

# **EXHIBIT A**

### RAILCAR LEASE AGREEMENT

THIS RAILCAR LEASE AGREEMENT ("Lease") is made as of January 18, 2013, between **CALDWELL-BAKER COMPANY (CBC)**, Delaware corporation ("Lessor") (as owner of the Cars [defined below]) and **Chieftain Sand and Proppant Barron (CS)**, A Wisconsin corporation referred to as ("Lessee").

31<sup>st</sup> CB

WHEREAS, Lessor is an owner of the railcars more particularly described on the attached Schedule A (the "Cars" or singularly, a "Car"); and

WHEREAS, Lessee has a need for transporting and shipping services by rail raw silica sand, resin coated silica sand and/or ceramic proppant ("Sand Services"); and

WHEREAS, Lessor desires to lease the Cars to Lessee upon the terms of this Lease and Lessee desires to lease and accept the Cars from Lessor upon the terms of this Lease.

NOW, THEREFORE, in consideration of the covenants, promises and undertakings of the parties hereto, as hereinafter set forth, the parties hereby agree as follows:

**1. Lease of Cars.**

This is a true lease. This Lease is intended to be a bailment.

**(a) Grant of Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Cars as described in Schedule A and any other such future schedule(s) that may be entered into between the parties. The Cars provided hereunder shall be up to One hundred (100) covered hopper railcars with capacities of 4740-4785 cubic feet with the final number of Cars leased being determined by the inspection and acceptance of the Cars by the Lessee Subject to section 2(b) Inspection and Acceptance.

**(b) Use of Cars.** Lessee agrees to use the Cars exclusively in its own sand service. Lessee agrees that the Cars will be used and parked in the United States and expect that the parties acknowledge that some rail routes will cause the Cars to travel through Canada. If the Lessee's business develops and requires international usage, Lessee will notify Lessor and the parties will agree to additional terms for international use, including taxation for use in Canada and Mexico.

**(c) Schedules.** The Cars subject to the Lease shall be described in Schedule A attached hereto. Any future cars leased will be identified on subsequent schedules. In the event of any conflict between any such schedule and the Lease, the Lease shall control.

CB



## 2. Term.

(a) **Commencement, Renewal and Expiration.** The term of this Lease with respect to any Car, and Lessee's obligation to pay rent for such Car, shall commence on the Delivery Date (as defined in section 2(c) below). The Lease term with respect to all Cars shall expire on September 1, 2016. The last day of the term is herein referred to as the "Expiration Date". Lessee shall have the right to renew the contract by giving Lessor thirty (30) day written notice of its desire to renew and/or extend the Lease, Schedule A and any other related schedules entered into between the parties. For any renewal the parties will agree upon rates and length of renewal term with such terms being formalized in an amendment and/or schedule.

(b) **Inspection and Acceptance.** Lessee shall have the right to inspect the Car(s) to ensure the Cars meets Lessee's needs at a mutually agreed upon inspection site prior to the acceptance and/or delivery of the Cars. During the inspection, if Lessee determines a Car(s) is unacceptable for its Sand Services, Lessee may request Lessor to provide a suitable replacement car, repair the Car in question or reject the Car eliminating it from the Lease. If car is not clean enough for sand service lessee agrees to pay for such cleaning at lessee's expense or provide a track for Lessor to clean such cars at Lessor's expense. If Lessee requests the Car(s) be repaired, Lessee maintains the right to inspect the repaired Car prior to final acceptance. Lessee shall have 10 days from date of notification of necessary repairs. A Car shall be deemed accepted if Lessee loads such Car(s) or does not inspect the cars within allotted 10 days. The specifications and marks for the Cars shall be set out on Schedule A and any subsequent schedules describing such Cars.

(c) **Delivery.** Each Car shall be deemed delivered to Lessee on the date it arrives at Lessee's interchange point. (the "Delivery Date"). Lessor's obligation to furnish the Cars shall be subject to all causes beyond Lessor's reasonable control.

## 3. Charges and AAR Agreements.

(a) **Charges.** From and after the acceptance of the Cars, Lessee shall pay, and shall defend and indemnify Lessor against, all switching, transportation, freight, demurrage and other charges assessed by any railroad or other entity with respect to such Car (including its movement, use or operation) from the time period beginning after the Delivery Date of such Cars until the return of such Cars to Lessor in accordance with the terms hereof. Lessee shall also pay, in advance, \$1350 per car to transport cars from Mississippi origins and \$875 per car for cars transported from Nebraska origins. For the return movement of each Car to Lessor's destinations, upon return of cars, at end of lease shall be at Lessee's sole expense to a return location designated by Lessor upon the expiration or termination of this Lease pursuant to Subsection 13 (a) of this



Lease.

**(b) AAR Agreements.** Lessee agrees to abide, if applicable, with the Association of American Railroads ("AAR") Car Service and Car Hire Agreements with respect to the Cars.

**4. Rent.**

**(a) Rent Payments.** Lessee shall pay to Lessor as monthly rent for each Car, the sum of three hundred and seventy five dollars (\$375.00); until the Cars are returned to Lessor. Such rent shall become due for each Car upon the applicable Delivery Date and shall continue throughout the term, subject to Subsection 13(c), until such Car is redelivered to Lessor in accordance with the terms of this Lease. Lessee shall pay rent monthly in advance on the first day of each month without any deduction recoupment, setoff abatement, or alleged over-payment whatsoever. Rent for a partial month shall be prorated based upon the actual number of days each Car is in Lessee's service and the actual number of days in the month. This is not construed as a limitation of remedies.

**(b) Equalization.** Lessee agrees to use the Cars so that their total mileage under load will be equal or exceed their mileage empty for each calendar year. If the empty mileage of the Cars for any calendar year exceeds their loaded mileage, Lessee shall equalize such excess empty mileage within the time limit allowed or pay Lessor for such excess empty mileage based on the rate established by the governing tariff, rule or regulation, or at a rate of Five Cents (\$.05) per mile if no tariff, rule or regulation applies. The calculations and payments set forth herein shall be prorated for any fractional part of a year.

**(c) Excess Operational Mileage.** Lessee agrees that if any of the Cars shall travel more than Twenty thousand (25,000) miles, annually, Lessee shall pay to Lessor five cents (\$.05) a mile for such excess mileage in addition to rent and other charges hereunder. Lessee shall promptly pay charges for excess operational mileage after receipt of Lessor's invoice. If used in unit train service an additional ten cents (\$.10) per mile.

**(d) Late payment penalty.** Lessee agrees to pay a late fee of 5% per month on any amount due hereunder not paid within 5 business days after the due date. The late fee is applicable to payment only and in no way is a recoupment or setoff for other fees due under this Lease, nor does it limit Lessor's rights under this Lease.

**5. Derailment.** If any Car is derailed and was not caused by Lessee or its agents, then if such Car is not re-railed after ten (10) days, rent shall then abate but shall be reinstated as of the date of re-railment. In the event the derailment damages the car(s) beyond the stipulated value of \$40,000 per Car the Lessor may accept the stipulated value and repair the Car or ask that the Car(s) be



scrapped by the damaging railroad or industry with Lessee paying Lessor the stipulated value.

## 6. Maintenance.

**(a) Definitions.** Interchange Rules mean collectively the Field Manual and the Office Manual of the AAR Interchange Rules and the Manual of Standards and Practices of the AAR. References herein to the Interchange Rules provide performance standards and criteria for the condition of the Cars and their maintenance and repair. However, as between Lessor and Lessee, this Lease, not the Interchange Rules, governs who is responsible for performing and paying for maintenance and repairs. Lessee Maintenance Items means the entire body/container of the car(s), not limited to slope sheets, Roofing, Side sheets/posts, Partition sheets, hatch covers (no patching), gasket(s), batten arm(s), outlet gate(s) and related components thereof including running boards and ladders.

**(b) Maintenance By Lessor.** Lessor shall, at its expense, maintain each Car in good working order and repair and in accordance with the standards set by the Interchange Rules and by the rules of any other applicable regulatory body. These repairs are also referred to as "running repairs" necessitated through the operation of the car by the Association of American Railroads. The AAR rules are contained in the field and office manuals.

**(c) Maintenance By Lessee.** Lessee will cause the Car(s), when in need of repair, to Lessee Maintenance Items as defined in 6(a) above, to be delivered to a mutually agreeable contract repair shop (Shop). Lessee will accept delivery of the Cars after the repairs have been made. Without waiving any rights or remedies of Lessor, if unauthorized work is performed, Lessee will be responsible for such work and rent will continue. Lessee shall, at its expense, maintain all Lessee Maintenance Items in good condition and repair, and all repairs must be made in kind and per the original construction and design of the entire Car(s), unless otherwise permitted in writing by Lessor, including renewal necessitated by repair to other portions of the Cars. If any Lessee Maintenance Item is removed, broken off or altered for any reason, or is missing, damaged, altered or replaced with a non-standard item, Lessee shall replace it with an approved AAR item, unless Lessor has performed such removal or modification or caused such damage. If Lessee has applied any interior and/or exterior protective coating to the Cars, the application, maintenance, renewal and removal thereof shall be performed by Lessee at its expense. All maintenance, repairs and replacements performed by Lessee shall be performed in accordance with the Interchange Rules and the rules of any other applicable regulatory body, including the FRA. Lessee, at its sole expense, shall clean such Car, if necessary, so that it is empty and free from any residue in or on said car(s) as mentioned in section 8 herein. Cars must be returned suitable for any sand loading. Lessee shall reimburse Lessor for all repairs necessitated by



Lessee's improper loading of the Cars. Lessee shall, within thirty (30) days after notification that Lessor has paid a bill for maintenance, repair or cleaning for which Lessee is responsible, reimburse Lessor for such payment which shall be deemed to be additional rent due hereunder.

**7. Use of Cars.**

**Lessee shall use the Cars for the Sand Services only. Lessee shall not load the Cars with any other commodity or use the Cars for any other purpose.** The Cars will only be used in the United States and as described in section 1.b.

**8. Corrosion and Similar Damage.**

**Responsibility for Corrosion or Similar Damage.** If any Car has corrosion or similar deterioration or damage due to any commodity placed or allowed to accumulate in or on the Car, or to which the Car is exposed during any term of this Lease, Lessee shall be liable for the cost of correcting such deterioration or damage at the time the Car is returned to Lessor, regardless of whether or not such condition is due to Lessee's negligence. Corrosion, deterioration or damage shall not be considered "normal wear and tear." Lessee agrees to defend, indemnify and hold harmless Lessor from any liability, losses, damages, injuries, claims, and demands and expenses, including reasonable attorney's fees and expenses, arising out of, or as a result of, the loading and/or shipping in the Cars of commodities which cause oxidative corrosion or deterioration or damage to the Cars or their lining, paint, coatings, sealants, or similar items. Lessee shall ensure that all commodities loaded in the Cars comply with the terms of this Lease and all applicable tariffs, laws, rules and regulations.

**9. Liability for Loss of Use of Cars and Damage to Commodities.**

Lessor is not liable for and Lessee hereby waives any claims for any loss of, or damage to, commodities loaded or shipped in the Cars, regardless of the cause save and except from Lessor's sole negligence, gross negligence or willful misconduct. Lessor is not liable for loss of use of any Car regardless of the cause save and except from Lessor's or its agents sole negligence, gross negligence or willful misconduct.

**10. Modifications.**

**(a) No Consent to Modifications.** Lessee will not modify or otherwise alter the Car unless Lessor has provided previous approval. This shall not relieve Lessee of its maintenance obligations.

**(b) Required Modifications.** If a Car is required to be changed or replaced or any additional equipment or appliance is required to be installed on



any Car or any Car is required to be modified or altered (in each case in order to comply with changes to any applicable law, regulation, requirement or rule) (a "Modification"), Lessor may elect to either (i) terminate this Lease, effective as of the date on which such Modification is required to be made, or (ii) make such Modification, pay the cost thereof, and increase the monthly rent. If Lessor elects to make the Modification, Lessee agrees to pay an additional monthly charge of \$2.00 per Car for each \$100.00 in Modification costs expended by Lessor on such Car, effective as of the date such Car is released from the shop after such Modification.

**(c) Substitution of Car.** Lessor may at its expense replace any Car that has been damaged beyond the Stipulated Value of said Car with equipment of similar age, type and capacity upon prior written notice to Lessee. Lessor may also, at its expense and upon prior written notice to Lessee, replace any Car that Lessor determines is uneconomical for Lessor to repair or maintain with equipment of similar age, type, and capacity. Notwithstanding anything herein to the contrary, Lessor may, for any reason whatsoever upon written notice to Lessee, replace and substitute any Car with a railcar of similar age, type and capacity and Lessee and Lessor shall execute new schedules covering such new railcars and subjecting them to the terms of this Lease. Any car so substituted shall be subject to the terms and conditions of this leasing including, but not limited to, the acceptance conditions. If certain Cars are sent to contract shops for Rule 88 Extended Life, such Cars will not be substituted for unless Lessor has available cars to substitute. The provision of 5(a) will apply as to rent abatement. Instead, Cars will move back to Lessee at Lessor's expense.

## **11. Possession and Use.**

**(a) Subordination.** Lessee acknowledges that the Cars may be subject to certain covenants of Lessor's financial institutions or subject to the provisions of Lessor's lease with the actual owner (or agent for the owner) of the Cars, and Lessee agrees to be bound by same. This Lease and Lessee's rights are subject and subordinate to the rights and remedies of Lessor, or owners, any lender, owner, or other party which finances the Cars.

**(b) Compliance.** Lessee agrees that at all times the Cars shall be used in compliance with the terms of this Lease, and with all applicable laws, regulations and AAR rules and standards. Lessee further agrees to comply with the load limitations recorded in UMLER which is currently 268,000 lbs. on each Car. Lessor's railcars maintained to Schedule A, (see section 1(b)) have a maximum loading limit of 268,000 lbs. The three (3) compartments of the car shall be equally loaded so as not to cause shifting of the product causing damage to the car. Any and all Car(s) repair necessary due to the over loaded railcar shall be at Lessee's expense. Scale weight on each loaded car shall be furnished to lessor within 15 business days of request.

**(c) Marks to Show Ownership or Security Interests.** Lessor may



mark Cars to indicate the rights of Lessor or of any financing party. Lessor shall maintain such marks. Lessor may place railroad markings and reprogram the corresponding AEI tags to reflect the change from RFMX marks to the railroads marks at Lessor's expense, if desired by Lessor. All cars would be subject to car hire earnings in the normal course of business provided for in the CHARM/Default Rates (whichever rate provides the maximum income to Lessor) provided through Railinc on these cars shall accrue to Lessor during the term of this Lease.

**(d) Lessee Liens.** Lessee shall not directly or indirectly allow to exist encumbrances of any kind on or with regard to any Cars or this Lease arising by, through or under it except those created for the benefit of Lessor or its financing party. Lessee shall within five (5) business days notify Lessor in writing if any such encumbrance arises and shall immediately at its expense cause it to be discharged and removed.

## **12. Default.**

**(a) Events of Default.** The occurrence of any of the following events shall be an Event of Default:

- (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within thirty (30) business days after the date such payment is due;
- (ii) The breach by Lessee of any other term or condition of this Lease which is not cured within thirty (30) business days after Lessor has given written notice of default;
- (iii) Lessee makes a general assignment for the benefit of creditors or fails to pay, or states that it is unable to pay, or is unable to pay its debts generally as they become due;
- (iv) In the event that Lessee becomes insolvent or the debtor in a Chapter 11 proceeding under the Bankruptcy Code, the failure of such entity to assume this Lease within sixty (60) days of the commencement of the Chapter 11 proceeding; or

**(b) Lessor Remedies.** Upon the occurrence of any Event of Default, Lessor at its option may exercise any or all of the following rights and remedies and any additional rights and remedies permitted by law and shall be entitled to recover all its costs and expenses including reasonable attorneys, fees and expenses in enforcing its rights and remedies:

- (i) Terminate this Lease recover damages; and/or proceed by any lawful means to enforce performance by Lessee of this



Lease and/or to recover damages for any breach thereof;  
and/or

- (ii) Terminate this Lease by written notice, and retake some or all the Cars and thereafter recover as liquidated damages (and not as a penalty, it being acknowledged by the parties that actual damages are difficult or impossible to estimate and that the following is a reasonable estimate of the probable loss) any and all costs and expenses of termination, retaking and reletting (including, without limitation, reasonable attorney's fees and expenses) in addition to the present value (using a discount rate of five percent [5%] over the Bank America Prime Rate) of all rental for the un-expired balance of the Lease term then, in effect unpaid as of said date of termination, reduced by the present value (using a discount rate of five percent [5%] over the Bank America Prime Rate) of the fair market rental value of the Cars for the unexpired balance of the Lease term as of said date (such fair market rental value to equal zero for any Car not returned by Lessee). Lessor may sell the Cars at public or private sale, with or without notice, advertisement, or publication, as Lessor may determine otherwise dispose of, hold, use, operate, lease to others or keep idle the Cars as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto; or
- (iii) Without terminating this Lease, repossess any part of or all of the Cars, but in the event the Cars are delivered to Lessor or are repossessed, Lessor shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorney's fees and expenses) of retaking, repairing (if necessary) and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease.
- (iv) Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. The election by Lessor to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained, including, without limitation, the obligation to pay rent. The obligation to pay any deficiency or any sum or sums due and unpaid or any damages

suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

Lessee agrees that it has a duty to mitigate its damages. The remedies in this Lease shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies existing at law or in equity. Nothing herein shall deprive lessor of bringing joint contract and tort claims together in one action.

### **13. Expiration or Other Termination.**

**(a) Return of Cars.** Upon the expiration, repossession, or other termination of this Lease with respect to any Car, Lessee, at its expense, shall return such Car(s) to Lessor at a point designated by Lessor (The Return Location).

#### **(b) Condition Upon Return.**

- (i) Each Car shall be returned to Lessor meeting the specifications previously imposed upon Lessee, including (but not to the exclusion of others): (A) free of all accumulations or deposits from commodities; and (B) free of corrosion and any other commodity-related damage subject to section 8 herein. (C) Subject to 6(a) "lessee maintenance items". Any item that is damaged (or worn beyond what the AAR calls cause for attention or condemnable items or repairs in any AAR rule or (what is considered to be normal by the original component manufacturer) shall be deemed to have been damaged by the negligence of Lessee or its employees, agents or licensees and shall be Lessee's responsibility. In addition, if Lessor has permitted Lessee to place any logos or special paint on any Car(s), Lessee shall have such logos or special paint removed.
- (ii) Lessor may inspect any returned Car(s) after such return. Lessee shall be entitled to participate in any such inspection if present. Lessee agrees to pay Lessor, within thirty (30) days after receipt of an invoice, for all repairs, replacements and cleaning for which Lessee is responsible hereunder but which were performed by Lessor or Lessor' agents. This remedy is not exclusive.

**(c) Holdover Rent.** Until any Car(s) is returned to Lessor, Lessee shall continue to pay rent for such Car(s) and Lessee shall make all other payments and perform all other obligations under this Lease as though the expiration or other termination had not occurred. If Lessor requests the return of any Car and



such Car has not been returned, Lessee upon notice from Lessor, shall pay two hundred and fifty percent (250%) of the rent in effect immediately prior to expiration or termination. Nothing in this section shall give Lessee the right to retain possession of any Car after expiration or other termination of this Lease with respect to such Car. This clause is not a limitation on Lessor's default remedies.

#### **14. Record Keeping.**

Lessee agrees to furnish Lessor promptly, at Lessor's request, with complete and accurate information reasonably requested by Lessor pertaining to the Cars, their movement, (including Bill of Ladings or other agreements with railroads pertaining to freight rates and car hire) and any repairs and maintenance to the Cars, which was not performed by Lessor. In addition, if any Car is derailed or damaged by any railroad or industry such notice of damage or derailment shall be forwarded to Lessor via phone, email or fax by Lessee or its agents. Lessor alone will decide if damage Car(s) will be repaired or scrapped. Such notice must get to Lessor in order that Lessor may make known its' instructions to the damaging railroad or industry in order to reserve Lessor's right to save the Car from further damage or scrapping. Failure to comply with this provision will be considered a breach and default in this lease subject to Article 12 above.

#### **15. Insurance.**

Lessee will procure and maintain for the entire duration of the Lease (including any renewal thereof) and any storage of Cars, at its sole cost and expense, with a reputable and financially responsible insurance underwriters rated "A" or better. Such policy shall cover Lessor's railcars in the amount of forty thousand dollars (\$40,000) against physical damage per Car. Lessor will provide unique identifying marks for each Car insured by Lessee. Lessee's insurance shall name Lessor as additional insured's. Upon execution hereof, and annually thereafter, Lessee shall provide Lessor with Lessee's insurance certificate evidencing Lessee's insurance required hereunder. Lessee's insurance shall be primary without right of contribution from any insurance carried by Lessor. The \$40,000 (value stated earlier) value is a stipulated loss value for the casualty of a railcar regardless of its AAR Rule 107 depreciated value.

#### **16. Taxes.**

Lessor shall pay, and shall defend and indemnify Lessee against all property taxes assessed against or levied upon the Cars and shall file all property tax returns. Lessee shall forward to Lessor upon receipt of copies of any correspondence, notifications of proposed assessments and tax bills it may receive with respect to such property taxes. Lessee shall be liable for, and shall indemnify, defend and hold Lessor harmless from and against, all other taxes, duties or government impositions with respect to the Cars,



which arise by, through or under lease, subject to the exception in section 1(b)..

**17. Indemnities.**

Lessee shall indemnify, defend and hold Lessor harmless from and against any loss, liability, claim, cost, damage or expense (including attorney's fees) arising out of or in connection with the possession, leasing, subleasing, storage, use or return of any Car from the date of acceptance by Lessee to the date of delivery to Lessor, excepting, however, any loss, liability, claim, cost, damage or expense which is attributable to the negligence or willful misconduct of Lessor, its agents or employees, or accrues with respect to any of the Cars while such Car is in a repair shop undergoing repairs for only Lessor maintenance items.

**18. Miscellaneous.**

**(a) No Assignment Without Lessor Consent.** This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns; PROVIDED, HOWEVER, THAT LESSEE MAY NOT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR PLEDGE OR ASSIGN THIS LEASE OR ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER. ANY PURPORTED ASSIGNMENT IN VIOLATION HEREOF SHALL BE VOID.

**(b) Subleases.** Lessee may sublease the Cars if first (i) Lessee notifies Lessor within thirty (30) days of the sublease and the terms thereof; (ii) Lessee and sublessee shall be and continue to remain liable to Lessor under this Lease and sublease; (iii) any sublease shall contain language which expressly makes such sublease subject and subordinate to this Lease and to the rights of Lessor and the financing parties described in Subsection 11(a); such sublease must require that the Cars will be used only within the boundaries of permitted use set forth in Subsection 7(a) and in accordance with all of the terms and conditions set forth herein upon Lessee.

**(c) Assignment by Lessor.** All rights and obligations of Lessor under this Lease, and Lessor's interest in the Cars and in the rents, may be assigned, pledged, or transferred in whole or in part without notice to or consent by Lessee.

**(d) Additional Documents.** Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition, financing or use of the Cars.

**(e) Parties and Permitted Parties.** Lessee expressly acknowledges and agrees that they are jointly and severally liable for the payment of rent and performance of all obligations to be paid or performed by Lessee hereunder.



**(f) No Waiver.** No delay, waiver, indulgence or partial exercise by Lessor of any right power, or remedy shall preclude any further exercise thereof or the exercise of any right, power or remedy in contract or law.

**(g) No Warranties.** Lessor's obligations are expressly limited to those set forth in this Lease, and LESSOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. LESSOR MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, FREEDOM FROM INFRINGEMENT OR CLAIMS OF ANY PARTY OR OTHERWISE, NOR SHALL LESSOR HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS LEASE OR THE BREACH OF ANY WARRANTY OR OTHER PROVISION HEREUNDER BY LESSOR OR IN CONNECTION WITH THE LEASE, USE, POSSESSION OR OPERATION OF ANY CAR OR ARISING BY REASON OF ANY IMPERFECTION OR DEFECT IN THE CARS, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN TORT OR IN CONTRACT.

**(h) Notices.** Any notices required or permitted to be given hereunder shall be deemed given when sent by fax with verification of transmission, email, or made in writing, deposited in United States mail, registered or certified, postage prepaid, or such overnight courier service requiring a signature for receipt addressed to:

**Lessor:** Caldwell-Baker Company  
Attention: Carle Baker, Jr., President  
P.O. Box 226  
Gardner, KS 66030  
(913) 856-6437  
Fax: (913) 856-7437

**Lessee:** Chieftain Sand  
Attn: Doug Weier, Logistics  
331 27<sup>th</sup> Street  
New Auburn, WI 54757  
(715) 237-2256 Ext. 214  
Fax: (715) 237-2275

Or to such other addresses as Lessor and Lessee may from time to time designate in writing.

**(i) Applicable Law.** The terms of this Lease and all rights and obligations hereunder shall be governed by the laws and venue of the State of Kansas without regard to Kansas' choice of law doctrine. It is agreed the venue



for any legal action between the parties to be in Johnson County Kansas District Court or Kansas Federal District Court in Wyandotte, Kansas, with said choice of venue to be Lessor's. There are words and phrases herein that are railroad terminology defined by the *Car and Locomotive Cyclopedia* (1997) dictionary published by Simmons-Boardman.

(j) **Survival.** The obligations of Lessor and Lessee to make any payments hereunder shall survive the expiration or other termination of this Lease.

(k) **Entire Lease.** This Lease and any Schedules attached hereto represent the entire agreement. This Lease may not be modified, altered, or amended, except by an agreement in writing signed by Lessor and Lessee.

(l) **Counterparts.** This Lease may be executed in any number of counterparts, and such counterparts together shall constitute one contract.

(m) **Binding Upon Parties.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

(n) **Recording.** Upon request by Lessor, Lessee shall join in the execution of a memorandum or short form of this Lease for use in recordation under 49 U.S.C.A. Section 11303 or such recordation as Lessor reasonably deems appropriate. Said memorandum or short form of lease may describe the parties, the cars being leased and the term of this Lease, including any options to extend, and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

**CALDWELL-BAKER COMPANY, Lessor**

**Chieftain Sand and Proppant Barron, Lessee**

By: Carle Baker

By: [Signature]

Printed Name: Carle Baker JR

Printed Name: Yohai Borenstein

Title: President

Title: CFO

Date: 1/31/13

Date: 1/31/13

CB



## Schedule B

**THIS AMENDMENT TO THE AGREEMENT** is made as of February \_\_, 2013, pursuant to the "Railcar Lease Agreement" ("Lease") dated January 31, 2013 between CALDWELL-BAKER COMPANY, a Delaware corporation ("Lessor") and CHIEFTAIN SAND AND PROPPANT BARRON, a Wisconsin corporation ("Lessee").

**WHEREAS**, Caldwell-Baker Company and Chieftain Sand and Proppant Barron amend their lease dated January 31, 2013 to add 100 covered hoppers, mentioned on the 2<sup>nd</sup> page of this Schedule B.

**WHEREAS**, Section 3(a) shall be amended as follows: **Charges**. From and after the acceptance of the Cars, Lessee shall pay, and shall defend and indemnify Lessor against, all switching, transportation, freight, demurrage and other charges assessed by any railroad or other entity with respect to such Car (including its movement, use or operation) from the time period beginning after the Delivery Date of such Cars until the return of such Cars to Lessor in accordance with the terms hereof. Lessee shall also pay all expenses and charges for the movement of each Car to Lessee's origin of initial loading and a return location designated by Lessor upon the expiration or termination of this Lease pursuant to Subsection 13 (a) of this Lease.

**WHEREAS**, Section 3(c) is added to include the following obligations of the Lessee: Lessee shall pay, and shall defend and indemnify Lessor against, all switching, transportation, freight, demurrage and other charges assessed by any railroad or other entity with respect to such Car (including its movement, use or operation) in moving railcars to their initial loading point.

**WHEREAS**, Lessee shall pay to Lessor as monthly rent for each car during the term, the sum of Three Hundred Seventy Five Dollars (\$375.00), commencing on the "Delivery Date" per section 2(c) of the lease agreement. The Lease term shall expire on September 30, 2016. All terms of the Lease shall remain unchanged and continue in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this agreement as of February 8, 2013.

**CALDWELL-BAKER COMPANY**

By: Caldwell Baker  
Title: President  
Date: 2/11/13

**Chieftain Sand and Proppant Barron**

By: [Signature]  
Title: CEO  
Date: 2/11/13