

CHAPTER 7 TRUSTEE'S REAL ESTATE CONTRACT

THIS AGREEMENT, made and entered into this 19th day of September, 2020, by and between Fred Charles Moon, duly appointed Chapter 7 Trustee of the bankruptcy estate of:

Legacy Quartz Sand Company, LLC, Debtor
Case No. 18-61082-CAN-7

hereinafter referred to as "Seller", and _____ and _____, hereinafter referred to as "Buyer(s)";

WITNESSETH

WHEREAS Seller, as Chapter 7 Trustee of the above Debtor LLC's estate, has been appointed to act as Chapter 7 Trustee of the Debtor LLC's estate, and has applied for authorization from the United States Bankruptcy Court for the Western District of Missouri, to sell the Debtor's interest in the real estate hereinafter described, at public auction sale and has obtained an Order authorizing said public auction sale; and

WHEREAS the above named Buyer(s) have submitted through Bob Kollmeier Auctions [Robert (Bob) Kollmeier, Auctioneer] to the Chapter Trustee, an bid and offer to purchase said property, "as is" and without any contingencies, for the sum of \$_____, at the public auction sale conducted on September 19th, 2020, and which bid and offer the Chapter 7 Trustee believes is a fair and reasonable; and

WHEREAS the parties desire to reduce to writing, the terms and provisions of said proposed sale and purchase by this agreement; and

WHEREAS Seller desires to sell in his capacity as Chapter 7 Trustee of the above named Debtor LLC's estate and Buyer(s) desire to buy for the amount hereinafter stated in paragraph 2, on the terms and conditions hereinafter set forth, the real estate described herein.

NOW THEREFORE, in consideration of the sum of the purchase price specified in paragraph 2 hereof, to be paid by Buyer(s), and the legal covenants herein contained, and other good and valuable consideration, the parties hereto agree as follows:

1. Seller, as Chapter 7 Trustee, as previously authorized by the Order of the United States Bankruptcy Court entered on September 4th, 2020 [doc. #32], a copy of which is attached

hereto as Exhibit #1, hereby agrees to sell in his capacity as Chapter 7 Trustee of the above named Debtor LLC's estate and Buyer(s) hereby agree to purchase, "as is" and without any contingencies, the following unimproved real estate, including any mineral right interest therein, described as follows:

Form 1, Item #1: 123.5 m/l acres of unimproved real estate at or near 12628 Cadle Road, Licking, Dent County, Missouri, including any mineral right interest: Tax Parcels, (T-1: 42.20 acres m/l) 17-3.0-06-0-00-005.000 and (T-2: 81.30 acres m/l) 17-3.0-07-0-00-002.000 and further

described as: Form 1, Item #1: 123.5 m/l acres of unimproved real estate at or near 12628 Cadle Road, Licking, Dent County, Missouri, including any mineral right interest: Tax Parcels, (T-1: 42.20 acres m/l) 17-3.0-06-0-00-005.000 and (T-2: 81.30 acres m/l) 17-3.0-07-0-00-002.000, and legally described as follows:

Beginning at the Southeast Corner of the Southwest Quarter of the Southeast Quarter (SW1/4 SE1/4) of Section Six (6), Township Thirty Two (32) North, Range Seven (7) West, Run North One Hundred (100) yards, thence West down the bluff to Pigeon Creek crossing the creek eight (8) yards South of a double elm tree, thence West with ditch and fence to the county road as now located, thence South along County Road to the line between Section Six (6) and Seven (7), thence continue South and East along County Road to Bean Creek, thence in a Southeasterly direction along Bean Creek to Pigeon Creek, thence North and East along Pigeon Creek on said line to the true point of beginning, all the above land being located in Sections Six (6) and Seven (7) Township Thirty Two (32) North, Range Seven (7) West.

SUBJECT to any and all rights-of-way, easements, restrictions, reservations and covenants of record; and

SUBJECT to the terms and conditions of the transmission line easement in favor of Sho-Me Power Corporation, by instrument filed November 29th, 1960, in Book 111 at Page 141, of the deed records of Dent County, Missouri, and any encroachments or limitations it may make on the subject property; and

SUBJECT to the terms and conditions as set forth in the easement deed by court order in settlement of landowner action in favor of Sho-Me Power Electric Cooperative, et al. recorded on December 13th, 2019, as Instrument #20192269, of the deed records of Dent County, Missouri; and

SUBJECT zoning ordinances and regulations of Dent County, Missouri;

SUBJECT to streams, riparian rights, boundary changes caused by accretion and avulsion, and the title to any filled in lands not otherwise shown by the public records; and

SUBJECT to the rights of the public, State of Missouri, County of Dent, in and to the part of the premises in question if any taken or used for highway or road purposes and subject to any and all easements, public or private, including easements of record.

2. The purchase price shall be the sum of \$_____ payable as follows:
- (a) Ten percent (10%) down, or \$_____ upon execution of this Contract, the receipt of which is acknowledged, which down payment deposit (Earnest Money Deposit) shall be held in escrow by Hiett Land Title LLC (Attn: Scott Stillwell Title Agent 417-967-0238) pending closing of this sale.
 - (b) In the event that the Buyer fails to close on or before the agreed closing date herein of (_____) _____, 2020, the entire amount of the Earnest Money Deposit shall be retained by the Seller, Chapter 7 Trustee, as reasonable liquidated damages incurred by the Chapter 7 bankruptcy estate on default of the Buyer. The parties agree that in the event of a dispute over the Earnest Money Deposit the above named title company shall continue to hold said deposit in its escrow account until a written release from all parties consenting to its disposition is provided or until entry of an Order by the United States Bankruptcy Court determining its disposition, at which time such funds shall be remitted by the title company as provided in such Bankruptcy Court Order. All parties to this agreement consent to exclusive exercise of jurisdiction by the Bankruptcy Court over any dispute regarding the Earnest Money Deposit and stipulate that any such dispute is a core matter under 28 U.S.C. Section 157(b)(2) or a related core matter and waive any right to trial by jury pursuant to Fed. R. Civ. Proc. 38 or otherwise of any issues triable by jury involving any claim to the Earnest Money deposit and consent to trial by the Bankruptcy Court on all such issues sitting without a jury.
 - (c) Balance of \$_____ is to be paid by cashier's check, or bank certified funds payable to Fred Charles Moon, Chapter 7 Trustee, Case No. 18-61082-

CAN-7 at closing or prior to closing by confirmed wire transfer to the escrow closing account of Hiatt Land Title LLC, 610 S. Grand Avenue, Houston, MO 65483

3. (A) Seller/Chapter 7 Trustee has concurrently with the execution of this contract, provided the Buyer(s) with a title commitment issued by Hiatt Land Title LLC, showing marketable contract in Debtor LLC/s name, a copy of which is attached hereto as Exhibit #2 and copies of the paid 2018 and 2019 Dent County, Missouri real estate tax receipts for Form 1, Item #1, T-1 and T-2..
- (B) Seller/Chapter 7 Trustee shall, if required by the Title Company, provide and record on or before closing, a certified copy of Seller's Notice of Appointment as Chapter 7 Trustee for the above Debtor LLC's estate and the Order Approving Chapter 7 Trustee's Motion and Application to Sell Property and Notice of Intent to Sell Property, if applicable; otherwise said documents shall be attached to the Chapter 7 Trustee's Deed Under Order Of The United States Bankruptcy Court At Public Auction Sale With Aid Of An Auctioneers Pursuant To 11 U.S.C. Section 363(f), and recorded at Buyer's expense .
- (C) Based on the fact that the Chapter 7 Trustee is authorized to sell said real estate at public auction sale as an asset of the Debtor LLC's Chapter 7 bankruptcy estate "as is" and without express or implied warranties, and since all bidders had the opportunity to examine Trustee's Exhibit #2 the Seller's title commitment in possession of the Court appointed Auctioneer before said public auction sale, the Bidder/Buyer herein expressly waives any right to notify the Seller in writing of any objections to title as a basis for cancellation of this contract.

4. The Seller/Chapter 7 Trustee shall be responsible for the payment of the Seller's title commitment policy only. Buyer(s) shall be responsible for a Buyers'/Owners' policy if Buyer(s) choose to purchase same.

5. This sale shall be closed on or before the _____ day of October, 2020, at the office of Hiatt Land Title LLC, 610 S. Grand Avenue, Houston, MO 65483 or as otherwise, in the sole discretion of the Seller/Chapter 7 Trustee, determined to be in the best interest of all parties herein, pursuant to a United States Bankruptcy Court Order [doc. #32], dated the 4th day of September, 2020, authorizing said public auction sale.

6. The closing settlement charges shall be assessed as follows:

- (a) To the Seller/Chapter 7 Trustee:
 - (1) ½ of the settlement closing fee;
 - (2) Cost of the title commitment;
 - (3) All auctioneer fees and costs of sale
 - (4) Seller's pro-rated 2020 real estate taxes to date of closing
 - (5) Other: (none)

- (b) To the Buyer(s):
 - (1) ½ of the settlement closing fee;
 - (2) Cost of Buyers'/Owners' title insurance coverage;
 - (3) All recording fees;
 - (4) Any current year taxes required to be paid by the title insurance company at closing;
 - (5) Any surveying fee
 - (6) Any mineral testing, including test bores and sample analysis
 - (7) Buyer pro-rated 2020 real estate taxes after date of closing.
 - (8) Other:

7. The Seller/Chapter 7 Trustee shall sell said property to Buyer(s) pursuant to 11 U.S.C. Section 363.(f) free and clear of all known liens and encumbrances indicated in the title commitment issued by Hiatt Land Title LLC, pursuant to the United States Bankruptcy Court's Order dated September 4th, 2020 [doc. #32].

8. Seller/Chapter 7 Trustee shall have no obligation to pay any claims for real estate taxes, assessments, special assessments, or owner's association dues or fees unless same are recorded as a lien prior to the filing of the Debtor LLC's petition, which date is as follows: September 27th,

2018, except such claims which were assessed and became due and payable during the administration this estate on or before December 31st, 2019.

9. Seller/Chapter 7 Trustee, unless otherwise expressly agreed to herein or ordered by the Bankruptcy Court, shall have no obligation to pay any general state, county, school, real estate taxes for the current year (2020) and such taxes shall not be prorated to the date of closing between Seller and Buyer(s) and shall be Buyer's separate expense.

10. It is understood and agreed, that because of the commitments of the parties, time is of the essence of this agreement, and if the Seller has kept Seller's part of this agreement by furnishing a title commitment as herein provided, and the Buyer(s) fail to comply with the requirements of this agreement upon closing, then the money deposited as aforesaid as a down payment shall be paid over the Seller/Chapter 7 Trustee as liquidated damages, actual damages being difficult if not possible to ascertain. In the event the Order of the United States Bankruptcy Court entered herein and authorizing said public auction sale has not become final and non-appealable prior to this contract date the Chapter 7 Trustee's performance under this Agreement is specifically conditioned upon said Order becoming a final and non-appealable Order, and the Chapter 7 Trustee shall have no liability to Buyer(s) for non-performance herein without said United States Bankruptcy Court Order becoming final and non-appealable.

11. It is further understood and agreed that this sale is being made without any express or implied warranties by the Chapter 7 Trustee, or any other party and that Buyer(s) assume all risk in connection with the purchase of said property, including any defects which may be apparent or hidden; and that Buyer(s) waive any claim that they may have against the Seller/Chapter 7 Trustee, or the Debtor LLC's estate with respect to any defect or hazardous condition that may exist with respect to the premises or be related thereto.

12. It is further understood and agreed that the property being sold may be subject to easements of record, riparian rights, boundary changes caused by accretion and avulsion, and subject

to and including utility and roadway easements and applicable right-of-ways whether private or governmental.

13. It is further understood and agreed that the accuracy of the legal description furnished by the Seller/Chapter 7 Trustee is not warranted by the Seller/Chapter 7 Trustee and is taken from the documentation provided to the Seller/Chapter 7 Trustee by the Debtor LLC and from the Seller/Chapter 7 Trustee's Title Commitment furnished by Hiatt Land Title LLC. In the event that the Buyer(s) requests a survey the costs of any such survey shall be at Buyer(s)' separate expense, and further provided that closing shall not be conditioned on completion of said survey.

14. It is further understood and agreed that the Seller/Chapter 7 Trustee shall have no obligation to remove any tenant or other person in possession of the property or such person's property, equipment, vehicles, livestock, household goods, domestic pets, trash or waste, provided that any known tenant shall be provided notice of the transfer of title by the Seller/Trustee to the Buyer(s) herein and notified that subsequent rents should be remitted to the Buyer(s), if applicable.

15. The risk of loss shall pass to Buyer(s) upon execution of this Contract, including all loss or damage to the subject property which occurs between execution and closing, and Buyer(s) shall be responsible for providing their own insurance coverage thereon subsequent to the execution of this Contract with the bankruptcy estate made a loss payee during the period prior to closing and making appropriate arrangements to secure said property and provide any required utility service subsequent to the execution of this contract.

16. If the real estate to be sold has any residential dwelling or similar structure built prior to 1978, the order of the Bankruptcy Court approving said sale provides for the Seller/Trustee to be authorized to sign a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards stating that the Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing, which shall satisfy the Seller's obligation under 41 U.S.C. Section 4582(d) and the parties agree that the cost of any risk assessment or inspection for possible lead-based paint hazards shall

be at "Buyer(s)" expense; and that the Seller/Chapter 7 Trustee shall have no liability to the Buyer(s) or subsequent transferee(s) with respect to such hazard, if any.

17. It is further understood and agreed that the Seller Chapter 7 Trustee shall provide the following instrument transferring and conveying all right title and interest of the Debtor LLC and the interest of the Chapter 7 bankruptcy estate to the purchaser or (its) designee:

**CHAPTER 7 TRUSTEE'S DEED UNDER ORDER OF THE UNITED STATES
BANKRUPTCY COURT AT PUBLIC AUCTION SALE WITH AID OF
AN AUCTIONEER PURSUANT TO 11 U.S.C. SECTION 363(f)**

18. The terms and provisions of this Contract shall be governed by the laws of the State of Missouri, the United States Bankruptcy Code and Rules, and the United States Bankruptcy Court Order authorizing the sale hereof.

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate this _____ day of September, 2020.

SELLER:

FRED CHARLES MOON, TRUSTEE
BANKRUPTCY ESTATE OF:
Legacy Quartz Sand Company, LLC, Debtor
Case No. 18-61082-CAN-7

BUYER(S):

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