

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

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In re: : Chapter 11
 :
HI-CRUSH INC., *et al.*,¹ : Case No. 20-33495 (DRJ)
 :
Debtors. : (Jointly Administered)
 :
----- X

**DEBTORS’ FIRST OMNIBUS MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO (I) REJECT CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES EFFECTIVE AS OF THE
DATES SPECIFIED IN THE MOTION AND (II) ABANDON CERTAIN
REMAINING PERSONAL PROPERTY IN CONNECTION THEREWITH**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



Please note that on March 24, 2020, through the entry of General Order 2020-10, the Court invoked the Protocol for Emergency Public Health or Safety Conditions.

It is anticipated that all persons will appear telephonically and also may appear via video at this hearing.

Audio communication will be by use of the Court's regular dial-in number. The dial-in number is +1 (832) 917-1510. You will be responsible for your own long-distance charges. You will be asked to key in the conference room number. Judge Jones' conference room number is 205691.

Parties may participate in electronic hearings by use of an internet connection. The internet site is www.join.me. Persons connecting by mobile device will need to download the free [join.me](http://www.join.me) application.

Once connected to www.join.me, a participant must select "join a meeting". The code for joining this hearing before Judge Jones is "judgejones". The next screen will have a place for the participant's name in the lower left corner. Please complete the name and click "Notify".

Hearing appearances should be made electronically and in advance of the hearing. You may make your electronic appearance by:

- 1) Going to the Southern District of Texas website;
- 2) Selecting "Bankruptcy Court" from the top menu;
- 3) Selecting "Judges' Procedures & Schedules;"
- 4) Selecting "view home page" for Judge David R. Jones;
- 5) Under "Electronic Appearance," select "Click here to submit Electronic Appearance;"
- 6) Select "Hi-Crush Inc., et al." from the list of Electronic Appearance Links; and
- 7) After selecting "Hi-Crush Inc., et al." from the list, complete the required fields and hit the "Submit" button at the bottom of the page.

Submitting your appearance electronically in advance of the hearing will negate the need to make an appearance on the record at the hearing.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") respectfully state the following in support of this motion (the "**Motion**"):

RELIEF REQUESTED

1. By this Motion, the Debtors request entry of an order (the "**Order**"), substantially in the form attached hereto, authorizing the Debtors to:

- (a) reject certain executory contracts and unexpired leases, including any agreements, master leases, subleases, riders, schedules, certificates, memoranda, amendments,

supplements, guaranties, and any other documents related to thereto, each as set forth on Exhibit 1 and Exhibit 2 to the Motion (collectively, the “**Rejected Contracts and Leases**”)² with the counterparties to the Rejected Contracts and Leases (collectively, the “**Counterparties**”), effective as of the dates specified herein; and

- (b) abandon certain remaining personal property in connection therewith.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction to consider this Motion under 28 U.S.C. §1334. This is a core proceeding under 28 U.S.C. § 157, and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 362, 365(a), and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 6004, 6006, and 6007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 7008-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

4. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the*

² As discussed below, Exhibit 1 consists of Rejected Contracts and Leases that the Debtors request authority to reject effective as of the Petition Date. Exhibit 2 consists of Rejected Contracts and Leases that the Debtors request authority to reject effective as of the date when the Debtors have removed their property from the Leased Premises (as defined below).

Debtors, in Support of Chapter 11 Petitions and First Day Pleadings (the “**First Day Declaration**”),³ which is filed with the Court concurrently herewith, and is fully incorporated herein by reference.

5. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

6. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

BASIS FOR RELIEF

A. The Rejected Contracts and Leases

7. As more particularly described in the First Day Declaration, the Debtors operate businesses throughout North America that are primarily engaged in the businesses of mining, processing, and distributing high-quality silica sand — a key input for the hydraulic fracturing of oil and natural gas wells. The Debtors’ ordinary course operations generally involve the mining of silica sand from open pit environments, the processing of the sand at wet and dry plant facilities designed to separate the sand from unusable materials, and the distribution of sand to customers, either directly or through transloading facilities located in key basins throughout North America.

8. In the lead up to the Chapter 11 Cases, the Debtors undertook an analysis of certain of their executory contracts and unexpired leases. As a result of this ongoing analysis, the Debtors determined, in their business judgment, that the Rejected Contracts and Leases identified on

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

Exhibit 1 and Exhibit 2 attached to the Motion are unnecessary and burdensome to the Debtors' estates and should be rejected. The Rejected Contracts and Leases included on Exhibit 1 to the Motion include the following:

- ***Transloading and Storage Agreements.*** The Debtors are party to certain transloading and storage agreements (collectively, the "**Transloading and Storage Agreements**") pursuant to which the Debtors pay the applicable Counterparties to provide (i) transloading facilities and/or services in connection with the Debtors' transportation and delivery of products to their customers, and/or (ii) storage for the Debtors' frac sand and other property. Generally, the Debtors pay the Counterparties to the Transloading and Storage Agreements a fee based on the amount of tonnage processed through the transloading facility (plus, in some cases, a minimum payment if the required tonnage is not met by the Debtors) and/or the amount of product stored. The Transloading and Storage Agreements vary in length, and may last up to three years.
- ***Ground Lease Agreements.*** The Debtors are party to certain ground leases and related expense allocation agreements (the "**Ground Lease Agreements**") pursuant to which the Debtors lease certain real property used for (i) the construction and operation of transloading and distribution facilities, (ii) storage of equipment and sand, and/or (iii) truck parking. Under certain of the Ground Lease Agreements, the Debtors pay monthly or annual rent to the applicable Counterparties and, in certain circumstances, provide transloading and other similar services to certain Counterparties for an additional fee.
- ***Equipment Lease Agreements.*** The Debtors are party to certain equipment leases and related equipment maintenance agreements (the "**Equipment Lease Agreements**") pursuant to which the Debtors lease automobiles used by employees to travel to certain remote locations where their mining and logistical operations are located, as well as certain office equipment. The Debtors are also party to one Equipment Lease Agreement pursuant to which the Debtors permit the Counterparty to use certain of the Debtors' equipment for a flat fee per use.
- ***Office Lease Agreements.*** Debtor Pronghorn Logistics, LLC is party to an office lease agreement with Western Office Portfolio Property Owner LLC, dated as of April 12, 2019, and Debtor D & I Silica, LLC is party to a lease agreement with ARB Niobrara Connector, LLC, dated as of April 12, 2016 (together, the "**Office Lease Agreements**"), pursuant to which the Debtors lease office space from the applicable Counterparties in exchange for monthly rent.

- **Subscription Agreement.** Debtor Hi-Crush Inc. is party to a subscription agreement with Salesforce.com, Inc., dated as of September 1, 2019 (the “**Subscription Agreement**”) pursuant to which the Debtors have a subscription to use certain sales-related software.

The Rejected Contracts and Leases included on Exhibit 2 to the Motion include the following:

- **Railcar Lease Agreements.** The Debtors are parties to certain railcar lease agreements (collectively, the “**Railcar Lease Agreements**”) pursuant to which the Debtors lease railcars to transport the Debtors’ silica sand products from their plant facilities to transloading facilities for customer pick up. Under the Railcar Lease Agreements, the Debtors pay the Counterparties a fixed fee per car based on market terms negotiated at the time the leases were executed.⁴
- **Trailer Lease Agreements.** The Debtors are party to certain leases pursuant to which the Debtors lease trailers used in the transportation of frac sand and containers to their customers (the “**Trailer Lease Agreements**”).

The Debtors seek authority to reject (a) the Rejected Contracts and Leases on Exhibit 1 effective as of the Petition Date, and (b) the Rejected Contracts and Leases on Exhibit 2 effective as of the date that the Debtors have removed their property from the applicable Leased Premises (as defined below).

B. Abandonment of Remaining Property in Connection Therewith

9. The Debtors have determined in their reasonable business judgment that the costs associated with the continued storage of certain inventory and personal property or other remaining assets, which might include equipment and/or office furnishings, located or stored at or in the surrendered facilities, premises or other leased personalty (the “**Leased Premises**”) under the Rejected Contracts and Leases on Exhibit 1 (collectively, the “**Abandoned Property**”) will exceed

⁴ By this Motion, the Debtors seek authority to reject certain transloading and storage agreements, ground leases, equipment leases, office leases, subscription agreement, railcar leases and trailer leases. Simultaneously with the filing of this Motion, the Debtors have filed the *Debtors’ Motion for Entry of an Order Authorizing the Debtors to (I) Reject Certain Railcar Lease Agreements Effective as of the Petition Date, and (II) Enter Into Proposed New Railcar Lease Agreements, Effective as of the Petition Date* whereby they seek to reject certain railcar leases and to enter into new leases with lessors.

any projected proceeds that could be realized from the sale thereof, or may have low prospects for resale. Thus, storage and removal costs associated with the Abandoned Property would impose a financial burden on the Debtors' estates that would provide little to no value in return. Accordingly, the Debtors request that the Court approve the abandonment of the Abandoned Property in connection with the Debtors' rejection of the Rejected Contracts and Leases on Exhibit 1 for the benefit of their estates and creditors. For the avoidance of doubt, any inventory (including sand), property, or other assets stored at or in the Leased Premises under the Rejected Contracts and Leases on Exhibit 2 shall not constitute Abandoned Property.⁵

BASIS FOR RELIEF

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

10. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)); *see also In re Orion Pictures Corp.*, 4 F. 3d 1095, 1098 (2d Cir. 1993) (noting that the purpose of rejection of executory contracts is to permit the debtor in possession to renounce title to and abandon burdensome property).

11. A debtor's rejection of an executory contract or unexpired lease is ordinarily governed by the "business judgment" standard. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1989) ("It is well established that 'the question of whether a lease

⁵ The Debtors reserve the right to seek to abandon property stored at or in the Leased Premises under the Rejected Contracts and Leases set forth on Exhibit 2 by separate motion.

should be rejected . . . is one of business judgment.”) (quoting *Grp. Of Institutional Inv’rs v. Chi., M., St. P & P.R. Co.*, 318 U.S. 523, 550 (1943)); see also *In re Tex. Sheet Metals, Inc.*, 90 B.R. 260, 264 (Bankr. S.D. Tex. 1988) (“The traditional business judgment standard governs the rejection of ordinary executory contracts.”). The business judgment standard requires a court to approve a debtor’s business decision unless that decision is the product of “bad faith, whim, or caprice.” See *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (citing *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 849-50 (Bankr. W.D. Pa. 1987)).

12. In applying the business judgment standard, courts have held that rejection of an executory contract or an unexpired lease is appropriate where such rejection would benefit the estate. See *In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. Dec. 21, 2009) (“Courts apply the ‘business judgment test,’ which requires a showing that the proposed course of action will be advantageous to the estate and the decision be based on sound business judgment.”); see also *Orion Pictures*, 4 F.3d at 1098-99 (stating that section 365 of the Bankruptcy Code permits a debtor in possession, subject to court approval, to decide which executory contracts would be beneficial to reject). Thus, upon finding that a debtor exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and other parties in interest, a court should approve the rejection under section 365(a) of the Bankruptcy Code. See *In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

13. The Debtors have determined, in the sound exercise of their business judgment, that (i) they no longer need the facilities, goods, and services provided pursuant to the Rejected Contracts and Leases, and/or (ii) the Rejected Contracts and Leases are above market or no longer

provide sufficient benefit or value to the Debtors to justify the cost. Absent rejection, the Rejected Contracts and Leases impose ongoing obligations on the Debtors and their estates that constitute an unnecessary drain on the Debtors' resources without sufficient corresponding benefits associated therewith. The rejection of the Rejected Contracts and Leases will relieve the Debtors of these unnecessary obligations and, thus, it is in the best interests of their creditors and other parties in interest.

14. Accordingly, to relieve the Debtors of burdensome obligations and avoid unnecessary expenses associated with the Rejected Contracts and Leases, the Debtors seek to reject the Rejected Contracts and Leases effective as of the dates set forth herein.

B. Granting Rejection of the Rejected Contracts and Leases Retroactive to the Dates Specified Herein is Appropriate Under the Circumstances

15. Under sections 105(a) and 365(a) of the Bankruptcy Code, bankruptcy courts may grant retroactive rejection of an executory contract or unexpired lease based on a balancing of the equities of the case. See, e.g., *In re Cafeteria Operators, L.P.*, 299 B.R. 384, 394 (Bankr. N.D. Tex. 2003) (granting retroactive relief for contract rejection where debtors were "receiving no benefit" from the lease); *In re O'Neil Theatres, Inc.*, 257 B.R. 806, 808 (Bankr. E.D. La. 2000) (granting retroactive relief based on the circumstances of the case); *In re Amber's Stores, Inc.*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (finding that "nothing precludes a bankruptcy court, based on the equities of the case, from approving" retroactive rejection); see also *In re Joseph C. Spiess Co.*, 145 B.R. 597, 606 (Bankr. N.D. Ill. 1992) ("[A] trustee's rejection of a lease should be retroactive to the date that the trustee takes affirmative steps to reject said lease.").

16. The balance of the equities favors rejection effective as of the Petition Date for all Rejected Contracts and Leases on Exhibit 1. The Debtors provided the applicable Counterparties with written notice of the Debtors' intent to reject such leases and contracts on the Petition Date.

In addition, with respect to such Rejected Contracts and Leases, the Debtors have surrendered the facilities and any material equipment or property on or before the Petition Date. Moreover, where applicable, the Debtors have made arrangements, or made best efforts to make commercially reasonable arrangements, with the Counterparties or other parties with an interest in the Rejected Contracts and Leases or Abandoned Property for the transfer or surrender thereof. Absent retroactive rejection, the Debtors may incur unnecessary administrative charges and other obligations under the Rejected Contracts and Leases without any reciprocal benefits to their estates.

17. With respect to the Rejected Contracts and Leases on Exhibit 2, the Debtors submit that the balance of the equities favors rejection effective as of the date the Debtors have removed their inventory, equipment, and/or other property or assets from the Leased Premises under such leases. The Debtors have provided the Counterparties to such leases with notice of the Debtors' intent to reject such leases under this Motion and will make commercially reasonable arrangements to remove their property from the Leased Premises as soon as reasonably practicable.

18. Accordingly, the Debtors submit that it is fair and equitable for the Court to authorize the Debtors to reject the Rejected Contracts and Leases effective as of the dates set forth above.

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

19. The Debtors derive authority to abandon the Abandoned Property from section 554(a) of the Bankruptcy Code, which provides that, "after notice and a hearing, the trustee may abandon any property that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). The decision to abandon property rests within the business judgment of the debtor. See *In re Beach Dev., L.P.*, No. 03-80223-G3-7, 2010 WL

3155255, at *4 (Bankr. S.D. Tex. Aug. 10, 2010) (affording deference to the business judgment of the trustee in abandoning property of the estate). The right to abandon property is virtually unfettered, unless (i) abandonment of the property will contravene laws designed to protect public health and safety or (ii) abandonment of the property poses an imminent threat to the public's welfare. See *In re Midlantic Nat'l Bank*, 474 U.S. 494, 501 (1986); see also *In re Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1182 (5th Cir. 1986) (recognizing that the Supreme Court in *Midlantic* recognized only a "limited exception" to the debtor's abandonment power). Neither of these limitations is relevant under the facts and circumstances presented here.

20. Here, although the Debtors believe that they have removed all of their material owned personal property assets located or stored at the Leased Premises subject to the Rejected Contracts and Leases on Exhibit 1, certain immaterial assets may remain at such facilities. The Debtors submit that such Abandoned Property is inconsequential to their estates and/or the cost of removal or storage of such property exceeds its value and would be burdensome to the Debtors' estates. Therefore, to the extent that any Abandoned Property remains at the Leased Premises, the Debtors seek authority to abandon such assets as of the Petition Date. For the foregoing reasons, the abandonment of the Abandoned Property should be approved by the Court.

D. Section 362 of the Bankruptcy Code Limits the Counterparties' Setoff Rights

21. The Debtors request that, consistent with the limitations imposed by section 362 of the Bankruptcy Code and any other applicable law, if any of the Debtors have deposited amounts with any of the Counterparties as a security deposit or pursuant to another similar arrangement, or if any of the Counterparties owe any of the Debtors any amount pursuant to the Rejected Contracts and Leases or other agreements between the same parties, the Counterparties shall not be permitted to setoff or otherwise use the amounts from such deposit or other similar arrangement, or other amount owed to the Debtors, without the prior order of the Court. See *In re Sweet N Sour 7th Ave.*

Corp., 431 B.R. 63, 70-72 (Bankr. S.D.N.Y. 2010) (automatic stay prohibits landlord from exercising right to set off on debtor's security deposit); *In re Communicall Cent., Inc.*, 106 B.R. 540, 545 (Bankr. N.D. Ill. 1989) (landlords are required to move for relief from the automatic stay to exercise right of set off); *In re Inslaw, Inc.*, 81 B.R. 169, 169-70 (Bankr. D.D.C. 1987) (landlord's right to set off may be utilized only after relief from stay is granted); *In re Village Craftsman, Inc.*, 160 B.R. 740, 747 (Bankr. D. NJ, Nov. 3, 1993) (utility's application of debtor's prepetition security deposit to prepetition utility bills was setoff, thus subject to the automatic stay).

BANKRUPTCY RULE 6004 SHOULD BE WAIVED

22. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

23. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant

to section 365 of the Bankruptcy Code (other than the Rejected Contracts and Leases); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Order once entered. Nothing contained in the Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

24. Notice of this Motion will be given to: (i) the United States Trustee for the Southern District of Texas; (ii) the parties included on the Debtors' consolidated list of the holders of the 30 largest unsecured claims against the Debtors; (iii) Simpson Thatcher & Bartlett LLP, as counsel to the agent for the Debtors' prepetition and postpetition secured asset-based revolving credit facility; (iv) U.S. Bank National Association as indenture trustee for the Debtors' prepetition notes; (v) counsel to that certain ad hoc group of holders of prepetition senior notes (the "**Ad Hoc Group**") (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, and (b) Porter Hedges LLP; (vi) Shipman & Goodwin LLP, counsel to the agents under the Debtors' postpetition term loan facilities; (vii) the Counterparties; (viii) the United States Attorney's Office for the Southern District of Texas; (ix) the Internal Revenue Service; (x) the Securities and Exchange Commission; (xi) the state attorneys general for states in which the Debtors conduct business; and (xii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

25. A copy of this Motion is available on (i) the Court's website: www.txs.uscourts.gov, and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at www.kccllc.net/hicrush.

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

Signed: July 12, 2020
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II
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-and-

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Proposed Counsel for the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on July 12, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II

Exhibit 1**Rejected Contracts and Leases¹*****Rejection Effective as of Petition Date***

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
1.	Hi-Crush Partners LP	Enterprise FM Trust	2341 Highway 85 North, Watford City, ND, 58854	Equipment Lease - Vehicle	Master Equity Lease Agreement and Amendment and Related Schedules	April 9, 2018
2.	Pronghorn Logistics, LLC	Enterprise FM Trust	2341 Highway 85 North, Watford City, ND, 58854	Equipment Lease - Vehicle	Addendum to Master Equity Lease Agreement	November 1, 2018
3.	Hi-Crush Partners LP	Enterprise Fleet Management, Inc.	2341 Highway 85 North, Watford City, ND, 58854	Equipment Lease - Vehicle	Maintenance Management and Fleet Rental Agreement	April 9, 2018
4.	Hi-Crush Partners LP	Enterprise Fleet Management, Inc.	2341 Highway 85 North, Watford City, ND, 58854	Equipment Lease - Vehicle	Maintenance Agreement and Amendment	April 9, 2018

¹ The Rejected Contracts and Leases shall include all agreements, master leases, subleases, riders, schedules, certificates, memoranda, amendments, supplements, guaranties, and any other documents related to the lease agreements listed herein.

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
5.	D & I Silica, LLC	ARB Niobrara Connector, LLC	720 S. Colorado Blvd., Penthouse North, Denver, Colorado 80246	Ground Lease	Ground Lease and Services Agreement	January 16, 2015
6.	D & I Silica, LLC	ARB Niobrara Connector, LLC	720 S. Colorado Blvd., Penthouse North, Denver, Colorado 80246	Ground Lease	First Amendment to Ground Lease and Services Agreement	April 12, 2016
7.	D & I Silica, LLC	ARB Niobrara Connector, LLC	720 S. Colorado Blvd., Penthouse North, Denver, Colorado 80246	Civil Upgrade Expense Allocation Agreement	Design, Road and Civil Upgrade Expense Allocation Agreement	January 16, 2015
8.	D & I Silica, LLC	ARB Niobrara Connector, LLC	720 S. Colorado Blvd., Penthouse North, Denver, Colorado 80246	Office Lease	Lease Agreement	April 12, 2016
9.	Hi-Crush LMS LLC	CIG Services LLC	420 Throckmorton Street #550, Fort Worth, TX 76102	Transloading and Storage Agreement	Sand Container Storage and Handling Agreement	November 1, 2016

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
10.	D & I Silica, LLC	CIG Odessa LLC	420 Throckmorton Street #550, Fort Worth, TX 76102	Transloading and Storage Agreement	Ground Lease Agreement	September 23, 2015
11.	D & I Silica, LLC	CIG Odessa LLC	420 Throckmorton Street #550, Fort Worth, TX 76102	Transloading and Storage Agreement	Storage and Transloading Services Agreement	September 23, 2015
12.	Pronghorn Logistics, LLC	Western Office Portfolio Property Owner LLC	c/o Unico Properties LLC, 1215 Fourth Avenue, Suite 600 Seattle, WA 98161	Office Lease	Lease Agreement	April 12, 2019
13.	Hi-Crush Proppants LLC	EO Johnson Company, Inc.	8400 W. Stewart Ave. Wausau, WI 54401	Equipment Lease - Office	Equipment Lease No. 105-1056507	June 26, 2016
14.	D & I Silica, LLC	Modern Materials Services, LLC d/b/a Arrow Material Services	2605 Nicholson Road Suite 5200 J Sewickley, PA 15143	Transloading and Storage Agreement	Transloading Services Agreement	July 27, 2018

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
15.	Pronghorn Logistics, LLC	Coronado Development Corp	1617 E Hwy 66, El Reno, OK 73036	Ground Lease	Lease Agreement	February 13, 2019
16.	Hi-Crush Inc.	Salesforce.com, Inc.	Salesforce Tower 415 Mission Street, 3 rd Floor San Francisco, CA 94105 Attn: VP, Worldwide Sales Operations/GC	Subscription Agreement	Master Subscription Agreement	September 1, 2019
17.	Hi-Crush Inc.	Salesforce.com Inc.	Salesforce Tower 415 Mission Street, 3 rd Floor San Francisco, CA 94105 Attn: VP, Worldwide Sales Operations/GC	Subscription Agreement	Subscription Order Form	September 1, 2019
18.	D & I Silica, LLC	The New York, Susquehanna and Western Railway Corporation	1 Railroad Avenue, Cooperstown, NY 13326	Transloading and Storage Agreement	Facility Development and Operating Agreement	April 15, 2010

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
19.	D & I Silica, LLC	The New York, Susquehanna and Western Railway Corporation	1 Railroad Avenue, Cooperstown, NY 13326	Transloading and Storage Agreement	First Modification of Facility Development and Operating Agreement	January 15, 2012
20.	D & I Silica, LLC	The New York, Susquehanna and Western Railway Corporation	1 Railroad Avenue, Cooperstown, NY 13326	Transloading and Storage Agreement	Second Modification of Facility Development and Operating Agreement	January 23, 2013
21.	D & I Silica, LLC	Delaware Express Company	802 Elkton Blvd. Elkton, MD 21921	Rental Agreement	Truck Scale Use Agreement at Binghamton, NY	March 13, 2014

Exhibit 2**Rejected Contracts and Leases***Rejection Effective as of Date Property is Removed¹*

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
	Hi-Crush Inc.	SFG Titling Co.	4680 Parkway Drive, Suite 300, Mason Ohio 45040	Equipment Lease Agreement - Trailer	Master Lease Agreement No. 2734	August 8, 2019
2.	Hi-Crush Inc.	SFG Titling Co.	4680 Parkway Drive, Suite 300, Mason Ohio 45040	Equipment Lease Agreement - Trailer	Progress Payment Agreement No. 001/001	August 8, 2019
3.	Pronghorn Logistics, LLC	Summit Funding Group, Inc.	4680 Parkway Drive, Suite 300, Mason Ohio 45040	Equipment Lease Agreement - Trailer	Master Lease Agreement No. 2723 and Equipment Schedule No. 001	April 10, 2019
4.	Pronghorn Logistics, LLC	Dune Sand Equipment, LLC	1630 Welton Street, Suite 408, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# 5EF2DF389KB791174)	December 21, 2017

¹ The Rejected Contracts and Leases shall include all agreements, master leases, subleases, riders, schedules, certificates, memoranda, amendments, supplements, guaranties, and any other documents related to the lease agreements listed herein.

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
5.	Pronghorn Logistics, LLC	Dune Sand Equipment, LLC	1630 Welton Street, Suite 408, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# 5EF2DF388KB791148)	December 21, 2017
6.	Pronghorn Logistics, LLC	Dune Sand Equipment, LLC	1630 Welton Street, Suite 408, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# 1RNF48A257R018722)	December 29, 2017
7.	Pronghorn Logistics, LLC	Dune Sand Equipment, LLC	1630 Welton Street, Suite 202, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# LJRC4326XJ1010379)	October 4, 2018
8.	Pronghorn Logistics, LLC	Dune Sand Equipment, LLC	1630 Welton Street, Suite 202, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# LJRC43267J1010338)	December 1, 2018
9.	Pronghorn Logistics, LLC	Dune Sand Equipment, LLC	1630 Welton Street, Suite 202, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# LJRC43260J1010374)	December 1, 2018

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
10.	Pronghorn Logistics, LLC	Dune Sand Equipment, LLC	1630 Welton Street, Suite 202, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# LJRC43265J1010354)	December 1, 2018
11.	Pronghorn Logistics, LLC	113 Logistics, LLC	1630 Welton Street, Suite 202, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# LJRC43269J1010387; LJRC43267J1010341)	December 1, 2018
12.	Pronghorn Logistics, LLC	113 Logistics, LLC	1630 Welton Street, Suite 202, Denver, Co 80202	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# LJRC43269J1010387; LJRC43267J1010341)	December 1, 2018
13.	Pronghorn Logistics, LLC	PGIP, LLC	915 S Milwaukee Way, Denver, CO 80209	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# IRNF48A227R016605; IRNF48A257R019353; IRNF48A257R018705)	December 29, 2017
14.	Pronghorn Logistics, LLC	PGIP, LLC	915 S Milwaukee Way, Denver, CO 80209	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# 5EF2DF388KB791392; 5EF2DF38XKB791393; 5EF2DF381KB791394; 5EF2DF383KB791395)	February 20, 2018

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
15.	Pronghorn Logistics, LLC	Horning Leasing, LLC	7995 S. Madison Way, Centennial, CO 80122	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# 5EF2DF385KB791396)	February 20, 2018
16.	Pronghorn Logistics, LLC	Neighbors Capital Ventures, LLC	1301 Fannin Street, Suite 2440, Houston, TX 77002	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# 5EF2DF387KB791397; 5EF2DF389KB791398; 5EF2DF380KB791399)	February 20, 2018
17.	Pronghorn Logistics, LLC	Neighbors Capital Ventures, LLC	1301 Fannin Street, Suite 2440, Houston, TX 77002	Equipment Lease Agreement - Trailer	Equipment Lease Agreement (VIN# LJRC43262J1010330)	December 1, 2018
18.	D & I Silica, LLC	C.K. Industries, Inc.	P.O. Box 1029 Lake Zurich, IL 60047-1029	Railcar Lease	CK Industries Railcar Lease	February 5, 2013
19.	D & I Silica, LLC	C.K. Industries, Inc.	P.O. Box 1029 Lake Zurich, IL 60047-1029	Railcar Lease	Amendment No. 1 to Railcar Lease Agreement	March 23, 2017

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
20.	D & I Silica, LLC	Wells Fargo Rail (f/k/a First Union Rail Corporation)	First Union Rail Corporation 6250 River Road, Suite 5000, Rosemont, IL 60018 Attn: Contract Administration	Railcar Lease	Rider Six (6) to Railroad Car Lease Agreement and Exhibit A Thereto	September 18, 2013
21.	D & I Silica, LLC	Wells Fargo Rail (f/k/a First Union Rail Corporation)	First Union Rail Corporation 6250 River Road, Suite 5000 Rosemont, IL 60018 Attn: Contract Administration	Railcar Lease	Acknowledgement of Assignment	June 19, 2014
22.	D & I Silica, LLC	CIT Rail LLC	c/o The CIT Group / Equipment Financing, Inc., as Servicer 30 Wacker Drive, Suite 2900 Chicago, IL 60606 Attn: Senior Vice President – Rail Group	Railcar Lease	Master Railcar Lease	June 10, 2014

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
23.	D & I Silica, LLC	CIT Rail LLC	c/o The CIT Group / Equipment Financing, Inc., as Servicer 30 Wacker Drive, Suite 2900 Chicago, IL 60606 Attn: Senior Vice President – Rail Group	Railcar Lease	Schedule No. 1 to Master Railcar Lease	June 10, 2014
24.	D & I Silica, LLC	CIT Bank, N.A. (as assignee of CIT Rail LLC)	c/o The CIT Group / Equipment Financing, Inc., as Servicer 30 Wacker Drive, Suite 2900 Chicago, IL 60606 Attn: Senior Vice President – Rail Group	Railcar Lease	Amendment No. 1 to Schedule No. 1	June 11, 2018
25.	D & I Silica, LLC	CIT Bank, N.A. (as assignee of CIT Rail LLC)	c/o The CIT Group / Equipment Financing, Inc., as Servicer 30 Wacker Drive, Suite 2900 Chicago, IL 60606	Railcar Lease	Amendment No. 2 to Schedule No. 1	September 13, 2019

No.	Debtor	Creditor	Creditor Address	Contract Type	Description/Title	Contract Date
			Attn: Senior Vice President – Rail Group			
26.	D & I Silica, LLC	CIT Rail LLC	c/o The CIT Group / Equipment Financing, Inc., as Servicer 30 Wacker Drive, Suite 2900 Chicago, IL 60606 Attn: Senior Vice President – Rail Group	Railcar Lease	Schedule No. 02 to Master Railcar Lease dated as of June 10, 2014	June 10, 2014
27.	D & I Silica, LLC	CIT Rail LLC	c/o The CIT Group / Equipment Financing, Inc., as Servicer 30 Wacker Drive, Suite 2900 Chicago, IL 60606 Attn: Senior Vice President – Rail Group	Railcar Lease	Schedule No. 03 to Master Railcar Lease dated as of June 10, 2014	June 10, 2014

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

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 In re: : Chapter 11
 :
 HI-CRUSH INC., *et al.*,¹ : Case No. 20-33495 (DRJ)
 :
 Debtors. : (Jointly Administered)
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 :
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 :
 ----- X

**ORDER AUTHORIZING THE DEBTORS TO (I) REJECT
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES
EFFECTIVE AS OF THE DATES SPECIFIED IN THE MOTION AND (II) ABANDON
CERTAIN REMAINING PERSONAL PROPERTY IN CONNECTION THEREWITH**

[Relates to Motion at Docket No. ____]

Upon the motion (the “**Motion**”)² of the Debtors for an Order authorizing the Debtors to (i) reject certain executory contracts and unexpired leases, each as set forth on Exhibit 1 to the Motion (collectively, the “**Rejected Contracts and Leases**”), effective as of the Petition Date, and (ii) abandon any remaining personal property in connection therewith, all as more fully described in the Motion; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

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

pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

ORDERED THAT:

1. The Debtors are authorized to reject the Rejected Contracts and Leases identified on Exhibit 1 attached to the Motion, including, to the extent applicable, any agreements, amendments, modifications, and subleases related thereto, effective as of the Petition Date.

2. The Debtors are authorized to reject the Rejected Contracts and Leases identified on Exhibit 2 attached to the Motion, including, to the extent applicable, any agreements, amendments, modifications, and subleases related thereto, effective as of the date the Debtors remove their inventory, property, or other assets from the Leased Premises.

3. Consistent with the limitations of section 362 of the Bankruptcy Code, and any other applicable law, the Counterparties are prohibited from setting off or otherwise utilizing any amounts deposited by the Debtors with any of the Counterparties as a security deposit or pursuant to another similar arrangement, or owed to the Debtors by any of the Counterparties under the Rejected Contracts and Leases or other agreements between the same parties, without further order of this Court.

4. The Debtors are authorized to abandon the Abandoned Property, and the Counterparties may dispose of the Abandoned Property on and after the Petition Date in their sole

and absolute discretion without further notice to or the approval from the Debtors or any third party. For the avoidance of doubt, any inventory and/or other property or remaining assets stored in Leased Premises under the Rejected Contracts and Leases on Exhibit 2 shall not constitute Abandoned Property unless further ordered by the Court.

5. Third parties, including but not limited to third parties party to the Rejected Contracts and Leases, shall not impede or interfere in any manner with the removal by the Counterparties of their equipment or other property based on any claims, financial or otherwise, against the Debtors whether arising prepetition or postpetition.

6. Nothing in this Order shall prejudice the rights of the Counterparties with respect to any claim for damages arising from the rejection of the Rejected Contracts and Leases and with respect to any objection by the Debtors thereto.

7. Any claims based on the rejection of the Rejected Contracts and Leases shall be filed in accordance with the bar date for filing proofs of claims, to be established by the Court at a later date.

8. Nothing herein shall prejudice the rights of the Debtors to argue (and the Counterparties to raise objection thereto) that any of the Rejected Contracts and Leases were terminated prior to the Petition Date or that any claim for damages arising from the rejection of the Rejected Contracts and Leases is limited to the remedies available under any applicable termination provision of such contract or lease, as applicable, or that any such claim is an obligation of a third party and not that of the Debtors or their estates.

9. Nothing in the Motion or this Order shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to

pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; or (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code (other than the Rejected Contracts and Leases); or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6004(a).

11. Notwithstanding Bankruptcy Rule 6004(h) to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

12. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

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

Signed: _____, 2020

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE