of Sellers, non-written notice) that it intends to cancel, terminate, fail to renew or materially reduce business conducted under any Material Contract. Except to the extent that a Material Contract is rejected, repudiated or terminated by Sellers after the execution of this Agreement in accordance with the terms of this Agreement, each of the Material Contracts is in full force and effect and is valid and binding on the applicable Seller party thereto and, to the Knowledge of Sellers, each other party thereto. Sellers have made available to Purchaser complete and accurate copies of each Material Contract.

5.8 Intellectual Property. Section 5.8 of the Seller Disclosure Schedule sets forth a list of the following Intellectual Property Rights owned or purported to be owned by Sellers: (i) all patents and patent applications, including for each the applicable patent number or application serial number, the applicable jurisdiction, the date filed or issued, and the present status thereof, (ii) all registered trademarks, trade dress, trade names or service marks, including for each the application serial number or registration number, the date filed or registered, and the applicable jurisdiction, (iii) all internet domain name registrations and (iv) all copyright registrations, including for each the registration number, the date registered, and the applicable jurisdiction (items (i) through (iv) the “Seller Registered Intellectual Property Rights”). Section 5.8 of the Seller Disclosure Schedule also sets forth, all payments, filings, or other actions required to be made or taken in connection with the prosecution and maintenance of the Seller Registered Intellectual Property Rights during the 180 day period from the date hereof. Sellers own all Seller Registered Intellectual Property Rights free and clear of all Encumbrances (other than Permitted Encumbrances). Each item of Seller Registered Intellectual Property Rights (A) has not been abandoned, canceled or materially compromised by Sellers, or, to Sellers’ Knowledge, any other Person, (B) has been maintained effective by all requisite filings, renewals and payments and (C) to Sellers’ Knowledge, remains in full force and effect. Except as set forth on Section 5.8 of the Seller Disclosure Schedule, to Sellers’ Knowledge, Sellers own or have the right to use all Intellectual Property Rights necessary for the conduct of the Business in the Ordinary Course of Business.

5.9 Title to Assets; Sufficiency. Sellers have good and valid title to and interest in (as applicable) all of their personal property which constitutes Acquired Assets in each case free and clear of Encumbrances, except Permitted Encumbrances. Subject to the entry of the Sale Order, Purchaser or the Purchaser Designees will be vested with good title to the personal property which constitutes Acquired Assets, free and clear of all Encumbrances, Claims, interests and encumbrances, other than Assumed Liabilities, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. Except as set forth in Section 5.9 of the Seller Disclosure Schedule, upon entry of the Sale Order, Sellers will have all requisite authority to transfer good and valid title to or leasehold interest in all of the Acquired Assets free and clear of all Encumbrances, including Permitted Encumbrances, to the fullest extent permissible under Sections 363 and 365 of the Bankruptcy Code, and shall convey to Purchaser or, at the election of Purchaser, the Purchaser Designees at the time of the transfer of the Acquired Assets to Purchaser or such Purchaser Designees. The Acquired Assets constitute all of the properties used in or held for use in the Business and are sufficient for Purchaser or the Purchaser Designees to conduct the Business from and after the Closing Date without interruption and in the Ordinary Course of Business as it has been conducted by Sellers.

5.10 Real Property.

(a) Section 5.10(a) of the Seller Disclosure Schedule sets forth a list of all Owned Real Property. Except as set forth in Section 5.10(a) of the Seller Disclosure Schedule, with respect to each parcel of Owned Real Property: (i) the applicable Seller has good and marketable indefeasible fee, simple title free and clear of all Encumbrances (except Permitted Encumbrances); (ii) there are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any Person the right of use or occupancy of any portion of such Owned Real Property other than under the Owned Real Estate Leases; and (iii) there are no outstanding options or rights of first refusal to purchase such Owned Real Property (other than the right of Purchaser pursuant to this Agreement), or any portion thereof or interest therein.

(b) Sellers do not lease any real property as lessee.

(c) Sellers have not received any written, or to the Knowledge of Sellers, oral notice of condemnation or eminent domain proceedings pending or threatened that affect the Owned Real Property. Sellers have not received any written, or to the Knowledge of Sellers, oral notice of any zoning, ordinance, building, land use, fire or health code or other legal violation affecting any such Owned Real Property, except where any such violations would not have, individually or in the aggregate, a Material Adverse Effect.

(d) Sellers have delivered or made available to Purchaser in an electronic data room, to which representatives of Purchaser have been given access copies of all surveys of, and title insurance policies with respect to each Owned Real Property in Sellers' possession.

5.11 No Brokers or Finders. Except as relates to Sellers' retention and engagement of Tudor, Pickering, Holt & Co. or as set forth in Section 5.11 of the Seller Disclosure Schedule, Sellers shall have incurred no Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the negotiation, execution, or performance of this Agreement (a "Seller Broker Fee"). Neither Purchaser, the Purchaser Designees, nor any Affiliate of Purchaser the Purchaser Designees will have any Liability in connection with any Seller Broker Fee or any other brokerage or finders' fees or agents' commissions or other similar payment in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements incurred by any Seller.

5.12 Financial Statements. Sellers have delivered or made available to Purchaser the following financial statements (collectively the "Financial Statements"): (a) audited consolidated balance sheets and the related consolidated statements of operations, consolidated statement of changes in stockholders' equity and consolidated statement of cash flows, of Sellers, as of and for the fiscal years ended December 31, 2015, 2014 and 2013, together with the notes thereto (the "Audited Financial Statements"), and (b) the unaudited consolidated balance sheets, and the related unaudited consolidated statements of operations, consolidated statement of changes in stockholders' equity and consolidated statement of cash flows, of Sellers as of and for the nine-month period ended September 30, 2016 (the "Balance Sheet Date") (the "Interim Financial Statements") as set forth in Section 5.12 of the Seller Disclosure Schedule. The Audited Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, present fairly, in all material respects, the financial condition of

Sellers as of such dates and the results of operations and cash flows of Sellers for such periods, and are consistent, in all material respects, with the books and records of Sellers (which books are records are correct and complete in all material respects). The Interim Financial Statements include all of the assets and Liabilities of Sellers as of September 30, 2016, in each case that are required by GAAP to be set forth on a balance sheet, and present fairly, in all material respects, the financial condition of Sellers as of September 30, 2016 and the results of its operations for the period then ended, subject to customary year-end adjustments and accruals, and are consistent in all material respects with the books and records of Sellers.

5.13 Compliance with Laws; Regulatory Matters. To the Knowledge of Sellers, except as set forth in Section 5.13 of the Seller Disclosure Schedule, the Business of Sellers is being, and at all times within the past three (3) years has been, conducted in compliance in all material respects with all applicable Laws. Except as set forth on Section 5.13 of the Seller Disclosure Schedule, during the three-year period ending on the date hereof, neither Sellers nor any of their Affiliates has received any written communication from a Governmental Body that alleges that the Business is not in compliance with any applicable Law.

5.14 Absence of Undisclosed Liabilities. Except as set forth in Section 5.14 of the Seller Disclosure Schedule, to Sellers' Knowledge, Sellers do not have any material Liabilities except (a) Liabilities reflected in the Interim Financial Statements, (b) Liabilities that have arisen after the Balance Sheet Date in the Ordinary Course of Business or otherwise in accordance with the terms and conditions of this Agreement (none of which is a material Liability for breach of warranty, malpractice, tort or infringement or a claim or lawsuit or breach of an Environmental Law) and (c) Liabilities that are or will be Excluded Liabilities.

5.15 Absence of Certain Developments. Except as set forth in Section 5.15 of the Seller Disclosure Schedule, and except as a result of the idling of the business and commencement of the Chapter 11 Case (and the execution of the transactions and agreements in connection therewith), since the Balance Sheet Date, the Business has been conducted only in the Ordinary Course of Business consistent with past practice in all material respects, and Sellers has not taken any action which, if taken after the execution and delivery of this Agreement, would require the consent of Purchaser or the Purchaser Designees pursuant to Section 9.1(b).

5.16 Preemptive Rights. Other than (i) Purchaser and the Purchaser Designees, (ii) pursuant to any bids made by any Person in connection with the Auction, or (iii) prior to the Closing Date, any Seller, no Person has any written or oral agreement or option, right of first refusal, right of first offer, right of first negotiation or similar right for the purchase, sale, use or other disposition of all or any of the Acquired Assets.

5.17 Tax Returns; Taxes. Except as set forth in Section 5.17 of the Seller Disclosure Schedule:

(a) All Tax Returns required to have been filed by Sellers have been duly and timely filed and are true, correct and complete in all material respects. No extension of time in which to file such Tax Return is in effect.

(b) All Taxes due and payable by any Seller (whether or not shown on any Tax Return) have been timely paid in full. The accruals and reserves with respect to Taxes (other than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Interim Financial Statements are adequate in all respects to cover all Taxes of Sellers accruing or payable with respect to Tax Periods (or portions thereof) ending on or before the Balance Sheet Date. All Liabilities of Sellers for Taxes attributable to Tax Periods (or portions thereof) commencing after the Balance Sheet Date have arisen in the Ordinary Course of Business.

(c) No claims, adjustments, assessments or deficiencies for any amount of Taxes of Sellers by any Governmental Body are being asserted, proposed or, to the Knowledge of Sellers, threatened, and no audit or investigation of any Tax Return of any Seller by any Governmental Body has occurred in the last three (3) years or is currently underway, pending or, to the Knowledge of Sellers, threatened. There are no agreements with, or rulings requested or received from, any Governmental Body, which agreements or rulings would be binding on the Purchaser after the Closing.

(d) Since January 1, 2013, no claim has been made against a Seller by any Governmental Body in a jurisdiction where such Seller does not file a Tax Return that such Seller is or may be subject to taxation in such jurisdiction with respect to Taxes that are the subject of such Tax Return.

(e) Each Seller has complied in all material respects with all applicable Laws, rules and regulations relating to the payment and withholding of Taxes in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, nonresident or other third party, and has withheld and timely paid to the appropriate Governmental Body all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, nonresident or other third party.

(f) No Seller has executed or filed with any Governmental Body any agreement or waiver extending the period for assessment, reassessment or collection of any Taxes (other than as the result extending the time to file a Tax Return) which agreement or waiver is still in effect. Sellers have not made an election to treat any Acquired Asset as, and no Acquired Asset is, owned by another Person or “tax exempt bond-financed property” or “tax-exempt use property”, each within the meaning of Section 168 of the Code or under any comparable provision of state or local Tax Law. No Acquired Asset secures debt the interest on which is tax-exempt under Section 103(a) of the Code or is subject to a “section 467 rental agreement” within the meaning of Section 467(d) of the Code.

(g) No Seller has Liability for Taxes of any other Person as a transferee or successor, by Law, Contract or otherwise.

(h) No Seller has engaged in any “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b).

5.18 Employees.

(a) Sellers have delivered to Purchaser a true and correct list of the Employees as of a date no earlier than five (5) business days prior to the Execution Date (without reference to names or employee numbers), specifying their position, annual salary or wage rate, and date of hire. No Seller is delinquent in payments to any Employees for any wages, salaries, commissions, vacation pay, bonuses or other direct compensation for any services performed for them or amounts required to be reimbursed to Employees in any material respects. With respect to the Employees, to Sellers' Knowledge, the applicable Seller is in material compliance with all applicable Laws respecting labor, labor relations, employment, employment standards, fair employment practices, terms and conditions of employment, human rights, immigration, workers' compensation, occupational safety, pay equity, plant closings and wages and hours. Sellers have withheld all material amounts required by Law or by agreement to be withheld from the wages, salaries and other payments to Employees and are not liable for any arrears of wages, salaries, commissions, vacation pay, bonuses or other compensation due to Employees or any Taxes or any penalty or interest for failure to comply with any of the foregoing in any material respect. To Sellers' Knowledge, no Seller has direct or indirect Liability with respect to any misclassification of any Person as an independent contractor rather than as an Employee.

(b) No Seller is party to or bound by, either directly or by operation of Law, any collective bargaining agreement, labor contract, letter of understanding, letter of intent, voluntary recognition agreement or legally binding commitment or written communication to any labor union, trade union or employee organization or group which qualifies as a trade union in respect of or affecting Employees nor are Sellers aware of any union organization effort regarding the Employees, nor is any Seller engaged in any labor negotiation with any labor union, trade union or employee organization or group which qualifies as a trade union in respect of or affecting Employees. There are no, and within the prior three years there have not been any organized, collective (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the Knowledge of Sellers, threatened against or involving any Seller, or (ii) unfair labor practice charges, grievances or complaints under the National Labor Relations Act or other equivalent legislation pending or, to the Knowledge of Sellers, threatened by or on behalf of any trade union, Employee or group of Employees. Except as set forth in Section 5.18(b) of the Seller Disclosure Schedule, no Seller has any obligation to make any severance or termination payment to any Employee in excess of any amount payable under common law principles or applicable Law.

5.19 Seller Plans. Section 5.19 of the Seller Disclosure Schedule lists each material Seller Plan that Sellers maintain or to which Sellers contribute. As of the date hereof, there is no material pending or, to the Knowledge of Sellers, threatened, litigation relating to any Seller Plan and Sellers have not received any notice of violation related to any Seller Plan. To the Knowledge of Sellers, each Seller Plan has been established, funded, maintained and administered, in each case, in all material respects, in accordance with applicable Law.

5.20 Insurance Policies. Section 5.20 of the Seller Disclosure Schedule lists all material insurance policies owned or held by Sellers (the "Insurance Policies"). All such policies (or substitute policies with substantially similar terms and underwritten by insurance carriers with substantially similar or higher ratings) are in full force and effect, all premiums with respect thereto covering all periods up to and including the Execution Date have been paid, and no written notice of cancellation or termination (or any other threatened termination) has been

received with respect to any such policy. Except as set forth in Section 5.20 of the Seller Disclosure Schedule, there are no pending, or to Sellers' Knowledge, material threatened claims, or circumstances that might give rise to a material claim under any Insurance Policy.

5.21 No Other Representations or Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED HERE, NEITHER SELLERS NOR ANY OTHER PERSON MAKES, AND SELLERS EXPRESSLY DISCLAIM, ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT WITH RESPECT TO SELLERS, THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES OR THE TRANSACTIONS CONTEMPLATED HEREIN. THE ACQUIRED ASSETS ARE BEING TRANSFERRED TO PURCHASER ON A "WHERE IS" AND, AS TO CONDITION, "AS IS" BASIS.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the correspondingly numbered Sections of the Purchase Disclosure Schedule delivered as of the date hereof by Purchaser to Sellers (the "Purchaser Disclosure Schedule") (it being understood that any matter disclosed in any Section of the Purchaser Disclosure Schedule will be deemed to be disclosed in any other Section of the Purchaser Disclosure Schedule to the extent that it is readily apparent on the face of such disclosure that such disclosure is applicable to such other Section), Purchaser hereby represents and warrants to Sellers as follows:

6.1 Organization. Purchaser is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. Purchaser has all requisite power and authority to own, lease, develop and operate its properties and to carry on its business as now being conducted. Purchaser is duly licensed or qualified to do business in each jurisdiction in which the conduct of its businesses or the ownership of its properties requires such qualification or authorization, except where failure to be so qualified would not materially delay or impair the ability of Purchaser to perform its obligations under this Agreement or any of the Ancillary Agreements.

6.2 Authorization and Validity. Purchaser has all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is a party and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements and the performance of Purchaser's obligations hereunder and thereunder have been duly authorized by all necessary corporate (or equivalent) action on behalf of Purchaser, and no other proceedings on the part of Purchaser are necessary to authorize such execution, delivery, and performance. This Agreement and the Ancillary Agreements have been duly executed by Purchaser and constitute its valid and binding obligation, enforceable against it in accordance with the terms herein and therein (subject to the Exceptions).

6.3 No Conflict. The execution, delivery and performance by Purchaser of this Agreement and the Ancillary Agreements does not, and the consummation by Purchaser of the transactions contemplated hereunder and thereunder will not, (a) conflict with or result in the breach of any provision of the organizational documents of Purchaser, (b) conflict with, violate or result in the breach by Purchaser of any applicable Law, (c) require Purchaser to make any filing with or give notice to, or obtain any consent from, any Governmental Body, other than the Sale Order and, if required, any clearance under the HSR Act, or (d) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Contract to which Purchaser is party; other than, in the case of the foregoing subclause (iv), any of the foregoing that would not reasonably be expected to, individually or in the aggregate, materially impair Purchaser's ability to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

6.4 Law and Legal Proceedings. There are no Legal Proceedings pending or, to Purchaser's knowledge, threatened in writing against Purchaser before any Governmental Body, which, if adversely determined, would reasonably be expected to prohibit the consummation of the transactions contemplated by this Agreement or materially delay or impair the ability of Purchaser to perform its obligations under this Agreement or any of the Ancillary Agreements to which it is a party.

6.5 Investigation by Purchaser. Purchaser acknowledges and affirms that it has completed its own independent investigation, analysis and evaluation of the Acquired Assets, that it has made all such reviews and inspections of the Acquired Assets as it deems necessary and appropriate, and that in making its decision to enter into this Agreement and consummate the transactions contemplated by this Agreement and the Ancillary Agreements, it has relied on its own investigation, analysis, and evaluation with respect to all matters without reliance upon any express or implied representations or warranties except as expressly set forth in this Agreement.

6.6 Adequate Assurances Regarding Assigned Contracts. As of the Closing, Purchaser will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

6.7 Brokers. Neither Purchaser nor any of its Affiliates as entered into any arrangement to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Sellers could become liable or obligated to pay.

ARTICLE VII.

EMPLOYEES

7.1 Employee Matters. Purchaser or the Purchaser Designees may offer employment to the Employees of Sellers, as selected by Purchaser or the Purchaser Designees, on such terms and conditions as may be acceptable to the Employees and Purchaser or the Purchaser Designees in its sole discretion and need not bear any relationship to terms and provisions applicable to

their employment by Sellers; provided, however, Purchaser shall, or shall cause the Purchaser Designees to, (i) make a sufficient number of employment offers on such terms and conditions as necessary to ensure that the termination by Sellers of Sellers' Employees as of the Closing Date will not trigger any obligation under the WARN Act or (ii) pay all obligations and expenses pursuant to the WARN Act; provided that Sellers, after Purchaser's or the Purchaser Designees' prior five (5) day written request, promptly delivers any notices, on the form reasonably requested by Purchaser, contemplated under such the WARN Act. For the avoidance of doubt, Purchaser shall, or shall cause the Purchaser Designees to, offer reasonably equivalent employment to substantially all of Sellers' Employees located in the State of Wisconsin (and for purposes of this sentence, the phrase "substantially all" is defined as provided in Section 109.07 of the Wisconsin Statutes and the regulations thereunder)). Each Employee to whom Purchaser, the Purchaser Designees, or one of its or their Affiliates has made an offer of employment or offer of another type of services relationship and who has accepted such offer and commences employment or other services relationship with Purchaser, the Purchaser Designees, or its or their Affiliates on or following the Closing Date is hereinafter referred to as a "Transferred Employee."

7.2 Excluded Plans. Except as provided by applicable Law, Sellers shall be solely responsible and shall retain all Liabilities with respect to the Excluded Plans.

7.3 COBRA and Benefits Coverage. Only to the extent required by Law, Purchaser or the Purchaser Designees will be responsible for providing continued medical coverage be pursuant to its group health plans for employees under Part 6, Title I of ERISA and Section 4980B of the Code ("COBRA Continuation Coverage"), for each "M&A qualified beneficiary" (within the meaning of Treasury Regulation §54.4980B-9 Q&A-4) applicable to the Acquired Assets. As soon as practicable prior to the Closing, Sellers will provide to Purchaser a list of all M&A qualified beneficiaries who are receiving or eligible to elect COBRA Continuation Coverage on the Closing Date. In addition, if necessary in order for Sellers to avoid any Liability under Wis. Stat. §109.075 (to the extent not preempted by ERISA) and to the extent such obligations are not otherwise satisfied by COBRA Continuation Coverage to M&A qualified beneficiaries, then Purchaser shall, or shall cause the Purchaser Designees to, continue to offer health care benefits to Employees (whether or not such Employees shall become Transferred Employees) and their dependents following the Closing for a period not to exceed sixty (60) days.

7.4 No Third-Party Beneficiaries.

(a) Notwithstanding anything set forth in this ARTICLE VII, nothing contained herein, whether express or implied, (i) shall be treated as an amendment or other modification of any Seller Plan or (ii) shall limit the right of the applicable Purchaser or the Purchaser Designees or any of their Affiliates to amend, terminate or otherwise modify any Assumed Plan following the Closing Date.

(b) Sellers and Purchaser acknowledge and agree that all provisions contained in this ARTICLE VII, with respect to current or former Employees are included for the sole benefit of Sellers, Purchaser and the Purchaser Designees, and that nothing herein, whether express or implied, shall create any third-party beneficiary or other rights (i) in any other Person,

including, without limitation, any current or former employees, directors, officers or consultants of Sellers, any participant in any Seller Plan, or any dependent or beneficiary thereof, or (ii) to continued employment with Purchaser, the Purchaser Designees, or any of their Affiliates.

ARTICLE VIII.

BANKRUPTCY COURT MATTERS

8.1 Competing Bid and Other Matters.

(a) On the Petition Date, Sellers shall file with the Bankruptcy Court a Sale Motion seeking approval of the Bidding Procedures Order and the transactions contemplated in this Agreement (subject to higher or otherwise better offers).

(b) This Agreement, the parties' obligations hereunder and the transactions contemplated hereby are subject to approval of the Bankruptcy Court and Sellers' right and ability to pursue and consider higher or otherwise better competing bids with respect to the Business and a material portion of the Acquired Assets pursuant to the Bidding Procedures Order (each a "Competing Bid"). From and after the date on which the Chapter 11 cases are commenced until the conclusion of the Auction, Sellers shall and will cause their Representatives and Affiliates to, initiate contact with, provide information to, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates, agents and Representatives) in connection with any sale or other disposition of the Business or a material portion of the Acquired Assets or the continuation of the Business as a reorganized, going concern, subject only to the provisions of the Bidding Procedures Order.

(c) If an Auction is conducted, and Purchaser is not the prevailing party at the conclusion of such Auction (such prevailing party, the "Prevailing Bidder"), subject to the terms of the Bidding Procedures Order, Purchaser may at its sole discretion agree to serve as a back-up bidder (the "Back-up Bidder") and keep Purchaser's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until 11:59 p.m. (prevailing Eastern time) on the date that is the earliest of (i) sixty (60) days after the date of the Sale Hearing, (ii) such date upon which Sellers will notify the Back-up Bidder, and (iii) the date of closing of an Alternative Transaction with the Prevailing Bidder (the "Outside Back-up Date"). Subject to the terms of the Bidding Procedures Order, following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Prevailing Bidder, the Back-up Bidder (if the Back-up Bidder is the next highest bidder at the Auction) will be deemed to have the new prevailing bid, and Sellers will be authorized, but not required, without further Order of the Bankruptcy Court or any action on the part of the Back-up Bidder, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) with the Back-up Bidder pursuant to the procedures set forth in the Bidding Procedures Order.

(d) Sellers shall promptly serve true and correct copies of the Sale Motion and all related pleadings in accordance with the Bidding Procedures Order, the Bankruptcy Code, the

Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the District of Delaware and any other applicable Order of the Bankruptcy Court.

8.2 Sale Order. An Order approving the sale transaction shall be entered by the Bankruptcy Court, and shall be in a form and substance reasonably acceptable to Sellers, Purchaser, the DIP Agent, and the Prepetition Agent (the “Sale Order”). The Sale Order shall, among other things, (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Sellers of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Sellers of their obligations under this Agreement; (b) authorize and empower Sellers to assume and assign to Purchaser the Assigned Contracts; (c) find that Purchaser is a “good faith” buyer within the meaning of Section 363(m) of the Bankruptcy Code and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code; (d) include an injunction against any holder of a Claim against Sellers or the Acquired Assets from asserting, prosecuting or otherwise pursuing such Claim against Purchaser (other than with respect to the Assumed Liabilities); (e) include a finding that, upon payment of Cure Costs, all Assigned Contracts that are subject to the provisions of Section 365 of the Bankruptcy Code or otherwise pursuant to applicable Law, remain in full force and effect with all parties to the Assigned Contracts enjoined from asserting against Purchaser any default, breach, acceleration, assignment fees, increases, or any other fees resulting from Sellers’ assumption and assignment of the Assigned Contracts to Purchaser; and (f) include a finding that the sale does not and will not subject Purchaser to any liability by reason of such sale pursuant to any bulk-transfer laws, successor liability, or similar theories to the maximum extent permitted by applicable Law, in all cases except as expressly provided in this Agreement. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining the Sale Order, including, without limitation, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (1) demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code, and (2) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. In the event that the Bankruptcy Court’s entry of the Sale Order shall be appealed, Sellers and Purchaser shall use reasonable efforts to defend such appeal(s).

ARTICLE IX.

COVENANTS AND AGREEMENTS

9.1 Conduct of Business of Sellers.

(a) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Schedule 9.1(a), or (4) with the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), Sellers shall conduct the Business and

operate and maintain the Acquired Assets in the Ordinary Course of Business consistent with the period from September 2016 to date.

(b) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by, or actions required by, the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Schedule 9.1(a), or (4) with the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), Sellers shall not:

(i) mortgage, pledge or subject to any Encumbrance (other than a Permitted Encumbrance) the Business or any of the Acquired Assets unless otherwise agreed to by Purchaser;

(ii) sell, assign, license, transfer, convey, lease, surrender, relinquish, abandon, permit to lapse or otherwise dispose of any of the Acquired Assets except to the extent permitted by the DIP Loan Documents or this Agreement;

(iii) cancel or compromise any material debt or Claim or waive or release any material right of Sellers that constitutes an Acquired Asset;

(iv) (A) enter into any (1) new Contract or renew any existing Contract requiring payments by any Seller in excess of \$75,000 over the twelve-month period immediately following the execution thereof outside the Ordinary Course of Business or (2) new Contract that would constitute a Material Contract if in existence as of the date of this Agreement, and (B) cancel, terminate, amend, modify, supplement or rescind any Material Contract or any terms of any Material Contract with future payments in excess of \$75,000, except for the purpose of effecting any changes in applicable Law or implementing regulatory requirements or in response to a breach or default by the other party thereto;

(v) abandon any rights under any Material Contract or breach any Material Contract outside the Ordinary Course of Business;

(vi) incur any long-term expenditure associated with the Acquired Assets that would be an Assumed Liability except to the extent permitted by the DIP Loan Documents;

(vii) incur or permit to be incurred any Liability (other than in connection with the performance of any Non-Assumed Contracts or execution of any Contracts that are not Material Contracts in the Ordinary Course of Business) that would be an Assumed Liability outside the Ordinary Course of Business except to the extent permitted by the DIP Loan Documents, or that would increase the amount of an Assumed Liability except to the extent permitted by the DIP Loan Documents;

(viii) (A) with respect to any Employee set forth on Schedule 9.1(b)(viii), increase the salary, bonus or severance arrangements of such Employee or

amend, modify, terminate or enter into any employment or severance Contract with such Employee and (B) with respect to all other Employees, take any of the foregoing actions other than in the Ordinary Course of Business;

(ix) (A) enter into, amend or terminate any Seller Plan, (B) exercise any discretion to accelerate the vesting or payment of any compensation or benefit under any Seller Plan to any current or former employee, officer or director, or other service provider of Sellers, (C) grant any new awards under any Seller Plan or (D) take any action to fund the payment of compensation or benefits under any Seller Plan to any current or former employee, officer or director, or other service provider of Sellers, except (X) in the case of clauses (A) or (D), in the Ordinary Course of Business with respect to Employees of Sellers who are not currently, and have never been, officers or directors of any Seller and (Y) in the case of all clauses (A) through (D), to conform to applicable Law or as may be required under any Seller Plan that is in effect as of the date hereof;

(x) (A) enter into, amend or renew any collective bargaining agreements and (B) recognize any union or works council as the bargaining representative of any Employee of Sellers;

(xi) make, change or rescind any material Tax election, file any amended Tax Return, change its fiscal year or financial or Tax accounting methods, policies or practices, settle or compromise any Tax Liability, enter into a closing agreement with respect to Taxes or agree to an extension of the period for assessment, reassessment or collection of any Taxes;

(xii) institute, settle or agree to settle or modify in any manner that is adverse to the Business or the Acquired Assets, any litigation, action or other Legal Proceeding before any court or Governmental Body relating to the Acquired Assets and that is or will be an Assumed Liability except any such litigation, action or other Legal Proceeding involving payment by or to a Seller that is less than \$15,000 individually and \$50,000 in the aggregate;

(xiii) (A) take any action that reasonably jeopardizes the validity of or results in the revocation, surrender or forfeiture of, any of the Permits necessary for the continued operation of the Business, (B) fail to use commercially reasonable efforts to prosecute with due diligence any material pending applications with respect to the Permits, including any renewals thereof, (C) with respect to the Permits, fail to make all filings and reports and pay all material fees necessary or reasonably appropriate for the continued operation of the Business of Sellers, as and when such filings, reports or payments are necessary or appropriate or (D) fail to initiate appropriate steps to renew any Permits held by any Seller that are scheduled to terminate prior to or within sixty (60) days after the Closing or to prosecute any pending applications for any Permit;

(xiv) transfer, sell, assign, abandon, permit to lapse or grant any rights or modify any existing rights under any Seller Intellectual Property Rights other than in the Ordinary Course of Business, or enter into any settlement regarding the breach or

infringement, misappropriation, dilution or other violation of any Intellectual Property Rights;

(xv) make, commit to make or incur any Liability in excess of \$50,000 for capital expenditures except to the extent permitted by the DIP Loan Documents;

(xvi) enter into a plan of consolidation, merger, share exchange or reorganization with any Person or adopt a plan of complete or partial liquidation;

(xvii) authorize, declare or pay any dividends on or make any distribution with respect to its outstanding shares of capital stock (whether in cash, assets, stock or other securities);

(xviii) amend the charter documents, bylaws or similar governing documents of any Seller;

(xix) make any change in accounting policies, practices, principles, methods or procedures, other than as required by GAAP or by a Governmental Body;

(xx) fail to commence and diligently prosecute to completion any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations to the extent required of Sellers, including by any Governmental Body, under Environmental Laws in the event required or reasonably necessary under applicable Environmental Laws, or fail to respond to any notices, requests for information, claims, or any other communications from any Governmental Body regarding any actual or alleged violation of applicable Environmental Laws; or

(xxi) enter into any Contract to do any of the foregoing or agree to do anything prohibited by this Section 9.1(b).

(c) Promptly (and in any event within ten (10) days) after the Closing Date, Sellers will (i) at Purchaser's expense and written request, prepare and file with the appropriate Governmental Body appropriate documents, including, but not limited to, articles of amendment, changing Sellers' names so as to effectuate the transfer of the Acquired Names and any of like names or combinations of words or derivations thereof to Purchaser and promptly deliver evidence of such name change to Purchaser and (ii) cease using the Acquired Names, and any derivations thereof.

9.2 Access to Information.

(a) Sellers agree that, between the Execution Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, Purchaser and the Purchaser Designees shall be entitled, through its officers, employees, counsel, accountants and other authorized representatives, agents and contractors ("Representatives"), to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, Employees, accountants, auditors, counsel and operations of Sellers as Purchaser's and the Purchaser Designees' Representatives may

reasonably request (including for the avoidance of doubt, any attorneys or agents handling the prosecution or maintenance of the Seller Registered Intellectual Property Rights), provided, however, that Sellers shall not be obligated to provide information that they are not permitted to provide under applicable Law; provided, further, that Sellers shall provide their consent, which shall not be unreasonably withheld or delayed, for Purchaser and the Purchaser Designees or its and their Representatives to have access to Employees pursuant to this Section 9.2(a). Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, including Sellers' right to have its Representatives accompany Purchaser and the Purchaser Designees and its and their Representatives upon the Leased Real Property at the time of any inspection or examination and shall be subject to restrictions under applicable Law. Pursuant to this Section 9.2, Sellers shall furnish to Purchaser or the Purchaser Designees and its or their Representatives such financial, operating and property related data and other information as such Persons reasonably request. Sellers shall use commercially reasonable efforts to cause its Representatives to reasonably cooperate with Purchaser, the Purchaser Designees, and its and their Representatives in connection with such investigations and examinations, and Purchaser and the Purchaser Designees shall, and use its or their commercially reasonable efforts to cause its Representatives to, reasonably cooperate with Sellers and its Representatives and shall use their reasonable efforts to minimize any disruption to the Business. Purchaser and the Purchaser Designees and its or their Representatives shall be permitted to contact, or engage in discussions or otherwise communicate with Sellers' landlords, clients, suppliers and other Persons with which Sellers have material commercial dealings, provided, that Purchaser or the Purchaser Designees must obtain the prior consent of Sellers, which consent shall not be unreasonably withheld or delayed, to initiate such communications and give Sellers the opportunity to be present therefor.

(b) From and after the Closing Date, Sellers shall give Purchaser or the Purchaser Designees and its or their Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, Employees, Documents (including, without limitation, any Documents included in the Excluded Assets), personnel files and books and records of Sellers pertaining to the Business. In connection with the foregoing, Sellers shall use commercially reasonable efforts to cause their respective Representatives to furnish, at Purchaser's expense, to Purchaser or the Purchaser Designees such financial, technical, operating and other information pertaining to the Business as Purchaser's or the Purchaser's Designees Representatives shall from time to time reasonably request and to discuss such information with such Representatives. Without limiting the generality of the foregoing, at Purchaser's expense, Sellers shall, and shall use commercially reasonable efforts to cause its Affiliates to, cooperate with Purchaser and the Purchaser Designees as may reasonably be requested by any of Purchaser or the Purchaser Designees or its or their Representatives for purposes of (i) enabling an independent accounting firm selected by Purchaser to conduct an audit of the Business, including access to Sellers' independent auditors' working papers pertaining to the Business or the Acquired Assets including any environmental assessment; (ii) undertaking, with the consent of Sellers, which consent shall not be unreasonably withheld or delayed, any study of the condition or value of the Acquired Assets; and (iii) undertaking any study relating to Sellers' compliance with Laws; and Sellers acknowledge that information or access may be requested and used for such purpose; provided, however, that the access, and related rights to investigate and examine, granted to Purchaser and the Purchaser Designees and its and their Representatives pursuant to

this Agreement shall not constitute nor be construed as a waiver of any applicable legal privilege of Sellers, including the attorney-client and work product privileges.

(c) From and after the Closing Date until the first (1st) anniversary of the Closing Date, Purchaser shall give Sellers and Sellers' Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, Employees, Documents (including, without limitation, any Documents included in the Acquired Assets), personnel files and books and records of Purchaser or the Purchaser Designees pertaining to (i) the conduct of the Business or ownership of the Acquired Assets prior to the Closing Date or (ii) the Excluded Assets and Excluded Liabilities. In connection with the foregoing, Purchaser shall, or shall cause the Purchaser Designees to, use commercially reasonable efforts to cause its or their Representatives to furnish to Sellers such financial, technical, operating and other information pertaining to (i) the conduct of the Business or ownership of the Acquired Assets prior to the Closing Date, or (ii) the Excluded Assets and Excluded Liabilities, in each case, as Sellers' Representatives shall from time to time reasonably request and to discuss such information with such Representatives. Without limiting the generality of the foregoing, Purchaser shall, and shall use commercially reasonable efforts to cause each of its Affiliates and the Purchaser Designees to, cooperate with Sellers as may reasonably be requested by Sellers for purposes of enabling an independent accounting firm selected by Sellers to conduct an audit of the Business for periods prior to the Closing Date, including access to Purchaser's or the Purchaser Designees' independent auditors' working papers pertaining to the Business or the Acquired Assets.

(d) No information received pursuant to an investigation made under this Section 9.2 shall be deemed to (i) qualify, modify, amend or otherwise affect any representations, warranties, covenants or other agreements of Sellers set forth in this Agreement or any certificate or other instrument delivered to Purchaser in connection with the transactions contemplated hereby, (ii) amend or otherwise supplement the information set forth in the Seller Disclosure Schedule, (iii) limit or restrict the remedies available to the parties under applicable Law arising out of a breach of this Agreement or otherwise available at Law or in equity, or (iv) limit or restrict the ability of either party to invoke or rely on the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement set forth in Article X.

(e) On the Execution Date, Sellers shall provide Purchaser or the Purchaser Designees with a list of all payments, filings, and other actions which are due to be made or taken in connection with the prosecution and maintenance of the Seller Registered Intellectual Property Rights during the period beginning on the date hereof and extending to the date that is three (3) months following the scheduled Closing Date. Such list will be promptly updated by Sellers if the scheduled Closing Date is postponed.

9.3 Rejected Contracts. Sellers shall not obtain an order approving the rejection or assumption of any Assigned Contract in any bankruptcy proceeding following the date hereof unless in accordance with this Agreement without the prior written consent of Purchaser or the Purchaser Designees.

9.4 Further Agreements. Purchaser authorizes and empowers Sellers from and after the Closing Date to receive and to open all mail received by any Seller relating to the Acquired

Assets, the Business or the Assumed Liabilities and to deal with the contents of such communications in accordance with the provisions of this Section 9.4. Sellers shall (a) promptly deliver to Purchaser or the Purchaser Designees or its or their Affiliates any mail or other communication received by it after the Closing Date and relating to the Acquired Assets, the Business or the Assumed Liabilities, (b) promptly transfer in immediately available funds to Purchaser or the Purchaser Designees or its or their Affiliates any cash, electronic credit or deposit received by any Seller but solely to the extent that such cash, electronic credit or deposit are Acquired Assets and (c) promptly forward to Purchaser, the Purchaser Designees, or its or their Affiliates any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Acquired Assets. Purchaser, the Purchaser Designees, or its or their Affiliates shall (x) promptly deliver to Sellers any mail or other communication received by it after the Closing Date and relating to the Excluded Assets or the Excluded Liabilities, (y) promptly wire transfer in immediately available funds to Sellers, any cash, electronic credit or deposit received by it but solely to the extent that such cash, electronic credit or deposit are Excluded Assets and (z) promptly forward to Sellers any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Excluded Assets. From and after the Closing Date, Sellers shall refer all inquiries with respect to the Business, the Acquired Assets and the Assumed Liabilities to Purchaser or the Purchaser Designees, and Purchaser or the Purchaser Designees shall refer all inquiries with respect to the Excluded Assets and the Excluded Liabilities to Sellers.

9.5 Further Assurances.

(a) Subject to the terms and conditions of this Agreement (including Section 8.2) and applicable Law, Sellers and Purchaser shall use, or, in the case of Purchaser, cause the Purchaser Designees to use, their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and shall coordinate and cooperate with each other in exchanging information, keeping the other party reasonably informed with respect to the status of the matters contemplated by this Section 9.5 and supplying such reasonable assistance as may be reasonably requested by the other party in connection with the matters contemplated by this Section 9.5. Without limiting the foregoing, following the Execution Date and until the date on which the Closing occurs or this Agreement is terminated in accordance with Section 4.4, the parties shall use their commercially reasonable efforts to take the following actions but solely to the extent that such actions relate to the transactions contemplated by this Agreement:

(i) obtain any required consents, approvals (including Regulatory Approvals), waivers, Permits, authorizations, registrations, qualifications or other permissions or actions by, and give all necessary notices to, and make all filings with, and applications and submissions to, any Governmental Body or third party and provide all such information concerning such party as may be necessary or reasonably requested in connection with the foregoing;

(ii) avoid the entry of, or have vacated or terminated, any injunction, decree, Order, or judgment that would restrain, prevent, or delay the consummation of the transactions contemplated hereby;

(iii) take any and all reasonably necessary steps to avoid or eliminate every impediment under any applicable Law that is asserted by any Governmental Body with respect to the transactions contemplated hereby so as to enable the consummation of such transactions to occur as expeditiously as possible;

(iv) execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and cooperate and take such further actions, as may be reasonably necessary or appropriate to transfer and assign fully to Purchaser or the Purchaser Designees and its and their successors and assigns, all of the Acquired Assets, and for Purchaser or the Purchaser Designees and its or their successors and assigns, to assume the Assumed Liabilities as contemplated in this Agreement, and to otherwise make effective the transactions contemplated hereby and thereby; and without limiting the foregoing, Sellers agree that upon request they will, in a timely manner execute or arrange for execution of such further documents as may be required, if any, from Sellers, or take such other actions as Purchaser or the Purchaser Designees may reasonably request, to permit Purchaser or the Purchaser Designees to record the assignment of the Seller Registered Intellectual Property Rights required to be sold by Sellers hereunder free and clear of all Encumbrances, and to correct any defect in the record title to any of such Seller Registered Intellectual Property Rights. In the event that Seller fails to do so, Seller hereby grants Purchaser or the Purchaser Designees power of attorney to execute such further documents as may be required, if any, to record the assignment of such Seller Registered Intellectual Property Rights, or to correct any defect in the record title to any of such Seller Registered Intellectual Property Rights;

(v) take any and all commercially reasonable actions necessary to effect the transfer of all of the Permits and include all such Permits in the Acquired Assets to the extent transferrable under applicable Law; and

(vi) provide Purchaser or the Purchaser Designees with assistance in identifying and obtaining the Permits necessary to operate the Business.

(b) Subject to the terms and conditions of this Agreement, the parties shall not take any action or refrain from taking any action the effect of which would be to delay or impede the ability of Sellers and Purchaser or the Purchaser Designees to consummate the transactions contemplated by this Agreement, unless in such party's reasonable judgment, taking such action or refraining from taking such action is consistent with achieving the ultimate objective of consummating the transactions contemplated hereby or is required by applicable Law.

(c) Following the Execution Date and until the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, Sellers, on the one hand, and Purchaser, on the other hand, shall, or, in the case of Purchaser, shall cause the Purchaser Designees to, keep each other reasonably informed as to the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers, Purchaser or the Purchaser Designees or by any of their respective Affiliates (as the case may be), from any third

party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, the obligations of Sellers pursuant to this Section 9.5 shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Chapter 11 Case), and Sellers' obligations as a debtor in possession to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order) and Sellers' duty to seek and obtain the highest or otherwise best price for the Business as required by the Bankruptcy Code.

9.6 Preservation of Records. Sellers and Purchaser agree that each of them shall, and, in the case of Purchaser, cause the Purchaser Designees to, preserve and keep the Documents held by them or their Affiliates relating to the Business, the Acquired Assets and Assumed Liabilities for a period of two (2) years from the Closing Date, in the case of Purchaser, and until the closing of the Chapter 11 Case or the liquidation and winding up of Sellers' estates, in the case of Sellers, and shall make such Documents available to the other party as may be reasonably required by such other party in connection with, among other things, any insurance claims by, actions or Tax audits against or governmental investigations of Sellers, Purchaser, the Purchaser Designees or any of their respective Affiliates or in order to enable Sellers or Purchaser and the Purchaser Designees to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that any Seller, Purchaser or Purchaser Designee wishes to destroy such Documents at the end of any such period, such party shall first give sixty (60) days prior written notice to the other party and such other party shall have the right at its option and expense, upon prior written notice given to such party within such sixty (60) day period, to take possession of the Documents within one hundred and twenty (120) days after the date of such notice, or such shorter period as the liquidation and winding up of Sellers' estate shall permit.

9.7 Publicity. Except as required by applicable Law (including by the Bankruptcy Court or the Bankruptcy Code), each of Seller and Purchaser shall not issue a press release or make any other public announcement concerning this Agreement or the matters or transactions contemplated hereby without the prior written approval of the other parties hereto (which approval shall not be unreasonably withheld, conditioned or delayed).

9.8 Notification of Certain Matters. Sellers shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to Sellers, of (a) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement is not likely to be obtained prior to Closing and (b) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court. To the extent permitted by applicable Law, Sellers shall give prompt notice to Purchaser of (w) any notice of any alleged violation of Law applicable to any Seller, (x) the commencement of any investigation, inquiry or review by any Governmental Body with respect to the Business or that any such investigation, inquiry or review, to the Knowledge of Sellers, is contemplated, and (y) the infringement or unauthorized use by any Person of any material Intellectual Property Rights (of which Sellers have Knowledge).

9.9 DIP Loan Documents. Notwithstanding anything in this Agreement to the contrary, between the date of this Agreement and the earlier of the termination of this Agreement in accordance with Section 4.4 and the Closing Date, it shall not be a breach of this Agreement for, and nothing in this Agreement shall (or shall be deemed to) limit or affect the ability of, Sellers to incur Indebtedness or borrow funds under the DIP Loan or the DIP Loan Documents in accordance with the terms and conditions of the DIP Loan Documents and the DIP Orders.

9.10 Insurance Policies. From and after the Closing Date, Purchaser shall be solely responsible for providing insurance with respect to the Acquired Assets and the Business for any claims made with respect to any Acquired Assets regardless of when the event or occurrence relating to the claim arose. Seller shall hold any current or prior Insurance Policy for the benefit of Purchaser (except to the extent such Insurance Policy pertains to an Excluded Asset), shall reasonably cooperate with Purchaser (at Purchaser's cost and expense) in pursuing any claims thereunder, and shall pay over to Purchaser any insurance proceeds paid or recovered thereunder with respect to the Acquired Assets.

9.11 Release of Credit Support. With respect to each guaranty, letter of credit, indemnity, performance or surety bond or similar credit support arrangement or cash deposit issued by or for the account of Sellers or any of their Affiliates in relation to the Business set forth on Section 9.11 of the Seller Disclosure Schedule (collectively, the "Support Obligations"), Purchaser shall, or shall cause the Purchaser Designees to, obtain, prior to the Closing, substitute credit support arrangements in replacement for the Support Obligations, and shall procure that Sellers and their Affiliates, and, where applicable, their sureties or letter of credit issuers, be fully released from their respective obligations under the Support Obligations, in form and substance reasonably satisfactory to Sellers. For avoidance of doubt, all cash deposits released in connection therewith shall be treated as cash or Cash Equivalents of the Company.

ARTICLE X.

CONDITIONS TO CLOSING

10.1 Conditions Precedent to the Obligations of Purchaser and Sellers. The respective obligations of each party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction or written waiver, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Sellers and Purchaser in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any statute, rule, regulation, Law or Order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(b) the Bankruptcy Court shall have entered the Sale Order in form and substance reasonably satisfactory to Sellers, Purchaser, the DIP Agent, and the Prepetition Agent, in their respective sole discretion.

10.2 Conditions Precedent to the Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Sellers in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser set forth in Article VI hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date) and Sellers shall have received from Purchaser a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, and Sellers shall have received from Purchaser a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect;

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 4.3; and

(d) Purchaser shall have, or shall have caused the Purchaser Designees to, obtain, effective on or prior to the Closing, a full and unconditional release of all of the obligations of Sellers and their Affiliates under each of the Support Obligations and delivered evidence thereof to Sellers in form and substance reasonably satisfactory to Sellers.

10.3 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) Sellers shall have delivered to Purchaser (i) a copy of the Sale Order (and no Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date) and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Sellers (which service shall comply with Section 8.1(d));

(b) the representations and warranties of Sellers set forth in Article V hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date) and Purchaser shall have received a certificate signed by an authorized officer of Parent, dated the Closing Date, to the foregoing effect;

(c) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Sellers on or prior to the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of Sellers, dated such Closing Date, to the foregoing effect;

(d) Except as provided in Section 2.6, all of the Assigned Contracts (unless otherwise expired) set forth in Section 10.3(d) of the Seller Disclosure Schedule, shall (i) be assignable to Purchaser without the consent of the counterparty to such Assigned Contract for such assignment (or such consent shall have been received prior to the Closing Date) and (ii) have had all of the applicable Seller's monetary breaches and monetary defaults thereunder cured as of the Closing Date by payment of the Cure Costs by Purchaser (or creation of reserves therefor) in accordance with the Sale Order or otherwise;

(e) Sellers shall have delivered, or caused to be delivered, to Purchaser or the Purchaser Designees all of the items set forth in Section 4.2;

(f) Purchaser or the Purchaser Designees shall have received all of the Acquired Permits necessary for it or them to acquire and own the Acquired Assets and to conduct the Business immediately after the Closing Date, and all of such Acquired Permits shall be in full force and effect; and

(g) The total amount of the Cure Costs shall not exceed \$175,000 in the aggregate.

10.4 Failure Caused by Party's Failure to Comply. Neither Sellers nor Purchaser may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was caused directly by such party's failure to comply with any provision of this Agreement.

ARTICLE XI.

TAXES

11.1 Additional Tax Matters.

(a) Any sales, use, transfer, deed, fixed asset, stamp, documentary stamp or other similar type Taxes and recording charges (each, a "Transfer Tax") which may be payable by reason of the acquisition of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated herein shall be borne and timely paid by Sellers. Purchaser and Sellers shall, or, in the case of Purchaser, shall cause the Purchaser Designees to, cooperate to prepare and timely file any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence. Purchaser and Sellers further agree, upon request, to, or, in the case of Purchaser, shall cause the Purchaser Designees to, use commercially reasonable efforts to obtain any certificate or other document from any Governmental Body or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed in connection with the transactions contemplated hereby.

(b) All real and personal property Taxes and similar ad valorem taxes ("Property Taxes") imposed on, or levied with respect to, the Acquired Assets for any Tax Period commencing on or prior to the Closing Date and ending on or after the Closing Date (a "Straddle Period") shall be prorated between Purchaser or the Purchaser Designees and Sellers as of the end of the Closing Date, with (a) Sellers being liable for such Taxes attributable to any

portion of a Straddle Period ending on the Closing Date and (b) Purchaser or the Purchaser Designees being liable for such Taxes attributable to any portion of a Straddle Period beginning after the Closing Date. All such prorations shall be allocated so that items relating to the portion of a Straddle Period ending on the Closing Date shall be allocated to Sellers based upon the number of days in the Straddle Period ending on the Closing Date and items related to the portion of a Straddle Period beginning after the Closing Date shall be allocated to Purchaser or the Purchaser Designees based upon the number of days in the Straddle Period beginning after the Closing Date. For purposes of Sections 2.3 and 2.4, all Liabilities for Taxes other than Property Taxes imposed for a Straddle Period shall be determined for the portion of the Straddle Period ending on the Closing Date as if the Closing Date was the last day of the relevant Taxable Period.

(c) The purchase price, and any items treated as purchase price for relevant income Tax purposes, shall be allocated to the Acquired Assets for all Tax purposes in accordance with Schedule 11.1(c), which Purchaser and Sellers acknowledge and agree has been prepared in a manner consistent with the fair market value of the Acquired Assets and, as applicable, Section 1060 of the Code and the Treasury Regulations promulgated thereunder (and any similar provision of state, local, or foreign law, as appropriate), and which may be amended by the mutual written consent by the parties after the Closing (such schedule, the “Allocation Schedule”). Purchaser and Sellers shall, or, in the case of Purchaser, cause the Purchaser Designees to, report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any Governmental Body or any other proceeding); provided, however, that nothing contained herein shall prevent Purchaser, the Purchaser Designees, or Sellers from settling any proposed deficiency or adjustment by any Governmental Body based upon or arising out of the Allocation Schedule, and neither Purchaser nor the Purchaser Designees nor Sellers shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Body challenging the contents of the Allocation Schedule. Purchaser and Sellers shall, or, in the case of Purchaser, cause the Purchaser Designees to, cooperate in the filing of any forms (including IRS Form 8594 under Section 1060 of the Code) with respect to the contents of the Allocation Schedule, including any amendments to such forms required pursuant to this Agreement with respect to any adjustment to the Purchase Price. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 11.1(c) shall survive the Closing without limitation.

(d) Purchaser and Sellers agree to furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets, including, without limitation, access to books and records, as is reasonably necessary for the filing of all Tax Returns by Purchaser, the Purchaser Designees, or Sellers, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Purchaser and Sellers shall, or, in the case of Purchaser, cause the Purchaser Designees to, cooperate fully with each other in the conduct of any audit, litigation or other proceeding relating to Taxes involving the Acquired Assets. Sellers shall promptly notify Purchaser or the Purchaser Designees in writing upon receipt by Sellers of notice of any pending or threatened Tax audits, assessments or other proceedings relating to the income, properties or operations of Seller that

reasonably may be expected to relate to or give rise to a Lien on the Acquired Assets or the Business or otherwise be binding on or adversely affect Purchaser or the Purchaser Designees. Each of Purchaser and Sellers shall, or, in the case of Purchaser, cause the Purchaser Designees to, promptly notify the other in writing upon receipt of notice of any pending or threatened Tax audit or assessment challenging the Purchase Price allocation.

ARTICLE XII.

MISCELLANEOUS

12.1 Payment of Expenses. Whether or not the transactions contemplated hereby are consummated, Sellers shall be responsible for all of its expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby. Subject to Section 8.3(a) and the expense reimbursement provisions of the DIP Loan Documents and the Prepetition Credit Agreement and Prepetition Credit Documents, whether or not the transactions contemplated hereby are consummated, Purchaser shall be responsible for all of its expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

12.2 Survival of Representations and Warranties. The parties hereto agree that the representations and warranties, and the covenants and agreements to be performed prior to the Closing, contained in this Agreement shall not survive, and thus shall expire upon, the Closing. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant, until fully performed or, if earlier, upon Sellers' dissolution.

12.3 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto and other documents specifically referred to herein) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4 Counterparts. For the convenience of the parties hereto, this Agreement may be executed (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

12.5 Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

12.6 Jurisdiction, Waiver of Jury Trial.

(a) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER THE PARTIES HERETO AND ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.7 Notices. Unless otherwise set forth herein, any notice, request, instruction or other document to be given hereunder by any party to the other parties shall be in writing and shall be deemed duly given (i) upon delivery, when delivered personally, (ii) one (1) day after being sent by overnight courier or when sent by facsimile transmission or email PDF format (with a confirming copy sent by overnight courier), and (iii) three (3) days after being sent by registered or certified mail, postage prepaid, as follows:

If to Sellers, to:

Chieftain Sand and Proppant, LLC
331 27th Street
New Auburn, WI 54757
Attention: Victor Serri
Facsimile:

E-mail: vserri@chieftainsand.com

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

Gibbons P.C.

300 Delaware Avenue, Ste. 1015

Wilmington, DE 19801

Attention: Howard A. Cohen and Lawrence A. Goldman

Facsimile: 302-397-2323

E-mail: hcohen@gibbonslaw.com; lgoldman@gibbonslaw.com

If to Purchaser or the Purchaser Designees, to:

Energy Capital Partners Mezzanine, LLC

51 John F. Kennedy Parkway, Suite 200

Short Hills, NJ 07078

Attention: Matt Delaney

Facsimile: 973-671-6088

E-mail: mdelaney@ecpartners.com

with copies to (which shall not constitute effective notice):

Energy Capital Partners Mezzanine, LLC

12680 High Bluff Drive, 4th Floor

San Diego, CA 92130

Attention: Jennifer Gray

Facsimile: 858-703-4408

E-mail: jgray@ecpartners.com

and

Latham & Watkins LLP

885 Third Avenue

New York, New York 10022

Attention: David Kurzweil

Facsimile: 212-751-4864

Email: david.kurzweil@lw.com

or to such other Persons or addresses as may be designated in writing by the party to receive such notice.

12.8 Binding Effect; Assignment. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by Sellers or Purchaser (by operation of Law or otherwise) without the prior written consent of the other party hereto and any attempted assignment without the required consent will be void; provided, however, that Purchaser may assign all of its rights and all of its obligations hereunder to an Affiliate or the Purchaser Designees prior to the Closing. For the avoidance of doubt, the parties hereto acknowledge and agree that following an assignment of its rights and obligations hereunder to an Affiliate (i) Purchaser shall not receive any Acquired Assets or assume any Assumed Liabilities, respectively, and (ii) except in the event that such Affiliate is a Purchaser Designee, Purchaser shall have no rights or obligations hereunder or in connection herewith. Except as otherwise expressly provided in this Section 12.8, no assignment of any obligations hereunder will relieve the parties hereto of any such obligations. Upon any permitted assignment, the references in this Agreement to Sellers or Purchaser will apply to any such assignee unless the context otherwise requires.

12.9 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

12.10 Injunctive Relief; Limitations on Relief.

(a) The parties agree that damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement and, accordingly, Purchaser or the Purchaser Designees and Sellers shall be entitled to injunctive relief with respect to any such breach, including without limitation, specific performance of such covenants, promises or agreements or an Order enjoining the other party from any threatened, or from the continuation of any actual breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 12.10 shall be in addition to any other rights which Purchaser and Sellers may have at Law or in equity pursuant to this Agreement.

(b) Notwithstanding anything to the contrary contained herein, in the event that Sellers incur any damages, liabilities, costs and out-of-pocket expenses, including reasonable attorneys' fees (including such fees which are incurred in connection with a good-faith dispute of the provisions of this Agreement), fines, penalties, costs of investigation or settlement, other professionals' and experts' fees, and court or arbitration costs (but specifically excluding any punitive, exemplary, special or speculative damages except to the extent such damages specifically excluded herein are awarded to a third party) (hereinafter collectively referred to as "Damages") as a result of the breach by Purchaser of this Agreement, the claim of the Prepetition Agent, the Prepetition Lenders, the DIP Agent, and the DIP Lenders, respectively, against Sellers

arising under the Prepetition Credit Agreement and the DIP Loan Agreement, respectively, shall, without any further action on the part of Sellers, Purchaser, the Prepetition Agent, the Prepetition Lenders, the DIP Agent and the DIP Lenders, be reduced in an amount equal to the Damages incurred by Sellers; provided, however, in on event shall the Damages payable to Sellers pursuant to this Section 12.10(b) exceed an amount equal to the Credit Bid Amount in the aggregate. The right of Sellers to receive Damages pursuant to this Section 12.10(b) shall be the sole and exclusive remedy of Sellers against Purchaser, the Purchaser Designees, the Prepetition Agent, the Prepetition Lenders, the DIP Agent, the DIP Lenders and any of their respective Affiliates or Subsidiaries for any Damages suffered as a result of the breach by Purchaser of this Agreement by Sellers and in no event will Sellers (or Person acting on behalf of Sellers) seek to recover (or be entitled to obtain) any other money damages or any equitable relief or equitable remedies of any kind whatsoever or any other remedy from Purchaser, the Purchaser Designees, the Prepetition Agent, the Prepetition Lenders, the DIP Agent, the DIP Lenders or any of their respective Affiliates or Subsidiaries with respect thereto, regardless of whether such monetary damages or other remedies are based on a claim in law or equity, and Sellers (on their own behalf and on behalf of their estates) hereby waive all such claims except in the case of fraud by Purchaser, the Purchaser Designees, the Prepetition Agent, the Prepetition Lenders, the DIP Agent, the DIP Lenders or any of their respective Affiliates or Subsidiaries.

12.11 Non-Recourse. Except as expressly contemplated by this Agreement, no past, present or future director, officer, employee, advisor, lawyer, agent, representative, incorporator, member, partner or equityholder of Sellers or Purchaser shall have any liability for (i) any obligations or liabilities of Sellers or Purchaser under this Agreement or the certificate of incorporation and by-laws or comparable organizational documents of Sellers or Purchaser, or (ii) any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

12.12 No Waiver or Release. Notwithstanding anything herein to the contrary, all terms, conditions, covenants, representations and warranties contained in the DIP Loan Documents and Prepetition Credit Documents, and all rights, powers and remedies of the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders and all of the obligations of the Debtors (as defined in the DIP Loan Documents) and other Loan Parties (as defined in the DIP Loan Documents) thereunder (and Sellers acknowledge their obligation to reimburse the Prepetition Agent and the Prepetition Lenders for fees and expenses incurred in accordance with the Prepetition Credit Documents and the DIP Agent and DIP Lenders for fees and expenses incurred in accordance with the DIP Loan Documents and the DIP Orders), are reserved and are not amended, modified, limited or otherwise affected by the terms and conditions of this Agreement.

12.13 Time of the Essence. Time is of the essence in the performance of each of the obligations of the parties and with respect to all covenants and conditions to be satisfied by the parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

12.14 Miscellaneous.

(a) Certain Interpretations. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) All references in this Agreement to Articles, Sections, Schedules and Exhibits shall be deemed to refer to Articles, Sections, Schedules and Exhibits to this Agreement.

(ii) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iii) The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(iv) The words “include,” “includes” and “including,” when used herein, shall be deemed in each case to be followed by the words “without limitation” (regardless of whether such words or similar words actually appear).

(v) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(vi) Any reference in this Agreement to \$ shall mean U.S. dollars.

(vii) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(viii) The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(b) The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

(c) This Agreement is the result of the joint efforts of the parties hereto, and each provision hereof has been subject to the mutual consultation, negotiation, and agreement of the parties and there is to be no construction against any party based on any presumption of that party’s involvement in the drafting thereof.

(d) Purchaser acknowledges hereby that Sellers may not comply with the provisions of any bulk transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.


PURCHASER:

**ENERGY CAPITAL PARTNERS
MEZZANINE OPPORTUNITIES FUND A,
L.P.,**

a Delaware limited partnership

By: Energy Capital Partners Mezzanine GP, LP
Its: General Partner

By: Energy Capital Partners Mezzanine, LLC
Its: General Partner

By: 
Name: Peter Labbat
Title: Managing Member

effectively convey, transfer to and vest in Purchaser, and to put Purchaser in possession of, any of the Acquired Assets.

Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than Purchaser and its successors and assigns, any remedy or claim under or by reason of this instrument or any terms, covenants or condition hereof, and all of the terms, covenants and conditions, promises and agreements in this instrument contained shall be for the sole and exclusive benefit of Purchaser and its successors and assigns.

This instrument is executed by, and shall be binding upon, Sellers and its successors and assigns for the uses and purposes above set forth and referred to, effective as of the Effective Time.

This instrument shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of [New York], without regard to its conflict of law principle provisions.

To the extent this Bill of Sale is inconsistent with any terms or conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall control.

This instrument may be executed in counterpart signature pages, all of which when so executed and attached hereto shall constitute one and the same original.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale or caused this Bill of Sale to be executed on their behalf by a duly authorized officer as of the date first set forth above.

SELLERS:

CHIEFTAIN SAND AND PROPPANT, LLC

By: _____
Name:
Title:

**CHIEFTAIN SAND AND PROPPANT
BARRON, LLC**

By: _____
Name:
Title:

PURCHASER:

> ” @

By: _____
Name:
Title:

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Agreement”) is entered into this 1st day of December, 2016, by and between L Q W R D V, R [Delaware>limited@liability company] (“Assignee”) and Chieftain Sand and Proppant, LLC, a Delaware limited liability company (“Assignor”). D P R

WITNESSETH:

WHEREAS, Assignor and Assignee entered into that certain Asset Purchase Agreement (“Purchase Agreement”); capitalized terms used but not otherwise defined herein have the meanings given them in the Purchase Agreement); and

WHEREAS, pursuant to the Purchase Agreement, Assignor has agreed to assign certain rights and agreements to Assignee, and Assignee has agreed to assume certain obligations of Assignor, as set forth therein and herein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Effective as of 12:01 a.m. EDT on the date hereof, Assignor hereby sells, transfers and assigns (collectively the “Assignment”) to the Assignee, and Assignee hereby assume and agree to pay, perform and discharge, each and all of the Assumed Liabilities, as that term is defined in, and in accordance with, Section 2.3 of the Purchase Agreement.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

3. This Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of [New York], without regard to its conflict of law principle provisions and rules.

4. To the extent this Agreement is inconsistent with any terms or conditions in the Purchase Agreement, the Purchase Agreement shall control.

5. This Agreement may be executed in counterpart signature pages, all of which when so executed and attached hereto shall constitute one and the same original.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the date first set forth above.

ASSIGNOR:

CHIEFTAIN SAND AND PROPPANT, LLC

By: _____
Name:
Title:

ASSIGNEE:

> ” @

By: _____
Name:
Title:

EXECUTION VERSION

Chieftain Sand.	Model 10W 10 Open Bay Office	Mobile Mini and Chieftain Sand	11/16/2012	Mobile Mini - Guard Shack - Model 10W 10 Open bay office - SN: AS10SYW0141 - contract #: 298083346	MTM	Mobile Mini 7420 S. Kyrene Road Suite 101 Tempe, AZ 85283	\$0
Chieftain Sand.	Model 40W 40 Open Bay Office	Mobile Mini and Chieftain Sand	6/20/2013	Mobile Mini - Office for Uniforms - Model 40W 40 Open bay office - SN: AS40TYW1417 - contract #: 151005371	MTM	Mobile Mini 7420 S. Kyrene Road Suite 101 Tempe, AZ 85283	\$0
Chieftain Sand.	Model 32MO 32 X 12 Mobile Office	Mobile Mini (business sold to Acton Mobile) and Chieftain Sand	7/17/2013	Action Mobile - Office for QC Lab - SN: HL32UYW0012 - original Mobile Mini contract #: 151005392	MTM	Action Mobile 809 Gleneagles Court Suite 300 Baltimore, MD 21286	\$0
Chieftain Sand.	Model 44MO 44 X 12 Mobile Office	Mobile Mini (business sold to Acton Mobile) and Chieftain Sand	12/13/2013	Action Mobile - Office for Uniforms - SN: HM44UYW0082 - original Mobile Mini contract #: 151005851	estimated 54 months - lease date = 12/13/13 Estimated Return = 02/01/2018	Action Mobile 809 Gleneagles Court Suite 300 Baltimore, MD 21286	\$872
Chieftain Sand.	Model 60DW 60 X 24 Modular Office	Mobile Mini (business sold to Acton Mobile) and Chieftain Sand	3/26/2014	Action Mobile - Office for Maintenance - SN: HN60UGW0043 - original Mobile Mini contract #: 151005955	MTM	Action Mobile 809 Gleneagles Court Suite 300 Baltimore, MD 21286	\$2,000
Chieftain Sand.	Rental Order DWO2460	Satellite Shelters, Inc. and Chieftain Sand	5/14/2014	Satellite Shelters, Inc. - Logistics Trailer - SN: S039468/69 - contract #: RO337732	MTM	Satellite Shelters, Inc. - Minneapolis 200570 75th Ave N Hamel, MN 55340-9459	\$2,000
Chieftain Sand and Proppant Barron LLC	Equipment Operating Lease Agreement	Hehli-Vold Corporation and Chieftain Sand and Proppant Barron, LLC	6/27/2014	New Holland T8 Tractor - Model T8.360	7/11/2017	Hehli-Vold Corporation PO Box 469 Menomonie, WI 54751	\$4,013
Chieftain Sand and Proppant LLC	Equipment Rental Agreement	FABCO Equipment Inc. and Chieftain Sand and Proppant LLC	8/25/2014	Caterpillar Telehandler TL1255C	MTM	FABCO Equipment Inc. Attn: Branch Supervisor 7860 Partridge Road/EE Eau Claire, WI 54703	\$14,685
Chieftain Sand and Proppant Barron LLC	Portable Truck Scale Installation	Valu Weigh and Chieftain Sand & Proppant Barron LLC	5/23/2015	Portable Truck Scale - Valu Weigh	Ongoing - no expiration date defined	Valu Weigh 5555 N 28th Ave Wausau, WI 54401	\$3,600

EXHIBIT A TO SCHEDULE 5.10(a)
LEGAL DESCRIPTIONS

TRACT I:

NE 1/4-SW 1/4;
SW 1/4-SW 1/4;
SE 1/4-SW 1/4 EXCEPT LOT 1 OF CSM 33-53, MAP NO. 4751;

ALL IN SECTION 17, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE).

AKA

A PARCEL OF LAND BEING THE NE 1/4-SW 1/4, THE SW 1/4-SW 1/4 AND THE SE 1/4-SW 1/4 EXCEPT THOSE PARCELS CONVEYED IN DEEDS 20-515, DEEDS 32-482, DEEDS 48-180, AND DEEDS 45-546, ALL IN SECTION 17, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE) DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF SECTION 17;

THENCE N.01°06'44"E. ALONG THE WEST LINE OF SW 1/4-SW 1/4, 1290.60 FEET TO THE NW CORNER OF THE SW 1/4-SW 1/4;

THENCE S.87°09'35"E. ALONG THE NORTH LINE OF SW 1/4-SW 1/4, 1335.75 FEET TO THE SW CORNER OF THE NE 1/4-SW 1/4;

THENCE N.01°03'20"E. ALONG THE WEST LINE OF THE NE 1/4-SW 1/4, 1311.01 FEET TO THE NW CORNER OF THE NE 1/4-SW 1/4;

THENCE S.88°02'02"E. ALONG THE NORTH LINE OF THE NE 1/4-SW 1/4, 1334.00 FEET TO THE NE CORNER OF THE NE 1/4-SW 1/4;

THENCE S.01°00'02"W. ALONG THE EAST LINE OF THE NE 1/4-SW 1/4 AND THE EAST LINE OF THE SE 1/4-SE 1/4, 2186.86 FEET TO THE NE CORNER OF LOT 1 OF CSM 33-53, MAP NO. 4751, ALSO BEING THE NE CORNER OF DEEDS 45-546;

THENCE N.86°17'06"W. ALONG THE NORTH LINE OF SAID LOT 1 AND NORTH LINE OF DEEDS 45-546, 280.47 FEET TO THE NW CORNER OF SAID LOT 1 AND DEEDS 45-546;

THENCE S.00°59'01"W. ALONG THE WEST LINE OF SAID LOT 1 AND WEST LINE OF DEEDS 45-546, 310.99 FEET TO THE NORTH LINE OF DEEDS 48-180;

THENCE N.86°12'31"W. ALONG THE WEST LINE OF LOT 1 OF CSM 33-53, MAP NO. 4751, AND THE NORTH LINE OF DEEDS 48-180, 5.28 FEET TO THE NW CORNER OF DEEDS 48-180;

THENCE S.00°59'48"W. ALONG THE WEST LINE OF LOT 1 OF CSM 33-53, MAP NO. 4751, AND WEST LINE OF DEEDS 48-180 AND WEST LINE OF DEEDS 32-482, 165.02 FEET TO THE SOUTH LINE OF THE SE 1/4-SW 1/4;

THENCE N.86°17'16"W. ALONG THE SOUTH LINE OF THE SE 1/4-SW 1/4 AND SOUTH LINE OF THE SW 1/4-SW 1/4, 2390.00 FEET TO THE POINT OF BEGINNING.

SAID DESCRIPTION FROM PLAT OF SURVEY BY JON M. NELSON, LAND SURVEYOR, DATED DECEMBER 29, 2011.

TAX PARCEL NOS. 022-1700-15-000 & 022-1700-16-000 and part of 022-1700-12-000

TRACT II:

NE 1/4-SE 1/4 OF SECTION 16, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE) EXCEPT THAT PART FOR HIGHWAY IN RECORDS 374-542.

TAX PARCEL NO. Part of 022-1500-19-000

EXECUTION VERSION

TRACT III:

NW 1/4-SW 1/4 EXCEPT:

A) RAILROAD RIGHT-OF-WAY;

B) HIGHWAY RIGHT-OF-WAY IN DEEDS 132-349;

C) LOTS 2 & 3 OF CSM 39-45, MAP NO. 5785;

SW 1/4 SW 1/4 EXCEPT:

A) RAILROAD RIGHT-OF-WAY;

B) HIGHWAY RIGHT-OF-WAY IN DEEDS 132-349;

ALL IN SECTION 15, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE).

THAT PART OF THE SE 1/4-SE 1/4 OF SECTION 16, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE) LYING NORTHEASTERLY OF USH 53 RIGHT-OF-WAY AS CONVEYED BY RECORDS 376-78.

THAT PART OF THE NE 1/4-NE 1/4 OF SECTION 21, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE) LYING NORTHEASTERLY OF USH 53 RIGHT-OF-WAY AS CONVEYED BY RECORDS 376-78.

TAX PARCEL NO. 022-1500-19-000

TRACT IV:

SE 1/4-NW 1/4 OF SECTION 17, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE), INCLUDING LOT 1 OF CSM 9-76, MAP NO. 1148.

TAX PARCEL NO. 022-1700-12-000

TRACT V:

THAT PART OF THE NW-NW OF SECTION 22, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE) LYING EASTERLY OF USH 53 DESCRIBED AS:
THE WESTERLY 650 FEET OF THE NORTHERLY 267 FEET EXCEPT THE SOUTHERLY 77 FEET OF THE EASTERLY 310 FEET THEREOF.

TAX PARCEL NO. 022-1500-19-000

TRACT VIA:

SE 1/4-SE 1/4 OF SECTION 17, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE), EXCEPT CSM 6-177, MAP NO. 753.

TAX PARCEL NO. 022-1700-22-000

TRACT VIB:

CSM 6-177, MAP NO. 753, A PART OF THE SE 1/4-SE 1/4 OF SECTION 17, TOWNSHIP 32 NORTH, RANGE 10 WEST (IN THE TOWNSHIP OF DOVRE).

TAX PARCEL NO. 022-1700-22-000

TRACTS I, II, III, IV, V AND VIA and VIB ALSO DESCRIBED AS:

TRACT I:

EXECUTION VERSION

A parcel of land being the NE ¼ of the SW ¼, the SW ¼ of the SW ¼ and the SE ¼ of the SW ¼ except those parcels conveyed in Deeds recorded in Volume 20, page 515, Volume 32, page 482, Volume 48, page 180, and Volume 45, page 546, all in Section 17, T.32N., R.10W., Town of Dovre, Barron County, Wisconsin, more particularly described as follows:

Beginning at the SW corner of Section 17; thence N01°06'44"E, along the west line of the SW ¼ of the SW ¼, 1290.60 feet to the NW corner of the SW ¼ of the SW ¼;

thence S87°09'35"E, along the north line of the SW ¼ of the SW ¼, 1335.75 feet to the SW corner of the NE ¼ of the SW ¼;

thence N01°03'20"E, along the west line of the NE ¼ of the SW ¼, 1311.01 feet to the NW corner of the NE ¼ of the SW ¼;

thence S88°02'02"E, along the north line of the NE ¼ of the SW ¼, 1334.00 feet to the NE corner of the NE ¼ of the SW ¼;

thence S01°00'02"W, along the east line of the NE ¼ of the SW ¼ and east line of the SE ¼ of the SW ¼, 2186.86 feet to the NE corner of Lot 1, CSM 33-53, also being the NE corner of Deed's 45-546;

thence N86°17'06"W, along the north line of said Lot 1 and north line of Deed's 45-546, 280.47 feet to the NW corner of said Lot 1 and Deed's 45-546;

thence S00°59'01"W, along the west line of said Lot 1 and west line of Deed's 45-546, 310.99 feet to the north line of Deed 48-180;

thence N86°12'31"W, along the west line of Lot 1, CSM 33-53 and north line of Deed's 48-180, 5.28 feet, to the NW corner of Deed's 48-180;

thence S00°59'48"W, along the west line of Lot 1, CSM 33-53 and west line of Deed's 48-180 and west line of Deed's 32-482, 165.02 feet to the south line of the SE ¼ of the SW ¼;

thence N86°17'16"W, along the south line of the SE ¼ of the SW ¼ and south line of the SW ¼ of the SW ¼, 2390.00 feet to the point of beginning.

TRACT II AND III:

A parcel of land described as the NE 1/4 of the SE 1/4 of Section 16 except that part for highway in Records 374-542, the NW 1/4 of the SW 1/4 of Section 15 except: a) Railroad right-of-way, b) Highway right-of-way in Deeds 132-349, c) Lots 2 and 3 of CSM 39-45, Map No. 5785; the SW 1/4 of the SW 1/4 of Section 15 except a) Railroad right-of-way, b) Highway right-of-way in Deeds 132-349; that part of the SE 1/4 of the SE 1/4 of Section 16 lying northeasterly of the USH 53 right-of-way as conveyed in Records 376-78 and that part of the NE 1/4 of the NE 1/4 of Section 21 lying northeasterly of USH 53 right-of-way as conveyed by Records 376-78; all in T.32N., R.10W., Town of Dovre, Barron County, Wisconsin, more particularly described as follows:

Beginning at the W 1/4 corner of Section 15;

thence S89°53'13"E, along the north line of the NW 1/4 of the SW 1/4 of Section 15, 152.99 feet to the westerly right-of-way line of a 100 foot wide railroad right-of-way; thence S37°53'31"E, along said railroad right-of-way line, 1891.40 feet to the east line of the SW 1/4 of the SW 1/4 of Section 15;

thence S00°10'34"W, along said east line, 1134.45 feet to the SE corner of the SW 1/4 of the SW 1/4 of Section 15;

thence S89°38'44"W, along the south line of said SW 1/4 of the SW 1/4, 1292.01 feet to the SW corner of Section 15;

thence S00°05'30"W, along the east line of the NE 1/4 of the NE 1/4 of Section 21, 103.01 feet to the easterly right-of-way line of USH 53, described in Record's Volume 376, page 78;

EXECUTION VERSION

thence N36°31'35"W, along said right-of-way line, 295.84 feet;
 thence N30°48'57"W, along said right-of-way line, 201.00 feet;
 thence N36°31'35"W, along said right-of-way line, 1256.46 feet to the north line of the SE 1/4 of the SE 1/4 of Section 16;
 thence N36°31'35"W, along USH 53 right-of-way line described in Record's Volume 374, page 542, 499.31 feet to the west line of the NE 1/4 of the SE 1/4 of Section 16; thence N00°14'50"W, along the west line of the NE 1/4 of the SE 1/4, 913.80 feet to the NW corner of the NE 1/4 of the SE 1/4;
 thence N89°51'13"E, along the north line of the NE 1/4 of the SE 1/4, 1309.01 feet to the point of beginning.

TRACT IV :

The SE 1/4 of the NW 1/4 of Section 17, located in Section 17, T.32N., R.10W., Town of Dovre, Barron County, Wisconsin, more particularly described as follows: Commencing at the N 1/4 corner of Section 17; thence S01°00'02"W, along the east line of the NE 1/4 of the NW 1/4, 1285.00 feet to the NE corner of the SE 1/4 of the NW 1/4, said point being the point of beginning; thence S01°00'02"W, along the east line of the SE 1/4 of the NW 1/4, 1285.00 feet to the SE corner of the SE 1/4 of the NW 1/4; thence N88°02'02"W, along the south line of the SE 1/4 of the NW 1/4, 1334.00 feet to the SW corner of the SE 1/4 of the NW 1/4; thence N01°17'37"E, along the west line of the SE 1/4 of the NW 1/4, 1274.80 feet to the NW corner of the SE 1/4 of the NW 1/4;
 thence S88°28'13"E, along the north line of the SE 1/4 of the NW 1/4, 1327.35 feet to the point of beginning.

TRACT V:

That part of the NW 1/4 of the NW 1/4 of Section 22, Township 32 North, Range 10 West lying easterly of the USH 53 described as: The westerly 650 feet of the northerly 267 feet EXCEPT the southerly 77 feet of the easterly 310 feet thereof, Town of Dovre, Barron County, Wisconsin, more particularly described as follows: Beginning at the NW corner of Section 22; thence N89°38'44"E, along the north line of the NW-NW of Section 22, 650.02 feet; thence S00°05'30"W, 190.01 feet; thence S89°38'44"W, 310.01 feet; thence S00°05'30"W, 77.00 feet; thence S89°38'44"W, 218.82 feet to the easterly right-of-way line of USH 53; thence N36°31'35"W, along said right-of-way line, 203.15 feet to the west line of the NW-NW of Section 22; thence N00°05'30"E, along said west line, 103.01 feet to the point of beginning.

TRACT VIA AND TRACT VIB:

SE 1/4 of the SE 1/4 of Section 17, T.32N., R.10W., Town of Dovre, EXCEPT CSM 6-177, Map No. 753, AND CSM 6-177, Map No. 753, a part of the SE 1/4 of the SE 1/4 of Section 17, T.32N., R.10W., Town of Dovre, all located in Barron County, Wisconsin, more particularly described as follows: Beginning at the SE corner of Section 17; thence N89°00'52"W, along the south line of the SE 1/4 of the SE 1/4, 1368.29 feet to the SW corner of the SE 1/4 of the SE 1/4; thence N00°59'08"E, along the west line of the SE 1/4 of the SE 1/4, 1319.72 feet to the NW corner of the SE 1/4 of the SE 1/4; thence S88°31'27"E, along the north line of the SE 1/4 of the SE 1/4, 1368.00 feet to the NE corner of the SE 1/4 of the SE 1/4; thence S00°58'14"W, along the east line of the SE 1/4 of the SE 1/4, 1308.02 feet to the point of beginning.

Tract VII:

SW 1/4-NE 1/4; SE 1/4-NW 1/4; All in Section 18, Township 32 North, Range 10 West (in the Township of Dovre).

Tax Parcel No: 022-1800-10-000 & 022-1800-05-000

Tract VIII:

NE 1/4-NE 1/4, Section 19, Township 32 North, Range 10 West except Lots 1 and 2 of CSM 12-44, Map No. 1627, Township of Dovre, Barron County, Wisconsin.

Tax Parcel No. 022-1900-02-000

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Tract IX:

Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) of Section Seventeen (17), Township Thirty-two (32) North, Range Ten (10) West (in the Township of Dovre), Barron County, Wisconsin

Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section Eighteen (18), Township Thirty-two (32) North, Range Ten (10) West (in the Township of Dovre), Barron County, Wisconsin, except the South 13 rods of the West 36 rods.

The South 13 rods of the West 36 rods of the Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section Eighteen (18), Township Thirty-two (32) North, Range Ten (10) West (in the Township of Dovre), Barron County, Wisconsin.

Tax Parcel No: 022-1700-09-000, 022-1800-02-000, 022-1800-03-000

Tract X:

Intentionally Deleted.

Tract XI:

That part of the NW 1/4 of the SE 1/4 of Section 16, Township 32 North, Range 10 West, Town of Dovre, Barron County, Wisconsin, lying East of USH 53 right of way described in Volume 376 of Records, Page 78, as Document No. 382669.

Property Address: 2663 3 1/2 Avenue

Tax Parcel No: 022-1600-25-000

Tract XII:

The NW 1/4 of the NE 1/4; The NE 1/4 of the SW 1/4; The NW 1/4 of the SE 1/4 of Section 18, Township 32 North, Range 10 West, Town of Dovre, Barron County, Wisconsin.

Tax Parcel No. 022-1800-04-000, 022-1800-11-000 and 022-1800-17-000

Tract XIII:

The Southeast Quarter of the Northeast Quarter (SE 1/4 NE 1/4) of Section Eighteen (18), Township Thirty-two (32), Range Ten (10) West, Town of Dovre, Barron County, Wisconsin.

and

The Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) of Section Seventeen (17), Township Thirty-two (32) North, Range Ten (10) West, Town of Dovre, Barron County, Wisconsin.

Tax Parcel No. 022-1700-10-000 and 022-1800-06-000

EXECUTION VERSION

Schedule 5.11
Seller Broker Fee

None.

EXECUTION VERSION

Schedule 5.12
Financial Statements

See Financial Statements and Consolidated Balance Sheets 2013-2016 attachments.



CHIEFTAIN SAND AND PROPPANT, LLC

**Consolidated Financial Statements
and
Independent Auditors' Report
December 31, 2013 and 2012**

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INDEPENDENT AUDITORS' REPORT

Board of Managers
Chieftain Sand and Proppant, LLC
Denver, Colorado

We have audited the accompanying consolidated financial statements of Chieftain Sand and Proppant, LLC and subsidiaries (the "Company"), which are comprised of the consolidated balance sheets as of December 31, 2013 and 2012, and the related consolidated statements of operations, changes in members' equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

MANAGEMENT'S RESPONSIBILITY FOR THE CONSOLIDATED FINANCIAL STATEMENTS

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

AUDITORS' RESPONSIBILITY

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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EKS&H LLP

Board of Managers
Chieftain Sand and Proppant, LLC
Page Two

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

OPINION

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Chieftain Sand and Proppant, LLC and subsidiaries as of December 31, 2013 and 2012, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

OTHER MATTERS

Our audits were conducted for the purpose of forming an opinion on the basic consolidated financial statements as a whole. The presentation of earnings before interest, taxes, depreciation, and amortization on page 23 is presented for purposes of additional analysis and is not a required part of the basic consolidated financial statements. Such information has not been subjected to the auditing procedures applied in the audits of the basic consolidated financial statements; accordingly, we do not express an opinion or provide any assurance on it.

EKS&H LLP

EKS&H LLP

May 15, 2014, except as to Note 4,
which is as of September 10, 2014
Denver, Colorado

CHIEFTAIN SAND AND PROPPANT, LLC**Consolidated Balance Sheets**

	December 31,	
	2013	2012
Assets		
Current assets		
Cash	\$ 2,033,064	\$ 907,624
Accounts receivable	5,565,720	3,515,876
Accounts receivable - financed	8,856,310	2,831,108
Inventory	6,377,450	2,234,657
Prepaid expenses	888,490	538,965
Total current assets	<u>23,721,034</u>	<u>10,028,230</u>
Non-current assets		
Mine properties, net	4,054,213	2,715,141
Property, plant, and equipment, net	52,696,340	42,942,287
Deferred financing costs, net	3,911,157	4,297,206
Reclamation bonds	439,670	413,180
Other long-term assets	1,030,902	930,385
Total non-current assets	<u>62,132,282</u>	<u>51,298,199</u>
Total assets	<u>\$ 85,853,316</u>	<u>\$ 61,326,429</u>
Liabilities, Redeemable Class C Interests, and Members' Equity		
Current liabilities		
Due to financing company	\$ 8,831,098	\$ 2,628,115
Accounts payable - trade	4,571,236	4,835,671
Accrued liabilities	2,617,691	1,399,976
Deferred revenue	540,778	-
Current portion of long-term debt	224,912	200,899
Total current liabilities	<u>16,785,715</u>	<u>9,064,661</u>
Non-current liabilities		
Long-term debt, less current portion	75,508,469	59,765,938
Subordinated notes payable	607,000	607,000
Customer deposit	7,200,000	7,200,000
Asset retirement obligation	2,206,133	338,979
Accrued interest - subordinated debt	320,777	228,001
Total non-current liabilities	<u>85,842,379</u>	<u>68,139,918</u>
Total liabilities	<u>102,628,094</u>	<u>77,204,579</u>
Commitments		
Redeemable Class C interests	3,437,500	-
Members' equity	<u>(20,212,278)</u>	<u>(15,878,150)</u>
Total liabilities, redeemable Class C interests, and members' equity	<u>\$ 85,853,316</u>	<u>\$ 61,326,429</u>

See notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC**Consolidated Statements of Operations**

	For the Years Ended December 31,	
	2013	2012
Sales		
Sand sales	\$ 57,205,242	\$ 21,290,568
Freight and rail car rental revenue	15,352,321	107,820
Total sales	<u>72,557,563</u>	<u>21,398,388</u>
Operating expenses		
Production and operating costs	25,701,670	13,653,402
Depreciation, depletion, and amortization	5,002,341	3,442,252
Selling, general, and administrative expenses	28,420,747	4,369,700
Impairment of long-term assets	-	64,387
Accretion of asset retirement obligations	65,851	47,111
Total operating expenses	<u>59,190,609</u>	<u>21,576,852</u>
Income (loss) from operations	<u>13,366,954</u>	<u>(178,464)</u>
Other (expense) income		
Interest expense	(13,911,232)	(23,017,389)
Interest income	1,364	4,990
Gain on debt forgiveness	-	625,000
Other	(353,714)	(3,769)
Total other expense	<u>(14,263,582)</u>	<u>(22,391,168)</u>
Net loss	<u>\$ (896,628)</u>	<u>\$ (22,569,632)</u>

See notes to consolidated financial statements.

Consolidated Statement of Changes in Members' Equity
For the Years Ended December 31, 2013 and 2012

See notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC**Schedule of Earnings Before Interest, Taxes, Depreciation, and Amortization**

	For the Years Ended December 31,	
	2013	2012
Net loss	\$ (896,628)	\$ (22,569,632)
Interest expense	13,911,232	23,017,389
Depreciation, depletion, and amortization	<u>5,002,341</u>	<u>3,442,252</u>
EBITDA	<u>\$ 18,016,945</u>	<u>\$ 3,890,009</u>

This presentation of earnings before interest, taxes, depreciation, and amortization ("EBITDA") provides management a basis for analyzing the financial performance of the Company in a manner that coincides with its internal financial reporting and analysis. This information is not intended to be presented in accordance with accounting principles generally accepted in the United States of America.



CHIEFTAIN SAND AND PROPPANT, LLC

Consolidated Financial Statements

December 31, 2014 and 2013

(With Independent Auditors' Report Thereon)

CHIEFTAIN SAND AND PROPPANT, LLC

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90 South Seventh Street
Minneapolis, MN 55402

Independent Auditors' Report

Board of Managers
Chieftain Sand and Proppant, LLC:

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of Chieftain Sand and Proppant, LLC and its subsidiaries, which comprise the consolidated balance sheet as of December 31, 2014, and the related consolidated statement of operations, changes in members' deficit, and cash flows for the year then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. The accompanying consolidated financial statements of Chieftain Sand and Proppant, LLC and subsidiaries as of December 31, 2013, were audited by other auditors whose report thereon dated May 15, 2014, and Note 4 dated September 10, 2014, expressed an unqualified opinion on those statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

KPMG LLP is a Delaware limited liability partnership,
the U.S. member firm of KPMG International Cooperative
("KPMG International"), a Swiss entity.



Opinion

In our opinion, the 2014 consolidated financial statements referred to above present fairly in all material respects, the financial position of Chieftain Sand and Proppant, LLC and its subsidiaries as of December 31, 2014, and the results of their operations and their cash flows for the year then ended in accordance with U.S. generally accepted accounting principles.

Emphasis of Matter

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company is projecting non-compliance with debt covenants for the remainder of 2015 which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to this matter.

Other Matters

Our audits were conducted for the purpose of forming an opinion on the basic financial statements as a whole. The presentation of earnings before interest, taxes, depreciation, and amortization (EBITDA) on page 19 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements; accordingly, we do not express an opinion or provide any assurance on it.

KPMG LLP

Minneapolis, Minnesota
April 30, 2015

CHIEFTAIN SAND AND PROPPANT, LLC**Consolidated Balance Sheets**

December 31, 2014 and 2013

Assets	2014	2013
Current assets:		
Cash	\$ 1,742,811	2,033,064
Accounts receivable	5,981,538	5,565,720
Accounts receivable – financed	12,646,091	8,856,310
Inventory	8,336,861	6,377,450
Prepaid expenses	1,192,340	888,490
Assets held for sale	425,000	—
Total current assets	30,324,641	23,721,034
Noncurrent assets:		
Mine properties, net	5,740,667	4,054,213
Property, plant, and equipment, net	50,570,294	52,696,340
Deferred financing costs, net	4,152,863	3,911,157
Reclamation deposits	476,260	439,670
Other long-term assets	1,391,529	1,030,902
Total noncurrent assets	62,331,613	62,132,282
Total assets	\$ 92,656,254	85,853,316
Liabilities, Redeemable Class C Interests, and Members' Deficit		
Current liabilities:		
Due to financing company	\$ 5,848,912	8,831,098
Accounts payable – trade	3,117,488	4,571,236
Accrued liabilities	3,187,809	2,617,691
Deferred revenue	—	540,778
Current portion of long-term debt	—	224,912
Total current liabilities	12,154,209	16,785,715
Noncurrent liabilities:		
Long-term debt, less current portion	79,977,930	75,508,469
Subordinated notes payable	607,000	607,000
Customer deposit	6,850,000	7,200,000
Asset retirement obligation	4,195,779	2,206,133
Accrued interest – subordinated debt	368,413	320,777
Total noncurrent liabilities	91,999,122	85,842,379
Total liabilities	104,153,331	102,628,094
Commitments		
Redeemable Class C interests	6,875,000	3,437,500
Members' deficit	(18,372,077)	(20,212,278)
Total liabilities, redeemable Class C interests, and members' deficit	\$ 92,656,254	85,853,316

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC

Consolidated Statements of Operations

Years ended December 31, 2014 and 2013

	<u>2014</u>	<u>2013</u>
Sales:		
Sand sales	\$ 80,826,303	57,205,242
Freight and rail car rental revenue	32,021,093	15,352,321
Total sales	<u>112,847,396</u>	<u>72,557,563</u>
Operating expenses:		
Production and operating costs	40,486,273	25,701,670
Depreciation, depletion, and amortization	7,598,159	5,002,341
Selling, general, and administrative expenses	39,994,807	28,420,747
Impairment of long-lived assets	2,494,525	—
Accretion of asset retirement obligations	227,595	65,851
Total operating expenses	<u>90,801,359</u>	<u>59,190,609</u>
Income from operations	<u>22,046,037</u>	<u>13,366,954</u>
Other (expense) income:		
Interest expense	(16,436,460)	(13,911,232)
Interest income	1,071	1,364
Other	(332,947)	(353,714)
Total other expense	<u>(16,768,336)</u>	<u>(14,263,582)</u>
Net income (loss)	<u>\$ 5,277,701</u>	<u>(896,628)</u>

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC
Consolidated Statement of Changes in Members' Deficit
Years ended December 31, 2014 and 2013

		<u>Class A</u>	<u>Class B</u>	<u>Class C</u>	<u>Retained earnings</u>	<u>Total members' deficit</u>
Balance – December 31, 2012	\$	12,000,000	—	5,384,581	(33,262,731)	(15,878,150)
Reclassification of redeemable Class C interests and deemed dividend		—	—	(1,346,145)	(2,091,355)	(3,437,500)
Net loss		—	—	—	(896,628)	(896,628)
Balance – December 31, 2013		12,000,000	—	4,038,436	(36,250,714)	(20,212,278)
Reclassification of redeemable Class C interests and deemed dividend		—	—	(1,346,145)	(2,091,355)	(3,437,500)
Net income		—	—	—	5,277,701	5,277,701
Balance – December 31, 2014	\$	<u>12,000,000</u>	<u>—</u>	<u>2,692,291</u>	<u>(33,064,368)</u>	<u>(18,372,077)</u>

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC

Consolidated Statements of Cash Flows

Years ended December 31, 2014 and 2013

	<u>2014</u>	<u>2013</u>
Cash flows from operating activities:		
Net income (loss)	\$ 5,277,701	(896,628)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation, depletion, and amortization	7,598,159	5,002,341
Amortization of deferred financing costs	1,182,640	778,565
Amortization of debt discounts	1,404,774	961,316
Principal in-kind interest	1,648,315	405,730
Impairment of long-lived assets	2,494,525	—
Accretion of asset retirement obligations	227,595	65,851
Gain (loss) on sales and disposals property, plant, and equipment	22,974	—
Bad debts expense	—	118,741
Changes in assets and liabilities:		
Accounts receivable	(4,205,599)	(8,193,787)
Inventory	(1,959,411)	(4,142,793)
Prepaid expenses and other assets	75,947	(450,042)
Accounts payable – trade	(1,532,342)	(150,284)
Accrued liabilities	617,754	1,310,491
Customer deposit	(350,000)	—
Deferred revenue	(540,778)	540,778
Total adjustments to reconcile net income (loss) to net cash used in operating activities	<u>6,684,553</u>	<u>(3,753,093)</u>
Net cash provided by (used in) operating activities	<u>11,962,254</u>	<u>(4,649,721)</u>
Cash flows from investing activities:		
Acquisition of mineral properties	(1,636,411)	(907,443)
Purchases of property, plant, and equipment	(6,974,534)	(13,500,871)
Proceeds from the sale of property, plant, and equipment	471,606	—
Land Deposits	(770,424)	—
Reclamation deposits	(100,210)	(26,490)
Net cash used in investing activities	<u>(9,009,973)</u>	<u>(14,434,804)</u>
Cash flows from financing activities:		
Repayments to finance company	(2,982,186)	6,202,983
Proceeds from long-term debt	—	14,399,498
Repayment of debt	(260,348)	—
Financing costs	—	(392,516)
Net cash provided by (used in) financing activities	<u>(3,242,534)</u>	<u>20,209,965</u>
Net increase (decrease) in cash	<u>(290,253)</u>	<u>1,125,440</u>
Cash – beginning of year	<u>2,033,064</u>	<u>907,624</u>
Cash – end of year	<u>\$ 1,742,811</u>	<u>2,033,064</u>

Supplemental disclosure of cash flow information:

Cash paid for interest for the years ended December 31, 2014 and 2013 was \$12,153,092 and \$12,025,197, respectively.

Supplemental disclosure of non-cash activity:

During 2014 and 2013, the Company capitalized \$1,762,051 and \$1,801,303, respectively, in asset retirement obligations additions to mineral properties.

During 2014 and 2013, the Company had decreases of \$78,594 and \$114,151, respectively, in accounts payable related to capital additions.

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

(1) Description of Business and Summary of Significant Accounting Policies**(a) Principles of Consolidation**

The accompanying consolidated financial statements include the accounts of Chieftain Sand and Proppant, LLC and its subsidiaries, CSP Holdings, CSP Barron, and CSP Arkansas. Collectively, CSP Holdings, CSP Barron, and CSP Arkansas are referred to as the "Company." All intercompany accounts and transactions have been eliminated in consolidation.

(b) Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The consolidated financial statements include some amounts that are based on management's best estimates and judgments. The most significant estimates relate to inventory valuation, reserves which impact the depletion of mine properties, asset retirement obligations ("AROs"), and the valuation of equity interests. These estimates may be adjusted as more current information becomes available, and any adjustment could be significant.

(c) Cash

The Company continually monitors its positions with, and the credit quality of, the financial institutions with which it invests. As of the balance sheet date, and periodically throughout the year, the Company has maintained balances in various operating accounts in excess of federally insured limits.

(d) Concentrations of Credit Risk

The Company grants credit in the normal course of business to customers in the United States. The Company periodically performs credit analysis and monitors the financial condition of its customers to reduce credit risk. The Company performs ongoing credit evaluations of its customers but generally does not require collateral to support accounts receivable. The Company had no allowance for bad debts as of December 31, 2014 and 2013.

During the year ended December 31, 2014, eight customers accounted for 84% of total revenues. At December 31, 2014, five of the same customers and one other customer accounted for 80% of total accounts receivable.

One of the customers, under a long-term contract, made a prepayment of \$7,500,000 in 2011, which is included as a customer deposit in the accompanying consolidated balance sheets. The customer deposit balance at the years ended December 31, 2014 and 2013, was \$6,850,000 and \$7,200,000, respectively. Under the amended contract, the remaining balance will be credited to the customer's account ratably over the remaining contract term based on sand shipments.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

(e) Inventory

Inventory consists of work-in-process, finished product, and spare parts and is stated at the lower of cost or market, determined using the weighted average method. Inventory costs include labor, supplies, equipment costs, and overhead.

(f) Prepaid Expenses

Prepaid expenses consist primarily of insurance, and other expenses paid in advance.

(g) Mine Properties

Mineral interests are recorded at cost. Interest costs applicable to major asset additions are capitalized during the construction period. Expenditures that extend the useful lives or increase the productivity of the assets are capitalized. The cost of maintenance and repairs that do not extend the useful lives or increase the productivity of the assets are expensed as incurred. Mineral properties are depleted using the units-of-production method over the estimated recoverable reserves.

(h) Property, Plant, and Equipment

Property, plant, and equipment is stated at cost. Depreciation is provided utilizing the straight-line method over the estimated useful lives for owned assets, ranging from 5 to 20 years, and the related lease terms for leasehold improvements. During 2013, the Company changed its estimates of the useful lives of certain plant and equipment to more accurately reflect actual experience. The change in estimate resulted in a decrease of approximately \$1,600,000 in depreciation expense for the year ended December 31, 2013.

(i) Deferred Financing Costs

Costs associated with obtaining debt financing are deferred and amortized to interest expense using the effective-interest method over the term of the related financing. Amortization of deferred financing costs of \$1,182,640 and \$778,565 was recorded to interest expense for the years ended December 31, 2014 and 2013, respectively.

Future amortization of deferred financing costs is as follows:

Year ending December 31:	
2015	\$ 1,459,220
2016	1,710,600
2017	983,043
	<u>\$ 4,152,863</u>

(j) Reclamation Deposits

Reclamation deposits represent deposits held by regulatory agencies that will be released when the Company has completed required reclamation activities.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

(k) Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recovered. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset group to estimated undiscounted future cash flows expected to be generated by the asset group. If the carrying amount of an asset group exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amounts of the assets in the asset group exceed the fair value for each individual asset. Assets to be disposed of are separately presented in the accompanying consolidated balance sheets and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposal group classified as held for sale are presented separately in the appropriate asset and liability sections of the accompanying consolidated balance sheets. Impairment charges related to long-lived assets are described within note 2.

(l) Asset Retirement Obligations

Federal, state, and local laws require that mines be reclaimed to their previous condition in accordance with specific standards and approved reclamation plans, as outlined in mining permits. At the time they are incurred, legal obligations associated with the retirement of long-lived assets are reflected at their estimated fair values, with an increase to asset retirement cost included in mineral properties. AROs are typically incurred with the commencement of the development of mining properties, and include costs re-grading disturbed land, re-vegetation, and removal of plant and equipment.

AROs are reflected at the present value of their future cash flows. The Company uses a 10% discount rate. The Company reflects accretion of the AROs for the period from the date they are incurred through the date they are extinguished. The asset retirement costs are amortized over the life of the mine.

The Company assesses its AROs at least annually and reflects revisions for permit changes, changes in its estimated reclamation costs, and changes in the estimated timing of such costs. The following summarizes the changes in AROs:

	2014	2013
Beginning balance	\$ 2,206,133	338,979
Additions	—	1,140,025
Revisions in estimates	1,762,051	661,278
Accretion	227,595	65,851
Ending balance	\$ 4,195,779	2,206,133

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

(m) Revenue Recognition

The Company recognizes revenue only when all of the following criteria have been met:

- Persuasive evidence of an arrangement exists;
- Transfer of title has occurred or services have been performed;
- The fee for the arrangement is fixed or determinable; and
- Collectibility is reasonably assured.

Risk of loss on sand sales passes at the shipping point once the rail cars leave the Company's yard for sales designated as FOB plant. Risk of loss on sand sales that are designated as FOB destination passes when the sand is unloaded from rail cars at the ultimate sales destination. The Company defers revenue on any shipments sent FOB destination that are in-transit on the reporting date.

The Company leases rail cars that are used to ship product to certain customers. Rail car rental income is attributable to customers' use of the Company's leased rail car fleet and is recognized as the rail cars are utilized to deliver product. The Company charges customers for the cost of freight to customer directed locations when product is shipped.

(n) Stock-Based Compensation

The Company awarded profits interests (Class B interests) to the key management team of the Company, as more fully described in note 5. The Company measures all equity-based compensation awards using the fair value method and records such expense in the consolidated financial statements over the vesting period of the award.

(o) Income Taxes

The Company has elected to be treated as a partnership for income tax purposes. Accordingly, taxable income and losses of the Company are reported on the income tax returns of the Company's members, and no provision for federal income taxes has been recorded in the accompanying consolidated financial statements.

The Company follows the guidance of Accounting Standards Codification (ASC) Topic 740, *Accounting for Uncertainty in Income Taxes*. ASC Topic 740 prescribes a more-likely-than-not measurement methodology to reflect the consolidated financial statement impact of uncertain tax positions taken or expected to be taken in a tax return. If taxing authorities were to disallow any tax positions taken by the Company, the additional income taxes, if any, would be imposed on the members rather than the Company. Accordingly, there would be no effect on the Company's consolidated financial statements.

Interest and penalties associated with tax positions are recorded in the period assessed as general and administrative expenses. However, no interest or penalties have been assessed as of December 31, 2014 and 2013.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

(p) Fair Value Measurements

The Company initially recognized ARO additions at fair value in the consolidated financial statements on a nonrecurring basis. Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Fair value is determined for assets and liabilities and establishes a hierarchy for which these assets and liabilities must be grouped, based on significant levels of inputs as follows:

- Level 1: Quoted prices in active markets for identical assets or liabilities;
- Level 2: Quoted prices in active markets for similar assets and liabilities and inputs that are observable for the asset or liability; or
- Level 3: Unobservable inputs in which there is little or no market data, which requires the reporting entity to develop its own assumptions.

The determination of where assets and liabilities fall within this hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The ARO addition estimates are initially recorded at fair value are classified as Level 3 measurements.

(q) Subsequent Events

The Company has evaluated all subsequent events through the auditors' report date, which is the date the consolidated financial statements were available for issuance. There were no material subsequent events that required recognition or disclosure in the consolidated financial statements.

(2) Going Concern

The accompanying consolidated financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and liquidation of liabilities in the ordinary course of business.

As defined in the Credit and Security Agreement, the Company's covenants with the lender contain a consolidated leverage calculation based on the sum of the Company's rolling financial performance. The Company is projecting non-compliance with the leverage calculation covenant for the quarter ended June 30, 2015 and continuing for the remainder of 2015 and first two quarters of 2016, which raises substantial doubt about its ability to continue as a going concern. The lender has granted waivers in the past but there is no certainty they will be willing to provide a waiver in future quarters.

Due to the downturn in the oil and gas market, there has been a decrease in demand for frac sand and declines in prices have contributed to lower operating margins. There can be no assurance that the necessary level of funding will be available in the future to meet the Company's forecasted liquidity needs and obligations as they become due. Management continues to implement cost cutting measures and process improvements to drive decreases in costs and maintain operating cash flows. Management is working to reach new customers and gain additional market share, while continuing to evaluate other measures to preserve cash funds.

These financial statements have been prepared on a going concern basis and do not reflect the adjustments to the carrying values of assets and liabilities that would be necessary if the Company is unable to continue as a going concern.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

(3) Balance Sheet Disclosures

Inventory is summarized as follows:

	December 31	
	2014	2013
Finished goods	\$ 799,290	2,697,861
Work in process	7,537,571	3,545,552
Spare parts	—	134,037
	<u>\$ 8,336,861</u>	<u>6,377,450</u>

Mineral properties are summarized as follows:

	December 31	
	2014	2013
Mineral interests	\$ 3,584,479	1,950,069
Capitalized interest	1,669,084	1,669,084
Asset retirement cost assets	3,843,147	2,079,095
	<u>9,096,710</u>	<u>5,698,248</u>
Less accumulated depletion	<u>(3,356,043)</u>	<u>(1,644,035)</u>
	<u>\$ 5,740,667</u>	<u>4,054,213</u>

Depletion expense for the years ended December 31, 2014 and 2013 was \$1,712,008 and \$1,369,674, respectively.

Property, plant, and equipment consist of the following:

	December 31	
	2014	2013
Buildings	\$ 16,726,095	12,195,981
Machinery and equipment	29,581,509	26,154,859
Construction in progress	829,642	8,406,631
Land	2,052,759	1,628,759
Vehicles	589,187	421,466
Land improvements	11,453,231	11,077,784
Computer equipment	406,690	149,516
Fixtures	60,540	50,843
	<u>61,699,653</u>	<u>60,085,839</u>
Less accumulated depreciation	<u>(11,129,359)</u>	<u>(7,389,499)</u>
	<u>\$ 50,570,294</u>	<u>52,696,340</u>

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

Depreciation expense for the years ended December 31, 2014 and 2013 was \$5,887,930 and \$3,632,667, respectively.

Asset impairments in fiscal 2014 included \$2,494,525 related to the Arkansas facility. There were no asset impairments in fiscal 2013.

Accrued expenses consist of the following:

	December 31	
	2014	2013
Accrued compensation	\$ 1,339,877	1,223,380
Accrued property and use taxes	806,197	788,375
Accrued Texas franchise taxes	485,875	—
Other accrued expenses	555,860	605,936
	<u>\$ 3,187,809</u>	<u>2,617,691</u>

(4) Accounts Receivable Financing Agreement

During December 2012, the Company entered into an agreement whereby it sells and assigns approved receivables to a financing company with recourse with a two-year initial term. The agreement was amended in February 2014, extending the contract through December 2015. The Company and the financing company can terminate this agreement at any time; however, the Company will be subject to a \$25,000 penalty if it terminates before the two-year term of the agreement. The agreement, as amended, stipulates that the Company will receive an advance equal to 85% of acceptable accounts. The advances will bear interest at one-month LIBOR plus 3.75% (3.92% at December 31, 2014) on the average daily balance for the period. Additionally, the Company will pay the financing company a processing fee of 0.20% of the gross invoice amount of each receivable. The maximum borrowing under the facility is \$15,000,000. The Company has granted a security interest in accounts receivable of the Company. The Company is not subject to any financial covenants under the terms of this agreement.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

(5) Long-Term and Subordinated Debt**(a) Recapitalization**

On July 25, 2012, as part of the recapitalization of the Company described in note 5, the Company closed on a credit agreement, which has been subsequently amended, with a private equity and debt investment firm and its affiliates for \$65,000,000 in term loans that were issued together with Class C interests representing a 25% interest in the Company. The \$65,000,000 of notes payable issued with an original issue discount of \$5,625,000. In addition to the original note, during 2013, the Company closed on an expansion term loan for \$15,000,000 with an original issue discount of \$375,000. Both loans call for interest at the rate of 16% per annum, payable quarterly. The Company may elect to have up to one-quarter of the annual interest paid in-kind, by deferring payment and adding the portion to the principal balance of the term loan. The Company elected to pay principal in-kind with interest of \$1,648,315 and \$405,730 for the years ending December 31, 2014 and 2013, respectively. In addition, the Company was able to pay principal in-kind with waiver fees of \$1,451,808 for the year ended December 31, 2014. Principal on the loans is due at maturity on July 25, 2017. The notes have a mandatory prepayment of principal clause requiring the Company to make quarterly principal payments in the amount of 75% of excess cash flow as defined in the credit agreement. The notes are collateralized by substantially all assets of the Company and are subject to certain restrictive covenants. The Company valued the Class C interests issued with the original loan in 2012 at \$4,000,000 and allocated the consideration received between the notes and the equity interests in proportion to their relative fair values, which resulted in an additional discount of \$1,675,922. Total discounts of \$7,675,922 are amortized over the term of the notes using the effective-interest method. During the year ended December 31, 2014 and 2013, the Company recorded amortization of debt discounts on the notes of \$1,404,774 and \$961,316, respectively. The net balance of the credit agreement is as follows:

	December 31	
	2014	2013
Loan agreements face amounts	\$ 80,000,000	80,000,000
Discounts on credit agreement	(7,675,922)	(7,675,922)
Accumulated amortization of discounts	3,001,977	1,597,203
Accumulated principal in-kind interest	3,200,067	1,551,752
Accumulated principal in-kind waiver fees	1,451,808	—
Net credit agreement balance	<u>\$ 79,977,930</u>	<u>75,473,033</u>

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

Long-term debt consists of the following:

	December 31	
	2014	2013
Notes payable issued in recapitalization	\$ 79,977,930	75,473,033
Note payable to an electric cooperative for the use of facilities with interest at 10.46%. The note calls for monthly principal and interest payments of \$12,251 and matures January 2015.	—	139,012
Note payable to an equipment finance company with interest at 3.9%. The note calls for monthly principal and interest payments of \$4,369 and matures August 2015. Collateralized by the underlying purchased equipment.	—	84,463
Note payable to a financial services company with interest at 6.5%. The note calls for monthly principal and interest payments of \$2,867 and matures August 2014. Collateralized by the underlying purchased equipment.	—	22,395
Note payable to an equipment finance company with interest at 2.9%. The note calls for monthly principal and interest payments of \$1,335 and matures November 2014. Collateralized by the underlying purchased equipment.	—	14,478
	<u>79,977,930</u>	<u>75,733,381</u>
Less current portion	<u>—</u>	<u>(224,912)</u>
	<u><u>\$ 79,977,930</u></u>	<u><u>75,508,469</u></u>

(b) Subordinated Debt

Subordinated debt consists of the following:

	December 31	
	2014	2013
Subordinated note payable to a group of individuals with interest at 12%. The entire principal balance and interest is due and payable on June 30, 2025.	\$ 607,000	607,000
	<u>607,000</u>	<u>607,000</u>
Less current portion	<u>—</u>	<u>—</u>
	<u><u>\$ 607,000</u></u>	<u><u>607,000</u></u>

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

Maturities of long-term obligations are as follows:

Year ending December 31:	
2015	\$ —
2016	—
2017	79,977,930
2018	—
2019	—
Thereafter	607,000
	<u>\$ 80,584,930</u>

(6) Equity Interests

Chieftain Sand and Proppant, LLC was originally formed on April 13, 2009 as a Colorado LLC to conduct industrial minerals and sand and gravel mining and related operations. The entity initially entered into an agreement to lease a production facility and associated deposit and mine in Garland City, Arkansas and commenced such operations in June 2009. Chieftain Sand and Proppant Barron, LLC (CSP Barron) was formed as a Wisconsin LLC in December 2011 for the purpose of acquiring property in northern Wisconsin for the development and operation of a sand and proppant mine. CSP Barron began mining in Barron County, Wisconsin in June 2012.

On July 25, 2012, concurrent with the private equity and debt financing discussed in note 4, the Company was recapitalized and the equity interests of the two previously existing LLCs were contributed to the new holding company of Chieftain Sand and Proppant, LLC, a Delaware LLC (CSP Holdings). As part of the recapitalization, Chieftain Sand and Proppant, LLC changed its name to Chieftain Sand and Proppant Arkansas, LLC (CSP Arkansas) and became a wholly owned subsidiary of the newly formed CSP Holdings. CSP Barron also became a wholly owned subsidiary of CSP Holdings.

As part of the recapitalization, the old CSP Arkansas membership interests were retired, and the owners of CSP Arkansas received Class A interests representing a 75% percentage interest. Additionally, Class C interests representing a 25% percentage interest were issued to the private equity and debt investment firm as part of the credit agreement discussed in note 4. The proceeds from the private equity and debt investment firm were allocated to debt and equity based on each component's relative fair values, which resulted in \$5,384,581 being allocated to the Class C interests. Finally, there were warrant holders that held warrants in 180 profits units of CSP Arkansas prior to the recapitalization. As part of the recapitalization, these warrants were converted into Class B interests representing a percentage interest of 7.5%. The issuance of the Class B interests reduced the Class A percentage interest to 67.5%.

To account for the recapitalization, the new interests were recorded at fair value with the difference between the fair value of the new interests and the carrying value of the old interests recorded to accumulated deficit. The fair value of the new Class A, Class B, and Class C interests were determined to be \$12,000,000, \$0, and \$4,000,000, respectively. The difference between the fair value of the new member interests and the carrying value of the old interests being retired resulted in \$11,242,417 being recorded to retained earnings.

Subsequent to the recapitalization and during 2012, the Company issued Class B interests to the key management team of the Company representing a 9% percentage interest, which further reduced the

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

percentage interest of the holders of Class A interests. During 2013, 6% in percentage interests of Class B interests previously issued to an employee was forfeited upon the termination of the employee. During 2014, 3.5% in percentage interests of Class B interests were granted to new employees. The accounting for these interests is discussed further below.

As of December 31, 2014, the percentage interests of each class of member interests of the Company are as follows:

<u>Class</u>	<u>interest</u>
Class A	62.50%
Class B	12.50
Class C	25.00

Class A and Class C interests include economic interests and the right to participate in the management of the business and to vote pursuant to the operating agreement. Class B interests are profits interests only and do not have any voting rights. Any issuance of Class B interests will dilute only the percentage interests of the Class A interest holders. Profits and losses are allocated, and distributions are to be made according to the percentage interests of the members. The Class C members will have four puts requiring the Company to purchase its interests equal to 25% of each Class C member's interests for \$3,437,500. Each put will vest in the quarter-end in which the Company's EBITDA for the previous six-month period meets or exceeds the EBITDA threshold. Only one put can be exercised on each vesting date. All puts vest automatically if there is a Mandatory Prepayment under the ECP Credit Agreement. The EBITDA thresholds, as defined in the operating agreement, are \$7,500,000 for the first vesting date, \$8,750,000 for the second vesting date, \$10,000,000 for the third vesting date, and \$11,250,000 for the fourth vesting date. As of December 31, 2013, the Company met the first EBITDA threshold and as of December 31, 2014, met the second EBITDA threshold, resulting in a deemed dividend recorded in 2013 and 2014 as the difference between the put amount and 25% of the equity initially allocated to the Class C interests. As of December 31, 2014 the Company has reclassified a total of 50% of the Class C equity interests from equity to redeemable Class C interests as temporary equity.

The Operating Agreement for CSP Holdings provides for the issuance of profits interests (Class B interests) at the discretion of the Board of Managers. Profits allocated to the Class B interests will only be distributed after the Class A and Class C interests' initial capital account balances have been returned. One-third of the awarded interests vest on each of the three vesting dates, March 1, 2013, March 1, 2014, and March 1, 2015.

The Company has computed the estimated fair value of Class B interests granted and will expense the estimated fair value over the vesting periods of the awards. The Company estimated the fair value of the awards by calculating the present value of the estimated future cash flows. The future cash flows were determined by using a probability weighted cash flow projection model, and it was determined the awards had a nominal fair value on the date of the agreement due to the required return to Class A and Class C interests before any payment to Class B. This is based on the fact that any distributions to Class B interests would be predicated on a liquidity event, which the Company did not deem probable as of December 31,

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2014 and 2013

2014 or 2013. During the years ended December 31, 2014 and 2013, the Company recognized no compensation expense in the consolidated statements of operations.

(7) Commitments**(a) Operating Leases**

The Company leases facilities, equipment, and vehicles under operating leases. Rent expense for the years ended December 31, 2014 and 2013 was \$6,940,155 and \$3,946,599, respectively.

Future minimum lease payments under these leases are approximately as follows:

Year ending December 31:	
2015	\$ 2,751,566
2016	1,200,646
2017	142,030
2018	61,355
2019	—
Thereafter	—
	<u>\$ 4,155,597</u>

(b) Litigation

In the normal course of business, the Company is party to litigation from time to time. The Company maintains insurance to cover certain actions and believes that resolution of such litigation will not have a material adverse effect on the Company.

(c) Long-Term Contracts

As of December 31, 2014, the Company is committed to supply three customers with approximately 2,125,000 tons of sand during the next five years. The Company evaluates each contract to determine whether they meet the definition of a derivative and has concluded they do not meet definition of a derivative. In the event the Company is unable to deliver the contracted tons under one of the contracts, the Company would owe liquidated damages to one customer.

(8) Employee Benefit Plan

The Company has a 401(k) Plan (the Plan) to provide retirement and incidental benefits for its employees. Employees may contribute up to 100% of their annual compensation to the Plan, limited to a maximum annual amount as updated annually by the Internal Revenue Service. The Company matches 50% employee contributions up to 10% of employee contributions. All matching contributions vest 20% per year. The Company established the Plan in 2012, and employees were eligible to enroll starting on January 1, 2013. During the years ended on December 31, 2014 and 2013, the Company contributed \$195,087 and \$175,841, respectively, to this plan.

ACCOMPANYING INFORMATION

CHIEFTAIN SAND AND PROPPANT, LLC

Schedule of Earnings Before Interest, Taxes, Depreciation, and Amortization

Years ended December 31, 2014 and 2013

	<u>2014</u>	<u>2013</u>
Net income (loss)	\$ 5,277,701	(896,628)
Interest expense	16,436,460	13,911,232
Depreciation, depletion, and amortization	7,598,159	5,002,341
EBITDA	<u>\$ 29,312,320</u>	<u>18,016,945</u>

This presentation of earnings before interest, taxes, depreciation, and amortization (EBITDA) provides management a basis for analyzing the financial performance of the Company in a manner that coincides with its internal financial reporting and analysis. This information is not intended to be presented in accordance with accounting principles generally accepted in the United States of America.



CHIEFTAIN SAND AND PROPPANT, LLC

Consolidated Financial Statements

December 31, 2015 and 2014

(With Independent Auditors' Report Thereon)

CHIEFTAIN SAND AND PROPPANT, LLC

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KPMG LLP
4200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Independent Auditors' Report

Board of Managers
Chieftain Sand and Proppant, LLC:

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of Chieftain Sand and Proppant, LLC and its subsidiaries, which comprise the consolidated balance sheets as of December 31, 2015 and 2014, and the related consolidated statement of operations, changes in members' deficit, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Chieftain Sand and Proppant, LLC and its subsidiaries as of December 31, 2015 and 2014, and the results of their operations and their cash flows for the years then ended, in accordance with U.S. generally accepted accounting principles.



Emphasis of Matter

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in note 2 to the consolidated financial statements, the Company is projecting noncompliance with debt covenants for the remainder of 2016, which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to this matter.

Other Matters

Our audits were conducted for the purpose of forming an opinion on the basic financial statements as a whole. The presentation of earnings before interest, taxes, depreciation, and amortization (EBITDA) on page 19 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements; accordingly, we do not express an opinion or provide any assurance on it.

KPMG LLP

Minneapolis, Minnesota
June 3, 2016

CHIEFTAIN SAND AND PROPPANT, LLC

Consolidated Balance Sheets

December 31, 2015 and 2014

Assets	2015	2014
Current assets:		
Cash	\$ 3,539,303	1,742,811
Accounts receivable	4,355,144	5,981,538
Accounts receivable – financed	—	12,646,091
Inventory	949,510	8,336,861
Prepaid expenses	620,878	1,192,340
Assets held for sale	—	425,000
Total current assets	<u>9,464,835</u>	<u>30,324,641</u>
Noncurrent assets:		
Mine properties, net	1,949,846	2,467,834
Property, plant, and equipment, net	28,493,160	53,843,127
Deferred financing costs, net	3,374,837	4,152,863
Reclamation deposits	557,700	476,260
Other long-term assets	1,476,038	1,391,529
Total noncurrent assets	<u>35,851,581</u>	<u>62,331,613</u>
Total assets	<u>\$ 45,316,416</u>	<u>92,656,254</u>
Liabilities, Redeemable Class C Interests, and Members' Deficit		
Current liabilities:		
Due to financing company	\$ —	5,848,912
Accounts payable – trade	2,246,196	3,117,488
Accrued liabilities	3,218,631	3,187,809
Current portion of long-term debt	93,258,622	—
Total current liabilities	<u>98,723,449</u>	<u>12,154,209</u>
Noncurrent liabilities:		
Long-term debt, less current portion	—	79,977,930
Subordinated notes payable	607,000	607,000
Customer deposit	6,775,000	6,850,000
Asset retirement obligation	2,905,608	4,195,779
Accrued interest	3,301,227	368,413
Total noncurrent liabilities	<u>13,588,835</u>	<u>91,999,122</u>
Total liabilities	112,312,284	104,153,331
Redeemable Class C interests	13,750,000	6,875,000
Members' equity:		
Class A	12,000,000	12,000,000
Class C	—	2,692,291
Class C preferred	5,000,000	—
Accumulated deficit	(97,745,868)	(33,064,368)
Members' equity	<u>(80,745,868)</u>	<u>(18,372,077)</u>
Total liabilities, redeemable Class C interests, and members' equity	<u>\$ 45,316,416</u>	<u>92,656,254</u>

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC

Consolidated Statements of Operations

Years ended December 31, 2015 and 2014

	<u>2015</u>	<u>2014</u>
Sales	\$ 41,832,820	112,847,396
Operating expenses:		
Production and operating costs	18,289,682	40,486,273
Depreciation, depletion, and amortization	8,363,689	7,598,159
Selling, general, and administrative expenses	35,602,646	39,994,807
Impairment of long-lived assets and inventory	24,295,123	2,494,525
Accretion of asset retirement obligations	406,452	227,595
Total operating expenses	<u>86,957,592</u>	<u>90,801,359</u>
Income from operations	<u>(45,124,772)</u>	<u>22,046,037</u>
Other (expense) income:		
Interest expense	(17,577,979)	(16,436,460)
Interest income	2,846	1,071
Other	2,251,114	(332,947)
Total other expense	<u>(15,324,019)</u>	<u>(16,768,336)</u>
Net (loss) income	<u>\$ (60,448,791)</u>	<u>5,277,701</u>

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC
Consolidated Statements of Changes in Members' Deficit
Years ended December 31, 2015 and 2014

	Class A	Class C	Class C Preferred	Accumulated deficit	Total Members' deficit
Balance – December 31, 2013	\$ 12,000,000	4,038,436	—	(36,250,714)	(20,212,278)
Reclassification of redeemable Class C interests and deemed dividend	—	(1,346,145)	—	(2,091,355)	(3,437,500)
Net income	—	—	—	5,277,701	5,277,701
Balance – December 31, 2014	12,000,000	2,692,291	—	(33,064,368)	(18,372,077)
Reclassification of redeemable Class C interests and deemed dividend	—	(2,692,291)	—	(4,182,709)	(6,875,000)
Class C Preferred Interest contribution	—	—	5,000,000	—	5,000,000
Arkansas LLC sale – removal of equity	—	—	—	(50,000)	(50,000)
Net loss	—	—	—	(60,448,791)	(60,448,791)
Balance – December 31, 2015	\$ 12,000,000	—	5,000,000	(97,745,868)	(80,745,868)

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC

Consolidated Statements of Cash Flows

Years ended December 31, 2015 and 2014

	2015	2014
Cash flows from operating activities:		
Net income (loss)	\$ (60,448,791)	5,277,701
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation, depletion, and amortization	8,363,689	7,598,159
Amortization of deferred financing costs	1,634,974	1,182,640
Amortization of debt discounts	1,646,776	1,404,774
Principal in-kind interest	7,923,790	1,648,315
Impairment of long-term assets	19,100,000	2,494,525
Accretion of asset retirement obligations	406,452	227,595
Inventory lower of cost or market adjustment	5,195,123	—
Loss on sales and disposals property, plant, and equipment	7,609	22,974
(Gain) loss on sale of Arkansas	(50,000)	—
Bad debts expense	100,000	—
Changes in assets and liabilities:		
Accounts receivable	14,272,485	(4,205,599)
Inventory	2,192,228	(1,959,411)
Prepaid expenses and other assets	641,866	75,947
Accounts payable – trade	(871,292)	(1,532,342)
Accrued liabilities	2,963,636	76,976
Customer deposit	(75,000)	(350,000)
Net cash provided by operating activities	<u>3,003,545</u>	<u>11,962,254</u>
Cash flows from investing activities:		
Acquisition of mineral properties	(1,465,641)	(1,636,411)
Purchases of property, plant, and equipment	(2,349,113)	(6,974,534)
Proceeds from the sale of property, plant, and equipment	—	471,606
Proceeds from sale of Arkansas LLC	425,000	—
Land deposits	359,874	(770,424)
Reclamation deposits	(81,440)	(100,210)
Net cash used in investing activities	<u>(3,111,320)</u>	<u>(9,009,973)</u>
Cash flows from financing activities:		
Repayments to finance company	(5,848,912)	(2,982,186)
Proceeds from equity contribution	5,000,000	—
Proceeds from long-term debt	3,000,000	—
Repayment of debt	—	(260,348)
Financing costs	(146,821)	—
Net cash provided by (used in) financing activities	<u>2,004,267</u>	<u>(3,242,534)</u>
Net increase (decrease) in cash	1,896,492	(290,253)
Cash – beginning of year	1,742,811	2,033,064
Cash – end of year	<u>\$ 3,639,303</u>	<u>1,742,811</u>

Supplemental disclosure of cash flow information:

Cash paid for interest for the years ended December 31, 2015 and 2014 was \$3,439,838 and \$12,153,092, respectively.

Supplemental disclosures of noncash activity:

During 2015, the Company had a net reduction of \$1,696,623 in asset retirement obligations to mineral properties.

During 2015, the Company had an increase of \$701,127 in principal in-kind waiver fees.

During 2014, the Company capitalized \$1,762,051 in asset retirement obligations additions to mineral properties.

During 2014, the Company had a decrease of \$78,594 in accounts payable related to capital additions.

See accompanying notes to consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

(1) Description of Business and Summary of Significant Accounting Policies

(a) *Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of Chieftain Sand and Proppant, LLC, referred to as CSP Holdings, and its subsidiaries, CSP Barron, and CSP Arkansas. During the current year, CSP Arkansas was sold. Collectively, they are referred to as the "Company." All intercompany accounts and transactions have been eliminated in consolidation.

(b) *Use of Estimates*

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

The consolidated financial statements include some amounts that are based on management's best estimates and judgments. The most significant estimates relate to inventory valuation, reserves that impact the depletion of mine properties, asset retirement obligations (AROs), and the valuation of assets. These estimates may be adjusted as more current information becomes available, and any adjustment could be significant.

(c) *Cash*

The Company continually monitors its positions with, and the credit quality of, the financial institutions with which it invests. As of the balance sheet date, and periodically throughout the year, the Company has maintained balances in various operating accounts in excess of federally insured limits.

(d) *Concentrations of Credit Risk*

The Company grants credit in the normal course of business to customers in the United States. The Company periodically performs credit analysis and monitors the financial condition of its customers to reduce credit risk. The Company performs ongoing credit evaluations of its customers but generally does not require collateral to support accounts receivable. The Company's allowance for bad debts as of December 31, 2015 and 2014 was \$0.

During the year ended December 31, 2015, nine customers accounted for 84% of total revenue. At December 31, 2015, four of the same customers and one other customer accounted for 64% of total accounts receivable.

One of the customers, under a long-term contract, made a prepayment of \$7,500,000 in 2011, which is included as a customer deposit in the accompanying consolidated balance sheets. The customer deposit balance at the years ended December 31, 2015 and 2014 was \$6,775,000 and \$6,850,000, respectively. Under the amended contract, the remaining balance will be credited to the customer's account ratably over the remaining contract term based on sand shipments.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

On October 30, 2015, the Company initiated arbitration against Baker Hughes Oilfield Operations, Inc., in the American Arbitration Association. The Company claims that Baker Hughes Oilfield Operations, Inc. failed to purchase the required sand tonnage for the contract year 2014–2015 and further claims that Baker Hughes Oilfield Operations, Inc. repudiated their yearly purchase obligations over the remaining contract term. The Company claims damages of approximately \$110 million plus interest, attorneys' fees and costs. A procedural schedule for the arbitration has been scheduled for September 2016. No amount has been recorded in the financial statements at December 31, 2015.

(e) Inventory

Inventory consists of work-in-process and finished product, and is stated at the lower of cost or market, determined using the weighted-average method. Inventory costs include labor, supplies, equipment costs, and overhead.

The Company periodically reviews the value of items in inventory and provides write-downs or write-offs of inventory based on its assessment of market conditions. Write-downs and write-offs are charged to cost of goods sold. In the current year, the Company experienced total write-downs of \$5,195,123.

(f) Prepaid Expenses

Prepaid expenses consist primarily of insurance, and other expenses paid in advance.

(g) Mine Properties

Mineral interests are recorded at cost. Interest costs applicable to major asset additions are capitalized during the construction period. Expenditures that extend the useful lives or increase the productivity of the assets are capitalized. The cost of maintenance and repairs that do not extend the useful lives or increase the productivity of the assets are expensed as incurred. Mineral properties are depleted using the units-of-production method over the estimated recoverable reserves.

(h) Property, Plant, and Equipment

Property, plant, and equipment are stated at cost. Depreciation is provided utilizing the straight-line method over the estimated useful lives for owned assets, ranging from 5 to 20 years, and the related lease terms for leasehold improvements.

(i) Deferred Financing Costs

Costs associated with obtaining debt financing are deferred and amortized to interest expense using the effective-interest method over the term of the related financing. Amortization of deferred financing costs of \$1,634,974 and \$1,182,640 was recorded to interest expense for the years ended December 31, 2015 and 2014, respectively.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

Future amortization of deferred financing costs is as follows:

Year ending December 31:	
2016	\$ 2,120,688
2017	<u>1,254,149</u>
	<u>\$ 3,374,837</u>

(j) Reclamation Deposits

Reclamation deposits represent deposits held by regulatory agencies that will be released when the Company has completed required reclamation activities.

(k) Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recovered. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset group to estimated undiscounted future cash flows expected to be generated by the asset group. If the carrying amount of an asset group exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amounts of the assets in the asset group exceed the fair value for each individual asset. Assets to be disposed of are separately presented in the accompanying consolidated balance sheets and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposal group classified as held for sale are presented separately in the appropriate asset and liability sections of the accompanying consolidated balance sheets. Impairments of \$19,100,000 and \$2,494,525 were recognized during 2015 and 2014, respectively.

(l) Asset Retirement Obligations

Federal, state, and local laws require that mines be reclaimed to their previous condition in accordance with specific standards and approved reclamation plans, as outlined in mining permits. At the time they are incurred, legal obligations associated with the retirement of long-lived assets are reflected at their estimated fair values, with an increase to asset retirement cost included in mineral properties. AROs are typically incurred with the commencement of the development of mining properties, and include costs regrading disturbed land, revegetation, and removal of plant and equipment.

AROs are reflected at the present value of their future cash flows. The Company uses a range of 10–16% for the discount rates. The Company reflects accretion of the AROs for the period from the date they are incurred through the date they are extinguished. The asset retirement costs are amortized over the life of the mine.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

The Company assesses its AROs at least annually and reflects revisions for permit changes, changes in its estimated reclamation costs, and changes in the estimated timing of such costs. The following summarizes the changes in AROs:

	<u>2015</u>	<u>2014</u>
Beginning balance	\$ 4,195,779	2,206,133
Additions	207,033	—
Revisions in estimates	(1,903,656)	1,762,051
Accretion	406,452	227,595
Ending balance	<u>\$ 2,905,608</u>	<u>4,195,779</u>

(m) Revenue Recognition

The Company recognizes revenue only when all of the following criteria have been met:

- Persuasive evidence of an arrangement exists,
- Transfer of title has occurred or services have been performed,
- The fee for the arrangement is fixed or determinable, and
- Collectibility is reasonably assured.

Risk of loss on sand sales passes at the shipping point once the rail cars leave the Company's yard for sales designated as FOB plant. Risk of loss on sand sales that are designated as FOB destination passes when the sand is unloaded from rail cars at the ultimate sales destination. The Company defers revenue on any shipments sent FOB destination that are in-transit on the reporting date.

The Company leases rail cars that are used to ship product to terminals or customer sites. Rail car rental income is attributable to customers' use of the Company's leased rail car fleet and is recognized as the rail cars are utilized to deliver product. The Company charges customers for the cost of freight to customer directed locations when product is shipped.

(n) Stock-Based Compensation

The Company awarded profits interests (Class B interests) to the key management team of the Company, as more fully described in note 5. The Company measures all equity-based compensation awards using the fair value method and records such expense in the consolidated financial statements over the vesting period of the award.

(o) Income Taxes

As a limited liability company with greater than one member, the Company is taxed as a partnership for federal income tax purposes. Accordingly, taxable income and losses of the Company are reported on the income tax returns of the Company's members, and no provision for federal income taxes has been recorded in the accompanying consolidated financial statements.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

The Company follows the guidance of Accounting Standards Codification (ASC) Topic 740, *Accounting for Uncertainty in Income Taxes*. ASC Topic 740 prescribes a more-likely-than-not measurement methodology to reflect the consolidated financial statement impact of uncertain tax positions taken or expected to be taken in a tax return. If taxing authorities were to disallow any tax positions taken by the Company, the additional income taxes, if any, would be imposed on the members rather than the Company. Accordingly, there would be no effect on the Company's consolidated financial statements.

Interest and penalties associated with tax positions are recorded in the period assessed as general and administrative expenses. However, no interest or penalties have been assessed as of December 31, 2015 and 2014.

(p) Fair Value Measurements

The Company initially recognized ARO additions at fair value in the consolidated financial statements on a nonrecurring basis. Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Fair value is determined for assets and liabilities and establishes a hierarchy for which these assets and liabilities must be grouped, based on significant levels of inputs as follows:

- Level 1: Quoted prices in active markets for identical assets or liabilities;
- Level 2: Quoted prices in active markets for similar assets and liabilities and inputs that are observable for the asset or liability; or
- Level 3: Unobservable inputs in which there is little or no market data, which requires the reporting entity to develop its own assumptions.

The determination of where assets and liabilities fall within this hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The ARO addition estimates are initially recorded at fair value are classified as Level 3 measurements.

(q) Subsequent Events

The Company has evaluated all subsequent events through the auditors' report date, which is the date the consolidated financial statements were available for issuance. There were no material subsequent events that required recognition or disclosure in the consolidated financial statements.

(2) Going Concern

The accompanying consolidated financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and liquidation of liabilities in the ordinary course of business.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

As defined in the Credit and Security Agreement, the Company's covenants with the lender contain a consolidated leverage calculation based on the sum of the Company's rolling financial performance. The Company was not in compliance with the leverage calculation covenant for the last three quarters of 2015 and does not expect to become in compliance in the near future, which raises substantial doubt about its ability to continue as a going concern. The lender has not waived the designated event of default and reserves all of its rights, powers, privileges, and remedies under the Credit and Security Agreement. As a result, the note payable has been classified as a current liability.

Due to the downturn in the oil and gas market, there has been a decrease in demand for frac sand and declines in prices have contributed to lower operating margins. There can be no assurance that the necessary level of funding will be available in the future to meet the Company's forecasted liquidity needs and obligations as they become due. Management continues to implement cost cutting measures and process improvements to drive decreases in costs and maintain operating cash flows. Management is working to reach new customers and gain additional market share, while continuing to evaluate other measures to preserve cash funds.

These financial statements have been prepared on a going-concern basis and do not reflect the adjustments to the carrying values of assets and liabilities that would be necessary if the Company is unable to continue as a going concern.

(3) Balance Sheet Disclosures

Inventory is summarized as follows:

	December 31	
	2015	2014
Finished goods	\$ 949,510	799,290
Work in process	—	7,537,571
	<u>\$ 949,510</u>	<u>8,336,861</u>

Mineral properties are summarized as follows:

	December 31	
	2015	2014
Mineral interests	\$ 5,301,959	5,253,563
Less accumulated depletion	(3,352,113)	(2,785,729)
	<u>\$ 1,949,846</u>	<u>2,467,834</u>

Depletion expense for the years ended December 31, 2015 and 2014 was \$589,526 and \$1,712,008, respectively.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

Property, plant, and equipment consist of the following:

	December 31	
	2015	2014
Buildings	\$ 9,106,245	16,726,095
Machinery and equipment	10,563,393	29,581,509
Construction in progress	—	829,642
Land	2,438,650	2,052,759
Vehicles	456,695	589,187
Land improvements	6,005,009	11,453,231
Computer equipment	233,014	406,690
Fixtures	60,540	60,540
Asset retirement costs	3,067,710	3,843,147
	<u>31,931,256</u>	<u>65,542,800</u>
Less accumulated depreciation	<u>(3,438,096)</u>	<u>(11,699,673)</u>
	<u>\$ 28,493,160</u>	<u>53,843,127</u>

Depreciation expense for the years ended December 31, 2015 and 2014 was \$7,774,163 and \$5,887,930, respectively.

Accrued expenses consist of the following:

	December 31	
	2015	2014
Accrued compensation	\$ 801,658	1,339,877
Accrued property and use taxes	508,441	806,197
Accrued Texas franchise taxes	147,000	485,875
Other accrued expenses	1,761,532	555,860
	<u>\$ 3,218,631</u>	<u>3,187,809</u>

(4) Accounts Receivable Financing Agreement

During December 2012, the Company entered into an agreement whereby it sells and assigns approved receivables to a financing company with recourse with a two-year initial term. The agreement was amended in February 2014 and terminated in October 2015. The agreement, as amended, stipulated that the Company would receive an advance equal to 85% of acceptable accounts. The advances bore interest at one-month LIBOR plus 3.75% on the average daily balance for the period. Additionally, the Company paid the financing company a processing fee of 0.20% of the gross invoice amount of each receivable. The Company was not subject to any financial covenants under the terms of this agreement.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

(5) Long-Term and Subordinated Debt**(a) Recapitalization**

On July 25, 2012, as part of the recapitalization of the Company described in note 5, the Company closed on a credit agreement, which has been subsequently amended, with a private equity and debt investment firm and its affiliates for \$65,000,000 in term loans that were issued together with Class C interests representing a 25% interest in the Company. The \$65,000,000 of notes payable were issued with an original issue discount of \$5,625,000. In addition to the original note, during 2013, the Company closed on an expansion term loan for \$15,000,000 with an original issue discount of \$375,000. During 2015, an additional \$3,000,000 was loaned to the Company. All loans call for interest at the rate of 16% per annum, payable quarterly. The Company may elect to have up to one-quarter of the annual interest paid in-kind, by deferring payment and adding the portion to the principal balance of the term loan. The Company elected to pay principal in-kind with interest of \$7,923,790 and \$1,648,315 for the years ending December 31, 2015 and 2014, respectively. In addition, the Company was able to pay principal in-kind with waiver fees of \$710,660 for the year ended December 31, 2015. Principal on the loans is due at maturity on July 25, 2017. The notes have a mandatory prepayment of principal clause requiring the Company to make quarterly principal payments in the amount of 75% of excess cash flow as defined in the credit agreement. The notes are collateralized by substantially all assets of the Company and are subject to certain restrictive covenants. The Company valued the Class C interests issued with the original loan in 2012 at \$4,000,000 and allocated the consideration received between the notes and the equity interests in proportion to their relative fair values, which resulted in an additional discount of \$1,675,922. Total discounts of \$7,675,922 are amortized over the term of the notes using the effective-interest method. During the years ended December 31, 2015 and 2014, the Company recorded amortization of debt discounts on the notes of \$1,646,776 and \$1,404,774, respectively. The net balance of the credit agreement is as follows:

	December 31	
	2015	2014
Loan agreements face amounts	\$ 83,000,000	80,000,000
Discounts on credit agreement	(7,675,922)	(7,675,922)
Accumulated amortization of discounts	4,648,753	3,001,977
Accumulated principal in-kind interest	11,123,856	3,200,067
Accumulated principal in-kind waiver fees	2,161,935	1,451,808
Net credit agreement balance	<u>\$ 93,258,622</u>	<u>79,977,930</u>

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

Long-term debt consists of the following:

	December 31	
	2015	2014
Notes payable issued in recapitalization	\$ 93,258,622	79,977,930
	93,258,622	79,977,930
Less current portion	93,258,622	—
	\$ —	79,977,930

(b) Subordinated Debt

Subordinated debt consists of the following:

	December 31	
	2015	2014
Subordinated note payable to a group of individuals with interest at 12%. The entire principal balance and interest is due and payable on June 30, 2025.	\$ 607,000	607,000
	\$ 607,000	607,000

Contractual maturities of long-term obligations are as follows:

Year ending December 31:	
2016	\$ —
2017	93,258,622
2018	—
2019	—
2020	—
Thereafter	607,000
	\$ 93,865,622

(6) Equity Interests

Chieftain Sand and Proppant, LLC was originally formed on April 13, 2009 as a Colorado LLC to conduct industrial minerals and sand and gravel mining and related operations. The entity initially entered into an agreement to lease a production facility and associated deposit and mine in Garland City, Arkansas and commenced such operations in June 2009. Chieftain Sand and Proppant Barron, LLC (CSP Barron) was formed as a Wisconsin LLC in December 2011 for the purpose of acquiring property in northern Wisconsin for the development and operation of a sand and proppant mine. CSP Barron began mining in Barron County, Wisconsin in June 2012.

CHIEFTAIN SAND AND PROPPANT, LLC

Notes to Consolidated Financial Statements

December 31, 2015 and 2014

On July 25, 2012, concurrent with the private equity and debt financing discussed in note 5, the Company was recapitalized and the equity interests of the two previously existing LLCs were contributed to the new holding company of Chieftain Sand and Proppant, LLC, a Delaware LLC (CSP Holdings). As part of the recapitalization, Chieftain Sand and Proppant, LLC changed its name to Chieftain Sand and Proppant Arkansas, LLC (CSP Arkansas) and became a wholly owned subsidiary of the newly formed CSP Holdings. CSP Barron also became a wholly owned subsidiary of CSP Holdings.

As part of the recapitalization, the old CSP Arkansas membership interests were retired, and the owners of CSP Arkansas received Class A interests representing a 75% percentage interest. Additionally, Class C interests representing a 25% percentage interest were issued to the private equity and debt investment firm as part of the credit agreement discussed in note 5. The proceeds from the private equity and debt investment firm were allocated to debt and equity based on each component's relative fair values, which resulted in \$5,384,581 being allocated to the Class C interests. Finally, there were warrant holders that held warrants in 180 profits units of CSP Arkansas prior to the recapitalization. As part of the recapitalization, these warrants were converted into Class B interests representing a percentage interest of 7.5%. The issuance of the Class B interests reduced the Class A percentage interest to 67.5%.

To account for the recapitalization, the new interests were recorded at fair value with the difference between the fair value of the new interests and the carrying value of the old interests recorded to accumulated deficit. The fair value of the new Class A, Class B, and Class C interests were determined to be \$12,000,000, \$0, and \$4,000,000, respectively. The difference between the fair value of the new member interests and the carrying value of the old interests being retired resulted in \$11,242,417 being recorded to retained earnings.

Subsequent to the recapitalization and during 2012, the Company issued Class B interests to the key management team of the Company representing a 9% percentage interest, which further reduced the percentage interest of the holders of Class A interests. During 2014, 3.5% in percentage interests of Class B interests were granted to new employees. During 2015, 0.67% in percentage interests of Class B interests previously issued to an employee was forfeited upon the termination of the employee. The accounting for these interests is discussed further below.

As of December 31, 2015, the percentage interests of each class of member interests of the Company are as follows:

Class	Percentage interest
Class A	63.12%
Class B	11.88
Class C	25.00

Class A and Class C interests include economic interests and the right to participate in the management of the business and to vote pursuant to the operating agreement. Class B interests are profits interests only and do not have any voting rights. Any issuance of Class B interests will dilute only the percentage interests of the Class A interest holders. Profits and losses are allocated, and distributions are to be made according to the percentage interests of the members. The Class C members received four puts requiring the Company to purchase its interests equal to 25% of each Class C member's interests for \$3,437,500. The first put vested

12-10-2015 Full satisfaction \$ 40,000.00

Judgment Parties

Party Type	Name	Dismissed	Status	Address	Attorney Name
Debtor	Chieftan Sand and Proppant Barron LLC	No	Active	331 27th Street, New Auburn, WI 54757	
Creditor	State of Wisconsin	No	Active	PO Box 7857, 17 West Main Street, Madison, WI 53707-7857	Mott, Bradley John

Costs / Amounts

Description	Amount
Judgment amount	\$ 40,000.00

- ¹ The designation listed in the Race field is subjective. It is provided to the court by the agency that filed the case.
- ² Non-Court activities do not require personal court appearances. For questions regarding which court type activities require court appearances, please contact the Clerk of Circuit Court in the county where the case originated.
- ³ Includes collection agency fees; bankruptcy discharge of debt; Department of Revenue collection fees; and forgiven debts due to indigence, death, time served, or community service.
- ⁴ Some amounts assessed by the courts are collected by the Department of Corrections or other agencies. This column is rarely updated by the courts and may be less than the actual amount owed.
- ⁵ For cases with multiple assessments, the due date represents the assessment with the latest date.
- ⁶ Your payment may not be processed immediately.

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State of Wisconsin vs. Chieftan Sand and Proppant Barron LLC
Barron County Case Number 2015CX000002
Court Record Events

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[What is RSS?](#) [RSS](#)

	Date	Event	Court Official	Court Reporter
1	12-10-2015	Received documents		
2	12-10-2015	Full satisfaction		
3	12-10-2015	Satisfaction of Judgment		
4	12-07-2015	Received documents		
5	09-14-2015	Notes Additional Text: Spoke with Attorney Brad Mott regarding what statute number to use for violation. Was advised to use 285.67(1).		
6	09-14-2015	Dispositional order/judgment	Babler, James C.	
7	09-14-2015	Received documents		
8	09-14-2015	Judgment	Babler, James C.	
9	09-14-2015	Stipulation and Order Additional Text: Stipulation and Order for Judgment	Babler, James C.	
10	09-11-2015	Summons and complaint		

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Schedule 5.13 Attachments

CHIEFTAIN SAND
08/12/2013
Date
08/12/2013

Date: 8/12/2013

[Signature]
Chieftain Sand and Proppant of Barron, LLC,

By: Mike Perry, its provided

Date: 8/12/13

[Signature]
David Gifford
Land Service Director

12/12/2016

Schedule 5.13 Attachments
WDNR BRRTS on the Web

Wisconsin Department of Natural Resources

Environmental Cleanup & Brownfields Redevelopment

BRRTS on the Web

Click the Location Name below to view the Location Details page for this Activity. Other Activities, if present, may be viewed from that page.

[BOTW Home](#) > [Basic Search](#) > [Search Results](#) > 04-03-562124 Activity Details

04-03-562124 CHIEFTAIN SAND & PROPPANT BARRON LLC SPILL

CLOSED SPILL

Location Name (Click Location Name to View Location Details)		County	WDNR Region
CHIEFTAIN SAND & PROPPANT BARRON LLC		BARRON	NORTHERN
Address		Municipality	
331 27TH ST		NEW AUBURN	
Public Land Survey System	Latitude	Google Maps	RR Sites Map
Additional Location Description		Facility ID	Size (Acres)
		NONE	UNKNOWN
Jurisdiction	PECFA No.	EPA Cerclis ID	Start Date
DNR RR			2014-04-09
		End Date	Last Action
		2014-06-10	2014-08-16

Comments

*** AUTO-POPULATED FROM SPILL SERTS SYSTEM. SPILL ID: 20140409NO03-1 ***

Characteristics

PECFA Tracked?	EPA NPL Site?	Eligible for PECFA Funds?	Above Ground Storage Tank?	Drycleaner?	Co-Contamination?	On GIS Registry? (X)
No	No	No	No	No	No	No

Actions

Place Cursor Over Action Code to View Description

Date	Code	Name	Comment
2014-04-09	1	Spill Incident Occurred	
2014-04-09	5	Spill Reported to DNR	
2014-06-10	11	Spill Closed	

Impacts

Type	Comment
Soil Contamination	-

Spill Information

Incident Date	Reported Date	Investigator	Source
04/09/2014	04/09/2014	UNKNOWN	Industrial Facility (Foundry/Factory/Plating/Manufacturing)

Cause: UNKNOWN

Comment: SAGER SPOKE TO JEFF GOLDSMITH, CHIEFTAIN SAND, AT APPROX 1147 HRS ON 4/9/14. CHIEFTAIN IS IN THE PROCESS OF EXCAVATING CONTAMINATED SOIL. OIL WAS RELEASED FROM A TRAIN ENGINE TO BALLAST BENEATH TRACK. THE OIL MIGRATED FROM THE BALLAST ACROSS A DIRT ROAD AND INTO A DRAINAGE DITCH. PROGRESSIVE RAIL WILL BE REMOVING RAIL AND BALLAST ON 4/10/2014 AND CONTAMINATED SOIL WILL BE EXCAVATED FROM BELOW THE TRACK. SAGER RECEIVED A TELEPHONE CALL FROM JEFF GOLDSMITH AT APPROX 1320HRS ON 4/14/2014. CHIEFTAIN EXCAVATED ALL VISUAL CONTAMINATION FROM BENEATH RAILROAD TRACKS, ROAD AND DITCH. DITCH FILLED WITH WATER. NO SHEEN VISIBLE. CHIEFTAIN WILL BE COLLECTING CONFIRMATION SAMPLES PVOCS AND NAPHTHALENE AND PREPARING A RESPONSE REPORT. SAGER RECEIVED A RESPONSE REPORT ON MAY 12, 2014 AND DISPOSAL DOCUMENTATION ON JUNE 9, 2014.

Spiller Actions

12/12/2016

Schedule F-13 Attachments
DNR BRRTS Online Web

Action		Comment	
Samples Collected			
Cleanup Method - Excavation			
Waste Destination		ADVANCED DISPOSAL	
Substances			
Substance	Type	Amount Released	Units
Engine Waste Oil	Petroleum	50	Gal
Who			
Role	Name/Address		
Project Manager	JOHN SAGER 1701 N 4TH ST SUPERIOR, WI 54880		
Responsible Party	CHIEFTAIN SAND 331 27TH ST NEW AUBURN, WI 54757		

BRRTS data comes from various sources, both internal and external to DNR. There may be omissions and errors in the data and delays in updating new information. Please see the [disclaimers page](#) for more information.

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Release 2.5.3 | 10/20/2016 | [Release Notes](#)

12/12/2016

Schedule 5.13 Attachments
WDNR BRRTS on the Web

Wisconsin Department of Natural Resources

Environmental Cleanup & Brownfields Redevelopment

BRRTS on the Web

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[BOTW Home](#) > [Basic Search](#) > [Search Results](#) > 04-03-561376 Activity Details

04-03-561376 CHIEFTAIN SAND SPILL						
CLOSED SPILL						
Location Name (Click Location Name to View Location Details)				County	WDNR Region	
CHIEFTAIN SAND				BARRON	NORTHERN	
Address				Municipality		
362 25TH ST				RICE LAKE		
Public Land Survey System			Latitude	Google Maps	RR Sites Map	
Additional Location Description			Longitude	Facility ID	Size (Acres)	
				NONE	UNKNOWN	
Jurisdiction	PECFA No.	EPA Cerolls ID	Start Date	End Date	Last Action	
DNR RR			2013-10-01	2013-12-18	2014-05-05	
Comments						
*** AUTO-POPULATED FROM SPILL SERTS SYSTEM. SPILL ID: 20131001NO03-1 ***						
Characteristics						
PECFA Tracked?	EPA NPL Site?	Eligible for PECFA Funds?	Above Ground Storage Tank?	Drycleaner?	Co-Contamination?	On GIS Registry? <input checked="" type="checkbox"/>
No	No	No	No	No	No	No
Actions						
Place Cursor Over Action Code to View Description						
Date	Code	Name	Comment			
2013-10-01	1	Spill Incident Occurred				
2013-10-01	5	Spill Reported to DNR				
2013-12-18	11	Spill Closed				
Other Documents and Images Not Linked to Actions Above Click File Name to Download or Open						
Category		File Name	Size (bytes)	Type		
SPILL Document/Photo		20131001NO03-1 RP Documentation Response Report.pdf	429421	pdf		
Impacts						
Type			Comment			
Soil Contamination			SOIL			
Spill Information						
Incident Date	Reported Date	Investigator	Source			
10/01/2013	10/01/2013	J SAGER	Quarry/PI/Mine (Limestone or Other/Sand/Gravel Pits)			
Cause: A WORK TRUCK SETTLED INTO THE SAND AND THE TRUCK TIPPED OVER. DIESEL FUEL LEAKED INTO THE SAND AND SOIL. THE ESTIMATED AMOUNT IS 30 GALLONS.						
Comment: THE CALLER WAS NOT ON SITE. AN ONSITE CONTACT IS THE MINING SUPERVISOR RYAN BROWN AND HE CAN BE REACHED AT 715-827-1365 SAGER SPOKE BY TELEPHONE WITH JEFF GOLBSMITH, CHIEFTAIN SAND, AT APPROX 0845 HRS ON 10/2/13. CONTAMINATED SOIL WAS EXCAVATED ON 10/1/13 AFTER THE TRUCK WAS RIGHTED. CHIEFTAIN SAND WILL SEND PHOTO DOCUMENTATION, AN EMAIL RESPONSE REPORT AND DISPOSAL DOCUMENTATION WHEN AVAILABLE. SAGER RECEIVED A RESPONSE REPORT FROM CHIEFTAIN SAND ON 10/2/13. SAGER RECEIVED DISPOSAL DOCUMENTATION ON 12/18/2013.						

Wisconsin Department of Natural Resources

Environmental Cleanup & Brownfields Redevelopment

BRRTS on the Web

Click the Location Name below to view the Location Details page for this Activity. Other Activities, if present, may be viewed from that page.

[BOTW Home](#) > [Basic Search](#) >> 02-03-563333 Activity Details

02-03-563333 CHIEFTAN SAND PROPPANT - PETERSON PROPERTY						
CLOSED ERP						
Location Name (Click Location Name to View Location Details)				County	WDNR Region	
CHIEFTAN SAND PROPPANT - PETERSON PROPERTY				BARRON	NORTHERN	
Address				Municipality		
395 24 3/4 ST				CHETEK		
Public Land Survey System			Latitude	Google Maps	RR Sites Map	
NE 1/4 of the NE 1/4 of Sec 18, T32N, R10W			45.2642945	CLICK TO VIEW	CLICK TO VIEW	
Additional Location Description			Longitude	Facility ID	Size (Acres)	
			-91.8487145	NONE	35	
Jurisdiction	PECFA No.	EPA CERCLIS ID	Start Date	End Date	Last Action	
DNR RR			2015-02-12	2015-10-06	2015-10-06	
Comments						
PARCEL ID: 022-1800-02-000						
Characteristics						
PECFA Tracked?	EPA NPL Site?	Eligible for PECFA Funds?	Above Ground Storage Tank?	Drycleaner?	Co-Contamination?	On GIS Registry? (7)
No	No	No	No	No	No	No
Actions						
Place Cursor Over Action Code to View Description						
Date	Code	Name	Comment			
2015-02-12	1	Notification				
2015-02-12	29	Phase II Environmental Site Assessment Rpt Received	PHASE II ESA RPT DATED 02/09/2015			
2015-04-09	2	RP Letter Sent				
2015-05-26	29	Phase II Environmental Site Assessment Rpt Received	ADDTL PHASE II RPT REC'D			
2015-05-27	99	Miscellaneous	ADDTL INFO NEEDED FOR HAZ WASTE REMOVAL			
2015-08-05	195	Semi-Annual/PECFA Cost Reporting Requirement Met	Period: 1/1/2015 - 6/30/2015			
Click 195 Action Name above to view the NR700 report						
2015-08-07	99	Miscellaneous	REC'D SAMPLING RESULTS FOR LF			
2015-09-11	99	Miscellaneous	EMAILED CONSULTANT RE: PROGRESS OF SAMPLING CHECK-IN			
2015-09-21	43	Status Report Received	WORK PLAN RAP - EXCAVATION, HAULING, DISPOSAL OF SOLID WASTE, SOIL SAMPLE RPT REC'D			
2015-10-06	11	Activity Closed	NO FURTHER ACTION - NO LETTER SENT			
2015-10-06	83	Close-out Under NR708.09	NO FURTHER ACTION - NO LETTER SENT			
Impacts						
Type	Comment					
Soil Contamination	-					
Substances						
Substance	Type	Amount Released		Units		

12/12/2016

Schedule 5.13 Attachments
WDNR BRRTS on the Web

Arsenic	Metals		
Lead (Pb)	Metals		
Other Substance Not Listed	Other		
Who			
Role	Name/Address		
Responsible Party	ROBERT PETERSON 395 24 3/4 ST CHETEK, WI 54728		
For Additional Information, Please Contact			
KATHLEEN SHAFEL 715-623-4190x3127 kathleen.shafel@wisconsin.gov			

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EXECUTION VERSION

Schedule 5.14
Absence of Undisclosed Liabilities

None.

EXECUTION VERSION

Schedule 5.15
Absence of Certain Developments

None.

EXECUTION VERSION**Schedule 5.17**
Taxes**Section 5.17(b): Taxes due and payable by Sellers**

Sellers are assessed property and real estate taxes and have the following payment options:

- (i) Property taxes are due January 31; and
- (ii) Real estate taxes have two payment options: (A) 100% due January 31 and (B) 50% due January 31 and 50% July 1.

If either the property or real estate taxes are not paid on time, interest and penalties are charged at 1% and .5%, respectively, retroactive to February 1.

Sellers have paid all of their 2015 property taxes in January of 2016, and 50% of their 2015 real estate taxes. The remaining 50% of the real estate taxes are delinquent and accruing interest retroactive to February 1, 2016. The second half of the real estate taxes was originally \$210,000, but has increased in the cash flow reports as Sellers have pushed out the estimated payment date.

Section 5.17(c): Claims, adjustments, assessment or deficiencies of Taxes of Sellers by any Governmental Body.

Authority	Tax	Amount	Due Date
WI Dept. of Revenue	Use	\$4,600	1/31/17
Town of Dovre WI	Property	\$254,000	1/31/17
Barron County, WI	Property	\$426,000	\$184,000 is due 7/1/17; \$242,000 is delinquent originally due 1/31/16.
Washington Revenue Dept.	Sales	\$500	1/31/17
Texas Comptroller	Franchise	\$300,000	5/31/17

EXECUTION VERSION

Schedule 5.18(b)

Seller Employee Termination/Separation Obligations

- 1) David Hanson Termination of Employment Letter Agreement, January 22, 2016. Hanson entitled to Base Salary, payable in accordance with the Company's customary payroll practices, and Fringe Benefits for a period of twelve (12) months following the Termination Date (January 21, 2016).
- 2) Employment Agreement by and between Vic Serri and Chieftain Sand and Proppant, LLC dated August 19, 2014. Serri entitled to \$350,000 as liquidated damages if terminated without Cause.

EXECUTION VERSION

Schedule 5.19
Seller Contribution Plans

1. Service and Expense Agreement between Principal Life Insurance Company and Chieftain Sand and Proppant, LLC, dated as of June 26, 2014.
2. Group Dental Plan Policy Endorsement No. 23808 by and between Delta Dental of Wisconsin and Chieftain Sand and Proppant, LLC, Renewal Date September 1, 2016.
3. Business Associate Agreement (Plan Administrator) by and between Chieftain Sand and Proppant, LLC and Benefit Plan Administrators of Eau Claire, Inc., dated as of August 1, 2014.
4. Anthem Blue Cross Blue Shield - Vision Contract by and between Anthem Blue Cross Blue Shield of Wisconsin and Chieftain Sand and Proppant, LLC, dated as of September 1, 2016.
5. Anthem Blue Cross Blue Shield - Health Insurance Plan by and between Blue Cross Blue Shield of Wisconsin and Chieftain Sand and Proppant, LLC, dated as of September 1, 2016.
6. Disability and Life Plan (Application Pending), by and between Anthem Life Insurance Company and Chieftain Sand & Proppant, LLC dated as of September 1, 2016 expiring on September 1, 2017.
7. Pursuant to the definition of "Seller Plan" (ii) in Agreement, all written employment, termination, bonus, severance, change in control or other similar contracts (other than those just offering at-will employment without severance), in each case with respect to which any Seller has any Liability or obligation with respect to current or former directors, officers, consultants and Employees are as follows:
 - (i) Employment Agreement by and between Vic Serri and Chieftain Sand and Proppant, LLC dated August 19, 2014; and
 - (ii) David Hanson Termination of Employment Letter Agreement, January 22, 2016. Hanson entitled to Base Salary, payable in accordance with the Company's customary payroll practices, and Fringe Benefits for a period of twelve (12) months following the Termination Date (January 21, 2016).

EXECUTION VERSION

Schedule 5.20
Insurance Policies



Schedule of Insurance
7/1/2016



COVERAGE DESCRIPTION	AMOUNT/LIMIT	COMPANY	POLICY NUMBER	POLICY PERIOD	PREMIUM
PROPERTY LIABILITY					
♦ Loss Limit	\$75,000,000	Axis Insurance Company (A+ XV)	MLB 781702-16	7/1/2016 – 7/1/2017	\$154,659 Includes TRIA 15% Commission
♦ Mobile Equipment	\$2,115,703				
♦ Earth Movement	\$25,000,000				
♦ Flood	\$25,000,000				
♦ Windstorm	Included				
♦ Equipment Breakdown	\$75,000,000				
♦ Business Interruption	Included				
♦ Extra Expense	\$2,500,000				
♦ Electronic Data Processing	\$500,000				
♦ Accounts Receivable	\$1,000,000				
♦ Unnamed Locations	\$500,000				
♦ Newly Acquired Locations	\$1,000,000				
♦ Valuable Papers	\$1,000,000				
♦ Debris Removal	\$5,000,000				
♦ Pollutant Clean-Up	\$25,000				
DEDUCTIBLES					
♦ Basic Loss	\$25,000				
♦ Earth Movement and Flood	\$100,000				
♦ Windstorm	5% TIV, \$250K Min.				
COMMERCIAL GENERAL LIABILITY					
♦ General Aggregate	\$2,000,000	Ironshore Specialty Insurance Company (A XIV)	001397604	7/1/2016 – 7/1/2017	\$23,000 TRIA Excluded Plus \$690 S/L Tax 15% Commission
♦ Products/Completed Operations Aggregate	\$2,000,000				
♦ Each Occurrence	\$1,000,000				
♦ Personal and Advertising Injury	\$1,000,000				
♦ Damage to Premises Rented to You	\$500,000				
♦ Medical Expense	\$25,000				
♦ Employee Benefits Liability	\$1,000,000				
DEDUCTIBLE					
♦ Employee Benefits – Per Occurrence	\$1,000				

EXECUTION VERSION



Schedule of Insurance 7/1/2016



COVERAGE DESCRIPTION	AMOUNT/LIMIT	COMPANY	POLICY NUMBER	POLICY PERIOD	PREMIUM
POLLUTION ♦ Contractors Pollution Liability ♦ Site Pollution Incident Legal Liability	\$1,000,000 \$1,000,000	Ironshore Specialty Insurance Company (A+ XIV)	001397604	7/1/2016 – 7/1/2017	Included in GL Premium
DEDUCTIBLES ♦ Contractors Pollution Liability – Per Occurrence ♦ Site Pollution Incident – Per Occurrence ♦ Retroactive Date	\$5,000 \$10,000 6/3/2009				
COMMERCIAL AUTOMOBILE LIABILITY ♦ Combined Single Limit (1) ♦ Uninsured/Underinsured Motorists (2) ♦ Medical Payments Per Person (2) ♦ Physical Damage (7,8)	\$1,000,000 \$1,000,000 \$5,000 ACV or Cost to Repair	American Mining Insurance Company (A+ XV)	ACA252495-11	7/1/2016 – 7/1/2017	\$16,124 15% Commission
DEDUCTIBLES ♦ Per Occurrence - Comprehensive - Collision	\$1,000 \$1,000				
WORKERS' COMPENSATION ♦ Workers Compensation – WI	Statutory	American Mining Insurance Company (A+ XV)	AMWC164503	7/1/2016 – 7/1/2017	\$47,970 Includes TRIA 7.5% Commission
EMPLOYER'S LIABILITY ♦ Bodily Injury by Accident – Each Accident ♦ Bodily Injury by Disease – Each Employee ♦ Bodily Injury by Disease – Policy Limit	\$1,000,000 \$1,000,000 \$1,000,000				
UMBRELLA LIABILITY ♦ Per Occurrence ♦ General Aggregate	\$5,000,000 \$5,000,000	Ironshore Specialty Insurance Company (A+ XIV)	001397704	7/1/2016 – 7/1/2017	\$25,000 TRIA Excluded Plus \$750 S/L Tax 15% Commission
SELF-INSURED RETENTION ♦ Per Occurrence	\$0				



Schedule of Insurance 7/1/2016



COVERAGE DESCRIPTION	AMOUNT/LIMIT	COMPANY	POLICY NUMBER	POLICY PERIOD	PREMIUM
RAILROAD PROPERTY ♦ Per Occurrence	\$5,000,000	Berkley National Insurance Company (A+ XV)	MM1010355	7/1/2016 – 7/1/2017	\$69,649 TRIA Excluded Plus \$2,089.47 S/L Tax 10% Commission
DEDUCTIBLES ♦ Per Occurrence ♦ Flood/Earthquake	\$10,000 \$50,000				
DIRECTORS AND OFFICERS LIABILITY ♦ Each Claim ♦ Aggregate Limit ♦ Continuity Date ♦ Maximum Aggregate	\$3,000,000 \$3,000,000 04/19/2012 \$7,000,000	Argonaut Insurance Company (A+ XII)	ML 7602033-00	7/1/2016 – 7/1/2017	\$49,500 Includes TRIA 15% Commission
RETENTION ♦ Each Claim	\$100,000				
EMPLOYMENT PRACTICES LIABILITY ♦ Each Claim ♦ Aggregate Limit ♦ Training Cost ♦ Continuity Date	\$3,000,000 \$3,000,000 \$25,000 04/19/2012	Argonaut Insurance Company (A+ XII)	ML 7602033-00	7/1/2016 – 7/1/2017	Included in Management Liability
RETENTION ♦ Each Claim	\$100,000				
FIDUCIARY LIABILITY ♦ Each Claim ♦ Aggregate Limit ♦ Voluntary Compliance Program Loss Limit ♦ HIPAA Claims ♦ Continuity Date	\$1,000,000 \$1,000,000 \$75,000 \$25,000 04/19/2012	Argonaut Insurance Company (A+ XII)	ML 7602033-00	7/1/2016 – 7/1/2017	Included in Management Liability
RETENTION ♦ Each Claim	\$0				

