

SURFACE LAND USE AGREEMENT

This Surface Land Use Agreement is made and entered into effective this 17th day of May, 2016 (“**Effective Date**”), by and between the **Office of Navajo and Hopi Indian Relocation (“ONHIR”)**, an independent agency in the Executive Branch of the United States Government, and whose address is P.O. Box KK, Flagstaff, AZ 86002; and **Preferred Sands of Arizona, LLC**, a Delaware limited liability company, whose address is One Radnor Corporate Center, 100 Matsonford Road, Suite 101, Radnor, PA 19087 (hereinafter referred to as “**Preferred**”), with the concurrence of the **Navajo Nation and Nahata Dziil Commission Governance (“NDCG”)**, P.O. Box 400, Sanders, AZ 86512. ONHIR, Preferred, Navajo Nation and NDCG are sometimes referred to collectively herein as the “**Parties**.”

RECITALS:

WHEREAS, ONHIR is the federal land manager and administers certain Trust Lands generally depicted on Exhibit A attached hereto (as same may be amended from time to time, the “**Lands**”) and located in Apache County, Arizona within Sections 13,14, and 24, Township 21 North, Range 29 East; and

WHEREAS, the Lands, as depicted on Exhibit A, consist of 350 acres, more or less, of land owned and held in trust by the United States (“**Owner**”) for the Navajo Nation, subject, however, to exceptions and reservations of minerals and rights of entry to prospect for, mine and remove the same and to use so much of the surface of said Lands as may be necessary and convenient for such purpose contained in the deed of conveyance of the Lands given by the Santa Fe Pacific Railroad Company, the predecessor in interest to BNSF Railway Company (“**BNSF**”), to Owner’s predecessor in interest; and

WHEREAS, the Lands comprise a small portion of the total land area covered by that certain Clay and Sand Sublease dated November 24, 2004 by and between Newmont Realty Company and BASF Corporation (as successor in interest to Engelhard Corporation (the “**Sublease**”)); and

WHEREAS, Preferred has represented to ONHIR, Navajo Nation and NDCG that it has been granted by BASF exclusive rights to purchase and direct the mining of all silica sand available to BASF pursuant to the Sublease (the “**Sand**”); and

WHEREAS, Preferred has conducted investigations on and received regulatory approval from the Navajo Nation Environmental Protection Agency, the Navajo Nation Historic Preservation Department and the Navajo Nation Department of Fish and Wildlife (collectively, the “**Approvals**”) to expand its ongoing Sanders, Arizona mining operations into a 152-acre (approximately) portion of the Lands described and depicted on Exhibit B attached hereto (as same may be amended from time to time, the “**Permitted Land**”); and

WHEREAS, a dispute among the Parties exists as to, among other things, (i) whether ownership of the Sand runs with ownership of the surface estate or of the subsurface estate, (ii) what surface uses are permissible with respect to the Sublease area under the reserved rights

of entry, surface use and mining, and (iii) the extent (if any) to which ONHIR, Navajo Nation and/or NDCG may condition or restrict such surface uses; and

WHEREAS, the Parties are entering into this Agreement in settlement of all such disputes between the Parties as to the Lands, with all Parties reserving all rights, claims, causes of action and remedies as may pertain to land that is not included within the Lands.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The Parties acknowledge the accuracy of the foregoing recitals and agree that they are incorporated herein by this reference as agreements among the Parties.

2. **Right of Use.** For the Consideration provided for in Section 5 of this Agreement, ONHIR hereby agrees that from and after the Effective Date, Preferred, its agents, employees, contractors, and related service companies, subject to the terms of this Agreement, shall have the exclusive right to enter upon and use the Lands for the purpose of developing, mining, recovering, removing, transporting, and otherwise using, enjoying, marketing, selling and exploiting from the Lands the Sand (which is generally found in the overburden overlying the bentonite clay strata), together with the right for Preferred to use the Lands to construct and maintain one or more access roads (collectively, the "**Intended Use**"). ONHIR further agrees that during the term of this Agreement neither ONHIR nor the Navajo Nation shall grant rights to any other party to Sand from the Lands and that Preferred's right to possession of all Sand mined pursuant to this Agreement shall be free and clear of any and all rights or claims of ONHIR, Navajo Nation and NDCG against Preferred and against any party who acquires rights in or title to the Sand from or through Preferred, including, but not limited to, claims for compensation based on claimed ownership of the Sand located within the Lands. It is the Parties' intention that Preferred, its agents, employees, contractors and related service companies shall have the right pursuant to this Agreement to utilize a total of 350 acres of land for the Intended Use. The depicted area of the Lands represents, as of the Effective Date, Preferred's preliminary understanding of an area containing 350 acres of land containing marketable Sand. If, as a result of further exploration, investigation and study, Preferred determines that some or all of the area depicted on Exhibit A does not contain sufficient quantities of marketable Sand to warrant mining, Preferred shall select alternative acreage from the Sublease area to replace the unsuitable lands. The Parties agree to work together in good faith to modify Exhibit A to this Agreement so that it depicts a total area of 350 acres of land that Preferred in fact intends to mine. The Navajo Nation and ONHIR shall promptly and diligently review and respond to all submittals by Preferred with respect to lands that are not currently Permitted Lands. In connection with its efforts to select alternative acreage, Preferred shall have the right to perform exploration and related activities on other land covered by the Sublease solely in order to determine the location and availability of marketable Sand within such land.

It is the Parties' intention that any areas of the Lands that are not actively being used by Preferred for the Intended Use shall remain subject to livestock grazing and related uses that will not preclude future mining activities. Preferred will not prevent use of the Lands except that

Preferred will install fencing as needed to segregate those portions of the Lands actually being used by Preferred for the Intended Use. Preferred will install gates in currently existing fence lines as needed to enable use of the Lands as described above.

3. **Location of Mining Activity.** Preferred has advised ONHIR, Navajo Nation and NDCG that mining activity on the Permitted Land will, in all material respects, occur in accordance with the mining and reclamation plan attached hereto as Exhibit C (the “**Mining and Reclamation Plan**”). From time to time, Preferred may obtain relevant regulatory approvals to further expand its mining operations into some or all of the balance of the Lands lying beyond the Permitted Land. In connection with such further approvals and expansion, Preferred shall modify the Mining and Reclamation Plan to include such additional portions of the Lands as part of the Permitted Land and subject to the requirements of the Mining and Reclamation Plan.

4. **Term.** This Agreement shall be in effect for a term of one hundred eighty (180) months beginning on the date both Preferred and ONHIR execute this Agreement and Navajo Nation and NDCG concur in the Agreement, or until the mining of Sand on the Lands is complete, whichever first occurs. Notwithstanding the expiration of this Agreement, Preferred’s reclamation obligations as set forth herein and in the Mining and Reclamation Plan shall continue until concluded and Preferred shall be granted continued access to the Lands as reasonably necessary to perform reclamation in accordance with the Mining and Reclamation Plan.

5. **Consideration.** In consideration of the agreements of ONHIR contained in this Agreement (and as concurred to by Navajo Nation and NDCG), Preferred shall pay up to the total sum of \$700,000 (the “**Consideration**”). The Consideration shall be paid as follows: \$175,000 to be paid within two (2) business days after full execution and concurrence of this Agreement, \$175,000 to be paid upon the first anniversary of the Effective Date of this Agreement, and \$350,000 to be paid on or before the third anniversary of the Effective Date of this Agreement. All funds paid by Preferred pursuant to this Section 5 shall be paid into and held in an escrow account approved by the Navajo Nation, ONHIR and NDCG until the Navajo Nation and NDCG agree on the allocation of such funds, which agreement must ensure that such funds are used solely for the benefit of Navajo families residing on the lands partitioned to the Hopi Tribe on December 22, 1974.

6. **Operations.** Preferred’s operations on the Lands shall be conducted in accordance with the following:

- (a) Preferred shall conduct operations and activities on the Lands in accordance, in all material respects, with Applicable Law (as defined in Section 11).
- (b) Preferred shall perform its operations and activities on the Lands in accordance, in all material respects, with the Mining and Reclamation Plan. Designated representatives of ONHIR and the Navajo Nation, in their official capacities, shall have the right, during normal business hours, to inspect Preferred’s operation to determine whether Preferred

is operating in accordance with its obligations under the Mining and Reclamation Plan and this Agreement. Except in the event of a situation posing an imminent danger to life, health or property, in which case no advance notice is required, the Navajo Nation or ONHIR shall give Preferred at least five (5) business days' notice of any inspection. At Preferred's option, Preferred shall have the right to have a representative of Preferred accompany any such ONHIR representative or Navajo Nation representative who is conducting an inspection.

- (c) All cattle guards installed by Preferred shall be kept clean and in good repair and will become the property of ONHIR at the expiration of the term of this Agreement.
- (d) Preferred shall not permit the release or discharge of any toxic or hazardous chemicals or wastes on the Lands. Any spill of oil, grease, solvents, chemicals, or hazardous substances on the Lands which are reportable to regulatory authorities under applicable law or regulations shall be immediately (within 24 hours) reported to the Navajo Nation, ONHIR and NDCG by telephone, fax, or e-mail, to be followed by copies of written notices which Preferred has filed with regulatory authorities within five (5) business days after such filing.
- (e) Topsoil shall be conserved during excavation, stockpiled, and reused as cover on disturbed areas to facilitate regrowth of vegetation in accordance with the Mining and Reclamation Plan.
- (f) Trees removed during the term of this Agreement shall be stacked in an area that does not interfere with Preferred's operations, and when dry and appropriate for use as firewood may be removed by NDCG in accordance with such reasonable conditions and restrictions as Preferred may develop from time to time.
- (g) No living quarters shall be constructed upon the Lands.
- (h) Preferred shall not fence any access roads without the prior consent of ONHIR, except to the extent necessary to cure an unsafe condition.
- (i) With respect to portions of the Lands actually being mined or otherwise utilized for the Intended Use, Preferred shall construct and maintain stock-tight fences for both sheep and cattle around any dangerous areas, including any pits, but excluding access roads.
- (j) None of Preferred's employees, agents, or contractors, or any other person under the direction or control of Preferred shall be permitted to carry firearms or any other weapons on the Lands and such persons

shall not hunt, fish, or engage in recreational activities on the Lands. No dogs will be permitted on the Lands at any time. Preferred will notify all of its contractors, agents, and employees that no dogs, firearms, weapons, hunting, fishing, or recreational activities will be allowed on the Lands. None of Preferred's employees, agents, or contractors, or any other persons under the direction or control of Preferred, shall possess or be under the influence of alcohol or illegal drugs while on the Lands.

(k) No open fires shall be permitted on the Lands.

7. **Extraordinary Damages.** The Consideration provided for herein does not account for loss of livestock, damage to personal property, or injuries to persons. This Agreement does not relieve Preferred from liability it would otherwise have for damage to livestock or loss of livestock directly related to activities of Preferred on the Lands. If loss of livestock should occur for which Preferred is liable, Preferred shall be liable for removal of said livestock.

8. **Designated Contact Person.** Preferred, NDCG and ONHIR will each from time to time designate an individual, with appropriate 24-hour telephone and fax numbers, who is to be the primary contact person for discussions and decisions concerning matters related to this Agreement. Current contact information is as follows:

For Preferred:

Preferred Sands of Arizona, LLC
One Radnor Corporate Center
100 Matsonford Road, Suite 101
Radnor, PA 19087
Attn: Paul McLean
pmclean@preferred.com

and

Preferred Sands
One Radnor Corporate Center
100 Matsonford Road, Suite 101
Radnor, PA 19087
Attn: Legal Department

For ONHIR:

ONHIR
P.O. Box KK
Flagstaff, AZ 86002
Attn: Scott Kuhr, Land Management Specialist
skuhr@onhir.gov

and

ONHIR
P.O. Box 130
Sanders, AZ 86512
Attn: Mae Salago-King, New Lands Program Operations Specialist
mking@onhir.gov

For NDCG: Nahata Dziil Commission Governance
P.O. Box 400
Sanders, AZ 86512
Attn: President

For the Navajo Nation: Office of the President/Vice President
Post Office Box 7440
Window Rock, Arizona 86515

9. **Assignment.** Any assignment of rights granted by this Agreement shall require the concurrence of ONHIR, the Navajo Nation and NDCG, which concurrence shall not be unreasonably withheld, conditioned or delayed.

10. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit of the successors, if any, of ONHIR and any approved assignee of Preferred.

11. **Applicable Law.** This Agreement shall be construed under the laws of the United States. The Agreement shall be governed by applicable federal law and the laws of the Navajo Nation including but not limited to the Navajo Preference in Employment Act; the Navajo Nation Water Code; the Navajo Nation Business Opportunity Act; laws administered by the Navajo Environmental Protection Agency, the Navajo Historic Preservation Department and the Navajo Fish and Wildlife Department, and all applicable Navajo Nation tax laws (collectively, "Applicable Law").

12. **Default and Right to Cure.** In the event of alleged default by Preferred in the payment of any of the sums hereinabove provided to be made, in obligations to be performed, or any other terms, conditions or covenants of this Agreement (including the Mining and Reclamation Plan), ONHIR and/or the Navajo Nation will notify Preferred, by certified mail, return receipt requested, of the alleged default. Preferred shall have thirty (30) days from receipt of the written notification in which to cure the alleged default or otherwise appropriately respond to the notification; provided, however, if the alleged default cannot be cured with reasonable diligence during the 30-day period, Preferred shall have an additional reasonable period of time to cure the alleged default so long as it proceeds to cure the alleged default within the 30-day period and thereafter exerts reasonably diligent efforts to effect a cure; further provided, however, that in the case of a default arising from Preferred's failure to comply with its obligations under Section G.1 of the Mining and Reclamation Plan, such default must be cured within thirty (30) days after notice of such default is given to Preferred or else Preferred shall cease all extraction operations on the Lands until the default is cured.

13. **No Waiver.** Subject to the terms, conditions and agreements contained in this Agreement, and except as otherwise provided in Section 2 above, no Party or concurring Party, by entering into this Agreement, waives any legal right it has or had or might have with respect to the Sand.

14. **Recording.** A memorandum of this Agreement may be recorded with the Apache County Recorder.

15. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which (whether by email, facsimile, or other electronic means) shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

16. **Indemnification.** Preferred shall indemnify, defend and hold the Navajo Nation, ONHIR, the United States, and NDCG and their employees (collectively, "**Indemnified Parties**") harmless for, from and against any and all claims, liabilities, demands, suits, losses, damages and costs, including, without limitation, reasonable attorneys' fees, to the extent they arise out of Preferred's breach of this Agreement or the willful misconduct or negligent acts or omissions of Preferred in performing activities on the Lands, unless caused by the willful misconduct or negligence of an Indemnified Party or any agent or contractor of an Indemnified Party.

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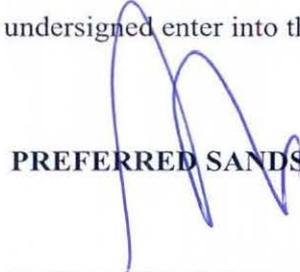
IN WITNESS WHEREOF, we the undersigned enter into this Agreement as of the Effective Date.

ONHIR



Christopher J. Bavasi, Executive Director

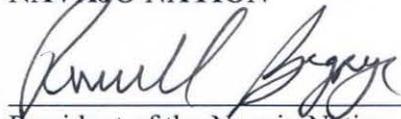
PREFERRED SANDS OF ARIZONA, LLC



Name: Michael G. O'Neill
Title: Chief Executive Officer (CEO)

CONCURRENCE:

NAVAJO NATION



President of the Navajo Nation

NDCG

Darryl T. Ahasteen, President
Nahata Dziil Commission Governance

IN WITNESS WHEREOF, we the undersigned enter into this Agreement as of the Effective Date.

ONHIR

PREFERRED SANDS OF ARIZONA, LLC

Christopher J. Bavasi, Executive Director

Name: _____
Title: _____

CONCURRENCE:

NAVAJO NATION

NDCG

President of the Navajo Nation



Darryl T. Ahasteen, President
Nahata Dziil Commission Governance