

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2017

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 1-34736

SEMGROUP CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-3533152
(IRS Employer
Identification Number)

Two Warren Place
6120 S. Yale Avenue, Suite 1500
Tulsa, OK 74136-4231
(Address of principal executive offices and zip code)

(918) 524-8100
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files): Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company)
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

<u>Class</u>		<u>Outstanding at October 31, 2017</u>	
Class A	Common stock, \$0.01 par	78,684,831	Shares
Class B	Common stock, \$0.01 par	—	Shares

SemGroup Corporation

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Cautionary Note Regarding Forward-Looking Statements

Certain matters contained in this Quarterly Report on Form 10-Q include “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We make these forward-looking statements in reliance on the safe harbor protections provided under the Private Securities Litigation Reform Act of 1995.

All statements, other than statements of historical fact, included in this Form 10-Q regarding the prospects of our industry, our anticipated financial performance, management’s plans and objectives for future operations, planned capital expenditures, business prospects, outcome of regulatory proceedings, market conditions and other matters, may constitute forward-looking statements. In addition, forward-looking statements generally can be identified by the use of forward-looking words such as “may,” “will,” “expect,” “intend,” “estimate,” “foresee,” “project,” “anticipate,” “believe,” “plans,” “forecasts,” “continue” or “could” or the negative of these terms or variations of them or similar terms. Although we believe that the expectations reflected in these forward-looking statements are reasonable, we cannot assure you that these expectations will prove to be correct. These forward-looking statements are subject to certain known and unknown risks, and uncertainties, as well as assumptions that could cause actual results to differ materially from those reflected in these forward-looking statements. Factors that might cause actual results to differ include, but are not limited to, those discussed in Item 1A of our most recent Annual Report on Form 10-K, entitled “Risk Factors,” risk factors discussed in other reports and documents that we file with the Securities and Exchange Commission (the “SEC”) and the following:

- Our ability to generate sufficient cash flow from operations to enable us to pay our debt obligations and our current and expected dividends or to fund our other liquidity needs;
- Any sustained reduction in demand for, or supply of, the petroleum products we gather, transport, process, market and store;
- The effect of our debt level on our future financial and operating flexibility, including our ability to obtain additional capital on terms that are favorable to us;
- Our ability to access the debt and equity markets, which will depend on general market conditions and the credit ratings for our debt obligations and equity;
- The failure to realize the anticipated benefits of our acquisition of HFOTCO LLC, doing business as Houston Fuel Oil Terminal Company LLC (“HFOTCO”);
- Our ability to pay the second payment related to our HFOTCO acquisition and the consequences of our failing to do so;
- The loss of, or a material nonpayment or nonperformance by, any of our key customers;
- The amount of cash distributions, capital requirements and performance of our investments and joint ventures;
- The consequences of any divestitures of non-strategic operating assets or divestitures of interests in some of our operating assets through partnerships and/or joint ventures;
- The amount of collateral required to be posted from time to time in our purchase, sale or derivative transactions;
- The impact of operational and developmental hazards and unforeseen interruptions;
- Our ability to obtain new sources of supply of petroleum products;
- Competition from other midstream energy companies;
- Our ability to comply with the covenants contained in our credit agreements, continuing covenant agreement and the indentures governing our notes, including requirements under our credit agreements and continuing covenant agreement to maintain certain financial ratios;
- Our ability to renew or replace expiring storage, transportation and related contracts;
- The overall forward markets for crude oil, natural gas and natural gas liquids;
- The possibility that the construction or acquisition of new assets may not result in the corresponding anticipated revenue increases;
- Any future impairment of goodwill resulting from the loss of customers or business;
- Changes in currency exchange rates;
- Weather and other natural phenomena and climate conditions;
- A cyber attack involving our information systems and related infrastructure, or that of our business associates;

- The risks and uncertainties of doing business outside of the U.S., including political and economic instability and changes in local governmental laws, regulations and policies;
- Costs of, or changes in, laws and regulations and our failure to comply with new or existing laws or regulations, particularly with regard to taxes, safety and protection of the environment;
- The possibility that our hedging activities may result in losses or may have a negative impact on our financial results; and
- General economic, market and business conditions.

New factors that could cause actual results to differ materially from those described in forward-looking statements emerge from time to time, and it is not possible for us to predict all such factors, or the extent to which any such factor or combination of factors may cause actual results to differ from those contained in any forward-looking statement.

Readers are cautioned not to place undue reliance on any forward-looking statements contained in this Form 10-Q, which reflect management's opinions only as of the date hereof. Except as required by law, we undertake no obligation to revise or publicly release the results of any revision to any forward-looking statements.

Investors and others should note that we announce material company information using our investor relations website (www.semgroupcorp.com), SEC filings, press releases, public conference calls and webcasts. We use these channels, as well as social media, to communicate with our investors and the public about our company, our businesses and our results of operations. The information we post on social media could be deemed to be material information. Therefore, we encourage investors, the media and others interested in our company to review the information we post on the social media channels listed on our investor relations website.

As used in this Form 10-Q, and unless the context indicates otherwise, the terms "the Company," "SemGroup," "we," "us," "our," "ours," and similar terms refer to SemGroup Corporation, its consolidated subsidiaries, and its predecessors. We sometimes refer to crude oil, natural gas, natural gas liquids (natural gas liquids, or "NGLs," include ethane, propane, normal butane, iso-butane, and natural gasoline), refined petroleum products, residual fuel oil and liquid asphalt cement, collectively, as "petroleum products" or "products."

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

SEMGROUP CORPORATION
Unaudited Condensed Consolidated Balance Sheets
(In thousands, except par value)

	September 30, 2017	December 31, 2016
<u>ASSETS</u>		
Current assets:		
Cash and cash equivalents	\$ 68,013	\$ 74,216
Accounts receivable (net of allowance of \$3,277 and \$2,322, respectively)	474,795	418,339
Receivable from affiliates	5,531	25,455
Inventories	128,633	99,234
Other current assets	21,922	18,630
Total current assets	<u>698,894</u>	<u>635,874</u>
Property, plant and equipment (net of accumulated depreciation of \$486,969 and \$393,635, respectively)	3,394,035	1,762,072
Equity method investments	433,805	434,289
Goodwill	262,059	34,230
Other intangible assets (net of accumulated amortization of \$51,469 and \$39,018, respectively)	413,730	150,978
Other noncurrent assets	162,402	57,529
Total assets	<u>\$ 5,364,925</u>	<u>\$ 3,074,972</u>
<u>LIABILITIES AND OWNERS' EQUITY</u>		
Current liabilities:		
Accounts payable	\$ 435,592	\$ 367,307
Payable to affiliates	4,877	26,508
Accrued liabilities	106,045	81,104
Deferred revenue	9,230	10,571
Other current liabilities	4,242	2,839
Current portion of long-term debt	5,529	26
Total current liabilities	<u>565,515</u>	<u>488,355</u>
Long-term debt, net	3,009,429	1,050,918
Deferred income taxes	57,476	64,501
Other noncurrent liabilities	38,614	25,233
Commitments and contingencies (Note 10)		
SemGroup owners' equity:		
Preferred stock, \$0.01 par value (authorized - 4,000 shares; issued - none)	—	—
Common stock, \$0.01 par value (authorized - 100,000 shares; issued - 79,679 and 67,079 shares, respectively)	785	659
Additional paid-in capital	1,804,277	1,561,695
Treasury stock, at cost (1,018 and 980 shares, respectively)	(7,919)	(6,558)
Accumulated deficit	(53,553)	(35,917)
Accumulated other comprehensive loss	(49,699)	(73,914)
Total owners' equity	<u>1,693,891</u>	<u>1,445,965</u>
Total liabilities and owners' equity	<u>\$ 5,364,925</u>	<u>\$ 3,074,972</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

SEMGROUP CORPORATION
Unaudited Condensed Consolidated Statements of Operations and Comprehensive Income (Loss)
(Dollars in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenues:				
Product	\$ 423,531	\$ 245,920	\$ 1,164,898	\$ 692,942
Service	105,287	66,074	261,967	192,347
Lease	2,646	—	2,646	—
Other	14,458	15,770	45,600	44,703
Total revenues	545,922	327,764	1,475,111	929,992
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below	398,252	218,503	1,087,357	592,292
Operating	62,666	52,636	188,095	157,537
General and administrative	35,210	20,583	83,606	62,419
Depreciation and amortization	50,135	24,922	100,336	74,028
Loss on disposal or impairment, net	41,625	1,018	43,801	16,010
Total expenses	587,888	317,662	1,503,195	902,286
Earnings from equity method investments	17,367	15,845	52,211	55,994
Loss on issuance of common units by equity method investee	—	—	—	(41)
Operating income (loss)	(24,599)	25,947	24,127	83,659
Other expenses (income), net:				
Interest expense	32,711	18,517	60,055	54,105
Loss on early extinguishment of debt	—	—	19,930	—
Foreign currency transaction loss (gain)	(747)	659	(1,758)	3,671
Loss on sale or impairment of equity method investment	—	—	—	30,644
Other income, net	(211)	(492)	(802)	(1,170)
Total other expenses, net	31,753	18,684	77,425	87,250
Income (loss) from continuing operations before income taxes	(56,352)	7,263	(53,298)	(3,591)
Income tax expense (benefit)	(37,249)	11,898	(33,529)	(4,851)
Income (loss) from continuing operations	(19,103)	(4,635)	(19,769)	1,260
Loss from discontinued operations, net of income taxes	—	—	—	(1)
Net income (loss)	(19,103)	(4,635)	(19,769)	1,259
Less: net income attributable to noncontrolling interests	—	225	—	11,167
Net loss attributable to SemGroup	\$ (19,103)	\$ (4,860)	\$ (19,769)	\$ (9,908)
Net income (loss)	\$ (19,103)	\$ (4,635)	\$ (19,769)	\$ 1,259
Other comprehensive income (loss), net of income taxes	9,230	(7,051)	24,215	(4,569)
Comprehensive income (loss)	(9,873)	(11,686)	4,446	(3,310)
Less: comprehensive income attributable to noncontrolling interests	—	225	—	11,167
Comprehensive income (loss) attributable to SemGroup	\$ (9,873)	\$ (11,911)	\$ 4,446	\$ (14,477)
Net loss attributable to SemGroup per common share (Note 12):				
Basic	\$ (0.25)	\$ (0.09)	\$ (0.29)	\$ (0.21)
Diluted	\$ (0.25)	\$ (0.09)	\$ (0.29)	\$ (0.21)

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

SEMGROUP CORPORATION
Unaudited Condensed Consolidated Statements of Cash Flows
(Dollars in thousands)

	Nine Months Ended September 30,	
	2017	2016
Cash flows from operating activities:		
Net income (loss)	\$ (19,769)	\$ 1,259
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	100,336	74,028
Loss on disposal or impairment, net	43,801	16,010
Earnings from equity method investments	(52,211)	(55,994)
Loss on issuance of common units by equity method investee	—	41
Loss on sale or impairment of equity method investment	—	30,644
Distributions from equity method investments	51,606	58,674
Amortization of debt issuance costs and discount	4,449	6,189
Loss on early extinguishment of debt	19,930	—
Deferred tax benefit	(37,824)	(7,810)
Non-cash equity compensation	8,517	7,046
Provision for uncollectible accounts receivable, net of recoveries	761	(551)
Foreign currency transaction loss (gain)	(1,758)	3,671
Gain on pension curtailment	(3,008)	—
Inventory valuation adjustment	455	—
Changes in operating assets and liabilities, net of the effect of acquisitions (Note 13)	(22,868)	6,897
Net cash provided by operating activities	92,417	140,104
Cash flows from investing activities:		
Capital expenditures	(346,204)	(203,776)
Proceeds from sale of long-lived assets	16,638	98
Contributions to equity method investments	(18,808)	(3,756)
Payments to acquire business, net of cash acquired	(293,039)	—
Proceeds from sale of common units of equity method investee	—	60,483
Distributions in excess of equity in earnings of affiliates	19,296	22,792
Net cash used in investing activities	(622,117)	(124,159)
Cash flows from financing activities:		
Debt issuance costs	(10,839)	(7,459)
Borrowings on credit facilities and issuance of senior notes, net of discount	1,353,377	362,500
Principal payments on credit facilities and other obligations	(711,941)	(393,994)
Debt extinguishment costs	(16,293)	—
Proceeds from issuance of common shares, net of offering costs	—	223,739
Distributions to noncontrolling interests	—	(32,133)
Repurchase of common stock for payment of statutory taxes due on equity-based compensation	(1,361)	(945)
Dividends paid	(94,714)	(63,338)
Proceeds from issuance of common stock under employee stock purchase plan	796	774
Net cash provided by financing activities	519,025	89,144
Effect of exchange rate changes on cash and cash equivalents	4,472	563
Change in cash and cash equivalents	(6,203)	105,652
Cash and cash equivalents at beginning of period	74,216	58,096
Cash and cash equivalents at end of period	\$ 68,013	\$ 163,748

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

1. OVERVIEW

SemGroup Corporation is a Delaware corporation headquartered in Tulsa, Oklahoma. The terms “we,” “our,” “us,” “SemGroup,” “the Company” and similar language used in these notes to the unaudited condensed consolidated financial statements refer to SemGroup Corporation and its subsidiaries.

Basis of presentation

The accompanying condensed consolidated balance sheet at December 31, 2016, which is derived from audited financial statements, and the unaudited condensed consolidated interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”) and the rules and regulations of the Securities and Exchange Commission (“SEC”). These financial statements include all normal and recurring adjustments that, in the opinion of management, are necessary to present fairly the financial position of the Company and the results of its operations and its cash flows.

Our condensed consolidated financial statements include the accounts of our controlled subsidiaries. All significant transactions between our consolidated subsidiaries have been eliminated.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the financial statements. Although management believes these estimates are reasonable, actual results could differ materially from these estimates. The results of operations for the three months and nine months ended September 30, 2017, are not necessarily indicative of the results to be expected for the full year ending December 31, 2017.

Pursuant to the rules and regulations of the SEC, the accompanying condensed consolidated financial statements do not include all of the information and notes normally included with financial statements prepared in accordance with U.S. GAAP. Certain reclassifications have been made to conform previously reported balances to the current presentation. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2016, which are included in our Annual Report on Form 10-K for the year ended December 31, 2016, filed with the SEC.

Our significant accounting policies are consistent with those described in our Annual Report on Form 10-K for the year ended December 31, 2016.

Prior year amounts have been recast from the amounts originally reported to correct for an immaterial error identified by management in the fourth quarter of 2016 related to an under capitalization of interest on certain capital projects. Previously reported interest expense has been decreased by \$1.4 million, \$0.9 million and \$2.5 million for the quarters ended March 31, June 30 and September 30, 2016, respectively, with a corresponding increase to net income before tax. Earnings per basic share was increased by \$0.03, \$0.02 and \$0.05 per share for the quarters ended March 31, June 30, and September 30, 2016, respectively.

Recent accounting pronouncements

In May 2017, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2017-09, “Compensation - Stock Compensation (Topic 718): Scope of Modification Accounting”, to provide clarity and reduce diversity in practice in determining which changes to terms or conditions of a share-based payment award require an entity to apply modification accounting under Accounting Standards Codification Topic 718. For public entities, this ASU is effective for annual periods beginning after December 15, 2017, and interim periods within those years. We will adopt this guidance in the first quarter of 2018. The impact is not expected to be material.

In March 2017, the FASB issued ASU 2017-07, “Compensation - Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Post-retirement Benefit Cost”, which requires that an employer disaggregate the service cost component from other components of net benefit cost. This ASU also provides explicit guidance on how to present the service cost component and the other components of net benefit cost in the income statement and allows only the service cost component of net benefit cost to be eligible for capitalization. For public entities, this ASU is effective for annual periods beginning after December 15, 2017, and interim periods within those years. We will adopt this guidance in the first quarter of 2018. The impact is not expected to be material.

In January 2017, the FASB issued ASU 2017-04, “Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment”, which removes Step 2 from the goodwill impairment test. Under the amended guidance, an entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit

SEMGROUP CORPORATION

Notes to Unaudited Condensed Consolidated Financial Statements

1. OVERVIEW, Continued

with its carrying amount. An entity should recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. For public entities, this ASU is effective for annual periods beginning after December 15, 2019. Early adoption is permitted for interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. We adopted this guidance in the third quarter of 2017 in conjunction with the impairment test of our Field Services business unit. See Note 4 for information related to the impairment of Field Services goodwill and intangible assets.

In October 2016, the FASB issued ASU 2016-16, "Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other Than Inventory", which requires an entity to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. For public entities, this ASU is effective for annual periods beginning after December 15, 2017, and interim periods within those years and early adoption is permitted in the year prior to the effective date. We will adopt this guidance in the first quarter of 2018. The impact is not expected to be material.

In August 2016, the FASB issued ASU 2016-15, "Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments (a consensus of the Emerging Issues Task Force)", to reduce diversity in practice in how certain transactions are classified in the statement of cash flows. The update addresses eight different transaction types and clarifies how to classify each in the statement of cash flows, where previously there was unclear or no specific guidance. For public entities, this ASU is effective for annual periods beginning after December 15, 2017, and interim periods within those years and early adoption is permitted in the year prior to the effective date. We will adopt this guidance in the first quarter of 2018. The impact is not expected to be material.

In June 2016, the FASB issued ASU 2016-13, "Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments", which introduces new guidance for estimating credit losses on certain types of financial instruments based on expected losses and the timing of the recognition of such losses. For public entities, this ASU is effective for annual periods beginning after December 15, 2019, and interim periods within those years and early adoption is permitted in the year prior to the effective date. We will adopt this guidance in the first quarter of 2020. The impact is not expected to be material.

In March 2016, the FASB issued ASU 2016-09, "Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting", which simplifies several aspects of the accounting for employee share-based payment transactions, including the accounting for income taxes, forfeitures and statutory tax withholding requirements, as well as classification in the statement of cash flows. For public entities, this ASU is effective for annual periods beginning after December 15, 2016, and interim periods within those years and early adoption is permitted. We adopted this guidance in the first quarter of 2017. We recorded adjustments of \$2.1 million and \$1.7 million to "accumulated deficit" and "additional paid-in capital", respectively, upon adoption offset by changes to our income tax liabilities.

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)", which amends the existing lease guidance to require lessees to recognize assets and liabilities on the balance sheet for the rights and obligations created by operating and finance leases and to disclose additional quantitative and qualitative information about leasing arrangements. This ASU also provides clarifications surrounding the presentation of the effects of leases in the income statement and statement of cash flows. For public entities, this ASU will be effective for annual periods beginning after December 15, 2018, and interim periods within those years. The new guidance will be applied using a modified retrospective approach and early adoption is permitted. We are currently evaluating the impact of the adoption of ASU 2016-02 on our consolidated financial statements, but are not yet able to quantify the impact. We continue to monitor FASB activity related to this ASU and have engaged with various peer groups to assess certain interpretive issues related to this ASU. We will adopt this guidance in the first quarter of 2019.

In November 2015, the FASB issued ASU 2015-17, "Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes", which requires all deferred tax assets and liabilities to be classified as noncurrent in the statement of financial position. For public entities, this ASU is effective for annual periods beginning after December 15, 2016, and interim periods within those years. The new guidance may be applied prospectively or retrospectively and early adoption is permitted. We adopted this guidance in the first quarter of 2017. Prior periods were not retrospectively adjusted and the impact was not material.

In July 2015, the FASB issued ASU 2015-11, "Inventory (Topic 330): Simplifying the Measurement of Inventory", which requires that inventory within the scope of the guidance be measured at the lower of cost and net realizable value rather than the lower of cost or market. The standard will be effective for public business entities for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years. The new guidance shall be

SEMGROUP CORPORATION

Notes to Unaudited Condensed Consolidated Financial Statements

1. OVERVIEW, Continued

applied prospectively and early adoption is permitted. We adopted this guidance in the first quarter of 2017. The impact was not material.

In May 2014, the FASB issued ASU 2014-09, "Revenue from Contracts with Customers", as amended, which supersedes nearly all existing revenue recognition guidance under U.S. GAAP. The core principle of ASU 2014-09 is to recognize revenues when promised goods or services are transferred to customers in an amount that reflects the consideration to which an entity expects to be entitled for those goods or services. ASU 2014-09 defines a five step process to achieve this core principle and, in doing so, more judgment and estimates may be required within the revenue recognition process than are required under existing U.S. GAAP. The standard permits using either of the following transition methods: (i) a full retrospective approach reflecting the application of the standard in each prior reporting period with the option to elect certain practical expedients, or (ii) a retrospective approach with the cumulative effect of initially adopting ASU 2014-09 recognized at the date of adoption (which includes additional footnote disclosures). We continue to evaluate the impact of our pending adoption of ASU 2014-09 on our consolidated financial statements. We have completed the first phase of our implementation process which included a review of contracts and transaction types from each significant revenue stream across all of our business segments. In addition, we are currently evaluating the methods of adoption and analyzing the impact of the standard on our internal controls, accounting policies and financial statements and disclosures and are nearing completion of the overall project. We expect to use a retrospective approach with the cumulative effect of initially adopting ASU 2014-09 recognized at the date of adoption.

Based on the current phase of our implementation process, we have identified certain potential areas of impact, such as non-cash consideration and "take-or-pay" arrangements.

- We have certain contractual arrangements where we retain commodities as consideration for processing of customer product. These arrangements could be impacted by the non-cash consideration guidance under ASU 2014-09. Currently revenue related to non-cash consideration is recognized when we sell the commodity. Under ASU 2014-09, we could recognize revenue when the commodity is received, rather than when it is sold.
- In addition, certain contractual arrangements include "take-or-pay" provisions. The fixed fees to which we have an unconditional right under these contracts could be subject to certain recognition changes and additional disclosure under ASU 2014-09. Under our current policies, revenues related to certain "take-or-pay" deficiency payments received from customers are deferred until the contractual right to make up volumetric deficiencies has expired. Under ASU 2014-09, these revenues are expected to be recognized when make up of the volumetric deficiencies is no longer considered probable. Deferred revenues related to these agreements at December 31, 2017, which will then be recognized through retained earnings at adoption, are not expected to be material.

During the fourth quarter of 2017, we will complete the remainder of our implementation process, which will include quantification of impact and final development of policies. We will adopt this guidance in the first quarter of 2018.

2. ACQUISITION

On July 17, 2017, we acquired Houston Fuel Oil Terminal Company ("HFOTCO"), one of the largest oil terminals in the U.S., for a purchase price paid, or to be paid, in two payments. This acquisition establishes our position in the premier energy market, the Houston Ship Channel, and provides a strategic platform to refinery-facing growth. The first payment consisted of \$297 million in cash, (which is net of an estimated \$4.2 million preliminary adjustment for working capital, net indebtedness and capital expenditures), funded from our revolving credit facility, issuance of approximately 12.4 million shares of our Class A common stock and the assumption of existing HFOTCO debt of approximately \$766 million. The second payment requires us to pay the sellers \$600 million in cash, if paid on December 31, 2018 (the "Second Payment"). If paid prior to December 31, 2018, the amount payable will be discounted by 5% per annum. If not paid by December 31, 2018, the amount payable increases to \$680 million and is due by December 31, 2019, or earlier if requested by the sellers. The Second Payment is reflected on the balance sheet as the present value of cash flows based on a weighted average of the expected timing of payment under various scenarios and using an 8% discount rate.

We are in the process of finalizing the determination of the fair value of consideration exchanged and assets and liabilities acquired at the acquisition date to record the business combination. The acquisition date fair value of the

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

2. ACQUISITION, Continued

common shares issued is approximately \$330 million, based on \$26.68 per common share market price at issuance. The determination of the estimated fair values of the Second Payment, assets acquired and liabilities assumed, including HFOTCO net debt, is not yet complete and adjustments to preliminary amounts could be material. We expect to finalize the amounts in the fourth quarter of 2017.

As of September 30, 2017, we have recorded the preliminary purchase price allocation as follows (in thousands):

Assets acquired	
Cash	\$ 3,583
Accounts receivable	11,028
Other current assets	5,277
Property, plant and equipment	1,327,145
Intangible assets subject to amortization	
Customer contracts	1,000
Customer relationships	260,000
Non-compete agreement	30,000
Goodwill	253,935
Other noncurrent assets	72,603
Total assets acquired	<u>\$ 1,964,571</u>
Consideration	
Cash	\$ 296,622
Common shares	330,341
Second Payment	549,900
Liabilities assumed	
Accounts payable and accrued liabilities	7,824
Current portion of long-term debt	5,500
Long-term debt	760,500
Other noncurrent liabilities	13,884
Total liabilities assumed	<u>787,708</u>
Total consideration	<u>\$ 1,964,571</u>

Finite-lived intangibles are amortized over their estimated useful lives. The non-compete agreement is effective for two years from the acquisition date and will be amortized straight-line over the two-year period. Customer relationships are being amortized over 20 years on an accelerated basis which matches the incremental cash flow models used to value the intangible assets and in consideration of a historical customer attrition rate of 5%. Customer contracts are being amortized over three years on an accelerated basis. Goodwill primarily relates to the location of the business and potential for future growth. Goodwill is amortizable over 15 years for income tax purposes. Acquired property, plant and equipment has been assigned useful lives consistent with our accounting policies disclosed in our Annual Report on Form 10-K for the year ended December 31, 2016.

From the acquisition date through September 30, 2017, HFOTCO contributed \$34.7 million of revenue and \$0.6 million of net income to our consolidated financial results. Our results for the nine months ended September 30, 2017, include \$19.1 million of acquisition related expenses. Included in the results of HFOTCO for the post acquisition period is a gain of \$3.0 million related to the curtailment of HFOTCO's defined benefit pension plan. Subsequent to the acquisition, SemGroup closed the plan to new members and stopped the accrual of future benefits under the plan to better align HFOTCO with SemGroup's compensation strategy. Accordingly, the pension liability assumed at acquisition of \$10.0 million was reduced to \$7.0 million as of September 30, 2017.

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

2. ACQUISITION, Continued

The information necessary to prepare pro forma financial disclosures for the nine months ended September 30, 2016 is not available. Therefore, only pro forma financial information for the nine months ended September 30, 2017 has been disclosed below (in thousands):

	Pro forma (unaudited) Nine Months Ended September 30, 2017
Revenue	\$ 1,561,782
Net loss	\$ (35,007)
Basic and diluted loss per share	\$ (0.45)

These pro forma amounts have been calculated after applying our accounting policies and adjusting the results of HFOTCO to reflect the additional depreciation and amortization that would have been charged assuming the fair value adjustments to property, plant, and equipment, and intangible assets had been applied from January 1, 2017. Additionally, incremental interest expense has been added related to the Second Payment assuming an 8% interest rate and cash consideration paid assuming a 5.5% interest rate. The income tax impact of these adjustments has been included in pro forma net income using our historical blended statutory rate of 37.7%. This unaudited pro forma consolidated financial information is provided for illustrative purposes only and does not purport to represent what our actual results would have been if the acquisition had occurred on the date assumed, nor is it necessarily indicative of our future operating results. However, the pro forma adjustments reflected in this unaudited pro forma consolidated financial information are based on estimates and assumptions that we believe to be reasonable.

The assets and credit of the acquired entities and their holding companies, all of which are included in the HFOTCO segment, are not available to satisfy the debts and obligations of other SemGroup entities. HFOTCO is not a subsidiary guarantor of SemGroup's senior unsecured notes or revolving credit facility.

3. EQUITY METHOD INVESTMENTS

Our equity method investments consisted of the following (in thousands):

	September 30, 2017	December 31, 2016
White Cliffs Pipeline, L.L.C.	\$ 269,938	\$ 281,734
Glass Mountain Pipeline, LLC	144,930	133,622
NGL Energy Partners LP	18,937	18,933
Total equity method investments	<u>\$ 433,805</u>	<u>\$ 434,289</u>

Our earnings from equity method investments consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
White Cliffs Pipeline, L.L.C.	\$ 15,636	\$ 15,555	\$ 46,805	\$ 51,763
Glass Mountain Pipeline, LLC	1,736	328	5,402	2,037
NGL Energy Partners LP ⁽¹⁾	(5)	(38)	4	2,194
Total earnings from equity method investments	<u>\$ 17,367</u>	<u>\$ 15,845</u>	<u>\$ 52,211</u>	<u>\$ 55,994</u>

(1) Excluding loss on issuance of common units of \$41.0 thousand for the nine months ended September 30, 2016.

Cash distributions received from equity method investments consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
White Cliffs Pipeline, L.L.C.	\$ 19,847	\$ 22,733	\$ 60,552	\$ 68,495
Glass Mountain Pipeline, LLC	3,410	2,164	10,350	8,096
NGL Energy Partners LP	—	—	—	4,873
Total cash distributions received from equity method investments	<u>\$ 23,257</u>	<u>\$ 24,897</u>	<u>\$ 70,902</u>	<u>\$ 81,464</u>

SEMGROUP CORPORATION**Notes to Unaudited Condensed Consolidated Financial Statements****3. EQUITY METHOD INVESTMENTS, Continued*****White Cliffs Pipeline, L.L.C.***

We own a 51% interest in White Cliffs Pipeline, L.L.C. (“White Cliffs”), which we account for under the equity method. Certain unaudited summarized income statement information of White Cliffs for the three months and nine months ended September 30, 2017 and 2016, is shown below (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 45,445	\$ 48,331	\$ 145,288	\$ 161,973
Cost of products sold, exclusive of depreciation and amortization shown below	\$ (360)	\$ (368)	\$ 8,091	\$ 2,685
Operating, general and administrative expenses	\$ 5,723	\$ 7,529	\$ 17,849	\$ 27,256
Depreciation and amortization expense	\$ 9,154	\$ 10,367	\$ 27,619	\$ 29,414
Net income	\$ 30,928	\$ 30,801	\$ 91,688	\$ 102,623

Our equity in earnings of White Cliffs for the three months and nine months ended September 30, 2017 and 2016, is less than 51% of the net income of White Cliffs for the same periods. This is due to certain general and administrative expenses we incur in managing the operations of White Cliffs that the other owners are not obligated to share. In addition, our equity in earnings is also impacted by the elimination of earnings on commodity sales with White Cliffs. Revenue related to inventory transactions with White Cliffs is deferred until a sale of the inventory has been made with a third party.

The members of White Cliffs are required to contribute capital to White Cliffs to fund various projects. For the nine months ended September 30, 2017, we contributed \$1.4 million to White Cliffs related to capital projects.

Glass Mountain Pipeline, LLC

We own a 50% interest in Glass Mountain Pipeline, LLC (“Glass Mountain”), which we account for under the equity method. The excess of the recorded amount of our investment over the book value of our share of the underlying net assets represents equity method goodwill and capitalized interest at September 30, 2017. Capitalized interest is amortized as a reduction of earnings from equity method investments.

Certain unaudited summarized income statement information of Glass Mountain for the three months and nine months ended September 30, 2017 and 2016, is shown below (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 10,079	\$ 6,793	\$ 31,593	\$ 22,263
Cost of products sold, exclusive of depreciation and amortization shown below	\$ (85)	\$ (145)	\$ 1,941	\$ 300
Operating, general and administrative expenses	\$ 2,576	\$ 2,184	\$ 6,533	\$ 5,647
Depreciation and amortization expense	\$ 4,008	\$ 3,992	\$ 11,995	\$ 11,917
Net income	\$ 3,579	\$ 761	\$ 11,123	\$ 4,393

Our equity in earnings of Glass Mountain for the three months and nine months ended September 30, 2017 and 2016, is less than 50% of the net income of Glass Mountain for the same period due to amortization of capitalized interest for the period.

For the nine months ended September 30, 2017, we contributed \$16.3 million to Glass Mountain related to capital projects.

See Note 16 for subsequent event related to the sale of our interest in Glass Mountain.

NGL Energy Partners LP

We own an 11.78% interest in the general partner of NGL Energy Partners LP (NYSE: NGL) (“NGL Energy”) which is being accounted for under the equity method in accordance ASC 323-30-S99-1, as our ownership is in excess of the 3 to

SEMGROUP CORPORATION

Notes to Unaudited Condensed Consolidated Financial Statements

3. EQUITY METHOD INVESTMENTS, Continued

5 percent interest which is generally considered to be more than minor. The general partner of NGL Energy is not a publicly traded company.

Our policy is to record our equity in earnings of NGL Energy on a one-quarter lag, as we do not expect information on the earnings of NGL Energy to always be available in time to consistently record the earnings in the quarter in which they are generated. Accordingly, the equity in earnings from NGL Energy, which is reflected in our condensed consolidated statements of operations and comprehensive income (loss) for the three months and nine months ended September 30, 2017 and 2016, relates to the earnings of NGL Energy for the three months and nine months ended June 30, 2017 and 2016, respectively.

4. IMPAIRMENT

Based on current market conditions, management has lowered the long range forecast for our Field Services business unit, which provides truck transportation services as part of our Crude Transportation segment. The decrease in the long range forecast for Field Services is primarily due to the on-going challenging business environment. We viewed the decrease in the forecast as a triggering event that indicated a potential impairment and performed an interim impairment analysis on the business unit's assets including goodwill and intangible assets.

We performed a recoverability test of our definite lived assets under ASC 360 whereby we compared the undiscounted cash flows of the asset group, which was determined to be the entire Field Services reporting unit and included goodwill, to the carrying value of the assets at September 30, 2017. This test indicated that the assets were not fully recoverable. Therefore, we estimated the fair value of the definite lived assets using an income approach, supplemented by a market approach to measure impairment. We also performed an interim impairment test of our goodwill associated with the Field Services reporting unit and determined the estimated fair value was less than the adjusted carrying value of the reporting unit resulting in impairment of goodwill. The cash flow models used to determine recoverability of our assets and to measure impairment expense involved using significant judgments and assumptions, which included the discount rate, anticipated revenue and volume growth rates, estimated operating expenses and capital expenditures, which were based on our operating and capital budgets as well as our strategic plans. We considered the market approach by comparing the revenue and earnings multiples implied by our income approach to those of comparable companies for reasonableness and for estimating the fair value of certain assets of our reporting unit.

At September 30, 2017, we have recorded a \$26.6 million impairment of Field Services' goodwill and a \$12.1 million impairment of intangible assets, which are reflected in "loss on disposal or impairment, net" in our condensed consolidated statements of operations and comprehensive income (loss).

5. SEGMENTS

Our businesses are organized based on the nature and location of the services they provide. Certain summarized information related to our reportable segments is shown in the tables below. None of the operating segments have been aggregated. The results of HFOTCO subsequent to the acquisition date are shown as a separate segment below. Although Corporate and Other does not represent an operating segment, it is included in the tables below to reconcile segment information to that of the consolidated Company. Eliminations of transactions between segments are also included within Corporate and Other in the tables below.

The accounting policies of each segment are the same as the accounting policies of the consolidated Company. Transactions between segments are generally recorded based on prices negotiated between the segments. Certain general and administrative expenses incurred at the corporate level were allocated to the segments based on our allocation policies in effect at the time.

Our results by segment are presented in the tables below (in thousands):

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

5. SEGMENTS , Continued

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenues:				
Crude Transportation				
External	\$ 18,824	\$ 15,947	\$ 46,822	\$ 48,786
Intersegment	8,988	6,993	22,443	19,334
Crude Facilities				
External	9,053	9,939	28,513	30,372
Intersegment	2,567	2,801	7,563	8,073
Crude Supply and Logistics				
External	339,874	165,523	928,664	485,346
HFOTCO				
External	34,675	—	34,675	—
SemGas				
External	54,095	57,824	167,605	149,544
Intersegment	2,152	2,266	8,693	7,533
SemCAMS				
External	39,500	36,111	136,412	100,792
SemLogistics				
External	7,009	5,668	21,505	17,980
SemMexico				
External	42,893	36,752	110,916	97,172
Corporate and Other				
Intersegment	(13,708)	(12,060)	(38,700)	(34,940)
Total Revenues	\$ 545,922	\$ 327,764	\$ 1,475,111	\$ 929,992

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Earnings from equity method investments:				
Crude Transportation	\$ 17,372	\$ 15,883	\$ 52,207	\$ 53,800
Corporate and Other ⁽¹⁾	(5)	(38)	4	2,153
Total earnings from equity method investments	\$ 17,367	\$ 15,845	\$ 52,211	\$ 55,953

(1) Includes historical earnings from equity method investments including gain (loss) on issuance of common units by equity method investee related to our investment in NGL Energy.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Depreciation and amortization:				
Crude Transportation	\$ 11,170	\$ 6,309	\$ 23,595	\$ 18,343
Crude Facilities	2,058	1,982	6,024	5,785
Crude Supply and Logistics	103	46	243	126
HFOTCO	19,300	—	19,300	—
SemGas	9,114	9,079	27,140	27,204

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements
5. SEGMENTS , Continued

SemCAMS	4,727	4,239	13,657	12,484
SemLogistics	1,967	1,880	5,683	5,823
SemMexico	1,070	932	3,029	2,822
Corporate and Other	626	455	1,665	1,441
Total depreciation and amortization	\$ 50,135	\$ 24,922	\$ 100,336	\$ 74,028

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Income tax expense (benefit):				
HFOTCO	\$ 166	\$ —	\$ 166	\$ —
SemCAMS	1,270	1,573	4,961	2,989
SemLogistics	(96)	(601)	657	(815)
SemMexico	360	349	1,102	1,150
Corporate and Other ⁽¹⁾	(38,949)	10,577	(40,415)	(8,175)
Total income tax expense (benefit)	\$ (37,249)	\$ 11,898	\$ (33,529)	\$ (4,851)

(1) Corporate and Other includes the impact of intra-period tax allocation.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Segment profit (loss) ⁽¹⁾ :				
Crude Transportation ⁽²⁾	\$ (14,829)	\$ 19,511	\$ 20,581	\$ 63,090
Crude Facilities	8,497	9,679	26,336	28,637
Crude Supply and Logistics	(2,368)	3,151	(9,447)	22,313
HFOTCO	25,751	—	25,751	—
SemGas	12,915	16,196	45,318	27,508
SemCAMS	11,859	13,067	38,907	31,971
SemLogistics	2,569	3,312	9,273	7,973
SemMexico	2,075	2,517	5,462	6,859
Corporate and Other	(19,100)	(10,397)	(36,786)	(24,568)
Total segment profit	\$ 27,369	\$ 57,036	\$ 125,395	\$ 163,783

(1) Segment profit (loss) represents revenues excluding unrealized gains (losses) related to commodity derivative instruments plus earnings from equity method investments less cost of sales excluding depreciation and amortization and less operating and general and administrative expenses, including gains or losses on disposals or impairments.

(2) The nine months ended September 30, 2017, includes a \$4.5 million out of period loss on the disposal of right-of-way related to immaterial prior period errors.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Reconciliation of segment profit to net income (loss):				
Total segment profit	\$ 27,369	\$ 57,036	\$ 125,395	\$ 163,783
Less:				
Net unrealized loss related to commodity derivative instruments	1,833	6,167	932	6,096
Depreciation and amortization	50,135	24,922	100,336	74,028

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

5. SEGMENTS , Continued

Loss on debt extinguishment	—	—	19,930	—
Interest expense	32,711	18,517	60,055	54,105
Foreign currency transaction loss (gain)	(747)	659	(1,758)	3,671
Loss on sale or impairment of equity method investment	—	—	—	30,644
Other income, net	(211)	(492)	(802)	(1,170)
Income tax expense (benefit)	(37,249)	11,898	(33,529)	(4,851)
Loss from discontinued operations, net of income taxes	—	—	—	1
Net income (loss)	<u>\$ (19,103)</u>	<u>\$ (4,635)</u>	<u>\$ (19,769)</u>	<u>\$ 1,259</u>

	<u>September 30, 2017</u>	<u>December 31, 2016</u>
Total assets (excluding intersegment receivables):		
Crude Transportation	\$ 1,181,139	\$ 1,042,327
Crude Facilities	150,526	156,907
Crude Supply and Logistics	506,486	484,475
HFOTCO	1,967,294	—
SemGas	722,804	683,952
SemCAMS	461,469	379,785
SemLogistics	151,083	135,387
SemMexico	88,383	75,440
Corporate and Other	135,741	116,699
Total	<u>\$ 5,364,925</u>	<u>\$ 3,074,972</u>

	<u>September 30, 2017</u>	<u>December 31, 2016</u>
Equity investments:		
Crude Transportation	\$ 414,868	\$ 415,356
Corporate and Other	18,937	18,933
Total equity investments	<u>\$ 433,805</u>	<u>\$ 434,289</u>

6. INVENTORIES

Inventories consist of the following (in thousands):

	<u>September 30, 2017</u>	<u>December 31, 2016</u>
Crude oil	\$ 118,577	\$ 89,683
Asphalt and other	10,056	9,551
Total inventories	<u>\$ 128,633</u>	<u>\$ 99,234</u>

During the nine months ended September 30, 2017, our Crude Supply and Logistics segment recorded non-cash charges of \$0.5 million to write-down crude oil inventory to lower of cost or market. There were no inventory write-downs during the nine months ended September 30, 2016.

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

7. FINANCIAL INSTRUMENTS

Fair value of financial instruments

We record certain financial assets and liabilities at fair value at each balance sheet date. The tables below summarize the balances of derivative assets and liabilities at September 30, 2017 and December 31, 2016 (in thousands):

	September 30, 2017				
	Level 1	Level 2	Level 3	Netting ⁽¹⁾	Total - Net
Assets:					
Commodity derivatives ⁽²⁾	\$ 1,397	\$ —	\$ —	\$ (1,397)	\$ —
Total assets	\$ 1,397	\$ —	\$ —	\$ (1,397)	\$ —
Liabilities:					
Commodity derivatives	\$ 3,657	\$ —	\$ —	\$ (1,397)	\$ 2,260
Interest rate swaps	—	—	2,657	—	2,657
Total liabilities	\$ 3,657	\$ —	\$ 2,657	\$ (1,397)	\$ 4,917
Net assets (liabilities) at fair value	\$ (2,260)	\$ —	\$ (2,657)	\$ —	\$ (4,917)

	December 31, 2016				
	Level 1	Level 2	Level 3	Netting ⁽¹⁾	Total - Net
Assets:					
Commodity derivatives ⁽²⁾	\$ 68	\$ —	\$ —	\$ (68)	\$ —
Total assets	\$ 68	\$ —	\$ —	\$ (68)	\$ —
Liabilities:					
Commodity derivatives	\$ 1,396	\$ —	\$ —	\$ (68)	\$ 1,328
Interest rate swaps	—	—	—	—	—
Total liabilities	\$ 1,396	\$ —	\$ —	\$ (68)	\$ 1,328
Net assets (liabilities) at fair value	\$ (1,328)	\$ —	\$ —	\$ —	\$ (1,328)

(1) Relates primarily to exchange traded futures. Gain and loss positions on multiple contracts are settled net on a daily basis with the exchange.

(2) Commodity derivatives are subject to netting arrangements.

“Level 1” measurements are based on inputs consisting of unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities. These include commodity futures contracts that are traded on an exchange.

“Level 2” measurements are based on inputs consisting of market observable and corroborated prices for similar derivative contracts. Assets and liabilities classified as Level 2 include over the counter (“OTC”) traded physical fixed priced purchases and sales forward contracts.

“Level 3” measurements are based on inputs from a pricing service and/or internal valuation models incorporating observable and unobservable market data. These could include commodity derivatives, such as forwards and swaps for which there is not a highly liquid market and therefore are not included in Level 2 above and interest rate swaps for which certain unobservable inputs are used in the valuation.

Financial assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurement. Our assessment of the significance of a particular input to the measurement requires judgment and may affect the valuation of assets and liabilities and their placement within the fair value levels. At September 30, 2017, all of our physical fixed price forward purchases and sales contracts were being accounted for as normal purchases and normal sales.

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

7. FINANCIAL INSTRUMENTS, Continued

Our assessment of the significance of a particular input to the measurement requires judgment, and may affect the valuation of assets and liabilities and their placement within the fair value levels. The following table summarizes changes in the fair value of our net financial liabilities classified as Level 3 in the fair value hierarchy (in thousands):

	Three and Nine Months Ended September 30, 2017	
Net liabilities - beginning balance	\$	—
Interest rate swaps acquired through acquisition (Note 2)		3,275
Transfers out of Level 3		—
Total gain (realized and unrealized) included in earnings*		(618)
Settlements		—
Net liabilities - ending balance	\$	2,657

*Gains and losses related to interest rate swaps are recorded in interest expense in the condensed consolidated statements of operations and comprehensive income (loss).

There were no financial assets or liabilities recorded at fair value which were classified as Level 3 during the three months and nine months ended September 30, 2016 .

Commodity derivative contracts

Our consolidated results of operations and cash flows are impacted by changes in market prices for petroleum products. This exposure to commodity price risk is managed, in part, by entering into various commodity derivatives.

We seek to manage the price risk associated with our marketing operations by limiting our net open positions through (i) the concurrent purchase and sale of like quantities of petroleum products to create back-to-back transactions that are intended to lock in positive margins based on the timing, location or quality of the petroleum products purchased and delivered or (ii) derivative contracts. Our storage and transportation assets can also be used to mitigate time and location basis risks, respectively. All marketing activities are subject to our Comprehensive Risk Management Policy, a Delegation of Authority policy and their supporting policies and procedures, which establish limits in order to manage risk and mitigate financial exposure.

Our commodity derivatives can be comprised of swaps, futures contracts and forward contracts of crude oil, natural gas and natural gas liquids. These are defined as follows:

Swaps – OTC transactions where a floating price, basis or index is exchanged for a fixed (or a different floating) price, basis or index at a preset schedule in the future, according to an agreed-upon formula.

Futures contracts – Exchange traded contracts to buy or sell a commodity. These contracts are standardized by the exchange in terms of quality, quantity, delivery period and location for each commodity.

Forward contracts – OTC contracts to buy or sell a commodity at an agreed upon future date. The buyer and seller agree on specific terms (price, quantity, delivery period and location) and conditions at the inception of the contract.

The following table sets forth the notional quantities for commodity derivative instruments entered into (in thousands of barrels):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Sales	3,386	7,508	9,980	23,818
Purchases	2,820	7,448	9,772	23,701

We have not designated any of our commodity derivative instruments as accounting hedges. We have recorded the fair value of our commodity derivative instruments on our condensed consolidated balance sheets in “other current assets” and “other current liabilities” in the following amounts (in thousands):

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

7. FINANCIAL INSTRUMENTS, Continued

	September 30, 2017		December 31, 2016	
	Assets	Liabilities	Assets	Liabilities
Commodity contracts	\$ —	\$ 2,260	\$ —	\$ 1,328

We have posted margin deposits as collateral with brokers who have the right of set off associated with these funds. At September 30, 2017 and December 31, 2016, our margin deposit balances were in net asset positions of \$4.4 million and \$3.6 million, respectively. These margin account balances have not been offset against our net commodity derivative instrument (contract) positions. Had these margin deposits been netted against our net commodity derivative instrument (contract) positions as of September 30, 2017 and December 31, 2016, we would have had asset positions of \$2.2 million and \$2.3 million, respectively.

Realized and unrealized gains (losses) from our commodity derivatives were recorded to product revenue in the following amounts (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Commodity contracts	\$ (3,897)	\$ 2,777	\$ 4,886	\$ (996)

Interest rate swaps

In conjunction with the HFOTCO acquisition (Note 2), we acquired HFOTCO's interest rate swaps. The swaps allow us to limit exposure to interest rate fluctuations. The swaps only apply to a portion of our outstanding debt and provide only partial mitigation of interest rate fluctuations. We have not designated the swaps as hedges, as such changes in the fair value of the swaps are recorded through current period earnings as a component of interest expense. At September 30, 2017, we had interest rate swaps with notional values of \$491.8 million. At September 30, 2017, the fair value of our interest rate swaps was \$2.7 million which was reported within "other liabilities" in our condensed consolidated balance sheet. For the three and nine months ended September 30, 2017, we recognized unrealized gains of \$0.6 million related to interest rate swaps.

Concentrations of risk

During the three months ended September 30, 2017, one customer, primarily of our Crude Supply and Logistics segment, accounted for more than 10% of our consolidated revenue with revenues of \$89.9 million. No suppliers accounted for more than 10% of our consolidated costs of products sold.

During the nine months ended September 30, 2017, one customer, primarily of our Crude Supply and Logistics segment, accounted for more than 10% of our consolidated revenue with revenues of \$345.3 million. No suppliers accounted for more than 10% of our consolidated costs of products sold.

At September 30, 2017, one third-party customer primarily of our Crude Supply and Logistics segment accounted for approximately 19% of our consolidated accounts receivable.

8. INCOME TAXES

The effective tax rate was 66% and 164% for the three months ended September 30, 2017 and 2016, respectively. The effective tax rate was 63% and 135% for the nine months ended September 30, 2017 and 2016, respectively. The rate for the nine months ended September 30, 2017, is impacted by a discrete tax expense of \$1.4 million related to the vesting of restricted stock during the period and a discrete tax benefit of \$31.6 million related to a change of position to deduct foreign taxes in lieu of claiming a foreign tax credit for the tax years 2013 through 2016. The foreign tax credit for these years was previously offset by a full valuation allowance and accordingly, there is no net tax expense or balance sheet impact from their reversal. The discrete benefit arises from recognition of the increase in our net operating loss carryforward resulting from the deduction of foreign taxes. The decision to deduct foreign taxes or claim the foreign tax credit is made with respect to each tax period. The rate for the nine months ended September 30, 2016, is impacted by a non-controlling interest in Rose Rock Midstream, L.P. ("Rose Rock") for which taxes are not provided. Significant items that impacted the effective tax rate for each period, as compared to the U.S. federal statutory rate of 35%, include earnings in foreign jurisdictions taxed at lower rates and foreign earnings taxed in foreign jurisdictions as well as in the

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

8. INCOME TAXES

U.S., since they are disregarded entities for U.S. federal income tax purposes. These combined factors, and the magnitude of the permanent items impacting the tax rate relative to income from continuing operations before income taxes, result in rates that are not comparable between the periods.

We have a valuation allowance on a small portion of our state net operating loss carryovers with shorter carryover periods and our remaining foreign tax credit carryover generated in tax years prior to 2013. We have not released the valuation allowance on the foreign tax credits due to the foreign tax credit limitation and the relative subjectivity of forecasts of the relational magnitude of U.S. and foreign taxable income in future periods, as well as the shorter carryover period available for the credits. Deferred tax assets are reduced by a valuation allowance when a determination is made that it is more likely than not that some, or all, of the deferred tax assets will not be realized based on the weight of all available evidence. Evidence which is objectively verifiable carries a higher weight in the analysis. The ultimate realization of deferred tax assets is dependent upon the existence of sufficient taxable income of the appropriate character within the carryback and carryforward period available under the tax law. Sources of taxable income include future reversals of existing taxable temporary differences, future earnings and available tax planning strategies.

We have analyzed filing positions in all of the federal, state and foreign jurisdictions where we are required to file income tax returns and determined that no accruals related to uncertainty in tax positions are required. All income tax years of the Company ending after the emergence from bankruptcy remain open for examination in U.S. jurisdictions under general operation of the statute of limitations, including special provisions with regard to net operating loss carryovers. In foreign jurisdictions, all tax periods prior to the emergence from bankruptcy are closed. The statute of limitations has not been waived with respect to any foreign jurisdictions post emergence and tax periods are open for examination in accordance with the general statutes of each foreign jurisdiction. Currently, there are no examinations in progress for our federal and state jurisdictions. Canada Revenue Agency has initiated an income tax audit of SemCAMS ULC for the tax years 2013 through 2015. No other foreign jurisdictions are currently under audit.

9. LONG-TERM DEBT

Our long-term debt consisted of the following (dollars in thousands):

	Interest rate at September 30, 2017	September 30, 2017	December 31, 2016
Senior unsecured notes due 2021	7.500%	\$ —	\$ 300,000
Senior unsecured notes due 2022	5.625%	400,000	400,000
Senior unsecured notes due 2023	5.625%	350,000	350,000
Senior unsecured notes due 2025	6.375%	325,000	—
Senior unsecured notes due 2026	7.250%	300,000	—
SemGroup \$1.0 billion corporate revolving credit facility ⁽¹⁾			
Alternate base rate borrowings	5.500%	222,000	20,000
Eurodollar borrowings	3.567%	110,000	—
Second Payment ⁽²⁾	8.000%	555,644	—
HFOTCO term loan B ⁽³⁾	4.800%	533,500	—
HFOTCO tax exempt notes payable due 2050	2.266%	225,000	—
HFOTCO \$75 million revolving credit facility ⁽⁴⁾	6.500%	25,000	—
SemMexico revolving credit facility ⁽⁵⁾	8.879%	—	—
Capital leases		32	51
Unamortized premium (discount) and debt issuance costs, net		(31,218)	(19,107)
Total long-term debt, net		3,014,958	1,050,944
Less: current portion of long-term debt		5,529	26

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements**9. LONG-TERM DEBT, Continued**

Noncurrent portion of long-term debt, net	\$ 3,009,429	\$ 1,050,918
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- (1) SemGroup \$1.0 billion corporate revolving credit facility matures on May 15, 2021.
- (2) Second Payment was discounted to \$549.9 million fair value at the HFOTCO acquisition date based on expected timing of payments and an 8% discount rate. See Note 2 for additional information.
- (3) HFOTCO term loan B is due in quarterly installments of \$1.4 million with a final payment due on August 19, 2021.
- (4) HFOTCO \$75 million revolving credit facility matures on August 19, 2019.
- (5) SemMexico revolving credit facility has a borrowing capacity of \$70 million pesos (\$3.8 million USD at September 30, 2017 exchange rate).

Early extinguishment of senior unsecured notes due 2021

On March 15, 2017, we purchased \$290 million of our outstanding \$300 million, 7.50% senior unsecured notes due 2021 (the “2021 Notes”) through a tender offer. The purchase price included a premium and interest to the purchase date. On March 17, 2017, a notice of redemption was issued for the remaining \$10 million of 2021 Notes which were not purchased through the tender offer pursuant to the redemption and satisfaction and discharge provisions of the indenture governing the 2021 Notes. These remaining 2021 Notes were redeemed on June 15, 2017, including a redemption premium and accrued unpaid interest to the redemption date. We recorded a loss on early extinguishment of \$19.9 million for the above transactions, which included premiums totaling \$15.9 million and the write off of \$3.6 million of associated unamortized debt issuance costs.

Issuance of senior unsecured notes due 2025 and 2026

On March 15, 2017, we sold \$325 million of 6.375% senior unsecured notes due 2025 (the “2025 Notes”). The 2025 Notes were sold at 98.467% of par, a discount of \$5.0 million. The discount is reported as a reduction to the face value of the 2025 Notes on our condensed consolidated balance sheets and is being amortized over the life of the 2025 Notes using the interest method.

The net proceeds from the offering of \$315.2 million, after the discount and \$4.9 million of initial purchasers’ fees and offering expenses, together with cash on hand, were used to purchase and redeem the 2021 Notes.

On September 20, 2017, we sold \$300 million of 7.25% senior unsecured notes due 2026 (the “2026 Notes”). The 2026 Notes were sold at 98.453% of par, a discount of \$4.6 million. The discount is reported as a reduction to the face value of the 2026 Notes on our condensed consolidated balance sheets and is being amortized over the life of the 2026 Notes using the interest method.

The net proceeds from the offering of \$290.6 million, after the discount and \$4.8 million of initial purchasers’ fees and offering expenses, were used to repay amounts borrowed under our revolving credit facility.

The 2025 Notes and 2026 Notes (collectively, the “Notes”) were each issued under an indenture (the “Indenture”) by and among the Company, the Guarantors and Wilmington Trust, National Association, as trustee (the “Trustee”). The Notes are fully and unconditionally guaranteed on a senior unsecured basis by our existing subsidiaries that guarantee our revolving credit facility. Interest on the 2025 Notes accrues at a rate of 6.375% per annum and is payable in cash semi-annually on March 15 and September 15 of each year, commencing on September 15, 2017. The 2025 Notes will mature on March 15, 2025. Interest on the 2026 Notes accrues at a rate of 7.25% per annum and is payable in cash semi-annually on March 15 and September 15 of each year, commencing on March 15, 2018. The Notes will mature on March 15, 2026.

Prior to March 15, 2020, for the 2025 Notes, or prior to March 15, 2021, for the 2026 Notes, we may redeem the Notes, in whole or in part, at any time at a price equal to the principal amount of the such notes redeemed plus accrued and unpaid interest to, but not including, the redemption date and a “make-whole premium.” Additionally, from time to time before March 15, 2020, for the 2025 Notes, or prior to September 15, 2020, for the 2026 Notes, we may choose to redeem up to 35% of the original principal amount of such notes at a redemption price equal to 106.375% of the face amount thereof, for the 2025 Notes, or 107.25%, for the 2026 Notes, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds that we raise in one or more equity offerings. On or after March 15, 2020, for the 2025 Notes, or on or after March 15, 2021, for the 2026 Notes, we may redeem such notes, in whole or in part, at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest thereon to, but not including, the redemption date if redeemed during the twelve month period beginning on March 15 of the years indicated below:

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements**9. LONG-TERM DEBT, Continued**

2025 Notes	
Year	Percentage
2020	103.188%
2021	101.594%
2022 and thereafter	100.000%

2026 Notes	
Year	Percentage
2021	103.625%
2022	101.813%
2023 and thereafter	100.000%

Upon the occurrence of a change of control triggering event, as defined in the Indenture, each holder of the Notes will have the right to require the Company to repurchase some or all of such holder's Notes at 101% of the principal amount thereof, plus accrued and unpaid interest to, but not including, the repurchase date.

The Indenture contains customary covenants restricting our ability and the ability of our restricted subsidiaries to: (i) incur additional indebtedness or issue certain preferred shares; (ii) pay dividends and make certain distributions, investments and other restricted payments; (iii) create certain liens; (iv) sell assets; (v) enter into transactions with affiliates; (vi) enter into sale and lease-back transactions; (vii) merge, consolidate, sell or otherwise dispose of all or substantially all of our assets; and (viii) designate our subsidiaries as unrestricted subsidiaries under the Indenture. These covenants are subject to a number of important limitations and exceptions, including certain provisions permitting us, subject to the satisfaction of certain conditions, to transfer assets to certain of our unrestricted subsidiaries.

The Indenture also contains customary events of default. Upon an event of default under the Indenture, the Trustee or the holders of at least 25% in aggregate principal amount of such notes then outstanding may declare all amounts owing under such notes to be due and payable.

Registration rights agreements

In connection with the closing of the offerings of the Notes, the Company and the Guarantors entered into registration rights agreements (the "Registration Rights Agreements"). Under the Registration Rights Agreements, the Company and the Guarantors have agreed to file registration statements with the Securities and Exchange Commission so that holders of the Notes can exchange the Notes and the related guarantees for registered notes and guarantees that have substantially identical terms as the Notes and related guarantees, within 365 days after the original issuance. In certain circumstances, the Company and the Guarantors may be required to file shelf registration statements to cover resales of the Notes. We are required to pay additional interest on the Notes if we fail to comply with our obligations to register the Notes and related guarantees, within the specified time periods.

Pledges and guarantees

Our senior unsecured notes are guaranteed by certain subsidiaries. See Note 15 for additional information.

Our \$1.0 billion corporate revolving credit facility is guaranteed by all of SemGroup's material domestic subsidiaries, with the exception of Maurepas Pipeline LLC and HFOTCO, and secured by a lien on substantially all of the property and assets of SemGroup Corporation and the other loan parties, subject to customary exceptions.

The HFOTCO term loan B, HFOTCO tax exempt notes payable and HFOTCO \$75 million revolving credit facility are secured by substantially all of the assets of HFOTCO and its immediate parent, Buffalo Gulf Coast Terminals LLC. The HFOTCO tax exempt notes payable have a priority position over the HFOTCO term loan B and HFOTCO revolving credit facility.

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements**9. LONG-TERM DEBT, Continued*****Letters of credit***

We had the following outstanding letters of credit at September 30, 2017 (dollars in thousands):

SemGroup \$1.0 billion revolving credit facility	2.25%	\$	39,385
Secured bi-lateral ⁽¹⁾	1.75%	\$	51,142
SemMexico ⁽²⁾	0.28%	\$	16,000

(1) Secured bi-lateral letters of credit are external to the SemGroup \$1.0 billion revolving credit facility and do not reduce availability for borrowing on the credit facility.

(2) \$292.8 million Mexican pesos at the September 30, 2017 exchange rate.

Capitalized interest

During the nine months ended September 30, 2017 and 2016, we capitalized interest of \$15.4 million and \$6.8 million, respectively. As described in Note 1, capitalized interest for the prior year has been recast.

Fair value

We estimate the fair value of our consolidated long-term debt, including current maturities, to be approximately \$3.0 billion at September 30, 2017, based on unadjusted, transacted market prices near the measurement date, which are categorized as Level 2 measurements.

10. COMMITMENTS AND CONTINGENCIES***Environmental***

We may, from time to time, experience leaks of petroleum products from our facilities and, as a result of which, we may incur remediation obligations or property damage claims. In addition, we are subject to numerous environmental regulations. Failure to comply with these regulations could result in the assessment of fines or penalties by regulatory authorities.

The Kansas Department of Health and Environment (the "KDHE") initiated discussions during our bankruptcy proceeding regarding six of our sites in Kansas (five owned by Crude Transportation and one owned by SemGas) that KDHE believed, based on their historical use, may have had soil or groundwater contamination in excess of state standards. KDHE sought our agreement to undertake assessments of these sites to determine whether they are contaminated. We reached an agreement with KDHE on this matter and entered into a Consent Agreement and Final Order with KDHE to conduct environmental assessments on the sites and to pay KDHE's costs associated with their oversight of this matter. We have conducted Phase II investigations at all sites. Four sites are in various stages of follow up investigation, remediation, monitoring, or closure under KDHE oversight. The environmental work at these sites is being completed under consent orders between Rose Rock Midstream Crude, L.P. and the KDHE. Two of the remaining sites have limited impacts to shallow soil and groundwater and the groundwater is currently being monitored on a semi-annual basis until such time that closure can be granted by the KDHE. No active remediation is anticipated for these two sites. The final two sites have required additional investigation and soil and groundwater remediation may be necessary to achieve KDHE closure. We do not anticipate any penalties or fines for these historical sites.

Other matters

We are party to various other claims, legal actions and complaints arising in the ordinary course of business. In the opinion of our management, the ultimate resolution of these claims, legal actions and complaints, after consideration of amounts accrued, insurance coverage and other arrangements, will not have a material adverse effect on our consolidated financial position, results of operations or cash flows. However, the outcome of such matters is inherently uncertain, and estimates of our consolidated liabilities may change materially as circumstances develop.

Asset retirement obligations

We will be required to incur significant removal and restoration costs when we retire our natural gas gathering and processing facilities in Canada. At September 30, 2017, we have an asset retirement obligation liability of \$21.8 million, which is included within other noncurrent liabilities on our condensed consolidated balance sheets. This amount was

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

10. COMMITMENTS AND CONTINGENCIES, Continued

calculated using the \$131.5 million cost we estimate we would incur to retire these facilities, discounted based on our risk-adjusted cost of borrowing and the estimated timing of remediation.

The calculation of the liability for an asset retirement obligation requires the use of significant estimates, including those related to the length of time before the assets will be retired, cost inflation over the assumed life of the assets, actual remediation activities to be required, and the rate at which such obligations should be discounted. Future changes in these estimates could result in material changes in the value of the recorded liability. In addition, future changes in laws or regulations could require us to record additional asset retirement obligations.

Our other segments may also be subject to removal and restoration costs upon retirement of their facilities. However, we are unable to predict when, or if, our pipelines, storage tanks and other facilities would become completely obsolete and require decommissioning. Accordingly, we have not recorded a liability or corresponding asset, as both the amount and timing of such potential future costs are indeterminable.

Purchase and sale commitments

We routinely enter into agreements to purchase and sell petroleum products at specified future dates. We account for derivatives at fair value with the exception of commitments which have been designated as normal purchases and sales for which we do not record assets or liabilities related to these agreements until the product is purchased or sold. At September 30, 2017, such commitments included the following (in thousands):

	Volume (Barrels)	Value
Fixed price purchases	4,908	\$ 239,789
Fixed price sales	6,312	\$ 308,997
Floating price purchases	11,788	\$ 589,050
Floating price sales	17,052	\$ 698,652

Certain of the commitments shown in the table above relate to agreements to purchase product from a counterparty and to sell a similar amount of product (in a different location) to the same counterparty. Many of the commitments shown in the table above are cancellable by either party, as long as notice is given within the time frame specified in the agreement (generally 30 to 120 days).

Our SemGas segment has a take-or-pay contractual obligation related to the fractionation of natural gas liquids through June 2023. The approximate amount of future obligation is as follows (in thousands):

For year ending:	
December 31, 2017	\$ 3,156
December 31, 2018	10,552
December 31, 2019	9,567
December 31, 2020	8,864
December 31, 2021	7,175
Thereafter	9,544
Total expected future payments	\$ 48,858

SemGas also enters into contracts under which we are responsible for marketing the majority of the gas and natural gas liquids produced by the counterparties to the agreements. The majority of SemGas' revenues were generated from such contracts.

Our Crude Supply and Logistics segment has a take-or-pay obligation with our equity method investee, White Cliffs, for approximately 5,000 barrels per day of space on White Cliffs' pipeline. The agreement became effective in October 2015 and has a term of five years. Annual payments to White Cliffs under the agreement are expected to be \$9.4 million. In addition, we have a throughput commitment for 5,000 barrels per day on a third-party pipeline. The agreement, effective June 1, 2017, has a seven year term. The approximate amount of annual payments is as follows (in thousands):

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

10. COMMITMENTS AND CONTINGENCIES, Continued

For year ending:

December 31, 2017	\$	12,100
December 31, 2018		12,337
December 31, 2019		12,593
December 31, 2020		12,848
December 31, 2021		13,103
Thereafter		26,992
Total expected future payments	\$	89,973

Capital expenditures

We expect to spend approximately \$80 million and \$155 million in 2017 and 2018, respectively, related to construction of the Wapiti Sour Gas Plant.

11. EQUITY

Unaudited condensed consolidated statement of changes in owners' equity

The following table shows the changes in our consolidated owners' equity accounts from December 31, 2016 to September 30, 2017 (in thousands):

	Common Stock	Additional Paid-in Capital	Treasury Stock	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Owners' Equity
Balance at December 31, 2016	\$ 659	\$ 1,561,695	\$ (6,558)	\$ (35,917)	\$ (73,914)	\$ 1,445,965
Adoption of ASU 2016-09	—	(1,650)	—	2,133	—	483
Net loss	—	—	—	(19,769)	—	(19,769)
Other comprehensive income, net of income taxes	—	—	—	—	24,215	24,215
Dividends paid	—	(94,714)	—	—	—	(94,714)
Unvested dividend equivalent rights	—	(818)	—	—	—	(818)
Non-cash equity compensation	—	8,377	—	—	—	8,377
Issuance of common stock	124	330,217	—	—	—	330,341
Issuance of common stock under compensation plans	2	1,170	—	—	—	1,172
Repurchase of common stock	—	—	(1,361)	—	—	(1,361)
Balance at September 30, 2017	\$ 785	\$ 1,804,277	\$ (7,919)	\$ (53,553)	\$ (49,699)	\$ 1,693,891

Accumulated other comprehensive loss

The following table presents the changes in the components of accumulated other comprehensive loss from December 31, 2016 to September 30, 2017 (in thousands):

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

11. EQUITY, Continued

	Currency Translation	Employee Benefit Plans	Total
Balance at December 31, 2016	\$ (71,425)	\$ (2,489)	\$ (73,914)
Currency translation adjustment, net of income tax expense of \$14,735	24,170	—	24,170
Changes related to benefit plans, net of income tax expense of \$17	—	45	45
Balance at September 30, 2017	<u>\$ (47,255)</u>	<u>\$ (2,444)</u>	<u>\$ (49,699)</u>

There were no significant items reclassified out of accumulated other comprehensive loss to net income for the three months and nine months ended September 30, 2017 .

Equity issuances

During the nine months ended September 30, 2017 , 39,545 shares under the Employee Stock Purchase Plan were issued and 132,031 shares related to our equity based compensation awards vested. See Note 2 for shares issued as consideration to acquire HFOTCO.

Equity-based compensation

At September 30, 2017 , there were 1,117,138 unvested shares that have been granted under our director and employee compensation programs. The par value of these shares is not reflected in common stock on the condensed consolidated balance sheets, as these shares have not yet vested. For certain of the awards, the number of shares that will vest is contingent upon our achievement of certain specified targets. If we meet the specified maximum targets, approximately 521,000 additional shares could vest.

The holders of certain restricted stock awards are entitled to equivalent dividends (“UDs”) to be received upon vesting of the related restricted stock awards and will be settled in cash. At September 30, 2017 , the value of the UD s to be settled in cash related to unvested restricted stock awards was approximately \$1.7 million .

During the nine months ended September 30, 2017 , we granted 377,766 restricted stock awards with a weighted average grant date fair value of \$35.22 per award.

Dividends

The following table sets forth the quarterly dividends per share declared and/or paid to shareholders for the periods indicated:

Quarter Ending	Dividend Per Share	Date of Record	Date Paid
March 31, 2016	\$ 0.45	March 7, 2016	March 17, 2016
June 30, 2016	\$ 0.45	May 16, 2016	May 26, 2016
September 30, 2016	\$ 0.45	August 15, 2016	August 25, 2016
December 31, 2016	\$ 0.45	November 18, 2016	November 28, 2016
March 31, 2017	\$ 0.45	March 7, 2017	March 17, 2017
June 30, 2017	\$ 0.45	May 15, 2017	May 26, 2017
September 30, 2017	\$ 0.45	August 18, 2017	August 28, 2017
December 31, 2107	\$ 0.45	November 20, 2017	December 1, 2017

12. EARNINGS PER SHARE

Earnings per share is calculated based on income from continuing and discontinued operations, less any income attributable to noncontrolling interests. Income attributable to noncontrolling interests represented third-party limited partner unitholders’ interests in the earnings of our consolidated subsidiary, Rose Rock, prior to completion of our purchase of the noncontrolling interests in the third quarter of 2016 (the “Merger”). Rose Rock allocated net income to

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements
12. EARNINGS PER SHARE, Continued

its limited partners based on the distributions pertaining to the current period's available cash as defined by Rose Rock's partnership agreement. After adjusting for the appropriate period's distributions, the remaining undistributed earnings or excess distributions over earnings, if any, were allocated to Rose Rock's general partner, limited partners and participating securities in accordance with the contractual terms of Rose Rock's partnership agreement and as further prescribed under the two-class method. Incentive distribution rights did not participate in undistributed earnings. Subsequent to the Merger, there is no longer a noncontrolling interest.

Basic earnings per share is calculated based on the weighted average shares outstanding during the period. Diluted earnings per share include the dilutive effect of unvested equity compensation awards.

The following summarizes the calculation of basic earnings per share for the three months and nine months ended September 30, 2017 and 2016 (in thousands, except per share amounts):

	Three Months Ended September 30, 2017			Three Months Ended September 30, 2016		
	Continuing Operations	Discontinued Operations	Net	Continuing Operations	Discontinued Operations	Net
Income (loss)	\$ (19,103)	\$ —	\$ (19,103)	\$ (4,635)	\$ —	\$ (4,635)
less: Income attributable to noncontrolling interests	—	—	—	225	—	225
Net loss attributable to SemGroup	\$ (19,103)	\$ —	\$ (19,103)	\$ (4,860)	\$ —	\$ (4,860)
Weighted average common stock outstanding	75,974	75,974	75,974	52,642	52,642	52,642
Basic loss per share	\$ (0.25)	\$ —	\$ (0.25)	\$ (0.09)	\$ —	\$ (0.09)
	Nine Months Ended September 30, 2017			Nine Months Ended September 30, 2016		
	Continuing Operations	Discontinued Operations	Net	Continuing Operations	Discontinued Operations	Net
Income (loss)	\$ (19,769)	\$ —	\$ (19,769)	\$ 1,260	\$ (1)	\$ 1,259
less: Income attributable to noncontrolling interests	—	—	—	11,167	—	11,167
Net loss attributable to SemGroup	\$ (19,769)	\$ —	\$ (19,769)	\$ (9,907)	\$ (1)	\$ (9,908)
Weighted average common stock outstanding	69,149	69,149	69,149	47,269	47,269	47,269
Basic loss per share	\$ (0.29)	\$ —	\$ (0.29)	\$ (0.21)	\$ —	\$ (0.21)

The following summarizes the calculation of diluted earnings per share for the three months and nine months ended September 30, 2017 and 2016 (in thousands, except per share amounts):

	Three Months Ended September 30, 2017			Three Months Ended September 30, 2016		
	Continuing Operations	Discontinued Operations	Net	Continuing Operations	Discontinued Operations	Net
Income (loss)	\$ (19,103)	\$ —	\$ (19,103)	\$ (4,635)	\$ —	\$ (4,635)
less: Income attributable to noncontrolling interests	—	—	—	225	—	225
Net loss attributable to SemGroup	\$ (19,103)	\$ —	\$ (19,103)	\$ (4,860)	\$ —	\$ (4,860)
Weighted average common stock outstanding	75,974	75,974	75,974	52,642	52,642	52,642
Effect of dilutive securities	—	—	—	—	—	—
Diluted weighted average common stock outstanding	75,974	75,974	75,974	52,642	52,642	52,642
Diluted loss per share	\$ (0.25)	\$ —	\$ (0.25)	\$ (0.09)	\$ —	\$ (0.09)

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Notes to Unaudited Condensed Consolidated Financial Statements

12. EARNINGS PER SHARE, Continued

	Nine Months Ended September 30, 2017			Nine Months Ended September 30, 2016		
	Continuing Operations	Discontinued Operations	Net	Continuing Operations	Discontinued Operations	Net
Income (loss)	\$ (19,769)	\$ —	\$ (19,769)	\$ 1,260	\$ (1)	\$ 1,259
less: Income attributable to noncontrolling interests	—	—	—	11,167	—	11,167
Net loss attributable to SemGroup	\$ (19,769)	\$ —	\$ (19,769)	\$ (9,907)	\$ (1)	\$ (9,908)
Weighted average common stock outstanding	69,149	69,149	69,149	47,269	47,269	47,269
Effect of dilutive securities	—	—	—	—	—	—
Diluted weighted average common stock outstanding	69,149	69,149	69,149	47,269	47,269	47,269
Diluted loss per share	\$ (0.29)	\$ —	\$ (0.29)	\$ (0.21)	\$ —	\$ (0.21)

For the three and nine months ended September 30, 2017 and 2016, we experienced net losses attributable to SemGroup. The unvested equity compensation awards would have been antidilutive and, therefore, were not included in the computation of diluted earnings per share.

13. SUPPLEMENTAL CASH FLOW INFORMATION

The following table summarizes the changes in the components of operating assets and liabilities, net of the effect of acquisitions, shown on our condensed consolidated statements of cash flows (in thousands):

	Nine Months Ended September 30,	
	2017	2016
Decrease (increase) in restricted cash	\$ 28	\$ 32
Decrease (increase) in accounts receivable	(36,203)	(4,245)
Decrease (increase) in receivable from affiliates	19,924	1,372
Decrease (increase) in inventories	(28,297)	(14,397)
Decrease (increase) in derivatives and margin deposits	(500)	85
Decrease (increase) in other current assets	(2,909)	2,402
Decrease (increase) in other assets	(17,723)	63
Increase (decrease) in accounts payable and accrued liabilities	57,073	22,138
Increase (decrease) in payable to affiliates	(21,631)	758
Increase (decrease) in other noncurrent liabilities	7,370	(1,311)
	\$ (22,868)	\$ 6,897

Other supplemental disclosures

We paid cash interest of \$58.6 million and \$50.1 million for the nine months ended September 30, 2017 and 2016, respectively.

We paid cash income taxes, net of refunds, of \$3.1 million for the nine months ended September 30, 2017. For the nine months ended September 30, 2016, cash refunds for income taxes exceeded payments by \$0.5 million.

We incurred liabilities for capital expenditures that had not been paid of \$25.0 million and \$16.8 million as of September 30, 2017 and 2016, respectively. Such amounts are not included in capital expenditures on the consolidated statements of cash flows.

We financed prepayments of insurance premiums of \$6.1 million and \$4.0 million for the nine months ended September 30, 2017 and 2016, respectively.

See Note 2 for information related to non-cash activity related to the HFOTCO acquisition.

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Notes to Unaudited Condensed Consolidated Financial Statements

14. RELATED PARTY TRANSACTIONS

Transactions with NGL Energy and its subsidiaries primarily relate to crude oil marketing, leased storage and transportation services, including buy/sell transactions. Transactions with White Cliffs primarily relate to leased storage, purchases and sales of crude oil, transportation fees for shipments on the White Cliffs Pipeline, and management fees. Transactions with Glass Mountain primarily relate to transportation fees for shipments on the Glass Mountain Pipeline, fees for support and administrative services associated with pipeline operations and purchases of crude oil.

In accordance with ASC 845-10-15, the buy/sell transactions with NGL Energy and White Cliffs were reported as revenue on a net basis in our condensed consolidated statements of operations and comprehensive income (loss) because the purchases of inventory and subsequent sales of the inventory were with the same counterparty and entered into in contemplation of one another.

During the three months and nine months ended September 30, 2017 and 2016, we generated the following transactions with related parties (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
NGL Energy				
Revenues	\$ 15,652	\$ 12,291	\$ 40,368	\$ 29,123
Purchases	\$ 12,414	\$ 13,849	\$ 29,562	\$ 27,045
White Cliffs				
Crude oil revenues	\$ —	\$ 220	\$ 436	\$ 220
Storage revenues	\$ 1,087	\$ 1,088	\$ 3,263	\$ 3,264
Transportation fees	\$ 3,111	\$ 2,704	\$ 8,152	\$ 7,929
Management fees	\$ 133	\$ 127	\$ 387	\$ 369
Crude oil purchases	\$ —	\$ 375	\$ 8,616	\$ 3,920
Glass Mountain				
Transportation fees	\$ 1,765	\$ 1,886	\$ 6,251	\$ 5,625
Management fees	\$ 204	\$ 198	\$ 612	\$ 594
Crude oil purchases	\$ —	\$ —	\$ 3,911	\$ 385

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS

Our senior unsecured notes are guaranteed by certain of our subsidiaries as follows: Rose Rock Finance Corporation, Rose Rock Midstream Operating, LLC, Rose Rock Midstream Energy GP, LLC, Rose Rock Midstream Crude, L.P., Rose Rock Midstream Field Services, LLC, SemGas, L.P., SemMaterials, L.P., SemGroup Europe Holding, L.L.C., SemOperating G.P., L.L.C., SemMexico, L.L.C., SemDevelopment, L.L.C., Mid-America Midstream Gas Services, L.L.C., SemCrude Pipeline, L.L.C., Wattenberg Holding, LLC and Glass Mountain Holding, LLC (collectively, the "Guarantors").

Each of the Guarantors is 100% owned by SemGroup Corporation (the "Parent"). Such guarantees of the Notes are full and unconditional and constitute the joint and several obligations of the Guarantors. There are no significant restrictions upon the ability of the Parent or any of the Guarantors to obtain funds from its respective subsidiaries by dividend or loan. Distributions of cash flows from HFOTCO, a non-guarantor, are restricted by the existing indebtedness of HFOTCO. None of the assets of the Guarantors represent restricted net assets pursuant to Rule 4-08(e)(3) of Regulation S-X under the Securities Act.

Subsequent to the Merger as described in Note 12, SemGroup assumed the obligations of Rose Rock under Rose Rock's senior unsecured notes. Supplemental indentures were entered into with respect to the previously existing SemGroup senior unsecured notes and the senior unsecured notes assumed from Rose Rock to include the Guarantors as listed

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS , Continued

above to the extent the entity was not already a Guarantor. Prior period comparative information has been recast to reflect the addition of Rose Rock subsidiaries as Guarantors.

Unaudited condensed consolidating financial statements for the Parent, the Guarantors and non-guarantors as of September 30, 2017 and December 31, 2016 , and for the three months and nine months ended September 30, 2017 and 2016 , are presented on an equity method basis in the tables below (in thousands).

Intercompany receivable and payable balances, including notes receivable and payable, are capital transactions primarily to facilitate the capital needs of our subsidiaries. As such, subsidiary intercompany balances have been reported as a reduction to equity on the condensed consolidating Guarantor balance sheets. The Parent's net intercompany balance, including notes receivable, and investments in subsidiaries have been reported in equity method investments on the condensed consolidating Guarantor balance sheets. Intercompany transactions, such as daily cash management activities, have been reported as financing activities within the condensed consolidating Guarantor statements of cash flows. These balances are eliminated through consolidating adjustments below.

Condensed Consolidating Guarantor Balance Sheets

	September 30, 2017				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
ASSETS					
Current assets:					
Cash and cash equivalents	\$ 24,597	\$ —	\$ 47,411	\$ (3,995)	\$ 68,013
Accounts receivable, net	4,246	367,661	102,888	—	474,795
Receivable from affiliates	40	5,211	280	—	5,531
Inventories	—	118,614	10,019	—	128,633
Other current assets	5,256	8,853	7,813	—	21,922
Total current assets	34,139	500,339	168,411	(3,995)	698,894
Property, plant and equipment, net	8,193	998,305	2,387,537	—	3,394,035
Equity method investments	3,289,043	1,119,061	—	(3,974,299)	433,805
Goodwill	—	—	262,059	—	262,059
Other intangible assets, net	11	129,833	283,886	—	413,730
Other noncurrent assets	68,454	2,666	91,282	—	162,402
Total assets	\$ 3,399,840	\$ 2,750,204	\$ 3,193,175	\$ (3,978,294)	\$ 5,364,925
LIABILITIES AND OWNERS' EQUITY					
Current liabilities:					
Accounts payable	\$ 680	\$ 388,927	\$ 45,985	\$ —	\$ 435,592
Payable to affiliates	—	4,877	—	—	4,877
Accrued liabilities	26,898	30,852	48,295	—	106,045
Other current liabilities	1,707	5,918	11,376	—	19,001
Total current liabilities	29,285	430,574	105,656	—	565,515
Long-term debt, net	1,674,663	6,644	1,351,263	(23,141)	3,009,429
Deferred income taxes	—	—	57,476	—	57,476
Other noncurrent liabilities	2,001	—	36,613	—	38,614
Commitments and contingencies					
Total owners' equity	1,693,891	2,312,986	1,642,167	(3,955,153)	1,693,891
Total liabilities and owners' equity	\$ 3,399,840	\$ 2,750,204	\$ 3,193,175	\$ (3,978,294)	\$ 5,364,925

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS , Continued

	December 31, 2016				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
ASSETS					
Current assets:					
Cash and cash equivalents	\$ 19,002	\$ —	\$ 59,796	\$ (4,582)	\$ 74,216
Accounts receivable, net	—	361,160	57,179	—	418,339
Receivable from affiliates	27	25,244	184	—	25,455
Inventories	—	89,638	9,596	—	99,234
Other current assets	8,986	5,760	3,887	(3)	18,630
Total current assets	28,015	481,802	130,642	(4,585)	635,874
Property, plant and equipment, net	5,621	970,079	786,372	—	1,762,072
Equity method investments	2,454,118	940,696	—	(2,960,525)	434,289
Goodwill	—	26,628	7,602	—	34,230
Other intangible assets, net	15	149,669	1,294	—	150,978
Other noncurrent assets	54,155	2,080	1,294	—	57,529
Total assets	\$ 2,541,924	\$ 2,570,954	\$ 927,204	\$ (2,965,110)	\$ 3,074,972
LIABILITIES AND OWNERS' EQUITY					
Current liabilities:					
Accounts payable	\$ 674	\$ 348,297	\$ 18,336	\$ —	\$ 367,307
Payable to affiliates	—	26,508	—	—	26,508
Accrued liabilities	25,078	23,423	32,603	—	81,104
Other current liabilities	889	5,108	7,439	—	13,436
Total current liabilities	26,641	403,336	58,378	—	488,355
Long-term debt, net	1,050,893	6,142	16,500	(22,617)	1,050,918
Deferred income taxes	16,119	—	48,382	—	64,501
Other noncurrent liabilities	2,306	—	22,927	—	25,233
Commitments and contingencies					
Total owners' equity	1,445,965	2,161,476	781,017	(2,942,493)	1,445,965
Total liabilities and owners' equity	\$ 2,541,924	\$ 2,570,954	\$ 927,204	\$ (2,965,110)	\$ 3,074,972

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS , Continued

Condensed Consolidating Guarantor Statements of Operations

	Three Months Ended September 30, 2017				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
Revenues:					
Product	\$ —	\$ 381,228	\$ 42,303	\$ —	\$ 423,531
Service	—	34,812	70,475	—	105,287
Lease	—	—	2,646	—	2,646
Other	—	—	14,458	—	14,458
Total revenues	—	416,040	129,882	—	545,922
Expenses:					
Costs of products sold, exclusive of depreciation and amortization shown below	—	361,675	36,577	—	398,252
Operating	—	28,752	33,914	—	62,666
General and administrative	18,970	5,833	10,407	—	35,210
Depreciation and amortization	610	17,580	31,945	—	50,135
Loss on disposal or impairment, net	—	40,161	1,464	—	41,625
Total expenses	19,580	454,001	114,307	—	587,888
Earnings (loss) from equity method investments	(26,856)	19,380	—	24,843	17,367
Operating income (loss)	(46,436)	(18,581)	15,575	24,843	(24,599)
Other expenses (income), net:					
Interest expense	12,418	9,854	10,656	(217)	32,711
Foreign currency transaction gain	—	—	(747)	—	(747)
Other income, net	(225)	(8)	(195)	217	(211)
Total other expenses, net	12,193	9,846	9,714	—	31,753
Income (loss) from continuing operations before income taxes	(58,629)	(28,427)	5,861	24,843	(56,352)
Income tax expense (benefit)	(39,526)	—	2,277	—	(37,249)
Net income (loss)	\$ (19,103)	\$ (28,427)	\$ 3,584	\$ 24,843	\$ (19,103)
Net income (loss)	\$ (19,103)	\$ (28,427)	\$ 3,584	\$ 24,843	\$ (19,103)
Other comprehensive income (loss), net of income taxes	(5,346)	(193)	14,769	—	9,230
Comprehensive income (loss)	\$ (24,449)	\$ (28,620)	\$ 18,353	\$ 24,843	\$ (9,873)

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS , Continued

	Three Months Ended September 30, 2016				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
Revenues:					
Product	\$ —	\$ 209,835	\$ 36,085	\$ —	\$ 245,920
Service	—	39,398	26,676	—	66,074
Other	—	—	15,770	—	15,770
Total revenues	—	249,233	78,531	—	327,764
Expenses:					
Costs of products sold, exclusive of depreciation and amortization shown below	—	188,329	30,174	—	218,503
Operating	—	29,212	23,424	—	52,636
General and administrative	4,576	9,557	6,450	—	20,583
Depreciation and amortization	439	17,384	7,099	—	24,922
Loss on disposal or impairment, net	—	1,018	—	—	1,018
Total expenses	5,015	245,500	67,147	—	317,662
Earnings from equity method investments	6,090	19,657	—	(9,902)	15,845
Operating income	1,075	23,390	11,384	(9,902)	25,947
Other expenses (income), net:					
Interest expense (income)	(3,672)	23,060	(632)	(239)	18,517
Foreign currency transaction loss (gain)	—	(18)	677	—	659
Other expense (income), net	(372)	63	(422)	239	(492)
Total other expense (income), net	(4,044)	23,105	(377)	—	18,684
Income from continuing operations before income taxes	5,119	285	11,761	(9,902)	7,263
Income tax expense	9,979	—	1,919	—	11,898
Net income (loss)	(4,860)	285	9,842	(9,902)	(4,635)
Less: net income attributable to noncontrolling interests	—	225	—	—	225
Net income (loss) attributable to SemGroup	\$ (4,860)	\$ 60	\$ 9,842	\$ (9,902)	\$ (4,860)
Net income (loss)	\$ (4,860)	\$ 285	\$ 9,842	\$ (9,902)	\$ (4,635)
Other comprehensive income (loss), net of income taxes	3,711	208	(10,970)	—	(7,051)
Comprehensive income (loss)	(1,149)	493	(1,128)	(9,902)	(11,686)
Less: comprehensive income attributable to noncontrolling interests	—	225	—	—	225
Comprehensive income (loss) attributable to SemGroup	\$ (1,149)	\$ 268	\$ (1,128)	\$ (9,902)	\$ (11,911)

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS , Continued

	Nine Months Ended September 30, 2017				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
Revenues:					
Product	\$ —	\$ 1,055,387	\$ 109,511	\$ —	\$ 1,164,898
Service	—	110,411	151,556	—	261,967
Lease	—	—	2,646	—	2,646
Other	—	—	45,600	—	45,600
Total revenues	—	1,165,798	309,313	—	1,475,111
Expenses:					
Costs of products sold, exclusive of depreciation and amortization shown below	—	993,838	93,519	—	1,087,357
Operating	—	84,886	103,209	—	188,095
General and administrative	35,513	21,206	26,887	—	83,606
Depreciation and amortization	1,613	52,077	46,646	—	100,336
Loss on disposal of long-lived assets, net	—	42,125	1,676	—	43,801
Total expenses	37,126	1,194,132	271,937	—	1,503,195
Earnings (loss) from equity method investments	17,435	57,015	—	(22,239)	52,211
Operating income (loss)	(19,691)	28,681	37,376	(22,239)	24,127
Other expenses (income), net:					
Interest expense	23,009	28,272	9,391	(617)	60,055
Loss on early extinguishment of debt	19,930	—	—	—	19,930
Foreign currency transaction gain	—	—	(1,758)	—	(1,758)
Other income, net	(669)	(13)	(737)	617	(802)
Total other expenses, net	42,270	28,259	6,896	—	77,425
Income (loss) from continuing operations before income taxes	(61,961)	422	30,480	(22,239)	(53,298)
Income tax expense (benefit)	(42,192)	—	8,663	—	(33,529)
Net income (loss)	\$ (19,769)	\$ 422	\$ 21,817	\$ (22,239)	\$ (19,769)
Net income (loss)	\$ (19,769)	\$ 422	\$ 21,817	\$ (22,239)	\$ (19,769)
Other comprehensive income (loss), net of income taxes	(14,296)	(523)	39,034	—	24,215
Comprehensive income (loss)	\$ (34,065)	\$ (101)	\$ 60,851	\$ (22,239)	\$ 4,446

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS , Continued

	Nine Months Ended September 30, 2016				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
Revenues:					
Product	\$ —	\$ 597,638	\$ 95,304	\$ —	\$ 692,942
Service	—	116,410	75,937	—	192,347
Other	—	—	44,703	—	44,703
Total revenues	—	714,048	215,944	—	929,992
Expenses:					
Costs of products sold, exclusive of depreciation and amortization shown below	—	514,996	77,296	—	592,292
Operating	—	87,232	70,305	—	157,537
General and administrative	15,230	24,512	22,677	—	62,419
Depreciation and amortization	1,212	51,543	21,273	—	74,028
Loss (gain) on disposal or impairment, net	—	16,077	(67)	—	16,010
Total expenses	16,442	694,360	191,484	—	902,286
Earnings from equity method investments	20,050	60,341	—	(24,397)	55,994
Loss on issuance of common units by equity method investee	(41)	—	—	—	(41)
Operating income	3,567	80,029	24,460	(24,397)	83,659
Other expenses (income), net:					
Interest expense (income)	(6,583)	64,267	(2,867)	(712)	54,105
Foreign currency transaction loss (gain)	—	(18)	3,689	—	3,671
Loss on sale of equity method investment	30,644	—	—	—	30,644
Other expense (income), net	(859)	63	(1,086)	712	(1,170)
Total other expense (income), net	23,202	64,312	(264)	—	87,250
Income (loss) from continuing operations before income taxes	(19,635)	15,717	24,724	(24,397)	(3,591)
Income tax expense (benefit)	(9,727)	—	4,876	—	(4,851)
Income (loss) from continuing operations	(9,908)	15,717	19,848	(24,397)	1,260
Loss from discontinued operations, net of income taxes	—	—	(1)	—	(1)
Net income (loss)	(9,908)	15,717	19,847	(24,397)	1,259
Less: net income attributable to noncontrolling interests	—	11,167	—	—	11,167
Net income (loss) attributable to SemGroup	\$ (9,908)	\$ 4,550	\$ 19,847	\$ (24,397)	\$ (9,908)
Net income (loss)	(9,908)	15,717	19,847	(24,397)	1,259
Other comprehensive income (loss), net of income taxes	1,725	909	(7,203)	—	(4,569)
Comprehensive income (loss)	(8,183)	16,626	12,644	(24,397)	(3,310)
Less: comprehensive income attributable to noncontrolling interests	—	11,167	—	—	11,167
Comprehensive income (loss) attributable to SemGroup	\$ (8,183)	\$ 5,459	\$ 12,644	\$ (24,397)	\$ (14,477)

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS, Continued

Condensed Consolidating Guarantor Statements of Cash Flows

	Nine Months Ended September 30, 2017				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
Net cash provided by (used in) operating activities	\$ (43,276)	\$ 99,519	\$ 36,174	\$ —	\$ 92,417
Cash flows from investing activities:					
Capital expenditures	(4,181)	(91,890)	(250,133)	—	(346,204)
Proceeds from sale of long-lived assets	—	15,530	1,108	—	16,638
Contributions to equity method investments	—	(18,808)	—	—	(18,808)
Payments to acquire businesses	—	—	(293,039)	—	(293,039)
Distributions in excess of equity in earnings of affiliates	—	19,296	—	—	19,296
Net cash provided used in investing activities	(4,181)	(75,872)	(542,064)	—	(622,117)
Cash flows from financing activities:					
Debt issuance costs	(10,839)	—	—	—	(10,839)
Borrowings on credit facilities and issuance of senior notes, net of discount	1,333,377	—	20,000	—	1,353,377
Principal payments on credit facilities and other obligations	(710,547)	(19)	(1,375)	—	(711,941)
Debt extinguishment costs	(16,293)	—	—	—	(16,293)
Repurchase of common stock for payment of statutory taxes due on equity-based compensation	(1,361)	—	—	—	(1,361)
Dividends paid	(94,714)	—	—	—	(94,714)
Proceeds from issuance of common stock under employee stock purchase plan	796	—	—	—	796
Intercompany borrowings (advances), net	(447,367)	(23,628)	470,408	587	—
Net cash provided by (used in) financing activities	53,052	(23,647)	489,033	587	519,025
Effect of exchange rate changes on cash and cash equivalents	—	—	4,472	—	4,472
Change in cash and cash equivalents	5,595	—	(12,385)	587	(6,203)
Cash and cash equivalents at beginning of period	19,002	—	59,796	(4,582)	74,216
Cash and cash equivalents at end of period	\$ 24,597	\$ —	\$ 47,411	\$ (3,995)	\$ 68,013

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

15. CONDENSED CONSOLIDATING GUARANTOR FINANCIAL STATEMENTS, Continued

	Nine Months Ended September 30, 2016				
	Parent	Guarantors	Non-guarantors	Consolidating Adjustments	Consolidated
Net cash provided by operating activities	\$ 53,460	\$ 52,620	\$ 59,781	\$ (25,757)	\$ 140,104
Cash flows from investing activities:					
Capital expenditures	(1,939)	(40,043)	(161,794)	—	(203,776)
Proceeds from sale of long-lived assets	—	—	98	—	98
Contributions to equity method investments	—	(3,756)	—	—	(3,756)
Proceeds from sale of common units of equity method investee	60,483	—	—	—	60,483
Distributions in excess of equity in earnings of affiliates	33,065	22,792	—	(33,065)	22,792
Net cash provided by (used in) investing activities	91,609	(21,007)	(161,696)	(33,065)	(124,159)
Cash flows from financing activities:					
Debt issuance costs	(7,459)	—	—	—	(7,459)
Borrowings on credit facilities	118,000	244,500	—	—	362,500
Principal payments on credit facilities and other obligations	(149,469)	(244,525)	—	—	(393,994)
Proceeds from issuance of common units, net of offering costs	223,739	—	—	—	223,739
Distributions to noncontrolling interests	—	(32,133)	—	—	(32,133)
Repurchase of common stock for payment of statutory taxes due on equity-based compensation	(945)	—	—	—	(945)
Dividends paid	(63,338)	—	—	—	(63,338)
Proceeds from issuance of common stock under employee stock purchase plan	774	—	—	—	774
Intercompany borrowing (advances), net	(172,495)	(8,531)	122,672	58,354	—
Net cash provided by (used in) financing activities	(51,193)	(40,689)	122,672	58,354	89,144
Effect of exchange rate changes on cash and cash equivalents	—	18	545	—	563
Change in cash and cash equivalents	93,876	(9,058)	21,302	(468)	105,652
Cash and cash equivalents at beginning of period	4,559	9,058	46,043	(1,564)	58,096
Cash and cash equivalents at end of period	\$ 98,435	\$ —	\$ 67,345	\$ (2,032)	\$ 163,748

SEMGROUP CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

16. SUBSEQUENT EVENT

In the fourth quarter of 2017, we have made considerable progress on our strategic initiatives to finance the deferred payment associated with our HFOTCO acquisition and to enhance our balance sheet. Those initiatives may include, but are not limited to, multiple asset sales. At September 30, 2017, we had not met the accounting criteria for those assets and liabilities to be presented as Held for Sale. If we progress further toward potential divestitures, gains or losses may be recorded to the extent the fair value of the assets divested are more or less than the carrying value of those assets, and those gains or losses may be significant.

On November 8, 2017, we reached an agreement to sell our 50% interest in Glass Mountain for \$300 million and expect to record a gain on disposal.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the unaudited condensed consolidated interim financial statements and the notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q, and our Annual Report on Form 10-K for the year ended December 31, 2016, filed with the SEC.

Overview of Business

Our business is to provide gathering, transportation, storage, distribution, marketing and other midstream services primarily to producers, refiners of petroleum products and other market participants located in the Gulf Coast, Midwest and Rocky Mountain regions of the United States of America (the "U.S.") and Canada. We, or our significant equity method investees, have an asset base consisting of pipelines, gathering systems, storage facilities, terminals, processing plants and other distribution assets located between North American production and supply areas, including the Gulf Coast, Midwest, Rocky Mountain and Western Canadian regions. We also maintain and operate storage, terminal and marine facilities at Milford Haven in the United Kingdom (the "U.K.") that enable customers to supply petroleum products to markets in the Atlantic Basin. We also operate a network of liquid asphalt cement terminals throughout Mexico. At September 30, 2017, our operations are conducted directly and indirectly through our primary business segments – Crude Transportation, Crude Facilities, Crude Supply and Logistics, HFOTCO, SemGas[®], SemCAMS, SemLogistics and SemMexico.

Our Assets

At September 30, 2017, our segments owned the following:

- Crude Transportation operates crude oil pipelines and truck transportation businesses in the U.S. Crude Transportation's assets include:
 - a 450 -mile crude oil gathering and transportation pipeline system with over 720,000 barrels of associated storage capacity in Kansas and northern Oklahoma that is connected to several third-party pipelines and refineries;
 - the Wattenberg Oil Trunkline ("WOT"), a 75 -mile, 12-inch diameter crude oil gathering pipeline system that transports crude oil from production facilities in the DJ Basin to the pipeline owned by White Cliffs Pipeline, L.L.C. ("White Cliffs"). The WOT also has 360,000 barrels of operational storage;
 - a crude oil trucking fleet of approximately 245 transport trucks and approximately 245 trailers;
 - Maurepas Pipeline, consisting of three pipelines, with an approximate total of 106 miles, that service refineries in the Gulf Coast region (the "Maurepas Pipeline");
 - a 51% ownership interest in White Cliffs, which owns a 527-mile pipeline, consisting of two parallel 12-inch common carrier, crude oil pipelines, that transports crude oil from Platteville, Colorado to Cushing, Oklahoma (the "White Cliffs Pipeline") that we operate; and
 - a 50% ownership interest in Glass Mountain Pipeline, LLC ("Glass Mountain"), which owns a 215 -mile crude oil pipeline in western and north central Oklahoma (the "Glass Mountain Pipeline") and 1.5 million barrels of associated storage, that we operate.

- Crude Facilities operates crude oil storage and terminal businesses in the U.S. Crude Facilities' assets include:
 - approximately 7.6 million barrels of crude oil storage capacity in Cushing, Oklahoma, of which 6.25 million barrels are leased to customers and 1.35 million barrels are used for crude oil operations and marketing activities; and
 - a 30 -lane crude oil truck unloading facility with 350,000 barrels of associated storage capacity in Platteville, Colorado which connects to the origination point of the White Cliffs Pipeline.
- Crude Supply and Logistics operates a crude oil marketing business which utilizes our Crude Transportation and Crude Facilities assets for marketing purposes. Additionally, Crude Supply and Logistics' assets include approximately 61,800 barrels of crude oil storage capacity in Trenton and Stanley, North Dakota.
- HFOTCO, acquired in July 2017, operates a large terminal facility located on the U.S. Gulf Coast. HFOTCO's assets include:
 - approximately 16.8 million barrels of product storage with crude pipeline connectivity to the local refining complex, deep water marine access and inbound crude receipt pipeline connectivity, as well as rail and truck loading and unloading capabilities; and
 - 330 acres on the Houston Ship Channel.
- SemGas, which provides natural gas gathering and processing services in the U.S. SemGas owns and operates gathering systems and four processing plants with 595 million cubic feet per day of capacity.
- SemCAMS, which provides natural gas gathering and processing services in Alberta, Canada. SemCAMS owns working interests in, and operates, four natural gas processing plants with a combined operating capacity of 695 million cubic feet per day.
- SemLogistics, which provides refined product and crude oil storage services in the U.K. SemLogistics owns a facility in Wales that has multi-product storage capacity of approximately 8.7 million barrels.
- SemMexico, which purchases, produces, stores, and distributes liquid asphalt cement products in Mexico. SemMexico operates an in-country network of 12 asphalt cement terminals and modification facilities and two marine terminals with a third under construction.

Additionally, we hold an 11.78% ownership interest in the general partner of NGL Energy Partners LP ("NGL Energy") (NYSE: NGL) which is reported within Corporate and Other.

Recent Developments

In the fourth quarter of 2017, we have made considerable progress on our strategic initiatives to finance the deferred payment associated with our HFOTCO acquisition and to enhance our balance sheet. Those initiatives may include, but are not limited to, multiple asset sales. At September 30, 2017, we had not met the accounting criteria for those assets and liabilities to be presented as Held for Sale. If we progress further toward potential divestitures, gains or losses may be recorded to the extent the fair value of the assets divested are more or less than the carrying value of those assets, and those gains or losses may be significant.

On November 8, 2017, we reached an agreement to sell our 50% interest in Glass Mountain for \$300 million and expect to record a gain on disposal.

Results of Operations*Consolidated Results of Operations*

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 545,922	\$ 327,764	\$ 1,475,111	\$ 929,992
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below	398,252	218,503	1,087,357	592,292
Operating	62,666	52,636	188,095	157,537
General and administrative	35,210	20,583	83,606	62,419
Depreciation and amortization	50,135	24,922	100,336	74,028
Loss on disposal or impairment, net	41,625	1,018	43,801	16,010
Total expenses	587,888	317,662	1,503,195	902,286
Earnings from equity method investments	17,367	15,845	52,211	55,994
Loss on issuance of common units by equity method investee	—	—	—	(41)
Operating income (loss)	(24,599)	25,947	24,127	83,659
Other expenses (income), net:				
Interest expense	32,711	18,517	60,055	54,105
Loss on early extinguishment of debt	—	—	19,930	—
Foreign currency transaction loss (gain)	(747)	659	(1,758)	3,671
Loss on sale or impairment of equity method investment	—	—	—	30,644
Other income, net	(211)	(492)	(802)	(1,170)
Total other expenses, net	31,753	18,684	77,425	87,250
Income (loss) from continuing operations before income taxes	(56,352)	7,263	(53,298)	(3,591)
Income tax expense (benefit)	(37,249)	11,898	(33,529)	(4,851)
Income (loss) from continuing operations	(19,103)	(4,635)	(19,769)	1,260
Loss from discontinued operations, net of income taxes	—	—	—	(1)
Net income (loss)	\$ (19,103)	\$ (4,635)	\$ (19,769)	\$ 1,259

Revenue and Expenses

Revenue and expenses are analyzed by operating segment below.

General and administrative expense

General and administrative expenses of each corporate department are allocated to the segments based on criteria such as actual usage, headcount and estimates of effort or benefit. The method for allocating cost is based on the type of service being provided. For example, internal audit costs are based on an estimate of effort attributable to a segment. In contrast, accounting department costs are allocated based on the number of transactions processed for a given segment compared to the total number processed. The overall increase in general and administrative expense compared with prior periods is primarily due to HFOTCO acquisition related costs of \$13.6 million and \$19.1 million for the three and nine months ended September 30, 2017, respectively.

Interest expense

Interest expense increased in the three months ended September 30, 2017, to \$32.7 million from \$18.5 million in the three months ended September 30, 2016. The increase is primarily due to debt issued during the three months ended September 30, 2017, including increased borrowings on the revolving credit facility and debt assumed in the HFOTCO acquisition. Interest expense increased in the nine months ended September 30, 2017, to \$60.1 million from \$54.1 million in the nine months ended September 30, 2016. The increase is primarily due to debt issued during the three months ended September 30, 2017, as discussed above, partially offset by higher capitalized interest amounts as compared to the prior year, primarily related to the Maurepas Pipeline.

Loss on early extinguishment of debt

During the nine months ended September 30, 2017, we purchased \$290 million of our outstanding \$300 million senior unsecured notes due 2021 (the “2021 Notes”) through a tender offer. The price included a premium and interest to the purchase date. A notice of redemption was issued for the remaining \$10 million of 2021 Notes, which were not redeemed through the tender offer pursuant to the redemption and satisfaction and discharge provisions of the indenture governing the 2021 Notes. The redemption price includes a redemption premium and interest to the redemption date. As a result, we recognized a loss of \$19.9 million on the early extinguishment of the 2021 Notes, which included premiums of \$15.9 million and the write off of \$3.6 million of associated unamortized debt issuance costs.

Loss on sale or impairment of equity method investment

During the nine months ended September 30, 2016, we recognized a \$30.6 million net loss on sale or impairment of equity method investment from the sale of limited partner units of NGL Energy.

Income tax expense (benefit)

We reported an income tax benefit of \$33.5 million for the nine months ended September 30, 2017, compared to a benefit of \$4.8 million for the nine months ended September 30, 2016. The effective tax rate was 66% and 164% for the three months ended September 30, 2017 and 2016, respectively, and 63% and 135% for the nine months ended September 30, 2017, and 2016, respectively. The rate for the nine months ended September 30, 2017, is impacted by a discrete tax expense of \$1.4 million related to the vesting of restricted stock during the period and a discrete tax benefit of \$31.6 million related to a change of position to deduct foreign taxes in lieu of claiming a foreign tax credit for the tax years 2013 through 2016. The foreign tax credit for these years was previously offset by a full valuation allowance and, accordingly, there is no net tax expense or balance sheet impact from their reversal. The discrete benefit arises from recognition of the increase in our net operating loss carryforward resulting from the deduction of foreign taxes. The decision to deduct foreign taxes or claim the foreign tax credit is made with respect to each tax period. The rate for the nine months ended September 30, 2016, is impacted by a non-controlling interest in Rose Rock Midstream, L.P. (“Rose Rock”) for which taxes are not provided. Significant items that impacted the effective tax rate for each period, as compared to the U.S. federal statutory rate of 35%, include earnings in foreign jurisdictions taxed at lower rates and foreign earnings taxed in foreign jurisdictions as well as in the U.S., since they are disregarded entities for U.S. federal income tax purposes. These combined factors, and the magnitude of the permanent items impacting the tax rate relative to income from continuing operations before income taxes, result in rates that are not comparable between the periods.

Results of Operations by Reporting Segment

Crude Transportation

<u>(in thousands)</u>	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2017</u>	<u>2016</u>	<u>2017</u>	<u>2016</u>
Revenue:				
Pipeline transportation	\$ 12,497	\$ 6,813	\$ 25,124	\$ 21,560
Truck transportation	15,315	16,127	44,141	46,560
Total revenue	27,812	22,940	69,265	68,120
Expenses:				
Operating	17,272	17,106	49,691	52,588
General and administrative	2,580	1,188	9,093	3,443
Depreciation and amortization	11,170	6,309	23,595	18,343
Loss on disposal or impairment, net	40,161	1,018	42,107	2,799
Total expenses	71,183	25,621	124,486	77,173
Earnings from equity method investments	17,372	15,883	52,207	53,800
Operating income (loss)	\$ (25,999)	\$ 13,202	\$ (3,014)	\$ 44,747

Three months ended September 30, 2017 versus three months ended September 30, 2016

Revenue

Pipeline transportation revenue increased to \$12.5 million in the three months ended September 30, 2017, from \$6.8

million in the three months ended September 30, 2016 . The increase was primarily the result of \$5.8 million related to the start-up of the Maurepas Pipeline and a \$1.0 million increase on the WOT, partially offset by a \$0.9 million reduction related to the Tampa pipeline that was sold in the first quarter of 2017 and a \$0.2 million reduction to intersegment transportation attributed to our Crude Supply and Logistics segment.

Truck transportation revenue decreased to \$15.3 million in three months ended September 30, 2017 , from \$16.1 million for the same period in 2016 as a result of lower average rates.

Operating expense

Operating expense increased slightly to \$17.3 million for the three months ended September 30, 2017 , compared to \$17.1 million for the three months ended September 30, 2016 . The increase was the result of higher field expenses and outside services, partially offset by decreases in compensation and insurance and taxes.

General and administrative expense

General and administrative expense increased to \$2.6 million in the three months ended September 30, 2017 , from \$1.2 million in the three months ended September 30, 2016 . The increase is primarily a result of higher overhead allocations largely due to certain Rose Rock corporate costs being allocated to the former Rose Rock segments subsequent to SemGroup's acquisition of the outstanding non-controlling interest in Rose Rock in September of 2016. These costs were included in Corporate and Other in the prior year. Insurance and taxes and other expense also increased as compared to prior period.

Depreciation and amortization expense

Depreciation and amortization expense increased to \$11.2 million in the three months ended September 30, 2017 , from \$6.3 million in the three months ended September 30, 2016 . The increase is primarily a result of the Maurepas Pipeline coming on line during the third quarter of 2017.

Loss on disposal or impairment, net

Crude Transportation recorded a loss on impairments of \$40.2 million in the three months ended September 30, 2017 , resulting from a \$38.9 million impairment in our trucking division primarily related to goodwill and intangible customer relationships and a \$1.3 million impairment to a 5.3 mile section of our Oklahoma pipeline system. See Note 4 of the accompanying financial statements for additional information related to the impairment of goodwill and customer relationship intangible assets. Crude Transportation recorded a loss on disposal of long-lived assets of \$1.0 million in the three months ended September 30, 2016 , primarily due to a write down of vehicles in our trucking division.

Earnings from equity method investments

Crude Transportation's earnings from equity method investments increased in the three months ended September 30, 2017 , to \$17.4 million from \$15.9 million in the three months ended September 30, 2016 , due to an increase in volume.

Nine months ended September 30, 2017 versus nine months ended September 30, 2016

Revenue

Pipeline transportation revenue increased to \$25.1 million in the nine months ended September 30, 2017 , from \$21.6 million in the nine months ended September 30, 2016 . The increase included a \$5.8 million increase related to the start-up of the Maurepas Pipeline and a \$2.4 million increase on the WOT. These increases were partially offset with a \$2.8 million decrease related to the Tampa pipeline that was sold early in the nine months ended September 30, 2017, a \$1.7 million reduction in intersegment activity and a \$0.2 million reduction to other income.

Truck transportation revenue decreased to \$44.1 million in the nine months ended September 30, 2017 , from \$46.6 million in the same period in 2016 , as a result of lower average rates.

Operating expense

Operating expense decreased to \$49.7 million for the nine months ended September 30, 2017 , from \$52.6 million for the nine months ended September 30, 2016 . The decrease was the result of lower compensation, insurance and taxes and other expenses, partially offset by increases in outside services and field expense.

General and administrative expense

General and administrative expense increased to \$9.1 million in the nine months ended September 30, 2017, from \$3.4 million in the nine months ended September 30, 2016. The increase is primarily a result of higher overhead allocations largely due to certain Rose Rock corporate costs being allocated to the former Rose Rock segments subsequent to SemGroup's acquisition of the outstanding non-controlling interest in Rose Rock in September of 2016. These costs were included in Corporate and Other in the prior year. Increases were also seen in insurance and taxes, legal and other expenses.

Depreciation and amortization expense

Depreciation and amortization expense increased to \$23.6 million in the nine months ended September 30, 2017, from \$18.3 million in the nine months ended September 30, 2016. The increase is primarily a result of the Maurepas Pipeline coming on line during the third quarter of 2017.

Loss on disposal or impairment, net

Crude Transportation recorded a loss on disposal or impairment of \$42.1 million in the nine months ended September 30, 2017, resulting primarily from a \$38.9 million impairment in our trucking division primarily related to goodwill and intangible customer relationships, a \$1.3 million impairment to a 5.3 mile section of our Oklahoma pipeline system and a \$4.8 million write down of right-of-ways, partially offset with a gain from the Tampa pipeline sale. The write down of right-of-ways included \$4.5 million related to the correction of immaterial prior period errors. See Note 4 of the accompanying financial statements for additional information related to the impairment of goodwill and customer relationship intangible assets. Crude Transportation recorded a loss on disposal of long-lived assets of \$2.8 million in the nine months ended September 30, 2016, primarily the result of an abandonment of a 13-mile section of the Kansas and Oklahoma pipeline system.

Earnings from equity method investments

Crude Transportation's earnings from equity method investments decreased in the nine months ended September 30, 2017, to \$52.2 million from \$53.8 million in the nine months ended September 30, 2016, due to a reduction in volume.

Crude Facilities

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 11,620	\$ 12,740	\$ 36,076	\$ 38,445
Expenses:				
Operating	2,814	2,360	8,225	6,900
General and administrative	309	701	1,515	2,908
Depreciation and amortization	2,058	1,982	6,024	5,785
Total expenses	5,181	5,043	15,764	15,593
Operating income	\$ 6,439	\$ 7,697	\$ 20,312	\$ 22,852

Three months ended September 30, 2017 versus three months ended September 30, 2016

Revenue

Revenue decreased to \$11.6 million in the three months ended September 30, 2017, from \$12.7 million for the three months ended September 30, 2016. The decrease is due to a reduction in storage revenue of \$0.6 million, primarily resulting from scheduled tank cleanings, as the average capacity used internally for crude oil operations and marketing activities decreased to 1.3 million barrels from 1.4 million barrels and the average capacity leased by storage customers decreased to 6.2 million barrels from 6.6 million barrels. The remainder is due to decreases in pump-over revenue of \$0.5 million.

Operating expense

Operating expense increased to \$2.8 million in the three months ended September 30, 2017, from \$2.4 million for the three months ended September 30, 2016, as a result of increased field expense, maintenance and repair and other expense.

General and administrative expense

General and administrative expense decreased to \$0.3 million for three months ended September 30, 2017, from \$0.7 million for the three months ended September 30, 2016, as a result of a reduction in overhead allocations.

Nine months ended September 30, 2017 versus nine months ended September 30, 2016

Revenue

Revenue decreased to \$36.1 million in the nine months ended September 30, 2017, from \$38.4 million for the nine months ended September 30, 2016. The decrease is due to a reduction in storage revenue of \$1.9 million, primarily resulting from scheduled tank cleanings, as the average capacity leased by storage customers decreased to 6.3 million barrels from 6.6 million barrels, with the remaining amount due to reduction of pump-over revenue.

Operating expense

Operating expense increased to \$8.2 million in the nine months ended September 30, 2017, from \$6.9 million for the nine months ended September 30, 2016, as a result of increased field expense, compensation, outside services and maintenance and repair expense.

General and administrative expense

General and administrative expense decreased to \$1.5 million for nine months ended September 30, 2017, from \$2.9 million for the nine months ended September 30, 2016, as a result of a reduction in overhead allocations.

Crude Supply and Logistics

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 339,874	\$ 165,523	\$ 928,664	\$ 485,346
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below	342,254	167,305	931,813	465,072
Operating	1,146	853	4,077	2,380
General and administrative	675	381	3,153	1,450
Depreciation and amortization	103	46	243	126
Loss on disposal of long-lived assets, net	—	—	—	227
Total expenses	344,178	168,585	939,286	469,255
Operating income (loss)	\$ (4,304)	\$ (3,062)	\$ (10,622)	\$ 16,091

Three months ended September 30, 2017 versus three months ended September 30, 2016

Revenue

Revenue increased to \$339.9 million in the three months ended September 30, 2017, from \$165.5 million in the three months ended September 30, 2016.

(in thousands)	Three Months Ended September 30,	
	2017	2016
Gross product revenue	\$ 1,050,165	\$ 862,237
Nonmonetary transaction adjustment	(708,458)	(690,547)
Unrealized loss on derivatives, net	(1,833)	(6,167)
Product revenue	\$ 339,874	\$ 165,523

Gross product revenue increased in the three months ended September 30, 2017, to \$1.1 billion from \$862.2 million in the three months ended September 30, 2016. The increase was primarily due to an increase in the volume sold to 22.2 million barrels at an average sales price of \$47 per barrel in the three months ended September 30, 2017, compared to volume sold of 19.0 million barrels at an average sales price of \$45 per barrel in the three months ended September 30, 2016.

Gross product revenue was reduced by \$708.5 million and \$690.5 million during the three months ended September 30, 2017 and 2016, respectively, in accordance with Accounting Standards Codification (“ASC”) 845-10-15, “Nonmonetary Transactions”. ASC 845-10-15 requires that certain transactions -- those where inventory is purchased from a customer then

resold to the same customer -- to be presented in the income statement on a net basis, resulting in a reduction of revenue and costs of products sold by the same amount.

Cost of products sold

Costs of products sold increased in the three months ended September 30, 2017, to \$342.3 million (including \$11.6 million of intersegment charges) from \$167.3 million in the three months ended September 30, 2016 (including \$9.8 million of intersegment charges). Costs of products sold reflect reductions of \$708.5 million and \$690.5 million in the three months ended September 30, 2017 and 2016, respectively, in accordance with ASC 845-10-15. There was an increase in the barrels sold, as described above, combined with an increase in the average cost per barrel of crude oil to \$47 in the three months ended September 30, 2017, from \$45 in the three months ended September 30, 2016.

Operating expense

Operating expense increased to \$1.1 million in the three months ended September 30, 2017, from \$0.9 million for the three months ended September 30, 2016. The increase is primarily due to higher outside services and other expenses.

General and administrative expense

General and administrative expense increased to \$0.7 million in the three months ended September 30, 2017, from \$0.4 million in the three months ended September 30, 2016. This increase is primarily due to additional overhead allocation.

Nine months ended September 30, 2017 versus nine months ended September 30, 2016

Revenue

Revenue increased to \$928.7 million in the nine months ended September 30, 2017, from \$485.3 million in the nine months ended September 30, 2016.

(in thousands)	Nine Months Ended September 30,	
	2017	2016
Gross product revenue	\$ 3,190,732	\$ 2,256,180
Nonmonetary transaction adjustment	(2,261,136)	(1,764,738)
Unrealized loss on derivatives, net	(932)	(6,096)
Product revenue	<u>\$ 928,664</u>	<u>\$ 485,346</u>

Gross product revenue increased in the nine months ended September 30, 2017, to \$3.2 billion from \$2.3 billion in the nine months ended September 30, 2016. The increase was primarily due to an increase in the volume sold to 65.0 million barrels at an average sales price of \$49 per barrel in the nine months ended September 30, 2017, compared to volume sold of 56.6 million barrels at an average sales price of \$40 per barrel in the nine months ended September 30, 2016. Current year volume includes approximately 5.5 million barrels moved at negligible margins primarily to overcome volume constraints on third-party pipelines.

Gross product revenue was reduced by \$2.3 billion and \$1.8 billion during the nine months ended September 30, 2017 and 2016, respectively, in accordance with Accounting Standards Codification ("ASC") 845-10-15, "Nonmonetary Transactions". ASC 845-10-15 requires that certain transactions -- those where inventory is purchased from a customer then resold to the same customer -- to be presented in the income statement on a net basis, resulting in a reduction of revenue and costs of products sold by the same amount.

Cost of products sold

Costs of products sold increased in the nine months ended September 30, 2017, to \$931.8 million (including \$30.0 million of intersegment charges) from \$465.1 million in the nine months ended September 30, 2016 (including \$27.4 million of intersegment charges). Costs of products sold reflect reductions of \$2.3 billion and \$1.8 billion in the nine months ended September 30, 2017 and 2016, respectively, in accordance with ASC 845-10-15. There was an increase in the barrels sold, as described above, combined with an increase in the average cost per barrel of crude oil to \$49 in the nine months ended September 30, 2017, from \$39 in the nine months ended September 30, 2016.

Operating expense

Operating expense increased to \$4.1 million in the nine months ended September 30, 2017, from \$2.4 million for the nine months ended September 30, 2016. The increase is primarily due to higher employment costs, outside services, maintenance and repair, insurance and taxes and other expenses.

General and administrative expense

General and administrative expense increased to \$3.2 million in the nine months ended September 30, 2017, from \$1.5 million in the nine months ended September 30, 2016. This increase is primarily due to additional overhead allocation.

HFOTCO

(in thousands)	Three and Nine Months Ended September 30,	
	2017	
Revenue	\$	34,675
Expenses:		
Operating		6,171
General and administrative		1,267
Depreciation and amortization		19,300
Loss on disposal of long-lived assets, net		1,486
Total expenses		28,224
Operating income	\$	6,451

On July 17, 2017 (the “Closing Date”), we completed our acquisition of Houston Fuel Oil Terminal Company pursuant to the Purchase and Sale Agreement (the “Purchase Agreement”) among us, Beachhead I LLC (“Buyer I”), Beachhead II LLC (“Buyer II” and, together with Buyer I, the “Buyers”), which are each an indirect wholly-owned subsidiary of us, Buffalo Investor I, L.P. (“Buffalo I”) and Buffalo Investor II, L.P. (“Buffalo II” and, together with Buffalo I, the “Sellers”). Pursuant to the Purchase Agreement, we acquired 100% of the equity interests in Buffalo Parent Gulf Coast Terminals LLC (“BPGCT”), the parent company of Buffalo Gulf Coast Terminals LLC (“BGCT”) and HFOTCO LLC doing business as Houston Fuel Oil Terminal Company (“HFOTCO”), in exchange for a purchase price paid or to be paid by the Buyers to the Sellers in two payments.

The first payment (the “First Payment”) occurred on the Closing Date and was composed of estimated assumed net indebtedness at HFOTCO of approximately \$766 million, issuance of approximately 12.4 million shares of our Class A common stock, and \$297 million in cash, which is net of an estimated \$4.2 million adjustment for working capital, net indebtedness and capital expenditures. We funded the cash portion of the First Payment and certain other transaction costs with borrowings under our revolving credit facility. We intend to make the second payment on or prior to December 31, 2018. The second payment will consist of \$600 million of cash if paid on December 31, 2018, which amount is discounted at a rate of 5% per annum if paid prior to December 31, 2018, and increases to \$680 million if not paid by December 31, 2018, but which amount must be paid any time after December 31, 2018, upon the written request of Sellers and, in any event, not later than December 31, 2019 (the “Second Payment”). Neither the Company nor any of its subsidiaries other than BPGCT, the Buyers and Beachhead Holdings LLC, the parent company of the Buyers (“Beachhead Holdings” and, together with BPGCT and the Buyers, the “Guarantors”), will have any obligation to pay the Second Payment to Sellers. Instead, the Second Payment is secured by a guarantee by the Guarantors and a pledge of the equity interests in BPGCT and the Buyers in favor of the Sellers.

This acquisition establishes our position in the premier energy market, the Houston Ship Channel, and provides a strategic platform to refinery-facing growth. This acquisition adds to our existing assets a 16.8 million barrel terminal strategically located on the U.S. Gulf Coast with crude pipeline delivery connectivity to the local refining complex, deep water marine access and inbound crude receipt pipeline connectivity, as well as rail/truck loading and unloading capabilities. The terminal, located on 330 acres on the Houston Ship Channel, stores, blends and transports residual fuel and crude oil as well as asphalt via pipeline, barge, rail, truck and ship for major oil companies, refiners, international trading firms and others. HFOTCO is currently executing on contractually supported growth projects, including a new ship dock, a new pipeline and connections, as well as an additional 1.45 million barrels of crude oil storage, expected to be in service mid-2018.

The results of HFOTCO subsequent to the acquisition are included in the table above. General and administrative expense for the period subsequent to the acquisition includes the benefit of a \$3.0 million reduction to the assumed pension

liability due to the curtailment of HFOTCO's defined benefit pension plan. Subsequent to the acquisition, SemGroup closed the plan to new members and stopped the accrual of future benefits under the plan to better align HFOTCO with SemGroup's compensation strategy. Accordingly, the pension liability assumed at acquisition of \$10.0 million was reduced to \$7.0 million as of September 30, 2017.

SemGas

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 56,247	\$ 60,090	\$ 176,298	\$ 157,077
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below				
Operating	33,129	33,084	100,725	84,864
General and administrative	7,563	8,686	22,307	24,910
Depreciation and amortization	2,640	2,124	7,927	6,744
Loss on disposal or impairment, net	9,114	9,079	27,140	27,204
Total expenses	—	—	21	13,051
Operating income	52,446	52,973	158,120	156,773
	\$ 3,801	\$ 7,117	\$ 18,178	\$ 304

Three months ended September 30, 2017 versus three months ended September 30, 2016

Revenue

Revenue decreased in the three months ended September 30, 2017, to \$56.2 million from \$60.1 million in the three months ended September 30, 2016. The decrease is primarily due to lower volumes (25,120 MMcf in the three months ended September 30, 2017, compared to 28,068 MMcf for the same period in 2016) and decreased fees (\$13 million in the three months ended September 30, 2017, versus \$14 million for the same period in 2016). Volume decreases are primarily due to reduced drilling coupled with natural well production declines. The decrease was offset by a higher average natural gas NYMEX price of \$2.99/MMBtu in the three months ended September 30, 2017, versus \$2.81/MMBtu for the same period in 2016, higher average NGL basket price of \$0.75/gallon in the three months ended September 30, 2017, versus \$0.54/gallon for the same period in 2016.

Costs of products sold

Costs of products sold remained constant in the three months ended September 30, 2017 and 2016, at \$33.1 million.

Operating expense

Operating expense decreased to \$7.6 million in the three months ended September 30, 2017, from \$8.7 million in the three months ended September 30, 2016. This decrease is due to lower equipment leases, maintenance and repair cost and field expense (which includes materials and supplies, lubricants, water disposal, electricity and fuel). All decreases are primarily driven by lower volume in northern Oklahoma. These decreases were offset by an increase in employment expense.

General and administrative expense

General and administrative expense increased slightly to \$2.6 million in the three months ended September 30, 2017, from \$2.1 million in the three months ended September 30, 2016. This increase is due primarily to an increase in intercompany, employment and insurance costs, offset by a decrease in office expense.

Nine months ended September 30, 2017 versus nine months ended September 30, 2016

Revenue

Revenue increased in the nine months ended September 30, 2017, to \$176.3 million from \$157.1 million in the nine months ended September 30, 2016. The increase is primarily due to a higher average natural gas NYMEX price of \$3.17/MMBtu in the nine months ended September 30, 2017, versus \$2.29/MMBtu for the same period in 2016, a higher average NGL basket price of \$0.71/gallon in the nine months ended September 30, 2017, versus \$0.51/gallon for the same period in 2016 and

increased fees (\$41 million in the nine months ended September 30, 2017, versus \$37 million for the same period in 2016). The increase was offset, in part, by lower volume (77,773 MMcf in the nine months ended September 30, 2017, compared to 88,470 MMcf for the same period in 2016). Volume decreases are primarily due to reduced drilling coupled with natural well production declines.

Costs of products sold

Costs of products sold increased in the nine months ended September 30, 2017, to \$100.7 million from \$84.9 million in the nine months ended September 30, 2016. The increase is attributable to higher prices offset, in part, by lower volume processed in northern Oklahoma.

Operating expense

Operating expense decreased to \$22.3 million in the nine months ended September 30, 2017, from \$24.9 million in the nine months ended September 30, 2016. This decrease is due to lower equipment lease expense, maintenance and repair cost and field expense (which includes materials and supplies, lubricants, water disposal, electricity and fuel). All decreases are primarily driven by lower volume in northern Oklahoma. These decreases were offset by an increase in employment costs and taxes.

General and administrative expense

General and administrative expense increased to \$7.9 million in the nine months ended September 30, 2017, from \$6.7 million in the nine months ended September 30, 2016. This increase is due primarily to an increase in employment costs, intercompany, outside services and facilities lease expense, offset by a decrease in office and insurance expense.

Loss on disposal or impairment, net

Net loss on disposal or impairment decreased to \$21.0 thousand in the nine months ended September 30, 2017, from \$13.1 million in the nine months ended September 30, 2016. This decrease is primarily due to a \$13.1 million goodwill impairment recorded in the nine months ended September 30, 2016.

SemCAMS

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 39,500	\$ 36,111	\$ 136,412	\$ 100,792
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below	3	19	59	95
Operating	22,793	19,604	83,747	57,944
General and administrative	4,867	3,421	13,276	10,782
Depreciation and amortization	4,727	4,239	13,657	12,484
Loss (gain) on disposal of long-lived assets, net	(22)	—	423	—
Total expenses	32,368	27,283	111,162	81,305
Operating income	\$ 7,132	\$ 8,828	\$ 25,250	\$ 19,487

Three months ended September 30, 2017 versus three months ended September 30, 2016

Revenue

Revenue in the three months ended September 30, 2017, increased to \$39.5 million from \$36.1 million for the three months ended September 30, 2016. This increase is primarily due to changes in foreign currency exchange rates between periods, higher gathering and processing revenue, higher operating cost recoveries and higher overhead recovery income of \$1.5 million, \$1.4 million, \$0.5 million and \$0.5 million, respectively. In addition, a 11-day unplanned outage at the KA plant reduced gathering and processing revenue by \$0.7 million.

Operating expense

Operating expense increased in the three months ended September 30, 2017 , to \$22.8 million from \$19.6 million for the three months ended September 30, 2016 . This increase is primarily due to turnaround costs related to the K3 plant and changes in foreign currency exchange rates between periods offset, in part, by lower contractor costs.

General and administrative expense

General and administrative expense increased in the three months ended September 30, 2017 , to \$4.9 million from \$3.4 million in the three months ended September 30, 2016 . This increase is primarily due to higher compensation costs, write-off of capital projects, higher office costs and changes in foreign currency exchange rates between periods.

Depreciation and amortization expense

Depreciation and amortization expense increased slightly in the three months ended September 30, 2017 , to \$4.7 million from \$4.2 million for the three months ended September 30, 2016 , as a result of project completions.

Nine months ended September 30, 2017 versus nine months ended September 30, 2016

Revenue

Revenue in the nine months ended September 30, 2017 , increased to \$136.4 million from \$100.8 million for the nine months ended September 30, 2016 . This increase is primarily due to higher operating costs recoveries, higher gathering and processing revenue, true-up of take-or-pay minimum volume commitments, higher overhead recovery income, changes in foreign currency exchange rates between periods and higher maintenance capital fees of \$26.2 million, \$4.3 million, \$3.8 million, \$2.7 million, \$0.9 million and \$0.6 million, respectively. In addition, a 36-day planned outage at the K3 plant and an 11-day unplanned outage at the KA plant reduced gathering and processing revenue by \$1.6 million and \$0.7 million, respectively.

Operating expense

Operating expense increased in the nine months ended September 30, 2017 , to \$83.7 million from \$57.9 million for the nine months ended September 30, 2016 . This increase is primarily due to turnaround costs related to the K3 plant and higher compensation costs. These increases were offset, in part, by lower contractor costs, repair costs in 2016 related to the K3 plant outage and changes in foreign currency exchange rates between periods.

General and administrative expense

General and administrative expense increased to \$13.3 million in the nine months ended September 30, 2017 , from \$10.8 million in nine months ended September 30, 2016 , due primarily to higher compensation costs, higher office costs, write-off of capital projects and changes in foreign currency exchange rates between periods.

Depreciation and amortization expense

Depreciation and amortization expense increased in the nine months ended September 30, 2017 , to \$13.7 million from \$12.5 million for the nine months ended September 30, 2016 , as a result of project completions.

SemLogistics

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 7,009	\$ 5,668	\$ 21,505	\$ 17,980
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below	—	30	—	30
Operating	2,682	1,619	6,790	5,713
General and administrative	1,758	707	5,442	4,264
Depreciation and amortization	1,967	1,880	5,683	5,823
Total expenses	6,407	4,236	17,915	15,830
Operating income	\$ 602	\$ 1,432	\$ 3,590	\$ 2,150

Three months ended September 30, 2017 versus three months ended September 30, 2016*Revenue*

Revenue increased to \$7.0 million in the three months ended September 30, 2017, from \$5.7 million in the three months ended September 30, 2016. Throughput revenues increased \$0.6 million as a result of a 2.6 million barrel increase in volume. Higher storage fees and an increase of 2.7 million barrels in storage volume over the comparable periods resulted in an increase in storage revenues of \$0.5 million and \$0.3 million, respectively.

Operating expense

Operating expense increased to \$2.7 million in the three months ended September 30, 2017, from \$1.6 million in the three months ended September 30, 2016. This increase is primarily due to higher maintenance costs.

General and administrative expense

General and administrative expense increased to \$1.8 million in the three months ended September 30, 2017, from \$0.7 million in the three months ended September 30, 2016. This increase is primarily due to property tax appeal costs.

Nine months ended September 30, 2017 versus nine months ended September 30, 2016*Revenue*

Revenue increased to \$21.5 million in the nine months ended September 30, 2017, from \$18.0 million in the nine months ended September 30, 2016. An increase of 9.4 million in volume (58.2 million barrels in the nine months ended September 30, 2017 compared to 48.8 million barrels in the comparable period) and higher storage fees resulted in an increase of \$3.0 million and \$1.2 million, respectively. Throughput volume increased 5.7 million barrels over the comparable period resulting in an increase in throughput revenue of \$0.9 million. These increases were offset by a decrease of \$2.0 million as a result of the change in foreign currency exchange rates between periods.

Operating expense

Operating expense increased to \$6.8 million in the nine months ended September 30, 2017, from \$5.7 million in the nine months ended September 30, 2016, primarily as a result of higher maintenance costs.

General and administrative expense

General and administrative expense increased to \$5.4 million in the nine months ended September 30, 2017, from \$4.3 million in the nine months ended September 30, 2016. This increase is primarily due to property tax appeal costs.

SemMexico

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ 42,893	\$ 36,752	\$ 110,916	\$ 97,172
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below	36,574	30,125	93,460	77,171
Operating	2,157	1,839	5,905	5,720
General and administrative	2,087	2,271	6,317	7,489
Depreciation and amortization	1,070	932	3,029	2,822
Gain on disposal of long-lived assets, net	—	—	(228)	(67)
Total expenses	41,888	35,167	108,483	93,135
Operating income	\$ 1,005	\$ 1,585	\$ 2,433	\$ 4,037

Three months ended September 30, 2017 versus three months ended September 30, 2016*Revenue*

Revenue increased in the three months ended September 30, 2017 , to \$42.9 million from \$36.8 million in the three months ended September 30, 2016 . An increase in the average sales price per metric ton between periods accounted for \$5.2 million of the increase and lower volumes between periods (95,015 metric tons in the three months ended September 30, 2017 , compared to 97,966 metric tons in the three months ended September 30, 2016), resulted in a decrease of \$1.1 million. The change in the foreign currency exchange rate between periods resulted in an increase of \$2.1 million.

Costs of products sold

Costs of products sold increased in the three months ended September 30, 2017 , to \$36.6 million from \$30.1 million in the three months ended September 30, 2016 . These increases were primarily due to a higher average cost of asphalt along with the effect of changes in foreign currency exchange rates, offset by decreases resulting from lower volume between the periods.

Operating expense

Operating expense increased in the three months ended September 30, 2017 , to \$2.2 million from \$1.8 million in the three months ended September 30, 2016 , as a result of increases in bad debt expense, maintenance and repair expense and the changes in foreign currency exchange rates between the periods.

General and administrative expense

General and administrative expense decreased in the three months ended September 30, 2017 , to \$2.1 million from \$2.3 million in the three months ended September 30, 2016 , as a result of decreased outside services, legal and travel expenses and an overall reduction in expenses due to the implementation of strict cost control measures.

Nine months ended September 30, 2017 versus nine months ended September 30, 2016*Revenue*

Revenue increased in the nine months ended September 30, 2017 , to \$110.9 million from \$97.2 million in the nine months ended September 30, 2016 . An increase in the average sales price per metric ton between periods accounted for \$15.4 million of the increase and higher volumes between periods (257,565 metric tons in the nine months ended September 30, 2017 , compared to 254,082 metric tons in the nine months ended September 30, 2016), resulted in an increase of \$1.3 million. Changes in the foreign currency exchange rate between periods resulted in a decrease of \$2.5 million.

Costs of products sold

Costs of products sold increased in the nine months ended September 30, 2017 , to \$93.5 million from \$77.2 million in the nine months ended September 30, 2016 . The increase is a result of higher average cost of asphalt and higher volume between the periods, offset by the effect of changes in the foreign currency exchange rates between periods.

General and administrative expense

General and administrative expense decreased in the nine months ended September 30, 2017, to \$6.3 million from \$7.5 million in the nine months ended September 30, 2016. The decrease is a result of overall reduction in expenses due to the implementation of strict cost control measures, along with reduced outside services, foreign currency exchange, legal and travel expenses.

Corporate and Other

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenue	\$ (13,708)	\$ (12,060)	\$ (38,700)	\$ (34,940)
Expenses:				
Costs of products sold, exclusive of depreciation and amortization shown below	(13,708)	(12,060)	(38,700)	(34,940)
Operating	68	569	1,182	1,382
General and administrative	19,027	9,790	35,616	25,339
Depreciation and amortization	626	455	1,665	1,441
Gain on disposal of long-lived assets, net	—	—	(8)	—
Total expenses	6,013	(1,246)	(245)	(6,778)
Earnings (loss) from equity method investments	(5)	(38)	4	2,153
Operating loss	\$ (19,726)	\$ (10,852)	\$ (38,451)	\$ (26,009)

Corporate and Other is not an operating segment. This table is included to permit the reconciliation of segment information to that of the consolidated Company. The increase in general and administrative expense in the current period is primarily due to HFOTCO acquisition costs of \$13.6 million and \$19.1 million for the three and nine months ended September 30, 2017, respectively. Earnings from equity method investments, which includes loss on issuance of common units by equity method investee in the table above, relate to our investment in NGL Energy.

Liquidity and Capital Resources*Sources and Uses of Cash*

Our principal sources of short-term liquidity are cash generated from our operations and borrowings under our revolving credit facilities. The consolidated cash balance on September 30, 2017, was \$68.0 million. Of this amount, \$21.0 million was held in Canada and portions may be subject to tax if transferred to the U.S. Potential sources of long-term liquidity include issuances of debt securities and equity securities and the sale of assets. Our primary cash requirements currently are operating expenses, capital expenditures and our quarterly dividends. In general, we expect to fund:

- operating expenses, maintenance capital expenditures and cash dividends through existing cash and cash from operating activities;
- expansion capital expenditures and any working capital deficits through cash on hand, borrowings under our credit facility and the issuance of debt securities and equity securities;
- acquisitions, including the Second Payment, through cash on hand, borrowings under our credit facility, the issuance of debt securities and equity securities and proceeds from the divestiture of assets or interests in assets; and
- debt principal payments through cash from operating activities and refinancing when the credit facility becomes due.

Our ability to meet our financing requirements and fund our planned capital expenditures will depend on our future operating performance and distributions from our equity investments, which will be affected by prevailing economic conditions in our industry. In addition, we are subject to conditions in the debt and equity markets for any issuances of debt securities and equity securities. There can be no assurance we will be able or willing to access the public or private markets in the future. If we would be unable or unwilling to access those markets, we could be required to restrict future expansion capital expenditures and potential future acquisitions.

We believe our cash from operations, our remaining borrowing capacity and other capital markets activity allow us to manage our day-to-day cash requirements, distribute our quarterly dividends and meet our capital expenditures commitments for the coming year.

Cash Flows

The following table summarizes our changes in unrestricted cash for the periods presented:

(in thousands)	Nine Months Ended September 30,	
	2017	2016
Statement of cash flow data:		
Cash flows provided by (used in):		
Operating activities	\$ 92,417	\$ 140,104
Investing activities	(622,117)	(124,159)
Financing activities	519,025	89,144
Subtotal	(10,675)	105,089
Effect of exchange rate on cash and cash equivalents	4,472	563
Change in cash and cash equivalents	(6,203)	105,652
Cash and cash equivalents at beginning of period	74,216	58,096
Cash and cash equivalents at end of period	\$ 68,013	\$ 163,748

Operating Activities

The components of operating cash flows can be summarized as follows:

(in thousands)	Nine Months Ended September 30,	
	2017	2016
Net income (loss)	\$ (19,769)	\$ 1,259
Non-cash expenses, net	135,054	131,948
Changes in operating assets and liabilities	(22,868)	6,897
Net cash flows provided by operating activities	\$ 92,417	\$ 140,104

Adjustments to net income (loss) for non-cash expenses, net increased \$3.1 million to \$135.1 million for the nine months ended September 30, 2017, from \$131.9 million for the nine months ended September 30, 2016. This change is primarily a result of:

- \$27.8 million increase in losses on disposal or impairments, net, primarily due to current year impairment of goodwill and intangible assets related to our truck transportation business;
- \$26.3 million in depreciation and amortization expense, primarily as a result of the acquisition of HFOTCO and completion of the Maurepas Pipeline;
- \$19.9 million increase related to a loss on early extinguishment of \$300 million of senior unsecured notes;
- \$3.8 million reduction in earnings from equity method investments;
- \$1.5 million increase in non-cash equity compensation; and
- \$1.3 million increase in provision for uncollectible accounts receivable, net of recoveries.

These increases to the adjustments to net income for non-cash expenses were offset by decreases due to:

- \$30.6 million from prior year losses on the sale or impairment of equity method investment which did not recur in the current year;
- \$30.0 million primarily due to the impact of a discrete tax benefit of \$31.5 million related to a change of position to deduct foreign taxes in lieu of claiming a foreign tax credit for the tax years 2013 through 2016 in the current year;

- \$7.1 million in distributions from equity investments due to our prior year disposal of our limited partner ownership in NGL Energy and lower distributions from White Cliffs;
- \$5.4 million in currency exchange losses in the prior year, compared to currency exchange gains in the current year;
- \$3.0 million gain on pension curtailment related to the HFOTCO pension plan; and
- \$1.7 million in decreases in amortization of debt issuance costs and discounts.

All other adjustments to net income for non-cash expenses, net for the nine months ended September 30, 2017, remained relatively comparable to the nine months ended September 30, 2016.

Changes in operating assets and liabilities for the nine months ended September 30, 2017, generated a net decrease in operating cash flows of \$22.9 million. The decrease to operating cash flow due to the change in operating assets and liabilities was primarily a result of an increase in assets related to accounts receivable, inventories, other assets and other current assets of \$36.2 million, \$28.3 million, \$17.7 million and \$2.9 million, respectively, offset by a decrease in receivables from affiliates of \$19.9 million. Liabilities increased \$57.1 million in accounts payable and accrued liabilities and \$7.4 million in other noncurrent liabilities, offset by a decrease in payables to affiliates of \$21.6 million. The increase in other noncurrent liabilities is primarily due to the accretion of the Second Payment. Changes in receivables, inventory, payables and accrued liabilities are primarily due to our segments' operating activities and are subject to the timing of purchases and sales and fluctuations in commodity pricing.

Changes in operating assets and liabilities for the nine months ended September 30, 2016, generated a net increase in operating cash flows of \$6.9 million. The increase to operating cash flow due to the change in operating assets and liabilities was primarily a result of increases in assets of \$14.4 million and \$4.2 million related to inventory and accounts receivable, respectively, offset by decreases in other current assets and receivables from affiliates of \$2.4 million and \$1.4 million, respectively. Accounts payable and accrued liabilities saw an increase of \$22.1 million, offset by a decrease in other noncurrent liabilities of \$1.3 million. Changes in receivables, inventory, payables and accrued liabilities are primarily due to our segments' operating activities and are subject to the timing of purchases and sales and fluctuations in commodity pricing.

Investing Activities

For the nine months ended September 30, 2017, we had net cash outflows of \$622.1 million from investing activities, due primarily to \$346.2 million of capital expenditures, \$293.0 million in payments to acquire HFOTCO, net of cash received and \$18.8 million of contributions to equity method investments. These cash outflows were offset by investing cash inflows of \$19.3 million of distributions in excess of equity in earnings of affiliates and \$16.6 million in proceeds from the sale of long-lived assets. Capital expenditures primarily related to the Maurepas Pipeline. Contributions to equity method investments primarily related to Glass Mountain growth projects. Proceeds from the sale of long-lived assets related to the sale of non-core assets. Distributions in excess of equity in earnings of affiliates represent cash distributions from White Cliffs and Glass Mountain in excess of our cumulative equity in earnings and are accounted for as a return of investment.

For the nine months ended September 30, 2016, we had net cash outflows of \$124.2 million from investing activities, due primarily to \$203.8 million of capital expenditures and \$3.8 million of contributions to equity method investments. These cash outflows were offset by investing cash inflows of \$60.5 million in proceeds from the sale of our common limited partner units of NGL Energy and \$22.8 million of distributions in excess of equity in earnings of affiliates. Capital expenditures primarily related to the Maurepas Pipeline, crude oil pipeline projects, SemGas' Northern Oklahoma expansion projects and SemCAMS' Wapiti plant. Distributions in excess of equity in earnings of affiliates represent cash distributions from White Cliffs and Glass Mountain in excess of our cumulative equity in earnings and are accounted for as a return of investment.

Financing Activities

For the nine months ended September 30, 2017, we had net cash inflows of \$519.0 million from financing activities, which related to borrowings on credit facilities and the issuance of senior unsecured notes, net of discount, of \$1.4 billion, offset by principal payments on credit facilities and other obligations of \$711.9 million, dividends paid of \$94.7 million, debt extinguishment costs of \$16.3 million, debt issuance costs of \$10.8 million and \$1.4 million to repurchase common stock for payment of statutory taxes due on equity-based compensation. Net borrowings were used primarily to extinguish senior unsecured notes, acquire HFOTCO and for capital expenditures. Debt issuance costs related to the issuance of senior unsecured notes.

For the nine months ended September 30, 2016, we had net cash inflows of \$89.1 million from financing activities, which related to borrowings on long-term debt of \$362.5 million and proceeds from the issuance of common shares, net of offering costs, of \$223.7 million, partially offset by principal payments on long-term debt of \$394.0 million, dividends paid of \$63.3 million, distributions to non-controlling interests of \$32.1 million and debt issuance costs of \$7.5 million. Net

borrowings were used primarily for capital expenditures. Proceeds from the issuance of common shares were used to repay borrowings on our credit facility and for capital expenditures and general corporate purposes. Debt issuance costs related to the increase and extension of our revolving credit facility.

Long-term Debt

Senior Unsecured Notes

At September 30, 2017, we had outstanding \$400 million of 5.625% senior unsecured notes due 2022, \$350 million of 5.625% senior unsecured notes due 2023, \$325 million of 6.375% senior unsecured notes due 2025 and \$300 million of 7.25% senior unsecured notes due 2026.

SemGroup Revolving Credit Facility

At September 30, 2017, we had \$332.0 million of cash borrowings outstanding under our \$1.0 billion revolving credit facility. We had \$39.4 million in outstanding letters of credit on that date. The maximum letter of credit capacity under this facility is \$250 million. The facility can be increased up to \$300 million. The credit agreement expires on March 15, 2021.

At September 30, 2017, we had available borrowing capacity of \$628.6 million under this facility.

On April 4, 2017, we amended the credit agreement to restate the pricing grid. The applicable margin for borrowings under the facility were amended to the following:

Leverage Ratio	ABR Loans	Eurodollar Loans
Category 1: Greater than 4.50 to 1.00	1.75%	2.75%
Category 2: Less than or equal to 4.50 to 1.00 but greater than 4.00 to 1.00	1.50%	2.50%
Category 3: Less than or equal to 4.00 to 1.00 but greater than 3.50 to 1.00	1.25%	2.25%
Category 4: Less than or equal to 3.50 to 1.00 but greater than 3.00 to 1.00	1.00%	2.00%
Category 5: Less than or equal to 3.00 to 1.00	0.75%	1.75%

SemMexico Credit Facility

At September 30, 2017, SemMexico had no amounts outstanding on its \$70 million Mexican pesos (U.S. \$3.8 million at the September 30, 2017 exchange rate) credit facility which matures in May 2018. At September 30, 2017, SemMexico had outstanding letters of credit of \$292.8 million Mexican pesos (U.S. \$16.0 million at the September 30, 2017 exchange rate).

HFOTCO Debt Assumption and Revolving Credit Facility

On July 17, 2017, we completed the acquisition of HFOTCO and assumed approximately \$766 million of existing net debt at HFOTCO, which has been adjusted to fair value through acquisition accounting. As of the Closing Date, the assumed debt at HFOTCO consisted of \$534.9 million of senior secured term loans and \$225 million of limited obligation revenue bonds due November 1, 2050 (the "IKE Bonds"). In addition, HFOTCO has a \$75 million senior secured revolving credit facility. HFOTCO indebtedness is non-recourse to the Company. At September 30, 2017, HFOTCO's senior secured revolving credit facility had outstanding borrowings of \$25.0 million.

At HFOTCO's option, outstanding senior secured term loan and outstanding senior secured revolver borrowings bear interest at either the Eurodollar rate or an alternate base rate ("ABR") plus, in each case, an applicable margin. After the Closing Date, the applicable margin relating to outstanding senior secured term loans is 3.5% per annum for Eurodollar loans or 2.5% per annum for ABR loans and the applicable margin relating to outstanding senior secured revolver borrowings is 3.25% per annum for Eurodollar loans or 2.25% per annum for ABR loans. The rate of interest for the IKE Bonds is determined to August 19, 2019, at 1-month LIBOR plus the applicable spread, which ranges from 1.25% to 1.65% per annum based on reference to a super senior leverage based pricing grid. Senior secured term loans require quarterly payments of 0.25% of the original \$550 million loan amount and mature on August 19, 2021. Senior secured revolving borrowings mature on August 19, 2019. HFOTCO may request an increase of up to an additional \$25 million of incremental revolving commitments under the revolving credit facility or the incurrence of up to an additional \$100 million of incremental term loans. Senior secured term loans, borrowings under the senior secured revolving credit facility and the IKE Bonds are guaranteed by BGCT and secured by a lien on substantially all of the assets of HFOTCO.

The agreement governing HFOTCO senior secured term loans or senior secured revolver borrowings (the "HFOTCO Credit Agreement") includes customary representations and warranties and affirmative and negative covenants, which were made only for the purposes of the HFOTCO Credit Agreement and as of the specific date (or dates) set forth therein, and may

be subject to certain limitations as agreed upon by the contracting parties, and apply only to BGCT, HFOTCO and any subsidiaries of HFOTCO party to the HFOTCO Credit Agreement. Such limitations include the creation of new liens, indebtedness, making of certain restricted payments and payments on indebtedness, making certain dispositions, making material changes in business activities, making fundamental changes including liquidations, mergers or consolidations, making certain investments, entering into certain transactions with affiliates, making amendments to material agreements, modifying the fiscal year, dealing with hazardous materials in certain ways, entering into certain hedging arrangements, entering into certain restrictive agreements, and funding or engaging in sanctioned activities.

In addition, the HFOTCO Credit Agreement contains a financial performance covenant as follows (the “HFOTCO Financial Covenant”): if the aggregate revolving exposure exceeds 25% of the HFOTCO Revolving Commitments, the total adjusted net leverage ratio of BGCT and its restricted subsidiaries under the HFOTCO Credit Agreement may not exceed 7.50 to 1.00 as of the last day of any fiscal quarter. The financial performance covenant is solely for the benefit of the lenders holding HFOTCO Revolving Commitments or HFOTCO Revolving Loans.

The HFOTCO Credit Agreement includes customary events of default, including events of default relating to inaccuracy of representations and warranties in any material respect when made or when deemed made, non-payment of principal and other amounts owing under the HFOTCO Credit Agreement, including in respect of letter of credit disbursement obligations, violation of covenants, cross acceleration to any material indebtedness of BGCT, HFOTCO and its subsidiaries, bankruptcy and insolvency events, certain unsatisfied judgments, certain ERISA events, certain invalidities of loan documents and the occurrence of a change of control (excluding the change of control occurring on the Closing Date). A default of the HFOTCO Financial Covenant will not constitute an event of default unless lenders holding a majority of the HFOTCO Revolving Commitments and HFOTCO Revolving Loans request that the administrative agent accelerate the maturity of the outstanding HFOTCO Revolving Loans due to a breach of the HFOTCO Financial Covenant. A default under the HFOTCO Credit Agreement would permit the participating banks to terminate commitments, require immediate repayment of any outstanding loans with interest and any unpaid accrued fees, require the cash collateralization of outstanding letter of credit obligations, and subject to intercreditor arrangements with the holders of the IKE Bonds referred to below, exercise other rights and remedies.

The IKE Bond Indentures include customary events of default, including non-payment of principal of or interest on the IKE Bonds, violation of covenants (including under the applicable HCIDC Loan Agreement), bankruptcy and insolvency events, and an event of default under the Continuing Covenant Agreement described below. On August 19, 2019, the IKE Bonds may be converted to bear interest on other terms for a successive term or terms on certain conditions at the option of HFOTCO and, if not converted, will continue to bear interest for successive 5-year terms at 3-month LIBOR plus a spread to be determined by a remarketing agent. If the IKE bonds are not remarketed to investors on August 19, 2019, or the end of any successive interest rate term, at a price equal to their principal amount, they must be purchased by HFOTCO under the HCIDC Loan Agreement for a price equal to their principal amount. The IKE Bonds mature on November 1, 2050.

In connection with the conversion of the interest rate mode of the IKE Bonds from the Weekly Mode to the LIBOR Term Indexed Mode contemporaneously with execution and delivery of the IKE Bond Indentures, certain purchasers purchased the IKE Bonds, and BGCT and HFOTCO, entered into a Continuing Covenant Agreement (the “Existing Continuing Covenant Agreement”), dated as of August 19, 2014, by and among BGCT, as the parent, HFOTCO, as obligor, Bank of America, N.A., as administrative agent and collateral agent, and the bondholders party thereto. In connection with the Closing, the Existing Continuing Covenant Agreement was modified pursuant to that certain Consent and Amendment (the “CCA Amendment”; the Existing Continuing Covenant Agreement, as modified by the CCA Amendment, the “Continuing Covenant Agreement”), dated as of June 5, 2017 and effective as of the Closing Date.

The Continuing Covenant Agreement includes customary representations and warranties and affirmative and negative covenants, which were made only for the purposes of the Continuing Covenant Agreement and as of the specific date (or dates) set forth therein, may be subject to certain limitations as agreed upon by the contracting parties, and apply only to BGCT, HFOTCO and any subsidiaries of HFOTCO party to the Continuing Covenant Agreement. Such covenants include limitations on the creation of new liens, indebtedness, making of certain restricted payments and payments on indebtedness, making certain dispositions, making material changes in business activities, making fundamental changes including liquidations, mergers or consolidations, making certain investments, entering into certain transactions with affiliates, making amendments to certain credit or organizational agreements, modifying the fiscal year, creating or dealing with hazardous materials in certain ways, entering into certain hedging arrangements, entering into certain restrictive agreements, funding or engaging in sanctioned activities, taking actions or causing the trustee to take actions that materially adversely affect the rights, interests, remedies or security of the bondholders, taking actions to remove the trustee, making certain amendments to the bond documents, and taking actions or omitting to take actions that adversely impact the tax-exempt status of the IKE Bonds.

In addition, the Continuing Covenant Agreement contains financial performance covenants as follows:

- the super senior leverage ratio of BGCT and its restricted subsidiaries under the Continuing Covenant Agreement may not exceed 3.50 to 1.00 as of the last day of any fiscal quarter; and

- the interest coverage ratio of BGCT and its restricted subsidiaries under the Continuing Covenant Agreement may not be less than 2.00 to 1.00 as of the last day of any fiscal quarter.

The Continuing Covenant Agreement includes customary events of default, including events of default relating to the inaccuracy of representations and warranties in any material respect when made or when deemed made, non-payment of principal and other amounts owing under the Continuing Covenant Agreement, violation of covenants, acceleration of or right of holders to accelerate any material indebtedness of BGCT, HFOTCO and its subsidiaries, bankruptcy and insolvency events, certain unsatisfied judgments, certain ERISA events, certain invalidities of bond, guaranty or collateral documents and the occurrence of a change of control (excluding the change of control occurring on the Closing Date). A default under the Continuing Covenant Agreement would permit the bondholders to accelerate outstanding obligations under the Continuing Covenant Agreement (other than the IKE Bonds), direct the trustee to accelerate the IKE Bonds, and subject to intercreditor arrangements with the creditors of the HFOTCO Credit Agreement, exercise other rights and remedies.

HFOTCO Second Payment

In addition to the assumed debt discussed above, we are required to make the Second Payment as part of the consideration for the acquisition of HFOTCO. The Second Payment requires us to pay the Sellers \$600 million in cash if paid on December 31, 2018. If paid prior to December 31, 2018, the amount payable will be discounted by 5% per annum. If not paid by December 31, 2018, the amount payable increases to \$680 million and is due by December 31, 2019 or earlier if requested by the Sellers.

Shelf Registration Statement

We have access to a universal shelf registration statement which provides us the ability to offer and sell an unlimited amount of debt and equity securities, subject to market conditions and our capital needs. This shelf registration statement expires in March 2019.

We have also established an “at the market” offering program under this shelf registration statement, which provides for the offer and sale, from time to time, of common shares having an aggregate offering price of up to \$300 million. We are able to make sales over a period of time and from time to time in transactions at prices which are prevailing market prices at the time of sale, prices related to market prices or at negotiated prices. Such sales may be made pursuant to an Equity Distribution Agreement between us and certain agents who may act as sales agents or purchase for their own accounts as principals. To date, there have been no such sales.

Registration Rights Agreements

In connection with the closing of the offerings of the 2025 and 2026 senior unsecured notes (the “Notes”), the Company and the Guarantors entered into registration rights agreements (the “Registration Rights Agreements”). Under the Registration Rights Agreements, the Company and the Guarantors have agreed to file registration statements with the Securities and Exchange Commission so that holders of the Notes can exchange the Notes and the related guarantees for registered notes and guarantees that have substantially identical terms as the Notes and related guarantees, within 365 days after the original issuance. In certain circumstances, the Company and the Guarantors may be required to file shelf registration statements to cover resales of the Notes. We are required to pay additional interest on the Notes if we fail to comply with our obligations to register the Notes and related guarantees, within the specified time periods.

Capital Requirements

The midstream energy business can be capital intensive, requiring significant investment for the maintenance of existing assets or acquisition or development of new systems and facilities. We categorize our capital expenditures as either:

- expansion capital expenditures, which are cash expenditures incurred for acquisitions or capital improvements that we expect will increase our operating income or operating capacity over the long-term; or
- maintenance capital expenditures, which are cash expenditures (including expenditures for the addition or improvement to, or the replacement of, our capital assets or for the acquisition of existing, or the construction or development of new, capital assets) made to maintain our long-term operating income or operating capacity.

Projected capital expenditures for 2017 are estimated at \$575 million in expansion projects, including capital contributions to affiliates for funding growth projects and acquisitions, and \$50 million in maintenance projects. These estimates may change as future events unfold. See “Cautionary Note Regarding Forward-Looking Statements.” During the

nine months ended September 30, 2017, we spent \$346.2 million (cash basis) on capital projects and \$18.8 million in capital contributions to equity method investees primarily for funding growth projects.

In addition to our budgeted capital program, we anticipate that we will continue to make significant expansion capital expenditures in the future. Consequently, our ability to develop and maintain sources of funds to meet our capital requirements is critical to our ability to meet our growth objectives. We expect that our future expansion capital expenditures will be funded by cash from operations, borrowings under our credit facilities, the issuance of debt and equity securities and proceeds from the divestiture of assets or interests in assets.

SemGroup Dividends

The table below shows dividends declared and/or paid by SemGroup during 2016 and 2017.

Quarter Ended	Record Date	Payment Date	Dividend Per Share
March 31, 2016	March 7, 2016	March 17, 2016	\$0.45
June 30, 2016	May 16, 2016	May 26, 2016	\$0.45
September 30, 2016	August 15, 2016	August 25, 2016	\$0.45
December 31, 2016	November 18, 2016	November 28, 2016	\$0.45
March 31, 2017	March 7, 2017	March 17, 2017	\$0.45
June 30, 2017	May 15, 2017	May 26, 2017	\$0.45
September 30, 2017	August 18, 2017	August 28, 2017	\$0.45
December 31, 2017	November 20, 2017	December 1, 2017	\$0.45

Credit Risk

We are subject to risks of loss resulting from nonpayment or nonperformance by our customers. We examine the creditworthiness of third-party customers to whom we extend credit and manage our exposure to credit risk through credit analysis, credit approval, credit limits and monitoring procedures, and for certain transactions, we may request letters of credit, prepayments or guarantees.

Customer Concentration

Shell Trading (US) Company, a customer of our Crude Supply and Logistics segment, accounted for more than 10% of our consolidated revenue for the three months ended September 30, 2017, at approximately 16%. Shell Trading (US) Company, a customer of our Crude Supply and Logistics segment, accounted for more than 10% of our consolidated revenue for the nine months ended September 30, 2017, at approximately 23%. The contracts from which our revenues are derived from this customer relate to our crude marketing operations and are for crude oil purchases and sales at market prices. We are not substantially dependent on such contracts and believe that if we were to lose any or all of these contracts, they could be readily replaced under substantially similar terms. Although we have contracts with customers of varying durations, if one or more of our major customers were to default on their contract, or if we were unable to renew our contract with one or more of these customers on favorable terms, we might not be able to replace any of these customers in a timely fashion, on favorable terms or at all. In any of these situations, our revenues and our ability to pay cash dividends to our stockholders may be adversely affected. We expect our exposure to risk of non-payment or non-performance to continue as long as we remain substantially dependent on a relatively small number of customers for a substantial portion of our revenues.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements as defined by Item 303 of Regulation S-K.

Commitments

For information regarding purchase and sales commitments, see the discussion under the caption "Purchase and sale commitments" in Note 10 of our condensed consolidated financial statements of this Form 10-Q, which information is incorporated by reference into this Item 2.

Critical Accounting Policies and Estimates

For disclosure regarding our critical accounting policies and estimates, see the discussion under the caption “Critical Accounting Policies and Estimates” in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2016 .

Recent Accounting Pronouncements

See Note 1 to our condensed consolidated financial statements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

This discussion on market risks represents an estimate of possible changes in future earnings that would occur assuming hypothetical future movements in commodity prices, interest rates and currency exchange rates. Our views on market risk are not necessarily indicative of actual results that may occur, and do not represent the maximum possible gains and losses that may occur since actual gains and losses will differ from those estimated based on actual fluctuations in commodity prices, interest rates, currency exchange rates and the timing of transactions.

We are exposed to various market risks, including changes in (i) petroleum prices, particularly crude oil, natural gas and natural gas liquids, (ii) interest rates and (iii) currency exchange rates. We may use from time-to-time various derivative instruments to manage such exposure. Our risk management policies and procedures are designed to monitor physical and financial commodity positions and the resulting outright commodity price risk as well as basis risk resulting from differences in commodity grades, purchase and sales locations and purchase and sale timing. We have a risk management function that has responsibility and authority for our Risk Governance Policies, which govern our enterprise-wide risks, including the market risks discussed in this item. Subject to our Risk Governance Policies, our finance and treasury function has responsibility and authority for managing exposure to interest rates and currency exchange rates. To manage the risks discussed above, we engage in price risk management activities.

Commodity Price Risk

The table below outlines the range of NYMEX prompt month daily settle prices for crude oil and natural gas futures, and the range of daily propane spot prices provided by an independent, third-party broker for the three months and nine months ended September 30, 2017 and September 30, 2016, and the year ended December 31, 2016.

	Light Sweet Crude Oil Futures (Barrel)	Mont Belvieu (Non-LDH) Spot Propane (Gallon)	Henry Hub Natural Gas Futures (MMBtu)
Three Months Ended September 30, 2017			
High	\$52.22	\$0.97	\$3.15
Low	\$44.23	\$0.60	\$2.77
<i>High/Low Differential</i>	<i>\$7.99</i>	<i>\$0.37</i>	<i>\$0.38</i>
Three Months Ended September 30, 2016			
High	\$48.99	\$0.55	\$3.06
Low	\$39.51	\$0.41	\$2.55
<i>High/Low Differential</i>	<i>\$9.48</i>	<i>\$0.14</i>	<i>\$0.51</i>
Nine Months Ended September 30, 2017			
High	\$54.45	\$0.97	\$3.42
Low	\$42.53	\$0.57	\$2.56
<i>High/Low Differential</i>	<i>\$11.92</i>	<i>\$0.40</i>	<i>\$0.86</i>
Nine Months Ended September 30, 2016			
High	\$51.23	\$0.57	\$3.06
Low	\$26.21	\$0.29	\$1.64
<i>High/Low Differential</i>	<i>\$25.02</i>	<i>\$0.28</i>	<i>\$1.42</i>
Year Ended December 31, 2016			
High	\$54.06	\$0.71	\$3.93
Low	\$26.21	\$0.29	\$1.64
<i>High/Low Differential</i>	<i>\$27.85</i>	<i>\$0.42</i>	<i>\$2.29</i>

Revenue from our asset-based activities is dependent on throughput volume, tariff rates, the level of fees generated from our pipeline systems, capacity leased to third parties, capacity that we use for our own operational or marketing activities and the level of other fees generated at our terminalling and storage facilities. Profit from our marketing activities is dependent on

our ability to sell petroleum products at prices in excess of our aggregate cost. Margins may be affected during transitional periods between a backwardated market (when the prices for future deliveries are lower than the current prices) and a contango market (when the prices for future deliveries are higher than the current prices). Our petroleum product marketing activities within each of our segments are generally not directly affected by the absolute level of petroleum product prices, but are affected by overall levels of supply and demand for petroleum products and relative fluctuations in market-related indices at various locations.

However, the SemGas segment has exposure to commodity price risk because of the nature of certain contracts for which our fee is based on a percentage of proceeds or index related to the prices of natural gas, natural gas liquids and condensate. Given current volumes, liquid recoveries and contract terms, we estimate the following sensitivities over the next twelve months:

- A 10% increase in the price of natural gas and natural gas liquids results in approximately a \$2.8 million increase to gross margin.
- A 10% decrease in those prices would have the opposite effect.

The above sensitivities may be impacted by changes in contract mix, change in production or other factors which are outside of our control.

Additionally, based on our open derivative contracts at September 30, 2017, an increase in the applicable market price or prices for each derivative contract would result in a decrease in our crude oil sales revenues. Likewise, a decrease in the applicable market price or prices for each derivative contract would result in an increase in our crude oil sales revenues. However, the increases or decreases in crude oil sales revenues we recognize from our open derivative contracts are substantially offset by higher or lower crude oil sales revenues when the physical sale of the product occurs. These contracts may be for the purchase or sale of crude oil or in markets different from the physical markets in which we are attempting to hedge our exposure, or may have timing differences relative to the physical markets. As a result of these factors, our hedges may not eliminate all price risks.

The notional volumes and fair value of our commodity derivatives open positions as well as the change in fair value that would be expected from a 10% market price increase or decrease is shown in the table below (in thousands):

	Notional Volume (Barrels)	Fair Value	Effect of 10% Price Increase	Effect of 10% Price Decrease	Settlement Date
Crude oil:					
Futures	954 short	\$ (2,260)	\$ (4,930)	\$ 4,930	October 2017

Margin deposits or other credit support, including letters of credit, are generally required on derivative instruments used to manage our price exposure. As commodity prices increase or decrease, the fair value of our derivative instruments changes, thereby increasing or decreasing our margin deposit or other credit support requirements. Although a component of our risk-management strategy is intended to manage the margin and other credit support requirements on our derivative instruments, volatile spot and forward commodity prices, or an expectation of increased commodity price volatility, could increase the cash needed to manage our commodity price exposure and thereby increase our liquidity requirements. This may limit amounts available to us through borrowing, decrease the volume of petroleum products we purchase and sell or limit our commodity price management activities.

Interest Rate Risk

We use variable rate debt and are exposed to market risk due to the floating interest rates on our credit facilities. Therefore, from time-to-time we may use interest rate derivatives to manage interest obligations on specific debt issuances. Our variable rate debt bears interest at LIBOR or prime, subject to certain floors, plus the applicable margin. At September 30, 2017, an increase in these base rates of 1%, above the base rate floors, would increase our interest expense by \$3.1 million for the three months ended September 30, 2017. At September 30, 2017, an increase in these base rates of 1%, above the base rate floors, would increase our interest expense by \$3.5 million for the nine months ended September 30, 2017. Increases in interest expense due to an increase in interest rates as presented above, would have been partially offset by a \$1.3 million reduction in interest expense from interest rate swaps, discussed below, in each period.

The average interest rates presented below are based upon rates in effect at September 30, 2017 and December 31, 2016. The carrying value of the variable rate instruments in our credit facilities approximate fair value primarily because our rates fluctuate with prevailing market rates.

The following table summarizes our debt obligations:

Liabilities	September 30, 2017	December 31, 2016
Long-term debt - variable rate	\$1.1 billion	\$20.0 million
Average interest rate	4.36%	4.75%
Long-term debt - fixed rate	\$1.4 billion	\$1.1 billion
Fixed interest rate	6.16%	6.16%

Debt obligations above exclude the Second Payment for which interest is being recorded based on an 8% annual rate. See Note 2 of the accompanying financial statements for additional information.

In conjunction with the HFOTCO acquisition, we acquired HFOTCO's interest rate swaps. The swaps allow us to limit exposure to interest rate fluctuations. The swaps only apply to a portion of our outstanding debt and provide only partial mitigation of interest rate fluctuations. We have not designated the swaps as hedges, as such changes in the fair value of the swaps are recorded through current period earnings as a component of interest expense. At September 30, 2017, we had interest rate swaps with notional values of \$491.8 million. At September 30, 2017, the fair value of our interest rate swaps was \$2.7 million which was reported within other liabilities in our condensed consolidated balance sheet. For the three and nine months ended September 30, 2017, we recognized unrealized gains of \$0.6 million related to interest rate swaps.

Currency Exchange Risk

The cash flows related to our U.K., Canada and Mexico operations are based on the U.S. dollar equivalent of such amounts measured in British pounds, Canadian dollars and Mexican pesos. Assets and liabilities of our U.K., Canadian and Mexican subsidiaries are translated to U.S. dollars using the applicable exchange rate as of the end of a reporting period. Revenue, expenses and cash flows are translated using the average exchange rate during the reporting period.

A 10% change in the average exchange rate during the three months ended September 30, 2017, would change operating income by \$1.6 million. A 10% change in the average exchange rate during the nine months ended September 30, 2017, would change operating income by \$5.4 million.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Our Chief Executive Officer and Chief Financial Officer have concluded that the design and operation of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act), are effective as of September 30, 2017. This conclusion is based on an evaluation conducted under the supervision and participation of our Chief Executive Officer and Chief Financial Officer along with our management. Disclosure controls and procedures are those controls and procedures designed to ensure that information required to be disclosed in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

On July 17, 2017, we closed on the acquisition of HFOTCO. We are in the process of assessing and, to the extent necessary, making changes to the internal control over financial reporting at HFOTCO to conform such internal control to that used in our other segments. Based on the information presently available to management, we do not believe such changes will adversely impact our internal control over financial reporting. Subject to the foregoing, there were no changes in our internal control over financial reporting that occurred during the fiscal quarter ended September 30, 2017, that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION**Item 1. Legal Proceedings**

For information regarding legal proceedings, see the discussion under the captions “Environmental” and “Other matters,” in Note 10 of our unaudited condensed consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q, which information is incorporated by reference into this Item 1.

Item 1A. Risk Factors

There have been no material changes to the risk factors involving us from those previously disclosed in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2016, except as previously described in Item 1A of Part II of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2017.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The following table provides information about purchases of our common stock by us during the quarter ended September 30, 2017 :

	Total Number of Shares Purchased (1)	Weighted Average Price Paid per Share (2)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares That May Yet Be Purchased Under the Plans or Programs
July 1, 2017 - July 31, 2017	—	\$ —	—	—
August 1, 2017 - August 31, 2017	3,995	23.85	—	—
September 1, 2017 - September 30, 2017	—	—	—	—
Total	3,995	\$ 23.85	—	—

- (1) Represents shares of common stock withheld from certain of our employees for payment of taxes associated with the vesting of restricted stock awards.
- (2) The price paid per common share represents the closing price as posted on the New York Stock Exchange on the day that the shares were purchased.

Item 3. Defaults Upon Senior Securities

None

Item 4. Mine Safety Disclosures

Not applicable

Item 5. Other Information

On November 3, 2017, our Board of Directors (the “Board”) amended and restated the Bylaws of the Company (the “Bylaws”). The Bylaws were effective immediately and include, among other things, the following changes:

- providing for additional disclosure requirements for notices of director nominations and stockholder proposals;
- providing the Board with explicit authority to postpone, reschedule or cancel a stockholder meeting;
- clarifying the powers of the chairman of a stockholder meeting; and
- clarifying the procedural requirements for stockholders to act by written consent.

The foregoing description of the Bylaws is not complete and is qualified in its entirety by reference to the complete text of the Bylaws, a copy of which is filed as Exhibit 3 to this Quarterly Report on Form 10-Q and incorporated by reference herein.

Item 6. Exhibits

The following exhibits are filed or furnished as part of this Quarterly Report on Form 10-Q:

Exhibit Number	Description
3	Amended and Restated Bylaws, dated as of November 3, 2017, of SemGroup Corporation.
4.1	Amended and Restated Bond Indenture, dated as of August 19, 2014, between Harris County Industrial Development Corporation and The Bank of New York Mellon Trust Company, National Association, as trustee, relating to \$75 million Series 2010 Marine Terminal Revenue Bonds (filed as Exhibit 4.1 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.2	Amended and Restated Bond Indenture, dated as of August 19, 2014, between Harris County Industrial Development Corporation and The Bank of New York Mellon Trust Company, National Association, as trustee, relating to \$50 million Series 2011 Marine Terminal Revenue Bonds (filed as Exhibit 4.2 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.3	Amended and Restated Bond Indenture, dated as of August 19, 2014, between Harris County Industrial Development Corporation and The Bank of New York Mellon Trust Company, National Association, as trustee, relating to \$100 million Series 2012 Marine Terminal Revenue Bonds (filed as Exhibit 4.3 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.4	Continuing Covenant Agreement, dated as of August 19, 2014, between HFOTCO LLC, as obligor, Buffalo Gulf Coast Terminals LLC, as the parent, Bank of America, N.A., as administrative agent and collateral agent, and the bondholders party thereto (filed as Exhibit 4.4 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.5	Loan Agreement, dated as of November 1, 2010, by and between HFOTCO LLC and Harris County Industrial Development Corporation, relating to \$75 million Series 2010 Marine Terminal Revenue Bonds (filed as Exhibit 4.6 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.6	Loan Agreement, dated as of December 1, 2011, by and between HFOTCO LLC and Harris County Industrial Development Corporation, relating to \$50 million Series 2011 Marine Terminal Revenue Bonds (filed as Exhibit 4.7 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.7	Loan Agreement, dated as of October 1, 2012, by and between HFOTCO LLC and Harris County Industrial Development Corporation, relating to \$100 million Series 2012 Marine Terminal Revenue Bonds (filed as Exhibit 4.8 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.8	First Amendment to Loan Agreement, dated as of August 19, 2014, by and between HFOTCO LLC and Harris County Industrial Development Corporation, relating to \$75 million Series 2010 Marine Terminal Revenue Bonds (filed as Exhibit 4.9 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.9	First Amendment to Loan Agreement, dated as of August 19, 2014, by and between HFOTCO LLC and Harris County Industrial Development Corporation, relating to \$50 million Series 2011 Marine Terminal Revenue Bonds (filed as Exhibit 4.10 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.10	First Amendment to Loan Agreement, dated as of August 19, 2014, by and between HFOTCO LLC and Harris County Industrial Development Corporation, relating to \$100 million Series 2012 Marine Terminal Revenue Bonds (filed as Exhibit 4.11 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.11	Registration Rights Agreement by and among SemGroup Corporation, Buffalo Investor I, LP and Buffalo Investor II, LP dated as of July 17, 2017 (filed as Exhibit 10.1 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
4.12	Indenture (and form of 7.25% Senior Note due 2026 attached as Exhibit 1 thereto), dated as of September 20, 2017, by and among SemGroup Corporation, certain of its wholly owned subsidiaries, as guarantors, and Wilmington Trust, National Association, as trustee (filed as Exhibit 4.1 to our current report on Form 8-K dated September 20, 2017, filed September 21, 2017, and incorporated herein by reference).
4.13	Registration Rights Agreement, dated as of September 20, 2017, by and among SemGroup Corporation, certain of its wholly owned subsidiaries and Credit Suisse Securities (USA) LLC, as representative of the Initial Purchasers (as defined therein) (filed as Exhibit 4.2 to our current report on Form 8-K dated September 20, 2017, filed September 21, 2017, and incorporated herein by reference).

10.1	Credit Agreement, dated as of August 19, 2014, among Buffalo Gulf Coast Terminals LLC, as the parent, HFOTCO LLC, as the borrower, Morgan Stanley Senior Funding, Inc. as administrative agent, Bank of America, N.A., as collateral agent, and the lenders party thereto (filed as Exhibit 10.2 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
10.2	Consent and Amendment No. 1 to Credit Agreement, dated as of June 14, 2017, among Buffalo Gulf Coast Terminals LLC, as the parent, HFOTCO LLC, as the borrower, Morgan Stanley Senior Funding, Inc. as administrative agent, Bank of America, N.A., as collateral agent, and the lenders party thereto (filed as Exhibit 10.3 to our current report on Form 8-K dated July 17, 2017, filed July 17, 2017, and incorporated herein by reference).
10.3	Guarantee, Pledge and Security Agreement, dated as of July 17, 2017, by and among Buffalo Investor I, L.P., Buffalo Investor II, L.P., Beachhead Holdings LLC, Beachhead I LLC, Beachhead II, LLC and Buffalo Parent Gulf Coast Terminals, LLC.
10.4	Agreement, Waiver, and Release, dated as of August 2, 2017, by and among SemManagement L.L.C., and Candice L. Cheeseman.
31.1	Rule 13a-14(a)/15d-14(a) Certification of Carlin G. Conner, Chief Executive Officer.
31.2	Rule 13a-14(a)/15d-14(a) Certification of Robert N. Fitzgerald, Chief Financial Officer.
32.1	Section 1350 Certification of Carlin G. Conner, Chief Executive Officer.
32.2	Section 1350 Certification of Robert N. Fitzgerald, Chief Financial Officer.
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 9, 2017

SEMGROUP CORPORATION

By: _____ /s/ Robert N. Fitzgerald
Robert N. Fitzgerald
Senior Vice President and
Chief Financial Officer

**AMENDED AND RESTATED BYLAWS OF
SEMGROUP CORPORATION**
(a Delaware corporation)

(hereinafter called the “ **Corporation** ”)
(as Amended and Restated Effective November 3, 2017)

ARTICLE I

OFFICES

Section 1.1 **Registered Office**. The registered office of the Corporation shall be at 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware, 19801, or at such other location within the State of Delaware as determined by the board of directors of the Corporation (the “ **Board of Directors** ” or “ **Board** ”). The Corporation’s registered agent in Delaware shall be The Corporation Trust Company, subject to change by the Board of Directors which by resolution may appoint, or change, the Corporation’s registered agent in Delaware in the manner and to the extent permitted by law.

Section 1.2 **Other Offices**. The Corporation may also have an office or offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

Section 1.3 **Fiscal Year**. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.1 **Place of Meetings**. Meetings of the stockholders for the election of directors of the Corporation (each, a “ **Director** ”) or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2.2 **Annual Meeting**. An annual meeting of stockholders of the Corporation (the “ **Annual Meeting of Stockholders** ”) for the election of Directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. The Board of Directors may, at any time prior to the holding of an Annual Meeting of Stockholders, and for any reasonable reason, postpone, reschedule, or cancel any Annual Meeting of Stockholders previously scheduled by the Board of Directors.

Section 2.3 **Special Meetings**. Unless otherwise prescribed by law or by the Certificate of Incorporation of the Corporation (the “ **Certificate of Incorporation** ”), special meetings of stockholders of the Corporation (each, a “ **Special Meeting of Stockholders** ” or “ **Special Meeting** ”), for any purpose or purposes, may be called by either the Chairman of the Board, if one has been elected, or the Chief Executive Officer, and shall be called by either such officer or the Secretary at the request in writing of a majority of the Board of Directors, but such Special Meetings may not be called by any other person or persons. Such request shall state the purpose or purposes of the proposed meeting. Only such business shall be conducted at a Special Meeting as shall have been properly brought before the meeting pursuant to the Corporation’s notice of meeting. The Board of Directors may, at any time prior to the holding of a Special Meeting of Stockholders, and for any reasonable reason, postpone, reschedule, or cancel any Special Meeting of Stockholders previously scheduled by the Board of Directors.

Section 2.4 **Notice of Meetings; Adjournments; Recesses**. (a) Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, written notice of all meetings of the stockholders, stating the place (if any), date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the place within the city or other municipality or community at which the list of stockholders may be examined and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in case of a Special Meeting of Stockholders, the

purpose or purposes for which the meeting is called, shall be mailed or delivered to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting not less than ten (10) nor more than sixty (60) days prior to the date of the meeting (except to the extent that such notice is waived or is not required by the General Corporation Law of the State of Delaware (the “**DGCL**”) or these Bylaws). Such notice shall be given in accordance with, and shall be deemed effective as set forth in, Section 222 (or any successor section) of the DGCL. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, and directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to such stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL. A written waiver of any notice, signed by a stockholder, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except when the person attends for the express purpose of objecting at the beginning of the meeting because the meeting is not lawfully called or convened.

(b) Any meeting of stockholders, annual or special, may adjourn or recess from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned or recessed meeting if the time and place thereof are announced at the meeting at which the adjournment or recess is taken. At the adjourned or recessed meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment or recess is for more than thirty (30) days, a notice of the adjourned or recessed meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment or recess a new record date for stockholders entitled to vote is fixed for the adjourned or recessed meeting, the Board of Directors shall fix a new record date for notice of such adjourned or recessed meeting in accordance with Section 213(a) of the DGCL, and shall give notice of the adjourned or recessed meeting to each stockholder of record entitled to vote at such adjourned or recessed meeting as of the record date for notice of such adjourned or recessed meeting.

Section 2.5 Stockholder Lists. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose necessary to the meeting, either (a) during normal business hours at the principal place of the Corporation or (b) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 2.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the issued and outstanding shares of common stock of the Corporation entitled to vote at the meeting, present in person or by proxy; provided, however, that, in no event shall a quorum consist of less than such number of votes as may be required under the DGCL. At all meetings of the stockholders at which a quorum is present, all matters, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, shall be decided by the vote of the holders of a majority of the shares entitled to vote thereat present in person or by proxy. If there is no such quorum, the holders of a majority of such shares so present or represented may adjourn the meeting from time to time, subject to Section 4.2 of this Article II, until a quorum shall have been obtained. The chairman of a meeting of stockholders may adjourn or recess the meeting at any time and for any reasonable reason, whether or not there is a quorum. When a quorum is once present it is not broken by the subsequent withdrawal of any stockholder.

Section 2.7 Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or if none or in the Chairman of the Board’s absence, the Vice Chairman of the Board, or if none or in the Vice Chairman of the Board’s absence, the Chief Executive Officer, or, if none of the foregoing is present, by a chairman designated by the Board of Directors, or in the absence of such designation, by a chairman chosen at the meeting. The Secretary of the Corporation, or in the Secretary’s absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the officer of the Corporation presiding at the meeting shall appoint any person present to act as secretary of the meeting.

Section 2.8 Nature of Business at Meetings of Stockholders. No business may be transacted at an Annual Meeting of Stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the

Annual Meeting of Stockholders by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the Annual Meeting of Stockholders by any stockholder of the Corporation who is a stockholder of record on the date of the giving of the notice provided for in Section 2.9 and on the record date for the determination of stockholders entitled to vote at such Annual Meeting of Stockholders and who complies with the notice procedures set forth in Section 2.9 and applicable law as to such business or, in the case of nominations for the election of Directors, who complies with the notice procedures set forth in Section 3.4 and applicable law as to such nominations.

Section 2.9 Advance Notice of Stockholder Proposals. (a) In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting of Stockholders by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation and such business must otherwise be a proper matter for stockholder action under the DGCL. Only such persons who are nominated in accordance with the procedures set forth in Section 3.4 shall be eligible to be elected at an Annual Meeting of Stockholders or Special Meeting of Stockholders of the Corporation to serve as Directors.

(b) To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation no later than the close of business on the ninetieth (90th) day, nor earlier than the close of business on the one hundred twentieth (120th) day, prior to the anniversary date of the immediately preceding Annual Meeting of Stockholders; provided, however, that in the event that the Annual Meeting of Stockholders is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such public disclosure of the date of the Annual Meeting of Stockholders was made. In no event shall any adjournment, recess, rescheduling or postponement of an Annual Meeting of Stockholders (or the public disclosure thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) To be in proper written form, a stockholder's notice to the Secretary must set forth: (i) as to each matter such stockholder proposes to bring before the Annual Meeting of Stockholders, (A) a reasonably brief description of the business desired to be brought before the Annual Meeting of Stockholders, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws or the Certificate of Incorporation, the language of the proposed amendment), (C) the reasons for conducting such business at the Annual Meeting of Stockholders, and (D) any material interest in such business of such Proposing Person; and (ii) as to each Proposing Person, (A) the name and record address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records), (B) the class or series, if any, and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and/or of record by such Proposing Person as of the date of the notice, (C) any option, warrant, convertible security, stock appreciation right, swap or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly, owned beneficially by such Proposing Person and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation; (D) a representation that the Proposing Person is a holder of record of stock of the Corporation entitled to vote at such meeting, will continue to be a holder of record of stock entitled to vote at such meeting through the date of the meeting and intends to appear in person or by proxy at the Annual Meeting of Stockholders to bring such business before the meeting; (E) a description of any agreement, arrangement or understanding (including any Derivative Instrument) that has been entered into in connection with the proposal of such business between or among such Proposing Persons and any other person or persons (including their names), including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Schedule 13D of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder or beneficial owner), (F) a description of any agreement, arrangement or understanding (including any Derivative Instrument) that has been entered into as of the date of the Proposing Person's notice by, or on behalf of, such Proposing Person, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit from changes in the share price of any class of the Corporation's capital stock, or increase or decrease the voting power of the Proposing Person with respect to shares of stock of the Corporation, (G) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which such Proposing Person has a right to vote any shares of any security of the Corporation; (H) any rights to dividends on the shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation; (I) any performance-related fees (other than an asset-based fee) that such Proposing Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such Proposing Person's immediate family sharing the same household; (J) a representation as to whether the Proposing Person intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the business, and/or otherwise to solicit proxies or

votes from stockholders in support of such business; (K) a summary of any material discussion regarding the business proposed to be brought before the meeting between such Proposing Person, on the one hand, and any other record or beneficial holder of the shares of any class or series of the Corporation (including their names), on the other hand; and (L) any other information relating to such Proposing Person, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the approval or adoption of the business pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder.

(d) The foregoing notice requirements shall apply to all proposals made by stockholders other than those proposals made in compliance with Rule 14a-8 under the Exchange Act that have been included in a proxy statement prepared by the Corporation to solicit proxies for such Annual Meeting of Stockholders. A stockholder seeking to include a proposal in the Corporation's proxy statement pursuant to Rule 14a-8 must comply with Rule 14a-8 and any other applicable Exchange Act requirements.

(e) No business shall be conducted at the Annual Meeting of Stockholders except business brought before the Annual Meeting of Stockholders in accordance with the procedures set forth in this Section 2.9 or, in the case of nominations for the election of Directors, in accordance with the procedures set forth in Section 3.4; provided, however, that, once business has been properly brought before the Annual Meeting of Stockholders in accordance with such procedures, nothing in this Section 2.9 shall be deemed to preclude discussion by any stockholder of any such business. If the Chairman of the Board or the Chairman of the Annual Meeting of Stockholders determines that business was not properly brought before the Annual Meeting of Stockholders in accordance with the foregoing procedures, such person shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.9, unless otherwise required by law, if the stockholder does not comply with the notice procedures set forth in Section 2.9 or if the stockholder does not appear in person or through a legally qualified representative at the Annual Meeting of Stockholders to present proposed business, such business shall not be transacted, notwithstanding that stockholders may have already submitted proxies to the Corporation in respect of such business in accordance with Section 2.8. For purposes of this Section 2.9, to be considered a legally qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(f) A stockholder providing notice of business to be brought before a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.9 shall be true and correct (i) as of the record date for the meeting and (ii) as of the date that is ten business days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than seven business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to any adjournment, recess or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment, recess or postponement thereof)).

(g) For purposes of these Bylaws, the term “ **Proposing Person** ” shall mean (i) the stockholder providing the notice of nomination or any other business proposed to be brought before the meeting of stockholders, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of nomination or any other business proposed to be brought before the meeting is made, (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owners and (iv) any other person with whom such stockholder or beneficial owner (or any of their respective affiliates or associates) is acting in concert.

Section 2.10 Voting; Proxies; Required Vote. At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney-in-fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period, and a proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power), and, unless the Certificate of Incorporation provides otherwise, shall have one (1) vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. At every meeting of stockholders duly called and held at which a quorum is present (a) in all matters other than the election of Directors, a majority of the votes that could be cast at the meeting upon a given question and (b) in the case of the election of Directors, a plurality of the votes that could be cast at the meeting upon the election, by the holders who are present in person or by proxy, shall be necessary, in addition to any vote or other action that may be expressly required by law,

the Certificate of Incorporation, these Bylaws or the rules or regulations of any stock exchange applicable to the Corporation, to decide the question or election. Except as otherwise provided by statute, and unless demanded by a stockholder present in person or by proxy at any meeting, and entitled to vote thereat, the vote on any question need not be by ballot.

Section 2.11 Stockholder Action Without a Meeting. (a) Any action required or permitted to be taken at any meeting of stockholders may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having a majority of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall first request the Board of Directors to fix a record date, which request shall be in proper form and delivered to the Secretary at the principal executive offices of the Corporation. Within (i) ten (10) days after the date on which such request is received by the Secretary or (ii) five (5) days after delivery of any information requested by the Corporation to determine the validity of any such request or whether the action to which such request relates to an action that may be taken by written consent of stockholders in lieu of a meeting, the Board of Directors shall determine the validity of such request and whether such request relates to an action that may be taken by written consent of the stockholders in lieu of a meeting in accordance with this Section 2.11 and applicable law. If (A) the request required by this Section 2.11 has been determined to be valid and to relate to an action that may be effected by written consent in accordance with this Section 2.11 and applicable law or (B) no such determination shall have been made by the date required by this Section 2.11, and in either event no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or to any officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action. change Act, with respect to such action.

(c) To be in proper form for purposes of Section 2.11, a request by a stockholder for the Board of Directors to fix a record date shall set forth the action proposed to be taken by written consent of stockholders in lieu of a meeting and must contain such information and representations, to the extent applicable, required by the Certificate of Incorporation, as applicable, and the Bylaws of the Corporation as though such stockholder were intending to make a nomination or to bring a business proposal before a meeting of stockholders. Notwithstanding anything to the contrary contained in this Section 2.11, upon receipt of a request by a stockholder to set a record date in order to have stockholders authorize or take corporate action by written consent, the Corporation may require the stockholder(s) submitting such request to furnish such other information as may be requested by the Corporation (i) to determine the validity of the request required by Section 2.11 and (ii) to determine whether such request relates to an action that may be effected by written consent of stockholders in lieu of a meeting under this Section 2.11 and applicable law.

(d) In connection with an action or actions proposed to be taken by written consent, the stockholder seeking such action shall further update and supplement the information previously provided to the Corporation in connection therewith, if necessary, so that the information provided or required to be provided pursuant to this Section 2.11 shall be true and correct as of the record date for determining the stockholders eligible to take such action and as of the date that is five (5) business days prior to the date the consent solicitation is commenced, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principle executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders eligible to take such action (in the case of the update and supplement required to be made as of the record date), and not later than three (3) business days prior to the date that the consent solicitation is commenced (in the case of the update and supplement required to be made as of five (5) business days prior to the commencement of the consent solicitation).

(e) Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall provide such stockholders with all information necessary to make an informed decision and, upon delivery of written consents to the Corporation, shall provide to the Secretary reasonable evidence that it complied with the foregoing requirement

in respect of such consents. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated written consent received in accordance with this Section, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation in the manner prescribed in this Section.

(f) In the event of the delivery to the Corporation of a written consent or consents purporting to represent the requisite voting power to authorize or take corporate action and/or any related revocations, the Secretary shall provide for the safekeeping of such consents and revocations. The Secretary, or such other officer of the Corporation as the Board of Directors may designate, shall, as promptly as practicable, conduct a ministerial review of the validity of the consents and/or any related revocations deemed necessary and appropriate; provided, however, that if the corporate action to which the written consent relates is the removal or replacement of one or more members of the Board of Directors, the Secretary, or such other officer of the Corporation as the Board of Directors may designate, shall promptly designate two persons, who may be employees of the Corporation, but who shall not be members of the Board of Directors or officers of the Corporation, to serve as inspectors with respect to such written consent and such inspectors shall discharge the functions of the Secretary, or such other officer of the Corporation as the Board of Directors may designate, under this Section 2.11. If after such investigation, the Secretary, such other officer of the Corporation as the Board of Directors may designate or the inspectors, as the case may be, shall determine that the action purported to have been taken is duly authorized by the consents, that fact shall be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders and the consents shall be filed in such records. In conducting the investigation required by this Section 2.11, the Secretary, such other officer of the Corporation as the Board of Directors may designate or the inspectors, as the case may be, may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors as such person or persons may deem necessary or appropriate and, to the fullest extent permitted by law, shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(g) No action by written consent without a meeting shall be effective until such date as the Secretary, such other officer of the Corporation as designated by the Board of Directors or inspectors as appointed in accordance with Section 2.11(f), as applicable, completes their review, determines that the consents delivered to the Corporation in accordance with this Section 2.11 represent not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and certifies such determination to the Board of Directors for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders.

(h) Notwithstanding anything in these Bylaws to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Section 2.11. If the Board of Directors shall determine that any request to fix a record date or to take stockholder action by written consent was not properly made in accordance with this Section 2.11, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Section 2.11, then the Board of Directors shall not be required to fix a record date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. In addition to the requirements of this Section 2.11 with respect to stockholders seeking to take an action by written consent, each such stockholder shall comply with all requirements of applicable law, including all requirements of the Exchange Act.

(i) Notwithstanding anything to the contrary set forth above, (i) none of the foregoing provisions of this Section 2.11 shall apply to any solicitation of stockholder action by written consent in lieu of a meeting by or at the direction of the Board of Directors and (ii) the Board of Directors shall be entitled to solicit stockholder action by written consent in accordance with applicable law.

Section 2.12 Inspectors. (a) The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment or recess thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

(b) In the event of the delivery, in the manner provided by these Bylaws, to the Corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the Corporation that the consents delivered to the Corporation in accordance with these Bylaws represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

Section 2.13 Conduct of Business. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; (e) limitations on the time allotted to questions or comments by participants; and (f) restrictions on the use of cell phones and audio or video recording devices at the meeting. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors.

Section 3.2 Qualification; Number; Term. (a) The Board of Directors shall consist of not less than three (3) nor more than eleven (11) members, the exact number of Directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. The use of the phrase "entire Board" herein refers to the total number of Directors which the Corporation would have if there were no vacancies in previously authorized directorships.

(b) Directors who are elected at an Annual Meeting of Stockholders, and Directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next Annual Meeting of Stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

Section 3.3 Nomination. Only persons who are nominated in accordance with the following procedures shall be eligible for election as Directors of the Corporation. Nominations of persons for election to the Board of Directors may be made at any Annual Meeting of Stockholders, or at any Special Meeting of Stockholders called for the purpose of electing Directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) provided that the Board of Directors has determined that Directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice required by Section 3.4 is delivered to the Secretary of the Corporation, who is entitled to vote at such meeting and who complies with the notice procedures set forth in Section 3.4 and applicable law.

Section 3.4 Stockholder Notice of Nomination. In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

(a) To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (i) in the case of an Annual Meeting of Stockholders, no later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the anniversary date of the immediately preceding Annual Meeting of Stockholders; provided, however, that in the event that the Annual Meeting of Stockholders is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such public disclosure of the date of the Annual Meeting of Stockholders was made; and (ii) in the case of a Special Meeting of Stockholders called for the purpose of electing Directors, not later than the close of business on the tenth (10th) day following the day on which public disclosure of the date of the Special Meeting of Stockholders was made. Notwithstanding anything in the previous sentence to the contrary, in the event that the number of Directors to be elected to the Board of Directors of the Corporation is increased and there is no public disclosure by the Corporation naming the nominees for the additional directorships or specifying the size of the increased Board at least 100 days prior to the first anniversary date of the immediately preceding Annual Meeting of Stockholders, a stockholder's notice required by this Section 3.4 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public disclosure is first made by the Corporation. In no event shall the public disclosure of an adjournment, recess, rescheduling or postponement of an Annual or Special Meeting of Stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(b) To be in proper written form, a stockholder's notice to the Secretary must set forth: (i) as to each person whom the stockholder proposes to nominate for election or re-election as a Director (A) the name, age, business address and residence address of the person; (B) the principal occupation or employment of the person; (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; (D) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and/or of record by the person, (E) any other information relating to the person that would be required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, (F) such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected; (G) a completed and signed questionnaire, representation and agreement required by Section 3.4(c) of these Bylaws; and (H) such other additional information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as an independent Director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee; and (ii) as to each Proposing Person, the information required by Section 2.9(c).

(c) To be eligible to be a nominee for election or reelection as a Director of the Corporation, a proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under Section 3.4 of these Bylaws and applicable law) to the Secretary at the principal executive offices of the Corporation (i) a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire the Proposing Person shall request in writing from the Secretary with at least 7 days' prior notice); and (ii) a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote in such capacity on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable law and all applicable rules of the U.S. exchanges upon which the capital stock of the Corporation is listed and all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and other guidelines of the Corporation, (D) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, intends to serve a full term if elected as a director of the Corporation and (E) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are

or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(d) No person shall be eligible for election as a Director of the Corporation unless nominated in accordance with the procedures set forth in this Section 3.4. If the Chairman of the Board determines that a nomination was not made in accordance with the foregoing procedures, the chairman of the meeting shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 3.4, unless otherwise required by law, if the stockholder does not comply with the notice procedures set forth in this Section 3.4 or if the stockholder does not appear in person or by proxy at the meeting to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(e) Except as otherwise provided by law, the officer of the Corporation presiding over the Annual Meeting of Stockholders shall have the power and duty:

(i) to determine whether a nomination proposed to be brought before the Annual Meeting of Stockholders was made in accordance with the procedures set forth in this Section 3.4 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee in compliance with such stockholder's representation as required by this Section 3.4); and

(ii) if any proposed nomination was not made in compliance with this Section 3.4, to declare that such nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 3.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the Annual Meeting of Stockholders of the Corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 3.4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(f) For purposes of Section 2.9 and Section 3.4, "public disclosure" shall include (i) disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service, (ii) in a document publicly filed by the Corporation with the U.S. Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder or (iii) in a notice of meeting (or any supplement) pursuant to Section 2.4.

(g) Notwithstanding the foregoing provisions of this Section 3.4, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 3.4; provided however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations to be considered pursuant to this Section 3.4, and compliance with Section 3.4 shall be the exclusive means for a stockholder to make nominations. Nothing in this Section 3.4 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or of the holders of any series of preferred stock, if any, to elect Directors pursuant to any applicable provisions of the Certificate of Incorporation.

(h) A stockholder providing notice of a nomination to be brought before a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 3.4 shall be true and correct (i) as of the record date for the meeting and (ii) as of the date that is ten business days prior to the meeting or any adjournment, recess, cancellation, rescheduling or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than seven business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to any adjournment, recess or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment, recess or postponement thereof)).

Section 3.5 Quorum and Manner of Voting. Except as otherwise provided by law, a majority of the entire Board shall constitute a quorum or, if there are fewer Directors then in office than, solely for the purpose of electing one or more Directors to fill any vacancies in accordance with Section 3.15, the number of Directors required to constitute such a quorum, a majority of the members of the Board of Directors then in office shall constitute a quorum. A majority of the Directors present, whether or not a quorum is present, may adjourn or recess a meeting from time to time to another time and place without notice. Except in

cases in which the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, the vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.6 Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

Section 3.7 Annual Meeting. Following the Annual Meeting of Stockholders, the newly elected Board of Directors shall meet for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting. Such meeting may, but is not required to, be held without notice immediately after the Annual Meeting of Stockholders at the same place at which such stockholders' meeting is held.

Section 3.8 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

Section 3.9 Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, Chief Executive Officer or by a majority of the Directors then in office.

Section 3.10 Notice of Special Meetings. Written notice of the time and place of each special meeting of the Board of Directors shall be given to each Director at least twenty-four (24) hours before the start of the meeting, or if sent by first class mail, at least five (5) days before the start of the meeting. A written waiver of notice signed by the Director entitled to notice, or electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors need be specified in any written waiver of notice. Notice of any adjourned or recessed meeting of the Board of Directors shall not be required to be given, except where required by law or under the Certificate of Incorporation or these Bylaws.

Section 3.11 Meetings by Means of Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 3.11 shall constitute presence in person at such meeting.

Section 3.12 Organization. At all meetings of the Board of Directors, the Chairman of the Board, if any, or in the Chairman of the Board's absence or inability to act, the Vice Chairman of the Board, or in the Vice Chairman of the Board's absence or inability to act, a chairman chosen by the Directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the officer of the Corporation presiding at such meeting may appoint any person to act as secretary.

Section 3.13 Resignation. Any Director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation.

Section 3.14 Removal. Subject to Section 3.15 below, any or all of the Directors may be removed, with or without cause, by the holders of a majority of the shares of capital stock outstanding and entitled to vote for the election of Directors.

Section 3.15 Vacancies. Unless otherwise provided in these Bylaws, the Certificate of Incorporation or by law, vacancies on the Board of Directors, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of Directors or otherwise, may be filled only by the majority vote of the remaining Directors, although such majority is less than quorum, or at a Special Meeting of Stockholders (if so called in accordance with Section 2.3), by the holders of shares entitled to vote for the election of Directors, and each Director so elected shall hold office until the expiration of the term of office of the Director whom he or she has replaced or until his or her successor is elected and qualified.

Section 3.16 Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the Directors consent thereto in writing (including by facsimile or portable document format (pdf)) and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

Section 3.17 Compensation. Directors may be paid their expenses, if any, of attendance at each meeting of the Board

of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as Director. Members of special or standing committees may be allowed like compensation for attending Committee meetings.

ARTICLE IV

COMMITTEES

Section 4.1 How Constituted, Powers, Name. The Board of Directors may, by resolution or resolutions, designate one or more Committees (as defined below), each Committee to consist of one or more of the Directors of the Corporation, which, to the extent permitted by law and provided in said resolution or resolutions or in these Bylaws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such Committee or Committees shall have such name or names as may be stated in these Bylaws or as may be determined from time to time by resolution adopted by the Board of Directors. The term “**Committee**” as used in this Article IV means any committee constituted pursuant to the Certificate of Incorporation and these Bylaws. The Board of Directors shall, by resolution, designate or create any Committee required by the rules of any securities exchange on which shares of the capital stock of the Corporation are listed.

Section 4.2 Term of Office and Vacancies. Each member of a Committee shall continue in office until (a) the next meeting of the Board of Directors following the next Annual Meeting of Stockholders held by the Board of Directors next succeeding his or her election and until a Director to succeed him or her shall have been elected and shall have qualified, or (b) his or her death, or (c) he or she shall have resigned or shall have been removed in the manner hereinafter provided, or (d) such Committee is discontinued or terminated by the Board of Directors. Any vacancy in a Committee shall be filled by the Board of Directors at any regular or special meeting thereof.

Section 4.3 Resignation. Any member of a Committee may resign from membership on that Committee by giving notice in writing or by electronic transmission to the Chairman of the Board of Directors, to the Chief Executive Officer, or to the Secretary of the Corporation. Such resignation shall take effect at the time of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.4 Removal. Any member of a Committee may be removed with or without cause at any time by the affirmative vote of the Board of Directors given at any regular meeting or at any special meeting thereof.

Section 4.5 Procedures, Quorum and Manner of Acting. Each Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a Committee shall constitute a quorum for the transaction of business by that Committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the Committee present shall be the act of the Committee. Each Committee shall keep minutes of proceedings, and actions taken by a Committee shall be reported to the Board of Directors.

Section 4.6 Action by Written Consent. Any action required or permitted to be taken at any meeting of any Committee of the Board of Directors may be taken without a meeting if all the members of the Committee consent thereto in writing (including by facsimile or portable document format (pdf)) and the writing or writings are filed with the minutes of proceedings of the Committee.

Section 4.7 Term; Termination. In the event any person shall cease to be a Director of the Corporation, such person shall simultaneously therewith cease to be a member of any Committee appointed by the Board of Directors.

ARTICLE V

OFFICERS

Section 5.1 Election and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a Chief Executive Officer, a President, a Chief Financial Officer and a Secretary, and may include, by election or appointment, one or more Vice Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such Assistant Secretaries, such Assistant Treasurers and such other officers as the Board may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors or the Chief Executive Officer. Any two or more offices may be held by the same person. Only the Board of Directors may fill any vacancy occurring in any office of the Corporation. Notwithstanding the foregoing sentence, the Chief

Executive Officer may appoint, or fill a vacancy created by the death, resignation or removal of, such Assistant Treasurers and such Assistant Secretaries as the Chief Executive Officer may from time to time deem proper.

Section 5.2 Term of Office and Remuneration. Each officer shall hold office for such term as may be prescribed by the Board of Directors and until such person's respective successor has been chosen and qualified or until such person's earlier death, disqualification, resignation or removal, but any officer may be removed from office, either with or without cause, at any time by the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

Section 5.3 Resignation; Removal. Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the entire Board.

Section 5.4 Chairman of the Board. The Chairman of the Board shall be a Director and shall preside at all meetings of the Board of Directors and of the stockholders. The Chairman of the Board shall, subject to the overall supervision of the Board of Directors, perform all duties incident to the office of the Chairman of the Board, and such other duties as may be assigned to him or her from time to time by the Board of Directors. In case of the absence or disability of the Chairman, the Board of Directors may designate the Vice Chairman, Chief Executive Officer, a Senior Vice President, Vice President or other person to act in place of the Chairman of the Board during his or her absence or disability, and when so acting such Vice Chairman, Chief Executive Officer, Senior Vice President, Vice President or other person shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board, except as may otherwise be provided in the resolution of the Board of Directors making such designation.

Section 5.5 Vice Chairman of the Board. The Vice Chairman of the Board shall be a Director and shall perform all duties incident to the office of the Vice Chairman of the Board and such other duties as may be assigned to him or her from time to time by the Board of Directors or the Chairman of the Board. In the absence of the Chairman of the Board, he or she shall preside at all meetings of the Board of Directors and of the stockholders.

Section 5.6 President and Chief Executive Officer. The President and Chief Executive Officer shall be the chief executive officer of the Corporation, and shall have such duties as customarily pertain to that office. The President and Chief Executive Officer shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers; may appoint and remove assistant officers and other agents and employees, other than officers referred to in Section 5.1; and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments.

Section 5.7 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.8 Vice President. A Vice President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors or the Chief Executive Officer.

Section 5.9 Treasurer. The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

Section 5.10 Secretary. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

Section 5.11 Assistant Officers. Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

ARTICLE VI

LIMITATION OF LIABILITY

Section 6.1 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit, arbitration, alternative dispute mechanism, inquiry, administrative or legislative hearing, investigation or any other actual, threatened or completed proceeding, including any and all appeals, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or is or was serving at the request of the Corporation as a Director (including elected or appointed positions that are equivalent to Director) of another corporation, partnership, joint venture, trust, non-profit entity or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a Director (or equivalent) or in any other capacity while serving as a Director (or equivalent), against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such claimant in connection therewith. Notwithstanding the preceding sentence, the Corporation shall indemnify any such claimant in connection with a proceeding (or part thereof) initiated by such claimant only if the commencement of such proceeding (or part thereof) by such claimant was authorized or ratified by the Board of Directors.

Section 6.2 Advancement of Expenses. Each Director shall, to the fullest extent not prohibited by law, have the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any proceeding in advance of its final disposition. However, if the DGCL requires, an advancement of expenses incurred by a claimant in his or her capacity as a Director shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such claimant, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such claimant is not entitled to be indemnified for such expenses.

Section 6.3 Indemnification of Officers, Employees and Agents of the Corporation. In addition to those claimants entitled to indemnification under Section 6.1, the Corporation may, to the extent authorized by the Board of Directors, grant rights to indemnification and the advancement of expenses (including attorneys’ fees) to any officer, employee or agent of the Corporation.

Section 6.4 Right of Claimant to Bring Suit. If a claim for indemnification or payment of expenses is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be thirty (30) days, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the claimant shall also be entitled to be paid the expense of prosecuting or defending such suit. In any such action, the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 6.5 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or Directors, provisions of the Certificate of Incorporation or these Bylaws, or otherwise.

Section 6.6 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or another company, partnership, joint venture, trust, non-profit entity or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.7 Nature of Rights. The rights conferred upon claimants in this Article VI shall be contract rights. Such rights shall vest at the time a claimant becomes a Director and shall continue as to a claimant who has ceased to be a Director and shall inure to the benefit of the claimant’s heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI, any other provision of these Bylaws or the Certificate of Incorporation that adversely affects any right of any claimant or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 6.8 Settlement of Claims. The Corporation shall not be liable to indemnify any claimant under this Article VI for any amounts paid in settlement of any action or claim effected without the Corporation’s written consent, or for any judicial award if the Corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

Section 6.9 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the claimant, who shall do everything that may be necessary to secure such rights, including the execution of documents necessary to enable the Corporation to effectively bring suit to enforce such

rights.

Section 6.10 Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any person who was or is serving at its request as a director of another company, partnership, joint venture, trust, non-profit entity or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, non-profit entity or other enterprise.

ARTICLE VII

BOOKS AND RECORDS

Section 7.1 Location. The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in these Bylaws and by such officer or agent as shall be designated by the Board of Directors.

Section 7.2 Addresses of Stockholders. Notices of meetings and all other corporate notices may be delivered personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation or may be given by electronic submission in the manner provided in Section 232 of the DGCL.

Section 7.3 Fixing Date for Determination of Stockholders of Record. (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment or recess thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or recess of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned or recessed meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE VIII

CERTIFICATES REPRESENTING STOCK

Section 8.1 Certificates; Signatures. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate, signed by or in the name of the Corporation by the Chairman of the Board or Vice Chairman of the Board, or the Chief Executive Officer or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

Section 8.2 Transfers of Stock. Transfers of shares of the capital stock of the Corporation shall be made only on the books of the Corporation by the holder thereof, or by his or her attorney thereunto authorized by a power of attorney duly

executed and filed with the Secretary of the Corporation, or a transfer agent of the Corporation, if any, and on surrender of the certificate or certificates for such shares properly endorsed. A person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof as regards to the Corporation, provided that whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact if known to the Secretary or to said transfer agent, shall be so expressed in the entry of transfer.

Section 8.3 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of any lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 8.4 Power of the Board of Directors. The Board of Directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates representing shares of the Corporation.

ARTICLE IX

DIVIDENDS

Subject always to the provisions of law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

WAIVER OF NOTICE

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, a written waiver thereof, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

ARTICLE XI

BANK ACCOUNTS, CHECKS AND DRAFTS, CONTRACTS, ETC.

Section 11.1 Bank Accounts. The Board of Directors or any Committee constituted pursuant to Article IV with power for the purpose, may from time to time authorize the opening and keeping with such banks, trust companies or other depositories as it may designate of general and special bank accounts, may make such special rules and regulations with respect thereto, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

Section 11.2 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, employees or agents of the Corporation as shall from time to time be determined by resolution of the Board of Directors or by any Committee constituted pursuant to Article IV with power for the purpose. Such authority may be general or confined to specific instances and the granting of such authority may be expressly delegated by the Board of Directors, or by any Committee constituted pursuant to Article IV with power for the purpose, to one or more officers of the Corporation.

Section 11.3 Contracts. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances. The power to grant such authority also may be

expressly delegated by the Board of Directors, or by any Committee constituted pursuant to Article IV of these Bylaws with power for the purpose, to one or more officers of the Corporation.

ARTICLE XII

FORUM FOR ADJUDICATION OF DISPUTES

Section 12.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, the sole and exclusive forum for any stockholder (including any beneficial owner) to bring internal corporate claims (as defined below) shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware). For purposes of this Article XII, “**internal corporate claims**” means claims, including claims in the right of the Corporation, (a) that are based upon a violation of a duty by a current or former Director, officer, employee or stockholder in such capacity, or (b) as to which the DGCL confers jurisdiction upon the Court of Chancery. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

Section 12.2 Personal Jurisdiction. If any action the subject matter of which is within the scope of this Article XII is filed in a court other than a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) (a “**Foreign Action**”) by any stockholder (including any beneficial owner), such stockholder shall be deemed to have consented to (a) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 12.1, and (b) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Amendments. These Bylaws may be amended, added to, rescinded or repealed, and any new bylaws made at any meeting of the Board of Directors or of the stockholders, provided notice of the proposed change was given in the notice of the meeting; provided, however, that, in case of amendments by stockholders, notwithstanding any other provision of these Bylaws or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of stock required by law, the Certificate of Incorporation or these Bylaws, the affirmative vote of the holders of a majority of the voting power of the then outstanding voting stock shall be required to alter, amend or repeal any provision of these Bylaws.

Section 13.2 Severability. If any provision or provisions of these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever: (a) then, to the fullest extent possible, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of these Bylaws (including, without limitation, each portion of any paragraph of these Bylaws containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of these Bylaws (including, without limitation, each such portion of any paragraph of these Bylaws containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 13.3 Electronic Transmission. When used in these Bylaws, the terms “written” and “in writing” shall include any “electronic transmission,” as defined in Section 232(c) of the DGCL, including without limitation any telegram, cablegram, facsimile transmission and communication by electronic mail.

Section 13.4 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or

document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal.

Section 13.5 Ratification. Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of a Director, officer or stockholder, non-disclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

GUARANTEE, PLEDGE AND SECURITY AGREEMENT

Dated as of July 17, 2017 among
BEACHHEAD HOLDINGS LLC,
as Holdings,

BEACHHEAD I LLC
and BEACHHEAD II LLC,
as the Buyers,

BUFFALO PARENT GULF COAST TERMINALS, LLC,
as OpCo Parent,

and
BUFFALO INVESTOR I, L.P.,
and
BUFFALO INVESTOR II, L.P.,
as the Sellers

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This GUARANTY, PLEDGE AND SECURITY AGREEMENT, dated as of July 17, 2017 (this “Agreement”), is entered into by and among BUFFALO INVESTOR I, L.P., a Delaware limited partnership (“Buffalo I”), BUFFALO INVESTOR II, L.P., a Delaware limited partnership (“Buffalo II”, and each of Buffalo I and Buffalo II, a “Seller” and, collectively, the “Sellers”), BEACHHEAD HOLDINGS LLC (“Holdings”), a Delaware limited liability company, BEACHHEAD I LLC, a Delaware limited liability company (“Buyer I”), BEACHHEAD II LLC, a Delaware limited liability company (“Buyer II” and each of Buyer I and Buyer II, a “Buyer” and, collectively, the, “Buyers”) and BUFFALO PARENT GULF COAST TERMINALS, LLC, a Delaware limited liability company (the “OpCo Parent”).

W I T N E S S E T H:

WHEREAS, capitalized terms used but not defined in the preamble above and in these recitals have the meaning assigned thereto in Article I;

WHEREAS, the HFOTCO is the direct 100% owner of an oil terminal storage facility located on the Houston Ship Channel near Houston, Texas (the “Terminal Storage Facility”);

WHEREAS, the OpCo Intermediate Parent is the direct owner of 100% of the Equity Interests in HFOTCO;

WHEREAS, the OpCo Parent is the direct owner of 100% of the Equity Interests in OpCo Intermediate Parent;

WHEREAS, upon the consummation of the Specified Acquisition, the Buyers will together become owners of 100% of the Equity Interests in the OpCo Parent;

WHEREAS, Holdings is the direct owner of 100% of the Equity Interests in each of the Buyers;

WHEREAS, as consideration for the sale of the Equity Interests in the OpCo Parent and other accommodations of the Sellers, as set forth in the Purchase Agreement and other Transaction Documents, the Grantors have agreed to secure the Obligations as set forth herein;

WHEREAS, the Grantors will derive substantial direct and indirect benefit from the execution and delivery of the Purchase Agreement and the other Transaction Documents and the consummation of the Transactions;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

AGREEMENT:
ARTICLE I
DEFINITIONS

Section 1.01. Defined Terms.

(a) As used herein, the following capitalized terms shall have the respective meanings given to them in the UCC (and, if defined in more than one Article of the UCC, shall have the meaning given in Article 9 thereof): “Account”, “Bank”, “Certificated Security”, “Chattel Paper”, “Commercial Tort Claim”, “Commodity Account”, “Commodity Contract”, “Deposit Account”, “Document”, “Electronic Chattel Paper”, “Financial Asset”, “General Intangible”, “Goods”, “Instrument”, “Investment Property”, “Letter-of-Credit Right”, “Money”, “Payment Intangible”, “Proceeds”, “Promissory Note”, “Record”, “Securities Account”, “Security Entitlement”, “Supporting Obligation”, “Tangible Chattel Paper” and “Uncertificated Security”.

(b) As used in this Agreement, the following terms shall have the meanings specified below. Capitalized terms used herein but not defined shall have the meaning assigned to such terms in the Purchase Agreement.

“ Account Collateral ” shall have the meaning assigned to such term in Section 2.01(b).

“ Acquisitio n ” shall mean the purchase or other acquisition (in one transaction or a series of transactions, including pursuant to any merger or consolidation) of all or substantially all the issued and outstanding Equity Interests in, or all or substantially all the assets of (or all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person.

“ Act ” shall mean the Securities Act of 1933, as amended (or any similar statute then in effect).

“ Affiliate ” shall mean, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“ Agreement ” shall have the meaning assigned to such term in the preamble.

“ Assigned Agreements ” shall have the meaning assigned to such term in Section 2.01(l).

“ Bond Documents ” shall mean the Bond Indentures, the Bond Loan Agreements, the Bond Facility Agreement and all other instruments, agreements and other documents evidencing or governing the Bonds or providing for any Guarantee or other right in respect thereof.

“ Bond Facility Administrative Agent ” shall mean Bank of America, N.A., as administrative agent under the Bond Facility Agreement, together with its successors and permitted assigns in such capacity.

“ Bond Facility Agreement ” shall mean the Continuing Covenant Agreement, dated as of the August 19, 2014, among the OpCo Intermediate Parent, HFOTCO, the holders of the Bonds from time to time, the Bond Facility Administrative Agent and Bank of America, N.A. as collateral agent.

“ Bond Indentures ” shall mean, collectively, (a) the Amended and Restated Bond Indenture, dated as of August 19, 2014, between the Bond Issuer and the Bond Trustee relating to the Bonds Series 2010, (b) the Amended and Restated Bond Indenture, dated as of August 19, 2014, between the Bond Issuer and the Bond Trustee relating to the Bonds Series 2011 and (c) the Amended and Restated Bond Indenture, dated as of August 19, 2014, between the Bond Issuer and the Bond Trustee relating to the Bonds Series 2012.

“ Bond Issuer ” shall mean the Harris County Industrial Development Corporation, a non- profit corporation organized with the approval of Harris County, Texas, and existing pursuant to the Development Corporation Act, Chapter 501, Texas Local Government Code.

“ Bond Loan Agreements ” shall mean, collectively, (a) the Loan Agreement, dated as of November 10, 2010, and as amended by the First Amendment thereto, dated as of August 19, 2014, between the Bond Issuer and HFOTCO relating to the \$75,000,000 loan made by the Bond Issuer to HFOTCO of the proceeds of \$75,000,000 related to Bonds Series 2010, (b) the Loan Agreement, dated as of December 1, 2011, and as amended by the First Amendment thereto, dated as of August 19, 2014, between the Bond Issuer and HFOTCO relating to the \$50,000,000 loan made by the Bond Issuer to HFOTCO of the proceeds of \$50,000,000 related to the Bonds Series 2011, and (c) the Loan Agreement, dated as of October 1, 2012, and as amended by the First Amendment thereto, dated as of August 19, 2014, between the Bond Issuer and HFOTCO relating to the \$100,000,000 loan made by the Bond Issuer to HFOTCO of the proceeds of \$100,000,000 related to the Bonds Series 2012.

“ Bonds ” shall mean, collectively, the Bonds Series 2010, the Bonds Series 2011 and the Bonds Series 2012.

“ Bonds Series 2010 ” shall mean the Bond Issuer’s Marine Terminal Revenue Bonds (HFOTCO LLC Project) Series 2010, issued by the Bond Issuer on November 1, 2010, and the Indebtedness represented thereby.

“ Bonds Series 2011 ” shall mean the Bond Issuer’s Marine Terminal Revenue Bonds (HFOTCO LLC Project) Series 2011, issued by the Bond Issuer on December 1, 2011, and the Indebtedness represented thereby.

“ Bonds Series 2012 ” shall mean the Bond Issuer’s Marine Terminal Revenue Bonds (HFOTCO LLC Project) Series 2012, issued by the Bond Issuer on October 1, 2012, and the Indebtedness represented thereby.

“ Bond Trustee ” shall mean The Bank of New York Mellon Trust Company, National Association, as trustee under the Bond Indentures, together with its successors and assigns in such capacity.

“ Business Day ” shall have the meaning assigned to such term in the Purchase Agreement.

“Buyers” and “Buyer” shall have the meaning assigned to such term in the preamble.

“Capital Lease Obligations” of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP. For the avoidance of doubt, obligations of any Grantor or their Subsidiaries under any lease of Real Property from the Port of Houston shall not be treated as Capital Lease Obligations (regardless of any change after the Closing Date in the treatment of leases under GAAP).

“Cash Proceeds” has the meaning assigned to such term in Section 7.07.

“Change of Control” shall mean (a) any sale, assignment, transfer or other Disposition resulting in (i) Holdings ceasing directly to own 100% of the Equity Interests in each of the Buyers, (ii) the Buyers ceasing directly to own 100% jointly of the Equity Interests in the OpCo Parent, (iii) the OpCo Parent ceasing directly to own 100% of the Equity Interests in the OpCo Intermediate Parent, (iv) the OpCo Intermediate Parent ceasing directly to own 100% of the Equity Interests in HFOTCO, (v) SemGroup ceasing directly or indirectly to own beneficially 100% of the Equity Interests of Holdings, (b) the occurrence of a “Change in Control” as defined in the Bond Documents or the HFOTCO Credit Agreement Documents, (c) any sale, assignment, transfer or other Disposition (either as one transaction or a series of transactions) of (i) the Terminal Storage Facility resulting in it not being owned directly or indirectly by the Buyers or

(i) all or substantially all assets of HFOTCO and its Restricted Subsidiaries or (d) any combination, merger, consolidation or similar transaction of, with or into SemGroup, whereby the surviving entity, after giving effect to such transaction, shall have a Rating assigned to it by either Ratings Agency that is lower than the Rating assigned to SemGroup by such Ratings Agency immediately prior to such combination, merger, consolidation or similar transaction; provided that the assignment of any Rating by a Ratings Agency to the surviving entity on or after 90 days following the closing of such combination, merger, consolidation or similar transaction shall be disregarded for purposes this clause (d).

“Chosen Courts” has the meaning assigned to such term in Section 8.13(a).

“Closing Date” shall have the meaning assigned to such term in the Purchase Agreement.

“Collateral” shall have the meaning assigned to such term in Section 2.01.

“Collateral Accounts” shall have the meaning assigned to such term in Section 7.07.

“Collateral and Guarantee Requirement” shall mean, at any time, the requirement that:

(a) the Sellers shall have received from the Grantors counterparts of the this Agreement duly executed and delivered by or on behalf of such Person;

(b) the Collateral shall have been pledged by the Grantors pursuant to this Agreement, and the Sellers shall have received certificates or other instruments, if any, representing all

such Equity Interests, together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank; and

(c) all documents and instruments, including UCC financing statements, required by applicable law or reasonably requested by the Sellers to be filed, registered or recorded to create the Liens intended to be created by this Agreement and perfect such Liens to the extent required by, and with the priority required by, this Agreement, shall have been filed, registered or recorded or delivered to the Sellers for filing, registration or recording.

“Communications” shall have the meaning assigned to such term in Section 8.14(a).

“Computer Software” shall have the meaning assigned to such term in Section 2.01(n).

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and “Controlling” and “Controlled” shall have meanings correlative thereto.

“Debtor Relief Law” shall mean any applicable liquidation, conservatorship, bankruptcy, insolvency, rearrangement, moratorium, reorganization or similar debtor relief laws affecting the rights, remedies, powers, privileges or benefits of creditors generally from time to time in effect.

“Default” shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

“Discharge Date” shall mean (i) the date on which the Obligations (other than unasserted contingent payment obligations that by their nature survive termination of this Agreement) shall have been indefeasibly paid in full in cash (it being understood that the requirement that the Installment Payment be “indefeasibly” paid shall not be interpreted to require that the Installment Payment would not be recoverable as a preference under any Debtor Relief Law or as a fraudulent transfer or that the Discharge Date would only occur after the running of the applicable preference period or statute of limitations) or (ii) the date on or after the Installment Payment has been indefeasibly paid in full in cash and all other remaining Obligations have been fully accepted and assumed by SemGroup and evidenced by SemGroup’s execution and delivery to Sellers of the assumption agreement in the form attached hereto as Annex III.

“Disposition” shall mean, with respect to any property, any sale, lease, sale and leaseback, conveyance, transfer or other disposition thereof (including by means of a Restricted Payment or sale or issuance of Equity Interests); and the terms “Dispose” and “Disposed of” shall have correlative meanings.

“Dollars” or “\$” shall mean lawful money of the United States.

“Equipment” shall have the meaning assigned to such term in Section 2.01(c).

“Equity Interests” in or of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however

designated) equity of such Person, including any Preferred Interests, any limited or general partnership interest and any limited liability company interest.

“Event of Default” shall have the meaning assigned to such term in Section 7.01.

“GAAP” shall mean generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

“Governmental Authority” shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory, judicial or legislative body.

“Governmental Rule” shall mean, with respect to any Person, any law, rule, regulation, ordinance, order, code, treaty, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority binding on such Person.

“Grantors” shall mean Holdings, each of the Buyers and OpCo Parent (except that references to the Grantors in Article II, Article IV, Section 5.06, and Section 5.07 shall exclude OpCo Parent).

“Group Members” shall mean (a) Holdings, (b) the Buyers, (c) OpCo Parent, (d) OpCo Intermediate Parent and (e) HFOTCO and its Restricted Subsidiaries.

“Guarantee” of or by any Person (the “guarantor”) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or other obligation; provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount, as of any date of determination, of any Guarantee shall be the principal amount outstanding on such date of Indebtedness or other obligation guaranteed thereby (or, in the case of (i) any Guarantee the terms of which limit the monetary exposure of the guarantor or (ii) any Guarantee of an obligation that does not have a principal amount, the maximum monetary exposure as of such date of the guarantor under such Guarantee (as determined, in the case of clause (i), pursuant to such terms or, in the case of clause (ii), reasonably and in good faith by the chief financial officer of Holdings)).

“Hedge Agreements” shall mean any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

“ HFOTCO ” means HFOTCO LLC, a Texas limited liability company.

“ HFOTCO Company Agreement ” shall mean the amended and restated limited liability company agreement of HFOTCO effective as of September 17, 2015.

“ HFOTCO Credit Agreement ” shall mean that certain credit agreement, dated as of August 19, 2014 among OpCo Intermediate Parent, HFOTCO, the lenders party thereto, Morgan Stanley Senior Funding, Inc., as Administrative Agent and Bank of America, N.A., as collateral agent, as amended by that certain Consent and Amendment No. 1 to Credit Agreement, dated June 14, 2017.

“ HFOTCO Credit Agreement Documents ” shall mean the HFOTCO Credit Agreement and all other instruments, agreements and other documents evidencing or governing the loans made under the HFOTCO Credit Agreement or providing for any Guarantee, security or other right in respect thereof.

“ Holdings ” shall have the meaning assigned to such term in the preamble.

“ Indebtedness ” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money (including loans) and all redemption obligations of such Person in respect of mandatorily redeemable Preferred Interests, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than accrued liabilities and trade liabilities incurred in the ordinary course of business and maturing within 90 days after the incurrence thereof), (e) all Guarantees by such Person of Indebtedness of others, (f) all Capital Lease Obligations of such Person, (g) the principal component of all obligations, contingent or otherwise, of such Person (i) as an account party in respect of letters of credit and (ii) in respect of bankers’ acceptances, (h) the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay under Hedge Agreements if such Hedge Agreements were terminated at the time of determination and (i) all obligations of others secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“ Installment Payment ” shall have the meaning assigned to such term in the Purchase Agreement.

“ Inventory ” shall have the meaning assigned to such term in Section 2.01(d).

“ Investment ” shall mean, with respect to any Person, (a) any Equity Interests, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of any other Person that are held by such Person, (b) any deposit with, advance, loan or capital contribution to, assumption of Indebtedness of or other extension of credit to, any other Person that are made by

such Person (excluding any such advance, loan or extension of credit having a term not exceeding 90 days representing the purchase price of inventory or supplies sold by such Person), or (c) Guarantees of any Indebtedness or other obligations of any other Person that are made by such Person.

“Issuer” shall have the meaning assigned to such term in Section 2.01(a)(i).

“Legal Requirements” shall mean, as to any Person, any requirement under a Permit and any Governmental Rules, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its properties is subject.

“Lien” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, (c) any shared facilities arrangement and (d) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Material Adverse Effect” shall mean a material adverse effect on (i) the assets, liabilities, or condition (financial or otherwise), business or results of operations of the Grantors, taken as a whole, (ii) the enforceability or validity of this Agreement and Section 2.2(c) of the Purchase Agreement or the enforceability, validity or priority of the Liens created under this Agreement or any other Security Documents, or (iii) the rights and remedies of any Seller under this Agreement or under the Purchase Agreement with respect to claims arising from Section 2.2(c) thereunder.

“Moody’s” shall mean Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Obligations” shall mean (i) the Installment Payment and the guarantees thereof under Section 3.01 of this Agreement, (ii) all amounts for which the Sellers are entitled to indemnification and all costs and expenses owing to Sellers under this Agreement, including pursuant to Section 8.05, and (iii) all other amounts due to the Sellers under or in respect of this Agreement, in each case whether now existing or hereafter incurred, whether direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, now or hereafter existing, due or to become due whether evidenced in writing or not, together with all costs, expenses (including attorneys’ fees incurred in the enforcement or collection thereof), and interest accruing thereon including interest accruing after the commencement of any proceedings against any Grantor under any Debtor Relief Law, whether or not allowed in such proceedings.

“OpCo Intermediate Parent” shall mean Buffalo Gulf Coast Terminals, LLC, a Delaware limited liability company.

“OpCo Parent” shall have the meaning assigned to such term in the preamble.

“Organizational Documents” shall mean, with respect to any Person, as applicable, its certificate or articles of incorporation or organization, by laws, certificate of partnership, partnership

agreement, certificate of formation, articles of organization, limited liability company agreement and/or operating agreement, and all shareholder agreements, voting trusts and similar arrangements applicable to any of such Person's partnership interests, limited liability company interests or authorized shares of Equity Interests, in each case as amended.

“Ownership Collateral” shall have the meaning assigned to such term in Section 2.01(a).

“Permits” shall mean any and all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, and other rights, privileges and approvals required under or issued pursuant to any Governmental Rule.

“Permitted Investments” shall mean:

(a) obligations backed by the full faith and credit of the United States Government (whether issued by the United States Government or an agency thereof), and obligations guaranteed by the United States Government;

(b) bonds, debentures, notes or similar debt instruments issued by a state or municipality given an “A” rating or better by S&P or an equivalent rating by another nationally recognized credit rating agency and maturing not more than one year from the date acquired;

(c) certificates of deposit issued by a bank given an “A” rating or better by S&P or an equivalent rating by another nationally recognized credit rating agency and maturing not more than one year from the date acquired;

(d) readily marketable commercial paper rated at the time of acquisition as A1 or better by S&P or Prime 1 or better by Moody's and maturing not more than 270 days from the date of creation thereof;

(e) bankers' acceptances which mature within 180 days;

(f) money market mutual funds that (i) are denominated in U.S. Dollars, (ii) have average asset maturities not in excess of 365 days, (iii) have total invested assets in excess of \$1,000,000,000 and (iv) invest exclusively in Permitted Investments described in clauses (a) through (e) above; and

(g) Equity Interests issued in respect of capital contributions to any Group Member.

“Permitted Liens” shall mean:

(a) the Liens of the Sellers as provided in this Agreement and any other Security Documents;

(b) Liens for taxes, assessments or other governmental levies or charges which are not yet due or which are being contested in good faith by any Grantor, as the case may be, and for which adequate reserves have been taken in accordance with GAAP;

(c) any attachment or judgment Liens in respect of judgments that do not constitute an Event of Default under Section 7.01(h); and

(d) banker's liens, rights of setoff or similar rights and remedies as to deposit accounts or other funds maintained with depository institutions; provided that such deposit accounts or funds are not established or deposited for the purpose of providing collateral for any Indebtedness and are not subject to restrictions on access by any Grantor in excess of those required by applicable banking regulations.

“ Person ” shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

“ Pledged Ownership Interests ” shall have the meaning assigned to such term in Section 2.01(a)(i).

“ Port of Houston ” shall mean the Port of Houston Authority of Harris County, Texas.

“ Preferred Interests ” shall mean any Equity Interests of a Person that is preferred over any other Equity Interests of such Person as to the payment of distributions or the payment of any amount upon liquidation or dissolution of such Person.

“ Purchase Agreement ” shall mean that certain Purchase and Sale Agreement dated as of June 5, 2017, among the Buyers, the Sellers, SemGroup and certain other parties thereto.

“ Ratings ” shall mean the applicable public ratings assigned to the senior unsecured, long-term non-credit enhanced indebtedness for borrowed money of a Person by a Ratings Agency.

“ Ratings Agency ” means Moody's or S&P, as applicable.

“ Real Property ” of any Person shall mean all right, title and interest of such Person in and to any and all parcels of real property owned, leased, licensed or operated by such Person together with all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof, including the Sites.

“ Refinancing Indebtedness ” shall have the meaning assigned to such term in the HFOTCO Credit Agreement.

“ Related Contracts ” shall have the meaning assigned to such term in Section 2.01(i).

“ Related Parties ” shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates.

“ Responsible Officer ” of any Person shall mean any duly appointed and authorized chief executive, president, vice president, treasurer or secretary of such Person and any other officer thereof responsible for the administration of the obligations of such Person in respect of this Agreement, in each case,

whose signatures and incumbency shall have been certified to the Sellers pursuant to Section 4.01(a)(iii) or pursuant to a certificate delivered to the Sellers after the Closing Date in form and substance satisfactory to the Sellers.

“Restricted Payment” shall mean any dividend or other distribution (whether in cash, securities or other property) on any Equity Interests in any Group Member, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, defeasance, retirement, acquisition, cancellation, repayment or termination of, or any other return of capital with respect to, any Equity Interests in Holdings, the Buyers or any other Group Member or any option, warrant or other right to acquire any such Equity Interest in Holdings, the Buyers or any other Group Member.

“Restricted Subsidiary” shall have the meaning assigned to such term in the HFOTCO Credit Agreement.

“S&P” shall mean means Standard & Poor’s Financial Services LLC, and any successor to its rating agency business.

“Security Documents” shall mean this Agreement and all other instruments and documents executed and delivered pursuant to the foregoing including Sections 5.06, 5.07 and

1. hereto.

“Seller” and “Sellers” shall have the meaning assigned to such term in the preamble.

“SemGro up” shall mean SemGroup Corporation, a Delaware corporation.

“Sites” shall mean each parcel of land on which any portion of the Terminal Storage Facility is located.

“Specified Acquisition” shall mean the purchase and acquisition by the Buyers from the Sellers, and the assignment, transfer and conveyance by the Sellers to the Buyers, of the Equity Interests in the OpCo Parent as contemplated by the Purchase Agreement.

“Subsidiary” shall mean, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held by such Person. Unless the context requires otherwise, references herein to a “Subsidiary” shall refer to a Subsidiary of Holdings.

“Terminal Storage Facility” shall have the meaning assigned to such term in the recitals.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the state of New York; provided that if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to Sellers pursuant to this Agreement is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United

States other than New York, UCC shall mean the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement and any financing statement relating to such perfection or effect of perfection or non-perfection.

“United States” and “U.S.” shall each mean the United States of America.

“U.S. Bankruptcy Code” shall mean Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“wholly-owned”, when used in reference to a Subsidiary of any Person, shall mean that all the Equity Interests in such Subsidiary (other than directors’ qualifying shares and other nominal amounts of Equity Interests that are required to be held by other Persons under applicable law) are owned, beneficially and of record, by such Person, another wholly-owned Subsidiary of such Person or any combination thereof.

Section 1.02. Terms Generally

Except as otherwise expressly provided, the following rules of interpretation shall apply to this Agreement:

- (a) the definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined;
- (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;
- (d) all references herein to Articles, Sections, Exhibits, Schedules, recitals and the preamble shall be deemed references to Articles and Sections of, and Exhibits, Schedules, recitals and the preamble to, this Agreement unless the context shall otherwise require;
- (e) the term “or” is not exclusive;
- (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties (whether real or personal), including cash, Equity Interests, securities, revenues, accounts, leasehold interests and contract rights;
- (g) references to agreements or other contractual obligations and laws shall, unless otherwise specified, be deemed to refer to such agreements or contractual obligations as amended, supplemented, restated or otherwise modified from time to time (subject to any applicable restrictions in this Agreement);
- (h) unless otherwise indicated, all references to the time of a day in this Agreement shall refer to New York, New York time; and

(i) references to a Person shall include its successors and assigns to the extent otherwise permitted under this Agreement.

ARTICLE II
THE COLLATERAL

Section 2.01. Grant of Security. Each Grantor hereby pledges, assigns, hypothecates and grants to the Sellers a security interest in and a Lien on all of such Grantor's right, title and interest in and to the following property, wherever located, whether now owned or in the future acquired by such Grantor and whether now existing or in the future coming into existence (all of the property, assets and revenues described in this Section 2.01 being collectively, the "Collateral"):

(a) the following (collectively, the "Ownership Collateral"):

(i) all of the Equity Interests in any Person listed in Schedule 3 (as such Schedule may be amended or supplemented from time to time) under the heading "Issuer" and all of the Equity Interests in any other Person now or hereafter owned by such Grantor (collectively, the "Issuers"), in each case together with all certificates (if any) evidencing the same (collectively, the "Pledged Ownership Interests");

(ii) all shares, partnership interests, limited liability company interests, securities, moneys or property representing a dividend on any of the Pledged Ownership Interests, or representing a distribution or return of capital upon or in respect of the Pledged Ownership Interests, or resulting from a split-up, revision, reclassification or other like change of the Pledged Ownership Interests or otherwise received in exchange therefor, and any subscription warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Ownership Interests;

(iii) without affecting the obligations of such Grantor under any provision prohibiting that action under this Agreement, in the event of any consolidation or merger in which any Issuer is not the surviving Person, all Equity Interests of any class or character in the successor Person (unless that successor Person is a Buyer) formed by or resulting from that consolidation or merger;

(iv) all of such Grantor's rights, benefits, privileges, authority and powers under the Organizational Documents of any Issuer or under any shareholder or voting trust agreement or similar agreement in respect of the Pledged Ownership Interests, including (A) all of such Grantor's interest in the capital of any Issuer, and all rights of such Grantor as a member and all rights to receive dividends, distributions, cash, securities, instruments and other property or proceeds of any kind from time to time receivable or otherwise distributable in respect of the Pledged Ownership Interests or pursuant to the Organizational Documents of any Issuer by way of distribution, return of capital or otherwise, (B) all other payments due or to become due to such Grantor in respect of the Pledged Ownership Interests

or the Organizational Documents of any Issuer, including all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty due to or with respect to the Pledged Ownership Interests or such Organizational Documents, (C) all claims of such Grantor for damages arising out of or for breach of or default under the Organizational Documents of any Issuer, (D) the right of such Grantor to terminate the Organizational Documents of any Issuer, to perform and exercise consensual or voting rights thereunder, including the right, if any, to manage such Issuer's affairs, to make determinations, to exercise any election or option or to give or receive any notice, consent, amendment, waiver or approval, and the right, if any, to compel performance and otherwise exercise all remedies thereunder, (E) all rights of such Grantor as a member of any Issuer to all property and assets of any Issuer (whether real property, inventory, equipment, contract rights, accounts, receivables, general intangibles, securities, instruments, chattel paper, documents, chooses in action or otherwise) and (vi) certificates or instruments evidencing an ownership or Equity Interests in any Issuer, or its property or assets; and

(v) any other claim that such Grantor now has or may in the future acquire in its capacity as member (or other equity owner) of any Issuer against such Issuer and its property or assets;

(b) the following (collectively, the "Account Collateral"):

(i) all Deposit Accounts and Securities Accounts of such Grantor and all amendments, extensions, renewals and replacements thereof, whether under the same or different account number and all funds and Financial Assets from time to time credited thereto (including all Permitted Investments), and all certificates and instruments, if any, from time to time representing or evidencing such accounts;

(ii) all promissory notes, certificates of deposit, checks and other instruments from time to time delivered to or otherwise possessed by the Sellers for or on behalf of such Grantor in substitution for or in addition to any or all of the then existing Account Collateral; and

(iii) all interest, dividends, distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the then existing Account Collateral;

(c) all "equipment" (as such term is defined in Article 9 of the UCC) in all of its forms, including all machinery, tools, furniture and fixtures, and all parts thereof and all accessions thereto, including computer programs and supporting information that constitute equipment within the meaning of the UCC (any and all such property being the "Equipment") and all documents or other receipts covering, evidencing or representing Equipment;

(d) all "inventory" (as such term is defined in Article 9 of the UCC) in all of its forms, including (i) all raw materials, work in process, finished goods and materials used or consumed in the

manufacture, production, preparation or shipping thereof, (ii) goods in which such Grantor has an interest in mass or a joint or other interest or right of any kind (including goods in which such Grantor has an interest or right as consignee) and (iii) goods that are returned to or repossessed or stopped in transit by such Grantor, and all accessions thereto and products thereof and documents therefor, including computer programs and supporting information that constitute inventory within the meaning of the UCC (any and all such property being the “Inventory”) and all documents or other receipt covering, evidencing or representing Inventory;

(e) all Goods;

(f) all Documents;

(g) all insurance;

(h) all rights, claims and benefits of such Grantor against any Person arising out of, relating to or in connection with Inventory or Equipment purchased by (or services provided to) such Grantor, including any such rights, claims and benefits against any Person storing or transporting such Inventory and Equipment;

(i) all Accounts, Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper), Instruments (including Promissory Notes), Deposit Accounts, Letter- of-Credit Rights, General Intangibles (including Payment Intangibles and Permits) and other obligations of any kind, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services and whether or not earned by performance, and all rights now or hereafter existing in and to all Supporting Obligations and in and to all security agreements, mortgages, Liens, leases, letters of credit and other contracts securing or otherwise relating to the foregoing property (any and all such Supporting Obligations, security agreements, mortgages, Liens, leases, letters of credit and other contracts being the “Related Contracts”);

(j) [reserved];

(k) the following (but excluding, in each case, any Collateral constituting Ownership Collateral or Account Collateral to the extent covered in clause (a) or (b) above, as applicable):

(i) all Indebtedness from time to time owed to such Grantor and the instruments, if any, evidencing such Indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness; and

(ii) all Investment Property (including all Certificated Securities, Uncertificated Securities, Security Entitlements, Securities Accounts, Commodity Contracts and Commodity Accounts) in which such Grantor has now, or acquires from time to time hereafter, any right, title or interest in any manner, and the certificates or instruments, if any, representing or evidencing such investment property, and all dividends, distributions, return of capital, interest, cash, instruments and other property instruments and other

property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such investment property and all warrants, rights or options issued thereon or with respect thereto;

(l) all agreements, contracts and documents to which such Grantor is now or may hereafter become a party, in each case as each such agreement, contract and document may be amended, amended and restated, supplemented or otherwise modified from time to time (collectively, the “Assigned Agreements”), including (i) all rights of such Grantor to receive moneys due and to become due under or pursuant to the Assigned Agreements, (ii) all rights of such Grantor to receive proceeds of any insurance, bond, indemnity, warranty, letter of credit or guaranty with respect to the Assigned Agreements, (iii) claims of such Grantor for damages arising out of or for breach of or default under the Assigned Agreements; and (iv) the right of such Grantor to terminate, amend, restate, amend and restate, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder;

(m) all Permits now or hereafter held in the name, or for the benefit of, such Grantor;

(n) the following:

(i) all patents, patent applications, utility models and statutory invention registrations, all invention claimed or disclosed therein and all improvements thereto;

(ii) all trademarks, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, whether registered or unregistered, together, in each case, with the goodwill symbolized thereby;

(iii) all copyrights, including copyrights in Computer Software, internet web sites and the content thereof, whether registered or unregistered;

(iv) all computer software, programs and databases (including source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing (“Computer Software”);

(v) all confidential and proprietary information, including know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and all other intellectual, industrial and intangible property of any type, including industrial designs and mask works;

(vi) all registrations and applications for registration for any of the foregoing together with all reissues, divisions, continuations, continuations-in- part, extensions, renewals and reexaminations thereof;

(vii) all tangible embodiments of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(viii) all agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any of the foregoing to which such Grantor, now or hereafter, is a party or a beneficiary; and

(ix) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

(o) all Commercial Tort Claims, including all Commercial Tort Claims set forth in Schedule 4 (as such Schedule may be supplemented from time to time pursuant to the terms hereof);

(p) all books and records (including customer lists, credit files, printouts and other computer output materials and records) of such Grantor pertaining to any of the Collateral;

(q) all other personal property of any kind; and

(r) all Proceeds, products, accessions, rents, profits and other payments now or hereafter due and payable with respect to, and Supporting Obligations relating to, any and all of the Collateral (including Proceeds and Supporting Obligations that constitute property of the types described in clauses (a) through (q) of this Section 2.01) and, to the extent not otherwise included, all (i) payments under insurance (whether or not the Sellers is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral and (ii) cash.

Section 2.02. Security for Obligations; Continuing Liability Under Collateral.

(a) This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment and performance in full when due, whether at the stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the U.S. Bankruptcy Code, or any comparable provision of any other Debtor Relief Law), of all Obligations.

(b) Notwithstanding anything herein to the contrary, unless the Sellers shall have expressly assumed any Grantor's rights, duties and obligations with respect to or under any of the Collateral following the occurrence and during the continuance of an Event of Default and the exercise of the Sellers' rights, remedies or powers under this Agreement, (i) such Grantor shall remain liable for all obligations

under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Sellers, (ii) such Grantor shall remain liable under each of the Permits, agreements and contracts included in the Collateral, including any agreements relating to Pledged Ownership Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and the Sellers shall have no obligation or liability under any of such Permits, agreements or contracts by reason of or arising out of this Agreement or any other document related thereto nor shall the Sellers have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any Permit, agreement or contract included in the Collateral, including any agreements relating to Pledged Ownership Interests, and (iii) the exercise by the Sellers of any of its rights, remedies, powers or privileges in respect of this Agreement shall not release any Grantor from any of its duties or obligations under the Permits, agreements and contracts included in the Collateral.

Section 2.03. Reinstatement. This Agreement and the security interest in, and the Lien on, the Collateral shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Grantor in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings under any Debtor Relief Law or otherwise. Each Grantor agrees that it will indemnify the Sellers on demand for all reasonable and reasonably documented costs and expenses (including reasonable and reasonably documented fees of counsel) incurred by the Sellers in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law. The provisions of this Section 2.03 shall survive the termination of this Agreement.

Section 2.04. Remedies. Each Grantor agrees that, as between such Grantor and the Sellers, the Obligations may, to the extent so permitted by the Purchase Agreement with respect to claims arising out of Section 2.2(c), Article VII hereto and by law, be declared to be forthwith due and payable notwithstanding any stay, injunction or other prohibition (except any applicable prohibitions set forth in the Transaction Documents) preventing such declaration (or such obligations from becoming automatically due and payable) as against such Grantor and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations shall forthwith be deemed to have become due and payable for purposes of this Agreement.

Section 2.05. Continuing Obligatio n. The obligations provided in this Article II are continuing obligations and shall apply to all Obligations whenever arising.

ARTICLE III

GUARANTEE

Section 3.01. The Guarantee. The Grantors hereby, jointly and severally guarantee, as a primary obligor and not as a surety to the Sellers and its successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the Obligations (including any interest, fees, costs or charges that would accrue but for

the provisions of the Title 11 of the United States Code or other applicable bankruptcy or insolvency legislation after any bankruptcy or insolvency petition under Title 11 of the United States Code or other applicable bankruptcy or insolvency legislation) owing by the Grantors to the Sellers hereunder, including pursuant to Section 8.05 hereof. The Grantors hereby jointly and severally agree that if the Buyers or other Grantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Obligations, the Grantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 3.02. Obligations Unconditional. The obligations of the Grantors under Section 3.1 shall constitute a guaranty of payment and to the fullest extent permitted by applicable law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Obligations of the Buyers under this Agreement or any other Transaction Document, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Grantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Grantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (a) at any time or from time to time, without notice to the Grantors, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein or therein shall be done or omitted;
- (c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be amended in any respect, or any right under this Agreement or any other Transaction Document or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or
- (d) any Lien or security interest granted to, or in favor of the Sellers as security for any of the Obligations shall fail to be perfected.

The Grantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Sellers exhaust any right, power or remedy or proceed against any Grantor under this Agreement or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Obligations. The Grantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Obligations and notice of or proof of reliance by the Sellers upon this Guarantee or acceptance

of this Guarantee, and the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Buyers and the Sellers shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Obligations at any time or from time to time held by the Sellers, and the obligations and liabilities of the Grantors hereunder shall not be conditioned or contingent upon the pursuit by the Sellers or any other person at any time of any right or remedy against the Buyers or any other any Grantor or against any other person which may be or become liable in respect of all or any part of the Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Grantors and the successors and assigns thereof, and shall inure to the benefit of the Sellers and its successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Obligations outstanding.

Section 3.03. Reinstatement. The obligations of the Grantors under this Article III shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Buyers or other Grantor in respect of the applicable Obligations is rescinded or must be otherwise restored by any holder of any of the applicable Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 3.04. Subrogation; Subordination. Each Grantor hereby agrees that until the Discharge Date, it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 3.01, whether by subrogation or otherwise, against any Buyers or any other Grantor of any of the applicable Obligations or any security for any of the applicable Obligations.

Section 3.05. Remedies. The Grantors jointly and severally agree that, as between the Grantors and the Sellers, the Obligations may be declared to be forthwith due and payable as provided in Article VII (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article VII) for purposes of Section 3.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Buyers and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Buyers) shall forthwith become due and payable by the applicable Grantors for purposes of Section 3.01.

Section 3.06. Instrument for the Payment of Money. Each Grantor hereby acknowledges that the guarantee in this Article 3 constitutes an instrument for the payment of money, and consents and agrees that the Sellers, at its sole option, in the event of a dispute by such Grantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 3.07. Continuing Guarantee. The guarantee in this Article 3 is a continuing guarantee of payment, and shall apply to all applicable Obligations whenever arising.

Section 3.08. General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Grantor under Section 10.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 10.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Grantor or any other person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties. Each Grantor hereby represents and warrants to the Sellers as of the Closing Date that:

(a) The information set forth in Schedules 3 and 4 is correct and complete.

(b) Schedules 1 and 2 set forth, with respect to each Grantor: (i) the full and correct legal name of such Grantor, all trade names or other names under which such Grantor currently conducts business, and the type of organization of such Grantor, (ii) the jurisdiction of organization of such Grantor, (iii) the place of business of such Grantor (or, if such Grantor has more than one place of business, the location of the chief executive office of such Grantor), and (iv) the location at which such Grantor's books and records concerning the Collateral are kept.

(c) No Grantor has within the period of five years prior to the date hereof, changed its "location" (as defined in Section 9-307 of the UCC). No Grantor has changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate form (e.g., by merger or consolidation) or has done business under any other name, in each case, within the past five years. No Grantor has within the last five years become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated.

(d) Each Grantor has been duly organized and is validly existing as an entity of the type as set forth in Schedule 1 solely under the laws of the jurisdiction as set forth therein. No Grantor has filed any certificates of dissolution or liquidation, any certificates of domestication, transfer or continuance in any other jurisdiction.

(e) All of the Pledged Ownership Interests have been or will be duly authorized and validly issued.

(f) None of the Pledged Ownership Interests has been or will be issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject. None of the Pledged Ownership Interests is, or represents interests in an entity that is: (i) registered as an investment company or (ii) dealt in or traded on securities exchanges or markets.

All of the Pledged Ownership Interests is or represents interests that by their terms provide that they are securities governed by Article 8 of the UCC of an applicable jurisdiction.

(g) No Grantor owns any Real Property or Collateral of a type described in Section 2.01(n) or any other interest in property that is of a type where a security interest or Lien must be or may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation.

(h) (1) Upon the filing of financing statements naming each Grantor as “debtor” and the Sellers as “secured party” and describing the Collateral in the filing offices and in the jurisdictions set forth in Schedule 2, the security interest of the Sellers in all Collateral that can be perfected by the filing of a financing statement under the UCC as in effect in the jurisdiction in which such filing is made will constitute a valid, perfected, first priority Lien subject, in the case of priority only, to any Permitted Liens with respect to Collateral.

(a) Each agreement purporting to give the Sellers “control” (within the meaning of Sections 9-104, 9-105, 9-106, and 9-107 of the UCC) over any Collateral is effective to establish the Sellers’ “control” of the Collateral subject thereto.

(b) To the extent perfection or priority of the security interest therein is not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in patents, trademarks, copyrights and exclusive copyright licenses in the applicable intellectual property registries, including the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to the Sellers hereunder shall constitute valid, perfected, first priority Liens (subject, in the case of priority only, to Permitted Liens).

(c) The Organizational Documents are in full force and effect, and no Grantor is in default thereunder.

(i) Schedule 3 (as such Schedule may be amended or supplemented from time to time in accordance with the terms hereof) correctly sets forth the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by the Pledged Ownership Interests and includes all Equity Interests in the Issuers and all debt securities and promissory notes required to be pledged hereunder in order to satisfy the requirements of the Transaction Documents.

(j) Other than the financing statements filed with respect to Liens permitted under Section 6.01, and the financing statements in favor of the Sellers, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office. Other than the Sellers, no Person is in “control” (within the meaning of Sections 9-104, 9-105, 9-106, and 9-107 of the UCC) of any Collateral.

(k) Except as set forth in Schedule 4 (as such Schedule may be amended or supplemented from time to time in accordance with the terms hereof), no Grantor has any Commercial Tort Claim.

ARTICLE V

AFFIRMATIVE COVENANTS

Each of Holdings and the Buyers covenants and agrees with the Sellers that, until the Discharge Date, each of Holdings and the Buyers shall, and where expressly applicable shall cause the other Grantors and their Subsidiaries, to, abide by the following affirmative covenants.

Section 5.01. Notices. Each of Holdings and the Buyers shall deliver to the Sellers:

(a) promptly, and in any event within five days, after a Responsible Officer of Holdings or any Buyer becomes aware of the existence of any Default or Event of Default, a written notice specifying the nature and period of existence thereof and what action Holdings or the Buyers are taking or propose to take with respect thereto;

(b) immediately prior to the effectiveness of, but in any event, no later than two Business Days following the effectiveness thereof, copies of any amendment, supplement, waiver, or other modification, replacement or renewal with respect to any Bond Documents or HFOTCO Credit Agreement Documents;

(c) upon the request of the Sellers, copies of all financial statements, reports and notices that OpCo Intermediate Parent, HFOTCO or any Subsidiary of HFOTCO sends to the holders of any class of its debt securities or to the administrative agent and lenders under the Bond Documents or Sections 5.03 or 5.04 (other than such items already delivered pursuant to Section 5.02 hereto) of the HFOTCO Credit Agreement (or any similar or corresponding provisions set forth in any amendment thereto entered into in compliance with Section 6.09 or any agreement governing Refinancing Indebtedness entered into in compliance with Section 6.10); and

(d) with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of any of the Group Members or relating to the Grantors' ability to perform its obligations under this Agreement that is within the Grantors' possession as from time to time may be reasonably requested by the Sellers.

Section 5.02. Financial Statements and Other Information. Each of Holdings and the Buyers shall deliver or cause to be delivered to the Sellers all financial statements, reports and other information required to be delivered by any Group Member pursuant to Section 5.04 of the HFOTCO Credit Agreement (other than clauses (e) and (g) thereto) (or any similar or corresponding provisions set forth in any amendment thereto entered into in compliance with Section 6.09 or any agreement governing Refinancing Indebtedness entered into in compliance with Section 6.10) not later than two Business Days after such documents are required to be delivered pursuant to Section 5.04 of the HFOTCO Credit Agreement; provided, however, that the failure to deliver an audit opinion as required by Section 5.04 of the HFOTCO Credit Agreement shall not be considered a breach of this Section 5.02 for so long as Holdings and the Buyers are continuing to use commercially reasonable efforts to deliver or cause to be delivered such audit opinion as promptly

as practicable following the date required by Section 5.04(a) of the HFOTCO Credit Agreement and the reason for such delay is not related to the potential inclusion of a “going concern” or like qualification or exception.

Section 5.03. Maintenance of Existence. Except as otherwise expressly permitted under this Agreement, each Grantor shall (a) at all times preserve and keep in full force and effect its corporate or limited liability company existence, as applicable and (b) preserve and keep in full force and effect all rights and franchises material to its business.

Section 5.04. Maintenance of Records; Access to Properties and Inspections. Each of Holdings and the Buyers shall, and shall cause the other Group Members to, maintain all financial records to be able to prepare financial statements in accordance with GAAP and permit the Sellers, Representatives of Sellers, or any other Persons designated by the Sellers (provided such other Persons enter into a customary confidentiality agreement for the benefit of the Group Members) to visit and inspect the financial records and the other properties of the Group Members, including the Terminal Storage Facility, in any case, at reasonable times, upon reasonable prior notice to the Holdings and the Buyers, and as often as reasonably requested without limitation, but only while an Event of Default is continuing, and to make extracts from and copies of such financial records, and permit any Persons designated by the Sellers or the Sellers upon reasonable prior notice to Holdings and the Buyers to discuss the affairs, finances and condition of the Grantors and their Subsidiaries with the officers thereof and independent accountants therefor (subject to reasonable requirements of safety and confidentiality, including requirements imposed by law or by contract). Notwithstanding the foregoing, no Person shall be required to permit the inspection of any information (a) that constitutes trade secrets or proprietary information with respect to any Person, (b) in respect of which disclosure to the Sellers or any of their respective representatives would violate (i) any confidentiality agreement of such Person or (ii) applicable Legal Requirements or (c) that is subject to attorney client or similar privilege or constitutes attorney work product; provided that each Grantor and their Subsidiaries shall use commercially reasonable efforts to obtain the agreement of any third-party necessary in order to disclose information that such Person would otherwise not be required to permit the inspection of pursuant to clause (b)(i) or (c) above; provided, further that if the Sellers requests the inspection of any information described in the foregoing clauses (a) through (c) in accordance with this Section 5.04, and any Grantor or its Subsidiary does not provide such information to the Sellers, then Holdings and the Buyers shall so notify the Sellers.

Section 5.05. Compliance with Laws; Permits.

(a) Subject to the accuracy of Section 4.4(c) of the Purchase Agreement, each of Holdings and the Buyers shall comply, and shall cause each of the other Grantors to comply with all Legal Requirements, including Legal Requirements relating to equal employment opportunity, employee benefit plans and employee safety, except such non-compliance as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Subject to the accuracy of Section 4.4(c) of the Purchase Agreement, each of Holdings and the Buyers shall, and shall cause each of the other Grantors to, obtain, maintain in full force and effect and comply with all Permits necessary to the ownership of their respective properties or to the conduct of

their respective businesses, except to the extent that a failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 5.06. Information Regarding Collateral.

(a) Each of the Holdings and the Buyers shall furnish to the Sellers prompt written notice no later than 30 days prior to the occurrence of any change in (i) the legal name of any Grantor, as set forth in its Organizational Documents or (ii) the jurisdiction of organization or the form of organization of any Grantor, (iii) the location of the chief executive office of any Grantor or (iv) with respect to any Grantor organized under the laws of a jurisdiction that requires such information to be set forth on the face of a UCC financing statement, the organizational number, if any, or the Federal Tax Payer of such Grantor. Each of Holdings and the Buyers agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Sellers to continue at all times following such change to have a valid, legal and perfected (to the extent perfection is required by this Agreement) security interest in all the Collateral.

(b) In the event that any Grantor hereafter acquires any Collateral of a type described in Section 2.01(n) or any other interest in property that is of a type where a security interest or Lien must be or may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation, it shall promptly notify the Sellers thereof in writing and take such actions and execute such documents and make such filings all at such Grantor's expense as the Sellers may reasonably request in order to ensure that they have a valid, perfected (to the extent perfection is required by this Agreement), first priority security interest in such Collateral, subject in the case of priority only, to any Permitted Liens.

(c) Except as provided in the next sentence, in the event any Grantor receives any dividends, interest or distributions on any Pledged Ownership Interest or other Investment Property, upon the merger, consolidation, liquidation or dissolution of any issuer of any Pledged Ownership Interest or Investment Property, then (i) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (ii) such Grantor shall immediately take all steps, if any, reasonably necessary or advisable to ensure the validity, perfection, priority and, if applicable, "control" (within the meaning of Sections 9-104, 9-105, 9-106, and 9-107 of the UCC) of the Sellers over such Investment Property (including delivery thereof to the Sellers if applicable) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Sellers and shall segregate such dividends, distributions, securities or other property from all other property of such Grantor; provided, however that the foregoing shall not restrict the payment by any Grantor of any Restricted Payment permitted by this Agreement.

(d) If any Pledged Ownership Interests are not securities (for the purposes of the UCC) on the date hereof, no Grantor shall vote to enable or take any other action to cause any Issuer to elect or otherwise take any action to cause such Pledged Ownership Interests to be treated as securities for purposes of the UCC; provided, however, notwithstanding the foregoing, if any Issuer takes any such action in violation of the foregoing in this clause (d), such Grantor shall promptly notify the Sellers in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Sellers'

“control” (within the meaning of Section 8-106 of the UCC) thereof. If any Pledged Ownership Interests are securities (for the purposes of the UCC) on the date hereof, no Grantor shall vote to enable or take any other action to cause any Issuer to elect or otherwise take any action to cause such Pledged Ownership Interests to not be treated as securities for purposes of the UCC; provided, however, notwithstanding the foregoing, if any Issuer takes any such action in violation of the foregoing in this clause (d), such Grantor shall promptly notify the Sellers in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Sellers’ “control” (within the meaning of Section 8-106 of the UCC) thereof.

(e) Each Grantor will defend all of the material rights, title and interests of the Sellers in and to the Collateral against the claims and demands of all Persons whomsoever.

Section 5.07. Perfection.

(a) Each Grantor shall promptly from time to time, at the expense and cost of such Grantor, give, execute, deliver, file, record, authorize or obtain, and hereby authorizes the Sellers to file, such financing statements and continuation statements and other notices, instruments, documents, agreements or consents in such offices as are or shall be reasonably necessary or as the Sellers may reasonably determine to be appropriate to create, perfect (to the extent perfection is required by this Agreement) and establish the priority of the liens granted by this Agreement in any and all of the Collateral, to preserve the validity, perfection (to the extent perfection is required by this Agreement) or priority of the liens granted by this Agreement in any and all of the Collateral or to enable the Sellers to exercise their remedies, rights, powers and privileges under this Agreement.

(b) Each Grantor shall:

(a) deliver to the Sellers any and all certificates for all Certificated Securities pledged hereunder, including those identified in Schedule 2, duly endorsed in blank;

(b) with respect to any part of the Ownership Collateral that constitutes an Uncertificated Security pledged hereunder, cause any issuer thereof to register the Sellers as the registered owner of such Uncertificated Security or to enter into agreements to establish the Sellers’ “control” (within the meaning of Section 8-106 of the UCC) over such Uncertificated Securities;

(c) deliver to the Sellers any and all Instruments pledged hereunder and evidencing a right to the payment of a monetary obligation, endorsed or accompanied by such instruments of assignment and transfer in such form and substance as the Sellers may reasonably request; and

(d) take all such other actions, and authenticate or sign and file or record such other records or instruments, as are necessary or as the Sellers may reasonably request to perfect (to the extent perfection is required by this Agreement) and establish the priority of the Liens granted by this Agreement in any and all of the Collateral, to preserve the validity, perfection (to the extent perfection is required by this Agreement) or priority of the Liens granted by this Agreement in any and all of the Collateral or to enable the Sellers to exercise its remedies, rights, powers and privileges

under this Agreement, including, during the continuance of an Event of Default, by causing any or all of the Collateral to be transferred of record into the name of the Sellers as such (and the Sellers agree that if any Collateral is transferred into its name, the Sellers will thereafter, upon the request of any Grantor and at such Grantor's expense, promptly give to such Grantor copies of any notices and communications received by it with respect to the Collateral pledged by such Grantor hereunder) and by exercising the right at any time to exchange certificates or instruments representing or evidencing any of the Equity Interests for certificates or instruments of smaller or larger denominations.

(c) The Sellers are hereby authorized to file (at the expense and cost of the Grantors) financing or continuation statements, intellectual property security agreements and amendments to any of the foregoing, in any jurisdictions and with any filing offices as the Sellers may reasonably determine are necessary or advisable to perfect or otherwise protect the security interest granted to the Sellers herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Sellers may reasonably determine is necessary or advisable, including describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired" or words of similar effect. Each Grantor shall furnish to the Sellers from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Sellers may reasonably request, all in reasonable detail. Notwithstanding anything to the contrary contained in this Agreement, the Sellers shall not be responsible for filing any UCC financing statements (or amendments or continuations thereof) or recording any documents or instruments in any public office at any time.

(d) With respect to any Commodity Accounts and Commodity Contracts included in the Collateral, each Grantor shall ensure that the Sellers have control thereof in a manner reasonably acceptable to the Sellers.

(e) With respect any Electronic Chattel Paper or "transferable record" (as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) included in the Collateral that evidences a monetary obligation in excess of \$1,000,000 individually or in the aggregate, each Grantor shall ensure that the Sellers have "control" (within the meaning of Section 9-105 of the UCC) thereof.

(f) Notwithstanding anything to the contrary contained herein, this Agreement shall not require the perfection of (a) security interests in Deposit Accounts or Securities Accounts by "control" (within the meaning of Sections 9-104 and 9-106 of the UCC) or (b) pledges of or security interests in particular assets of the Grantors, if, and for so long as Sellers, in consultation with Holdings and the Buyers, determine that the cost of perfecting such pledges or security interests in such assets (taking into account any adverse tax consequences to the Buyer and its Affiliates (including the imposition of withholding or other material taxes)) shall be excessive in view of the benefits to be obtained by the Sellers therefrom.

Section 5.08. Special Provisions Relating to Securities. Unless and until an Event of Default shall have occurred and be continuing and the Sellers shall have given notice to the applicable Grantor of the Sellers' intent to exercise such rights (it being acknowledged and agreed that the Sellers shall not be required to deliver any such notice if not permitted under any Debtor Relief Laws), each Grantor shall have the right to exercise all voting, consensual and other powers of ownership pertaining to all Collateral for all purposes not inconsistent with the terms of the this Agreement and the Purchase Agreement; and the Sellers shall, at such Grantor's expense, execute and deliver to such Grantor or cause to be executed and delivered to such Grantor all such proxies, powers of attorney, dividend and other orders and other instruments, without recourse, as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the rights and powers that it is entitled to exercise pursuant to this Section 5.08.

Section 5.09. Instruments. So long as no Event of Default has occurred and is continuing, the Sellers will, promptly upon the request, and at the expense of, such Grantor, make appropriate arrangements for making any Instruments pledged by such Grantor available to such Grantor for purposes of presentation, collection or renewal. Any such arrangement shall be effected, to the extent deemed appropriate by the Sellers, against a trust receipt or like document.

Section 5.10. As to Letter-of-Credit Rights.

(a) Each Grantor, by granting a security interest in its receivables consisting of Letter-of-Credit Rights to the Sellers, intends to (and hereby does) assign to the Sellers its rights (including its contingent rights) to the proceeds of all Related Contracts consisting of letters of credit of which it is or hereafter becomes a beneficiary or assignee. With respect to any Letter- of-Credit Rights included in the Collateral in respect of any letter of credit with a face amount exceeding \$1,000,000 (other than any Letter-of-Credit Rights constituting a Supporting Obligation for a Receivable in which the Sellers have a valid and perfected security interest), the applicable Grantor shall notify the Sellers thereof promptly upon the issuance of such letter of credit and, promptly upon request by the Sellers, such Grantor shall ensure that the Sellers have "control" (within the meaning of Section 9-107 of the UCC) thereof by obtaining the written consent of the issuer of such letter of credit to the assignment of the proceeds of such letter of credit to the Sellers

(b) Upon the occurrence and continuation of an Event of Default, the applicable Grantor will, promptly upon request by the Sellers, (i) notify (and such Grantor hereby authorizes the Sellers to notify) the issuer and each nominated person with respect to each of the Related Contracts consisting of letters of credit that the proceeds thereof have been assigned to the Sellers hereunder and any payments due or to become due in respect thereof are to be made directly to the Sellers or their designees and (ii) to the extent permitted by the terms of such letter of credit, arrange for the Sellers to become the transferee beneficiary of any such letter of credit.

Section 5.11. Grantor's Rights. Unless and until an Event of Default shall have occurred and be continuing and the Sellers shall have given notice to the applicable Grantor of the Sellers' intent to exercise such rights (it being acknowledged and agreed that the Sellers shall not be required to deliver any such notice if not permitted under any Debtor Relief Laws), each Grantor shall have the right, and shall be

entitled to, use and possess the Collateral and exercise all of its rights in respect of the Collateral (except as limited herein).

ARTICLE VI

NEGATIVE COVENANTS

Each of Holdings and the Buyers covenant and agree with the Sellers that, until the Discharge Date, each of Holdings and the Buyers shall, and shall cause the other Grantor to, abide by the following negative covenants.

Section 6.01. Lien s. None of the Grantors shall incur any Liens on its assets other than Permitted Liens.

Section 6.02. Indebtednes s. None of the Grantors shall incur, create, assume or be liable for any Indebtedness, other than the Obligations.

Section 6.03. Restricted Payments. (a) None of the Grantors shall make payments which are Restricted Payments, other than:

(i) Restricted Payments made by any Subsidiary of the Buyers in respect of its Equity Interests ratably to the holders of such Equity Interests;

(ii) distributions paid by Holdings with respect to its Equity Interests payable solely in additional Equity Interests (other than Preferred Interests); and

(iii) other Restricted Payments; provided that no Default or Event of Default shall have occurred and be continuing or would result therefrom and the conditions specified in either Section 6.03(a)(iii) or 6.03(a)(iv), each as in effect on the Closing Date, of the HFOTCO Credit Agreement as satisfied at the time of and immediately after giving effect to such Restricted Payment.

Section 6.04. Sale of Assets. None of the Grantors shall sell, lease, transfer or otherwise Dispose of any of its assets (excluding Equity Interests in its direct Subsidiaries, Dispositions of which are addressed in Section 6.05(b)(ii)), except Dispositions of cash not otherwise restricted by this Agreement, Restricted Payments permitted under Section 6.03 and Permitted Investments.

Section 6.05. Business Activities.

(a) The Grantors shall not engage in any business, operations or activity except the holding of the Equity Interests (in the case Holdings in the Buyers, in the case of the Buyers in OpCo Parent, and in the case of OpCo Parent, in OpCo Intermediate Parent), the performance of their respective obligations under, and, subject to any limitations in this Agreement or the other Transaction Documents, the exercise of their respective rights under this Agreement, the other Transaction Documents, the Organizational Documents of their respective direct Subsidiaries, and activities incidental thereto. Except as permitted under this Agreement or the other Transaction Documents, the Grantors shall not become a party to any contract or instrument other than this Agreement, the other Transaction Documents, and the

Organizational Documents of their respective direct Subsidiaries, and will not incur any liabilities, contingent or otherwise, except under this Agreement, the other Transaction Documents, the Organizational Documents of their respective Direct Subsidiaries, or incidental to the foregoing activities.

(b) The Grantors shall not (i) form any new direct subsidiaries or otherwise acquire direct ownership of any Person other than their direct Subsidiaries as of the Closing Date, or (ii) sell, transfer, assign or otherwise Dispose of the Equity Interests of their direct Subsidiaries (other than as may be required by this Agreement or the other Transaction Documents upon the enforcement by the Sellers of any of its rights or remedies hereunder or thereunder).

Section 6.06. No Liquidation, Merger or Consolidation; Name Changes.

(a) None of the Grantors shall liquidate, wind-up or dissolve, or sell, lease or otherwise transfer or Dispose of all or substantially all of its property, assets or business or combine, merge into or consolidate with any other Person, or permit any other Person to combine, merge into or consolidate with it.

(b) Without limiting any prohibitions or restrictions on mergers or other transactions set forth herein, no Grantor shall (i) establish any trade names or (ii) agree to or authorize any modification of the terms of any item of Collateral that would result in a change thereof from one UCC category to another such category, if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of "control" (within the meaning of Sections 9-104, 9-105, 9-106, and 9-107 of the UCC) over such item of Collateral, unless (in each case) it shall have (A) notified the Sellers in writing at least 30 days prior to any such change or establishment, identifying such new proposed trade name and providing such other information in connection therewith as the Sellers may reasonably request and (B) taken all actions necessary or advisable to maintain the continuous validity, perfection (to the extent perfection is required by this Agreement) and the same or better priority of the Sellers' security interest in the Collateral granted or intended to be granted and agreed to hereby, which in the case of any merger or other change in corporate structure shall include executing and delivering to the Sellers a supplement to the schedules attached hereto, upon completion of such merger or other change in corporate structure.

Section 6.07. Permitted Investments. None of the Grantors shall purchase or acquire, hold, make or otherwise suffer to exist any Investments in any other Person, or make any Acquisition, in each case other than Permitted Investments and the guarantees thereof under Section 3.01 of this Agreement.

Section 6.08. Transactions with Affiliates. None of the Grantors shall directly or indirectly enter into any transaction or series of related transactions with or for the benefit of any of its Affiliates, including SemGroup, except for (a) transactions in the ordinary course of business on fair and reasonable terms that, taken as a whole, are no less favorable to Grantors, as applicable, than those which would be included in an arm's-length transaction with a non-Affiliate, (b) transactions between or among the Grantors not involving any other Affiliate, (c) the payment of fees and indemnities to directors, officers, consultants and employees of any of the Grantors in the ordinary course of business, (e) the making of Restricted Payments permitted under Section 6.03 hereof, (f) the making of Investments permitted under Section 6.07

hereof, customary intercompany services arrangements and (h) the transactions set forth on Schedule 6.08. None of OpCo Intermediate Parent, HFOTCO and any Subsidiary of HFOTCO shall directly or indirectly enter into any transaction or series of related transactions with or for the benefit of any of its Affiliates, including SemGroup, except to the extent permitted under the HFOTCO Credit Agreement as in effect on the Closing Date or as set forth on Schedule 6.08.

Section 6.09. Amendments to Material Agreements. None of the Group Members will amend, modify or waive any of its rights under (a) any Bond Document or HFOTCO Credit Agreement Document or (b) its Organizational Documents, including the HFOTCO Company Agreement, in each case, to the extent such amendment, modification or waiver could reasonably be expected to be adverse in any material respect to the Sellers. None of the Grantors, OpCo Intermediate Parent or HFOTCO shall, to the extent applicable, amend, modify or waive any of its rights under their respective limited liability company agreement in any manner which shall alter the “separateness covenants” contained therein or to opt out of Article 8 of the UCC, to the extent such amendment, modification or waiver could reasonably be expected to materially and adversely affect (i) the ability of the Buyers to pay the Installment Payment when due or (ii) the value of the Collateral.

Section 6.10. Restrictive Agreements. None of the Grantors shall become subject to any contractual restrictions upon (a) the ability of the Grantors to create, incur or permit to exist any Lien upon the Collateral to secure the Obligations or (b) the ability of the Grantors to pay dividends or other distributions with respect to its Equity Interests or to make or repay loans or advances to the other Group Members; provided that the foregoing shall not apply to:

(a) restrictions in the Organizational Documents of the Grantors as in effect on the Closing Date;

(b) restrictions in the Transaction Documents;

(c) restrictions and conditions imposed by the Bond Facility Agreement or the HFOTCO Credit Agreement as in effect on the Closing Date, or any agreement or document governing or evidencing Indebtedness or Refinancing Indebtedness in respect thereof, in each case permitted under clause (b) of the definition of the term “Permitted Debt” as defined in the HFOTCO Credit Agreement as in effect on the Closing Date, provided that the restrictions and conditions contained in any such agreements or documents, taken as a whole, are not less favorable to the Sellers than the restrictions and conditions imposed by the Bond Facility Agreement or the HFOTCO Credit Agreement, as applicable, as in effect on the Closing Date; or

(d) restrictions and conditions existing on the Closing Date identified on Annex II (but shall apply to any extension, renewal, amendment or modification expanding the scope of any such restriction or condition).

Nothing in this paragraph shall be deemed to modify the requirements set forth in the definition of the term “Collateral and Guarantee Requirement” or the obligations of the Grantors under Sections 5.06, 5.07, 5.08 or under the other Transaction Documents.

For the avoidance of doubt, notwithstanding the foregoing Article VI, each of the Grantors may enter into agreements with respect to or otherwise agree to take any of the actions otherwise restricted by this Article VI, so long as the effectiveness of any action restricted by Article VI is contingent upon the occurrence of the Discharge Date, and no obligations or liabilities, whether for payment or performance or observance of covenants, in each case, that would otherwise be restricted by this Article VI shall accrue with respect to such agreements prior to the Discharge Date.

ARTICLE VII

EVENTS OF DEFAULT

Section 7.01. Events of Default. The occurrence of any of the following events shall constitute an event of default hereunder (each, an “Event of Default”):

(a) Misrepresentatio ns. Any representation, warranty or certification made or deemed made by any Grantor in Article IV of this Agreement or in Section 5.2 of the Purchase Agreement (to the extent relating to the due authorization, execution and delivery of the Purchase Agreement by Buyers and the enforceability of the obligation of Buyers to pay the Installment Payment) shall prove to have been false or misleading in any material respect when so made, deemed made or furnished by the applicable Grantor.

(b) Payment Default. Default shall be made in the payment of Installment Payment to the full extent owed when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise pursuant to this Agreement or the Purchase Agreement.

(c) Immediate Covenant Default. Default shall be made in the due observance or performance by the Grantors of any covenant, condition or agreement contained in Section 5.01(a), Section 5.03(a), or in Article VI, provided that with respect to a Default of observance or performance of Article VI, if such Default shall (i) be incapable of being remedied within five days (or, if longer, three Business Days), (ii) have had, as of the time of determination, no adverse effect on the value of the Collateral and (iii) does not result in an immediate Event of Default (or similar term) under the HFOTCO Credit Agreement Documents or any Bond Document, then such Default shall not constitute an Event of Default under this Section 7.01(c) unless it shall continue unremedied for a period of five days (or, if longer, three Business Days) after the earlier to occur of (x) written notice thereof having been given to the Buyers by the Sellers or (y) the date on which a Responsible Officer of the applicable Grantor first obtains actual knowledge of such Default.

(d) Covenant Default with Cure. Default shall be made in the due observance or performance by the Grantors of any covenant, condition or agreement contained in this Agreement (other than under clauses (b) or (c) above), and such Default shall continue unremedied for a period of 30 days after the earlier to occur of (i) written notice thereof having been given to the Buyers by the Sellers or (ii) the date on which a Responsible Officer of the applicable Grantor first obtains actual knowledge of such Default.

(e) Cross Default. The occurrence of an “Event of Default” pursuant to the HFOTCO Credit Agreement Documents or any Bond Document, irrespective of whether such event or condition results in any Indebtedness becoming due prior to its scheduled maturity, unless waived by the lenders party thereto so long as such waiver does not have a material and adverse affect on (i) the ability of Buyers to pay the Installment Payment when due or (ii) the value of the Collateral.

(f) Involuntary Bankruptcy. An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of SemGroup or any Group Member or of a substantial part of the property or assets of SemGroup or any Group Member under the U.S. Bankruptcy Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for SemGroup or any Group Member or for a substantial part of the property or assets of SemGroup or any Group Member or (iii) the winding-up or liquidation of SemGroup or any Group Member and in each case such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered.

(g) Voluntary Bankruptcy. SemGroup or any Group Member shall (i) voluntarily commence any proceeding or file any petition seeking relief under the U.S. Bankruptcy Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (g) above, (iii) apply for, request or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for SemGroup or any Group Member or for a substantial part of the property or assets of SemGroup or any Group Member, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(h) Judgments. One or more judgments or orders for the payment of money in excess of \$10,000,000 in the aggregate (taking into account any insurance proceeds payable under a policy where the insurer has accepted coverage without reservation) shall be rendered against any of the Grantors by a Governmental Authority of competent jurisdiction and such judgment or order is not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or is not discharged within 60 days after the expiration of such stay.

(i) Transaction Documentation. (i) This Agreement or any material provision of the Purchase Agreement relating to the Installment Payment shall cease to be in full force and effect (other than against the Sellers) or shall be declared void by a Governmental Authority, or any party thereto (other than the Sellers) shall claim such unenforceability or invalidity, (ii) the Guarantee purported to be created under the Guaranty Agreement shall cease to be, or shall be asserted by any Grantor not to be, in full force and effect or (iii) any security interest in the Collateral purported to be created by any Security Document shall cease to be, or shall be

asserted in writing by any Grantor not to be, a valid and perfected security interest (having the priority required by this Agreement or the relevant Security Document) in the securities, assets or properties covered thereby; provided, however, in the case of each of clause (iii), that the primary underlying fact or circumstances permitting or cause of any of the foregoing is not the loss by Sellers or any of their Affiliates of any certificates for Certificated Securities pledged hereunder and delivered to the Seller.

(j) Change of Control. A Change of Control shall have occurred.

Section 7.02. Acceleration of Obligations.

(a) Upon the occurrence and during the continuation of an Event of Default (other than an Event of Default described in paragraph (f) or (g) of Section 7.01), and at any time thereafter during the continuation of such Event of Default, the Sellers, may, by notice to the Buyers, declare the Installment Payment to be forthwith due and payable in whole or in part, whereupon the Installment Payment, shall become forthwith due and payable, together with any and all other Obligations.

(b) In the case of any event described in paragraph (f) or (g) of Section 7.01, the Installment Payment and all other Obligations shall automatically become due and payable, in each case, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by each of the Grantors, anything contained herein to the contrary notwithstanding.

Section 7.03. Further Remedies. Without limiting the rights, powers and privileges of the Sellers under Article II or Section 7.02 or in any other Transaction Document, if any Event of Default shall have occurred and be continuing:

(a) The Sellers in their discretion may require any Grantor to, and such Grantor shall, assemble the Collateral owned by it at such place or places reasonably convenient to both the Sellers and such Grantor.

(b) The Sellers in their discretion may make any reasonable compromise or settlement it deems desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, all or any part of the Collateral.

(c) The Sellers in their discretion may, in its name or in the name of any Grantor or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for all or any part of the Collateral, but shall be under no obligation to do so.

(d) Until the Discharge Date, to the maximum extent permitted by applicable Governmental Rules, the Sellers in their discretion may, upon thirty (30) days' prior written notice to Holdings and the Buyers of the time and place, with respect to all or any part of the Collateral which shall then be or shall thereafter come into the possession, custody or control of the Sellers or any of its agents, sell, lease or otherwise dispose of all or any part of such Collateral, at such place or places as the Sellers

deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) and at public or private sale, without demand of performance or notice of intention to effect any such disposition or of time or place of any such sale (except such notice as is required above or by Governmental Rule and cannot be waived), and the Sellers or any other Person may be the purchaser, lessee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by applicable Governmental Rules, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of any Grantor, any such demand, notice and right or equity being hereby expressly waived and released. The Sellers may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

(e) The Sellers shall have, and in their discretion may exercise, all of the rights, remedies, powers and privileges with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of this Agreement or the Collateral may be asserted, including the right, to the maximum extent permitted by Governmental Rule, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral (including the Security Collateral) as if the Sellers were the sole and absolute owner of the Collateral (and each Grantor agrees to take all such action as may be appropriate to give effect to such right).

(f) The Sellers in their discretion may, to the full extent provided by law, have a court having jurisdiction appoint a receiver, which receiver shall take charge and possession of and protect, preserve, replace and repair the Collateral or any part thereof, and manage and operate the same, and receive and collect all rents, income, receipts, royalties, revenues, issues and profits therefrom. Each Grantor irrevocably consents and, to the full extent permitted by law, shall be deemed to have hereby irrevocably consented to the appointment thereof, and upon such appointment each Grantor shall promptly deliver possession of any such Collateral then in its possession to the receiver. Each Grantor also irrevocably consents to the entry of an order authorizing such receiver to invest upon interest any funds held or received by the receiver in connection with such receivership. To the full extent permitted by law, the Sellers shall be entitled to such appointment as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy of the security of the Collateral.

(g) The Sellers in their discretion may enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent the Sellers from pursuing any other or further remedy which it may have hereunder or by law, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release any Grantor until the Discharge Date. Each Grantor shall reimburse the Sellers promptly upon demand for the costs and expenses (including reasonable attorneys' fees, transfer taxes and any other charges) incurred by the Sellers in connection with any sale, disposition, repair, replacement, alteration, addition, improvement or retention of any Collateral hereunder.

(h) If, at any time when the Sellers shall determine to exercise their right to sell the whole or any part of the Ownership Collateral hereunder, such Ownership Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Act, then the Sellers may (subject only to applicable Governmental Rules), sell such Ownership Collateral or part thereof by private sale in such manner and under such circumstances as the Sellers may deem necessary or advisable, but subject to the other requirements of this Section 7.03, and shall not be required to effect such registration or to cause the same to be effected. Without limiting the generality of the foregoing, in any such event, the Sellers may (i) in accordance with applicable securities laws, proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Ownership Collateral or part thereof could be or shall have been filed under said Act, (ii) approach and negotiate with a single possible purchaser to effect such sale, and (iii) restrict such sale to a purchaser who is an accredited investor under the Act and who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Ownership Collateral or any part thereof. In addition to a private sale as provided above in this Section 7.03, if any of the Ownership Collateral shall not be freely distributable to the public without registration under the Act (or similar statute) at the time of any proposed sale pursuant to this Section 7.03, then the Sellers shall not be required to effect such registration or cause the same to be effected but (subject only to applicable Governmental Rules) may require that any sale hereunder (including a sale at auction) be conducted subject to restrictions:

(i) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale;

(ii) as to the content of legends to be placed upon any certificates representing the Ownership Collateral sold in such sale, including restrictions on future transfer thereof;

(iii) as to the representations required to be made by each Person bidding or purchasing at such sale relating to that Person's access to financial information about the Grantors and such Person's intentions as to the holding of the Ownership Collateral so sold for investment for its own account and not with a view to the distribution thereof; and

(iv) as to such other matters as the Sellers may deem necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be effected in compliance with the U.S. Bankruptcy Code and other laws affecting the enforcement of creditors' right and the Act and all applicable state securities laws.

(i) The Sellers in their discretion may generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Collateral as fully and completely as though the Sellers were the absolute owner thereof for all purposes, and do, at the Sellers' option and each Grantor's expense, at any time, or from time to time, all acts and things that the Sellers reasonably deems necessary to protect, preserve or realize upon the Collateral and the Sellers' Liens thereon and to effect the intent of

this Agreement, all as fully and effectively as any Grantor might do.

(j) (i) The Sellers in their discretion may and shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property, and (ii) any or all of the Investment Property shall be registered in the name of the Sellers or their nominee, and the Sellers or their nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Sellers of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Sellers may determine), all without liability except to account for property actually received by it, but the Sellers shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(k) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Sellers in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Investment Property directly to the Sellers.

(l) The Sellers may exercise any other remedies available to a secured or unsecured creditor at law or equity or under the UCC.

The proceeds of, and other realization upon, the Collateral by virtue of the exercise of remedies under this Section 7.03 shall be deposited in to a Collateral Account or such other account designated by the Sellers and applied in accordance with Section 7.08.

Section 7.04. Deficiency. If the proceeds of, or other realization upon, the Collateral by virtue of the exercise of remedies under Section 7.03 are insufficient to cover the costs and expenses of such exercise and the payment in full of the Obligations, the Grantors shall remain jointly and severally liable for any deficiency.

Section 7.05. Private Sale.

(a) The Sellers shall not incur any liability as a result of the sale, lease or other Disposition of all or any part of the Collateral at any private sale pursuant to Section 7.03 conducted in good faith and in a commercially reasonable manner. Without limiting the foregoing, each Grantor hereby waives any claims against the Sellers arising by reason of the fact that the price at which the Collateral may have been

sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Sellers accepts the first offer received and does not offer the Collateral to more than one offeree.

(b) Each Grantor recognizes that, by reason of certain prohibitions contained in the Act and applicable state securities laws, the Sellers may be compelled, with respect to any sale of all or any part of the Collateral pursuant to, or otherwise in compliance with, Section 7.03, to limit purchasers to those who will agree, among other things to acquire the Collateral for their own account, for investment and not with a view to distribution or resale. Each Grantor acknowledges that any such private sales may be at prices and on terms less favorable to the Sellers than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agree that any such private sale conducted in compliance with this Agreement shall be deemed to have been made in a commercially reasonable manner and that the Sellers shall have no obligation to engage in public sales and no obligation to delay the sale of any Collateral for the period of time necessary to permit the respective issuer of such Collateral to register it for public sale.

(c) Sellers shall not sell Ownership Collateral to Sellers or any Affiliate of Sellers without the prior written consent of Holdings; provided that Sellers may credit bid at any public sale of the Ownership Collateral. Notwithstanding the foregoing, nothing in this Section 7.05(c) shall otherwise limit the ability of the Sellers or their Affiliates to take possession or control of the Collateral or take any other remedies available under this Agreement or any other Transaction Document.

Section 7.06. Sellers Appointed Attorney-in-Fact. Each Grantor hereby irrevocably appoints the Sellers as such Grantor's attorney-in-fact, with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, at such Grantor's sole cost and expense, from time to time to take any and all actions authorized or permitted to be taken by the Sellers under the Purchase Agreement with respect to enforcing its rights and remedies arising out of Section 2.2(c) thereto and under this Agreement, including the power to:

(a) take any action and execute any instrument which the Sellers may deem necessary or advisable to accomplish the purposes of this Agreement;

(b) ask for, demand, collect, sue for, recover, receive and give acquittance and receipts for moneys due and to become due under or in connection with all or any part of the Collateral;

(c) receive, indorse, and collect any drafts or other instruments, documents and chattel paper in connection therewith, all as the Sellers may reasonably determine necessary;

(d) file any claims or take any action or institute any proceedings which the Sellers may deem to be necessary or desirable for the collection of any of the Collateral or to enforce compliance with the terms and conditions of this Agreement or the payment of the Obligations;

(e) direct any party liable for any payment under any Collateral to make payment of any monies due or to become due thereunder directly to the Sellers or as the Sellers shall direct;

(f) commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect any Collateral and to enforce any other right in respect of any Collateral;

(g) defend any suit, action or proceeding brought against any Grantor with respect to any Collateral;

(h) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Sellers may deem appropriate; and

(i) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Collateral as fully and completely as though the Sellers were the absolute owner thereof for all purposes, and do, at the Sellers' option and each Grantor's expense, at any time, or from time to time, all acts and things that the Sellers reasonably deems necessary to protect, preserve or realize upon the Collateral and the Sellers' Liens thereon and to effect the intent of this Agreement, all as fully and effectively as any Grantor might do;

provided, however, that so long as no Event of Default shall have occurred and be continuing, the Sellers shall not exercise any of the aforementioned rights. This power of attorney is a power coupled with an interest and shall be irrevocable until the Discharge Date and is conferred on the Sellers solely to protect, preserve and realize upon its security interest in the Collateral. Each Grantor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof, in each case pursuant to the powers granted hereunder. Each Grantor hereby acknowledges and agrees that the Sellers shall have no fiduciary duties to any Grantor in acting pursuant to this power-of-attorney, and each Grantor hereby waives any claims or rights of a beneficiary of a fiduciary relationship hereunder.

Section 7.07. Cash Proceeds; Deposit Accounts. If any Event of Default shall have occurred and be continuing, in addition to the rights of the Sellers otherwise specified in this Agreement, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other near-cash items (collectively, "Cash Proceeds") shall be held by such Grantor in trust for the Sellers, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Sellers in the exact form received by such Grantor (duly indorsed by such Grantor to the Sellers, if required) and held by the Sellers in one or more accounts established by the Sellers under the sole dominion and control of the Sellers (collectively, the "Collateral Accounts"). Any Cash Proceeds received by the Sellers (whether from a Grantor or otherwise) may, in the sole discretion of the Sellers, (i) be held by the Sellers, as collateral security for the Obligations (whether matured or unmatured) and/or (ii) then or at any time thereafter may be applied by the Sellers against the Obligations then due and owing.

Section 7.08. Application of Proceeds. Upon the occurrence and during the continuance of an Event of Default, all Proceeds received by the Sellers under this Agreement shall be applied as follows:

(i) FIRST, to the payment of all costs and expenses of the sale, collection or other liquidation of the Collateral, including fees, charges and disbursements of counsel of the Sellers, and all other expenses, liabilities and advances made or incurred by the Sellers in connection therewith, and all amounts for which the Sellers are entitled to payment under Section 8.05 and such amounts paid or required to be paid (including any redemption or tender premiums and new issuance, arrangement, underwriting or similar fees, costs and expenses) to any lender, debt holder, financing source, agent, trustee or other representative with respect to any Indebtedness of any Group Member that is required to be amended, modified, refinanced or otherwise replaced in connection with, as a result of, or due to, the of any right or remedy (including the sale, transfer or other Disposition of any Collateral by the Sellers to any other Person) under this Agreement or claims arising out of Section 2.2(c) of the Purchase Agreement, and to the payment of all costs and expenses paid or incurred by the Sellers in connection with the exercise of any right or remedy under this Agreement or claims arising out of Section 2.2(c) of the Purchase Agreement, all in accordance with the terms thereof;

(ii) SECOND, to the extent of any excess of such Proceeds, to the indefeasible payment in full in cash of the other Obligations including the payment of the Installment Payment pursuant to the terms of the Purchase Agreement and Section 7.02 hereto; and

(iii) THIRD, to the extent of any excess of such Proceeds, to the payment to Holdings or to whosoever may be lawfully entitled to receive the same as a court of competent jurisdiction may direct.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Notices.

(a) Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, to the applicable address set forth on Annex I.

(b) Notices and other communications to the Sellers hereunder may be delivered or furnished by electronic communications pursuant to procedures set forth in Section 8.14 or as otherwise approved by the Sellers. The Sellers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; and provided, further, that approval of such procedures may be limited to particular notices or communications.

(c) All notices and other communications given to any party hereto in compliance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by

hand or overnight courier service, sent by telecopy or (to the extent permitted by paragraph (b) above) electronic means or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 8.01 or in compliance with the latest unrevoked direction from such party given in compliance with this Section 8.01.

(d) Any party hereto may change its address for notices and other communications hereunder by notice to the other parties hereto.

Section 8.02. Survival of Agreement. All covenants, agreements, representations and warranties made by each of the Grantors in this Agreement and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Sellers and shall survive the execution and delivery of this Agreement, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect until the Discharge Date. Without prejudice to the survival of any other agreements contained herein, the indemnification and reimbursement obligations contained herein (including pursuant to Section 8.05) shall survive the Discharge Date.

Section 8.03. Binding Effect. This Agreement shall become effective when it shall have been executed and delivered by Holdings and each of the Buyers and the Sellers and when the Sellers shall have received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Buyers, the Sellers and their respective permitted successors and assigns.

Section 8.04. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) no Grantor may assign or transfer any of its rights or interest in or under this Agreement or delegate any of its obligations under this Agreement without the prior written consent of the Sellers (and any assignment, transfer or delegation without such consent shall be null and void) and (ii) the Sellers may transfer or assign its rights under this Agreement to its Affiliates at any time.

Section 8.05. Expenses; Indemnity.

(a) The Buyers, severally and jointly, agree to pay all actual, reasonable and documented out-of-pocket costs, expenses, charges and disbursements incurred by the Sellers (including disbursements of Simpson Thacher & Bartlett LLP, counsel for the Sellers, or counsel replacing such counsel) in connection with (i) the enforcement of its rights (including any costs of settlement) under this Agreement or Section 2.2(c) of the Purchase Agreement or entered in connection herewith or therewith, and the fees, charges and disbursements of counsel and advisors for the Sellers and costs of settlement, in each case incurred during any workout, restructuring or negotiations in connection with this Agreement or in connection with the custody, use or preservation of, or the sale of, collection from or realization upon, any of the Collateral, including the expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral; and (ii) such amounts paid or required to be paid (including any redemption or tender premiums and new issuance, arrangement, underwriting or similar fees, costs and expenses) to any lender, debt holder, financing source, agent, trustee or other representative with respect to any Indebtedness of any Group Member that is required to be amended, modified, refinanced or otherwise

replaced in connection with, as a result of, or due to, the of any right or remedy (including the sale, transfer or other Disposition of any Collateral by the Sellers to any other Person) under this Agreement.

(b) The Buyers, jointly and severally, agree to indemnify the Sellers, its Related Parties and each of their respective directors, trustees, officers, employees, investment advisors and agents (each such Person being called an "Indemnatee") against, and to hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable and documented counsel fees, charges and disbursements, incurred by or asserted against any Indemnatee (including any such losses, claims, damages, liabilities and related expenses claimed or asserted by any of the Grantors or their Subsidiaries) arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated hereby, or (ii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnatee is a party thereto, in all cases, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) result from the gross negligence or willful misconduct of such Indemnatee or a material breach in bad faith by such Indemnatee of its express obligations under this Agreement, in each case, as determined by the final, non-appealable judgment of a court of competent jurisdiction, or (B) arise out of any proceeding that does not involve an act or omission of any Grantor or its Subsidiaries and that is brought by an Indemnatee against any other Indemnatee. Subject to and without limiting the generality of the foregoing sentence, the Buyers agree, jointly and severally, to indemnify each Indemnatee against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable and documented counsel or consultant fees, charges and disbursements, incurred by or asserted against any Indemnatee arising out of, in any way connected with, or as a result of (1) any environmental claim under environmental laws to the extent related in any way to any of the Grantors, their Subsidiaries or the Terminal Storage Facility or (2) any actual or alleged presence, release or threatened release of hazardous materials at, under, on or from any Real Property, any property owned, leased or operated by any predecessor of any of Grantors, their Subsidiaries or the Terminal Storage Facility, or, to the extent related in any way to any of the Grantors or their Subsidiaries, any property at which any of the Grantors or their Subsidiaries has sent hazardous materials for treatment, storage or disposal; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses result from the gross negligence or willful misconduct of such Indemnatee or any of its Related Parties or a material breach in bad faith by such Indemnatee of its express obligations under this Agreement, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The provisions of this Section 8.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the Transactions, the payment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Transaction Document, or any investigation made by or on behalf of the Sellers. All amounts due under this Section 8.5 shall be payable promptly upon (and in any event within 30 days after) written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) (c) No Indemnitee shall be liable for, and the Buyers hereby agree not to assert any claim against any Indemnitee, on any theory of liability, for consequential, incidental, indirect, punitive or special damages arising out of or otherwise relating to the transactions contemplated by this Agreement.

Section 8.06. APPLICABLE LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE.

Section 8.07. Waivers; Amendment.

(a) No failure or delay of the Sellers in exercising any right or power hereunder or under any other Transaction Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce any such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Sellers hereunder and under the other Transaction Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Transaction Document, or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Buyer or any other Grantor in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(b) This Agreement may not be amended, supplemented, or otherwise modified and no provision thereof may be waived without the written consent of the Sellers and the Grantors.

Section 8.08. Entire Agreement. This Agreement and the other Transaction Documents constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Transaction Documents. Nothing in this Agreement, expressed or implied, is intended to confer upon any party other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 8.09. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.09.

Section 8.10. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Transaction Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 8.11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 8.03. Delivery of an executed counterpart to this Agreement by facsimile transmission or electronic transmission in “.pdf” or comparable format shall be as effective as delivery of a manually signed original.

Section 8.12. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement or any provision hereof.

Section 8.13. Jurisdiction; Consent to Service of Process.

(a) Each of the Holdings and the Buyers and the Sellers hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, or to the extent such court does not have subject matter jurisdiction, the United States District Court for the District of Delaware, and any appellate court from any thereof (the “Chosen Courts”), in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in the Chosen Courts. Each of Holdings and the Buyers further irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties thereto by registered or certified mail, postage prepaid, to Holdings or the applicable Buyer, as the case may be, at the address specified therefor on Annex I. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Sellers may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor or its properties in the courts of any jurisdiction in which such Grantor or any of its properties is located.

(b) Each of Holdings, the Buyers and the Sellers hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in the Chosen Courts. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 8.14. Communications.

(a) Delivery.

(i) Each of the Holdings and the Buyers hereby agrees that it will use all reasonable efforts to provide to the Sellers all information, documents and other materials that it is obligated to furnish to the Sellers pursuant to this Agreement, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (all such communications collectively, the “Communications”), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Sellers at the address referenced on Annex I. Nothing in this Section 8.14 shall prejudice the right of the Sellers, Holdings or the Buyers to give any notice or other communication pursuant to this Agreement in any other manner specified in this Agreement.

(ii) The Sellers agrees that receipt of the Communications by the Sellers at the email address referenced on Annex I shall constitute effective delivery of the Communications to the Sellers for purposes of this Agreement.

Section 8.15. Release of Liens. On the Discharge Date, all security interests created in the Collateral by this Agreement shall be automatically released, and the Sellers shall execute and deliver to any Grantor, or otherwise authorize the filing or recordation without the signature of the Sellers of, at such Grantor’s expense, such instruments as such Grantor may reasonably request to remove the notation of the Sellers as lienholder on any financing statement with respect to such Collateral or to otherwise release the Liens and security interests created by this Agreement on such Collateral, as the case may be.

Section 8.16. Confidentiality. Section 6.4 (other than clause (e)) of the Purchase Agreements is incorporated herein by reference, *mutatis mutandis*.

Section 8.17. No Fiduciary Duty. The Sellers and its Affiliates (collectively, solely for purposes of this paragraph, the “Sellers Parties”), may have economic interests that conflict with those of the Grantors. Each of Holdings and the Buyers agrees that nothing in the Transaction Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Sellers Parties and the Grantors, their respective equityholders or their respective Affiliates. Each of the Holdings and the Buyers acknowledges and agrees that (a) the transactions contemplated by the Transaction Documents are arm’s-length commercial transactions between the Sellers Parties, on the one hand, and the Grantors, on the other, (b) in connection with such transactions (and any matters or processes leading to such transactions), the Sellers Parties are acting solely as a principal and not the agent or fiduciary of any Grantor, any of its affiliates or any of their respective management, equityholders, creditors or any other Person, (c) no Sellers Party assumed an advisory or fiduciary responsibility in favor of any Grantor with respect to the transactions contemplated hereby or by the other Transaction Documents or the matters

or processes leading thereto (irrespective of whether any Sellers Party has advised or is currently advising any Grantor on other matters) or any other obligation to any Grantor except the obligations expressly set forth in the Transaction Documents and (d) each Grantor has consulted its own legal and financial advisors to the extent it deemed appropriate. Each of the Holdings and the Buyers further acknowledges and agrees that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each of the Holdings and the Buyers agrees that it will not claim that any Sellers Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to any Grantor, in connection with such transaction or the process leading thereto.

Section 8.18. Specific Performance. The Sellers may demand specific performance of this Agreement. Each Grantor hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Sellers.

Section 8.19. Security Interest Absolute.

(a) To the maximum extent permitted by applicable law, the rights and remedies of the Sellers hereunder, the Liens created hereby, and the obligations of the Grantors under this Agreement shall be absolute, irrevocable and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including:

(i) the acceleration of the maturity of any of the Obligations or any other change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations or any renewal, extension, amendment or modification of, or addition or supplement to or deletion from, any Transaction Document or any other instrument or agreement referred to therein or related thereto, or any assignment or transfer of any thereof;

(ii) any waiver of, consent to or departure from, extension, indulgence or other action or inaction under or in respect of any of the Obligations, this Agreement, any other Transaction Document or other instrument or agreement relating thereto, or any exercise or non-exercise of any right, remedy, power or privilege under or in respect of the Obligations, this Agreement, any other Transaction Document or any such other instrument or agreement relating thereto;

(iii) any furnishing of any additional security (including any assets, whether now owned or hereafter acquired, upon which a Lien is created or granted from time to time pursuant to the other Transaction Documents) to the Sellers or any other Person or any acceptance thereof by the Sellers or any other Person or any substitution, sale, exchange, release, surrender or realization of or upon any such security by the Sellers or any other Person or the failure to create, preserve, validate, perfect or protect any other Lien granted to, or purported to be granted to, or in favor of, the Sellers or any other Person;

(iv) any invalidity, irregularity or unenforceability of any Transaction Document or any other instrument or agreement referred to therein or related thereto or of all or any part of the Obligations or of any security therefor;

(v) any exchange, release or non-perfection of any other collateral or any release, amendment or waiver of, or consent to any departure from, any guaranty, for all or any of the Obligations;

(vi) any judicial or nonjudicial foreclosure or sale of, or other election of remedies with respect to, any interest in real property or other collateral serving as security for all or any part of the Obligations, even though such foreclosure, sale or election of remedies may impair the subrogation rights of the Grantors or may preclude the Grantors from obtaining reimbursement, contribution, indemnification or other recovery and even though the Grantors may or may not, as a result of such foreclosure, sale or election of remedies, be liable for any deficiency;

(vii) any act or omission of the Sellers or any other Person (other than payment of the Obligations) that directly or indirectly results in or aids the discharge or release of any Grantor or any part of the Obligations or any security or guarantee (including any letter of credit) for all or any part of the Obligations by operation of law or otherwise;

(viii) the election by the Sellers, in any proceedings commenced by or against any Person under any Debtor Relief Law, of the application or non-application of Section 1111(b)(2) of the U.S. Bankruptcy Code;

(ix) any extension of credit or the grant of any Lien under Section 364 of the U.S. Bankruptcy Code;

(x) any use of cash collateral under Section 363 of the U.S. Bankruptcy Code;

(xi) any agreement or stipulation with respect to the provision of adequate protection in any proceedings commenced by or against any Person under any Debtor Relief Law;

(xii) the avoidance of any Lien in favor of the Sellers for any reason;

(xiii) any proceedings commenced by or against any Person under any Debtor Relief Law, including any discharge of, or bar or stay against collecting, all or any part of the Obligations (or any interest on all or any part of the Obligations) in or as a result of any such proceeding; or

(xiv) any other event or circumstance whatsoever which might otherwise constitute a defense available to, or a discharge of, any Grantor, except as otherwise provided herein;

(b) Each Grantor hereby expressly waives, to the maximum extent permitted by law,

- (i) promptness, diligence, presentment, demand for payment or performance and protest;
- (ii) filing of claims with any court;
- (iii) any proceeding to enforce any provision of the Transaction Documents;
- (iv) notice of acceptance of and reliance on this Agreement or any Transaction Document by any Seller;
- (v) notice of the creation of any Obligations, and (except with respect to any notice required by the applicable Transaction Documents relating to the Obligations) any other notice whatsoever;
- (vi) any requirement that the Sellers exhausts any right, power or remedy, or proceed or take any other action against any Grantor under any Transaction Document to which such Grantor is a party or any Lien on, or any claim of payment against, any property of such Grantor or any other agreement or instrument referred to therein, or any other Person under any guarantee of, or Lien securing, or claim for payment of, any of the Obligations;
- (vii) any right to require the Sellers to marshal any Collateral or any other assets or to exhaust any right or take any action against any Grantor or any other Person or any collateral or otherwise, or any diligence in collection or protection for realization upon any Obligations;
- (viii) any obligation hereunder or any collateral security for any of the foregoing;
- (ix) any claims of waiver, release, surrender, alteration or compromise; and
- (x) all other defenses, set-offs, counterclaims, recoupments, reductions, limitations, impairments or terminations, whether arising hereunder or otherwise.

(c) Each Grantor further waives (i) any requirement that any other Person be joined as a party to any proceeding for the enforcement by the Sellers of any Obligations and (ii) the filing of claims by the Sellers in the event of a bankruptcy or liquidation proceeding of such Grantor.

(d) Each Grantor hereby expressly waives, to the maximum extent permitted by applicable law:

(a) any claim that, as to any part of the Collateral, a public sale, should the Sellers elect so to proceed, is, in and of itself, not a commercially reasonable method of sale for the Collateral;

(b) the right to assert in any action or proceeding between it and the Sellers any offsets or counterclaims that it may have;

(c) except as otherwise provided in this Agreement or as otherwise provided by applicable law, any notice as to the time, place and terms of sale or other disposition of any of the Collateral and any other requirements with respect to the enforcement of the Sellers's rights or remedies hereunder;

(d) all rights of redemption, appraisal, valuation, stay and extension or moratorium;

(e) any and all rights it may have to a judicial hearing in advance of the Sellers's enforcement of its rights or remedies hereunder, including the rights following an Event of Default to take immediate possession of the Collateral and to dispose thereof; and

(f) all other rights the exercise of which would, directly or indirectly, prevent, delay or inhibit the enforcement of any of the rights or remedies of the Sellers under this Agreement or the absolute sale of the Collateral, now or hereafter in force under any applicable law, and such Grantor, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waive the benefit of all such laws and rights (other than the defense of payment).

Section 8.20. No Liability. Neither the Sellers, nor any of its respective officers, directors, employees, agents or counsel shall be liable for any action lawfully taken or omitted to be taken by it or them hereunder or under Section 2.2(c) of the Purchase Agreement, or in connection herewith or therewith, except for its or their own bad faith, gross negligence or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, and the duties set forth in Section 9-207 of the UCC, the Sellers shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral, unless the Sellers has agreed in writing to be so obligated. The Sellers shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equivalent to that which the Sellers accords other property of the type of which the Collateral consists in the ordinary course of its day-to-day business.

Section 8.21. Discretionary Action of Sellers. Notwithstanding anything to the contrary contained in this Agreement or in any other Transaction Document, the Sellers shall not be required to exercise any discretionary rights or remedies under this Agreement or give any consent under this Agreement or enter into any agreement amending, modifying, supplementing or waiving any provision of this Agreement .

[Signature pages to follow]

SELLERS:

BUFFALO INVESTOR I, L.P.

By: /s/ Chris Beale

Name: Chris Beale

Title: President

BUFFALO INVESTOR II, L.P.

By: /s/ Chris Beale

Name: Chris Beale

Title: President _____

Signature Page to Guarantee, Pledge & Security Agreement

BUYERS: BEACHHEAD I LLC

By: /s/ Carlin G. Conner
Name: Carlin G. Conner
Title: President

BEACHHEAD II LLC

By: /s/ Carlin G. Conner
Name: Carlin G. Conner Title: President

OTHER GRANTORS: BEACHHEAD HOLDINGS LLC

By: /s/ Carlin G. Conner
Name: Carlin G. Conner
Title: President

**BUFFALO PARENT GULF COAST
TERMINALS LLC**

By: /s/ Carlin G. Conner
Name: Carlin G. Conner
Title: President

Signature Page to Guarantee , Pledge & Security Agreement

Annex I

Notices

If to Sellers, to:

Buffalo Investor I, L.P. Buffalo Investor II, L.P. c/o Alinda Capital Partners 100 West Putnam Avenue Greenwich, CT 06830 Attention: General Counsel Fax: 203-930-3880

with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017 Attention: David Lieberman Fax: (212) 455-2502

If to any Grantor:

C/O SemGroup Corporation Two Warren Place
6120 S. Yale Avenue, Suite 1500
Tulsa, OK 74136 Attention: General Counsel Fax: (918) 524-8687

with a copy (which shall not constitute notice) to:

Vinson & Elkins LLP
1001 Fannin St., Suite 2500
Houston, Texas 77002
Attention: David Oelman and Lande Spottswood Fax: (713) 615-5678

Annex II

Restrictive Agreements

None.

Annex III

Form of Assumption Agreement

[attached]

FORM OF ASSUMPTION AGREEMENT

This Assumption Agreement (this “Agreement”) dated [], 201[] is made by SemGroup Corporation, a Delaware corporation (the “SEMG”), on the one hand, and Beachhead I LLC, a Delaware limited liability company, and Beachhead II LLC, a Delaware limited liability company (together, the “Buyers”), on the other hand, in favor of Buffalo Investor I, L.P., a Delaware limited partnership and Buffalo Investor II, L.P., a Delaware limited partnership (together, the “Sellers”).

WHEREAS, the Buyers entered into that certain Guarantee, Pledge and Security Agreement, dated as of July 17, 2017, with the Sellers, Beachhead Holdings LLC, a Delaware limited liability company, and Buffalo Parent Gulf Coast Terminals, LLC, a Delaware limited liability company (as amended, restated, supplemented or otherwise modified, the “Pledge Agreement”). Terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Pledge Agreement;

WHEREAS, pursuant to the Pledge Agreement, SEMG is entitled to fully accept and assume all Obligations under the Pledge Agreement (other than the Obligation to pay the Installment Payment) outstanding as of the date hereof or accrued hereafter, including all the indemnification and reimbursement obligations contained therein (including pursuant to Section 8.05 of the Pledge Agreement) which survive the Discharge Date, and any other unasserted contingent payment obligations under the Pledge Agreement that by their nature survive the Discharge Date (such Obligations, the “Pledge Obligations”); and

WHEREAS, SEMG desires to fully accept and assume the Pledge Obligations.

NOW, THEREFORE, IT IS AGREED:

SECTION 1. Assumption of Pledge Obligations. SEMG, as contemplated by the Pledge Agreement, hereby fully accepts and assumes the Pledge Obligations. Without limiting the generality of the foregoing, SEMG hereby expressly (i) assumes, and hereby agrees to perform and observe and be bound by, each and every one of the Pledge Obligations and (ii) accepts and assumes all liability of the Grantors related to the Pledge Obligations.

SECTION 2. Effect on Pledge Agreement. The Pledge Agreement remains in full force and effect as originally executed in accordance with its terms and is hereby ratified and confirmed, and nothing herein shall act as a waiver of any of the Sellers’ rights under the Pledge Agreement.

SECTION 3. GOVERNING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of DELAWARE.

SECTION 4. Miscellaneous. The miscellaneous provisions set forth in Article VIII of the Pledge Agreement apply to this Agreement. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract. Delivery of an executed counterpart to this Agreement by facsimile transmission or electronic transmission in “.pdf” or comparable format shall be as effective as delivery of a manually signed original.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered as of the date first above written.

SEMG :

SEMGROUP CORPORATION

By: _____
Name: _____
Title: _____

BUYERS :

BEACHHEAD I LLC

By: _____
Name: _____
Title: _____

BEACHHEAD II LLC

By: _____
Name: _____
Title: _____

Acknowledged and agreed to as of the date first above written:

BUFFALO INVESTOR I, L.P.

By: _____
Name: _____
Title: _____

BUFFALO INVESTOR II, L.P.

By: _____
Name: _____
Title: _____

Schedule 1 Grantors

(a) Grantor Current Information.

Legal Name	Type of Entity	Registered Organization (Yes/No)	State of Formation
Beachhead Holdings LLC	LLC	Y	Delaware
Beachhead I LLC	LLC	Y	Delaware
Beachhead II LLC	LLC	Y	Delaware

Schedule 1(b)

Prior Organizational Names

Entity	Prior Legal Name	Date Changed
None		

Schedule 1(c)

Changes in Corporate Identity; Other Names

Entity	Prior Legal Name
None	

Schedule 2

Grantor Jurisdiction Information

Chief Executive Offices

Grantor	Address
Beachhead Holdings LLC	c/o SemGroup Corporation Two Warren Place 6120 S. Yale Avenue, Suite 700 Tulsa, OK 74136-4216
Beachhead I LLC	c/o SemGroup Corporation Two Warren Place 6120 S. Yale Avenue, Suite 700 Tulsa, OK 74136-4216
Beachhead II LLC	c/o SemGroup Corporation Two Warren Place 6120 S. Yale Avenue, Suite 700 Tulsa, OK 74136-4216

Location of Books and Records

Grantor	Address of Books and Records
Beachhead Holdings LLC	c/o SemGroup Corporation Two Warren Place 6120 S. Yale Avenue, Suite 700 Tulsa, OK 74136-4216
Beachhead I LLC	c/o SemGroup Corporation Two Warren Place 6120 S. Yale Avenue, Suite 700 Tulsa, OK 74136-4216
Beachhead II LLC	c/o SemGroup Corporation Two Warren Place 6120 S. Yale Avenue, Suite 700 Tulsa, OK 74136-4216

UCC Filings

Grantor	UCC Filing Office
Beachhead Holdings LLC	Delaware

Grantor	UCC Filing Office
Beachhead I LLC	Delaware
Beachhead II LLC	Delaware

Schedule 3

Pledged Equity and Instruments

Equity Interests of Grantors

Issuer	Jurisdiction	Grantor	Certificate No.	No. of Shares / Units	Percentage of Ownership	Percentage to be Pledged
Beachhead I LLC	Delaware	Beachhead Holdings LLC	1	N/A	100%	100%
Beachhead II LLC	Delaware	Beachhead Holdings LLC	1	N/A	100%	100%
Buffalo Parent Gulf Coast Terminals LLC	Delaware	Beachhead I LLC	1	N/A	59.32%	100%
Buffalo Parent Gulf Coast Terminals LLC	Delaware	Beachhead II LLC	2	N/A	40.68%	100%

Instruments and Tangible Chattel Paper

Grantor	Instrument/Tangible Chattel Paper
None	

Schedule 4

Commercial Tort Claims

None.

Schedule 6.08

Affiliate Arrangements

Affiliate arrangements with respect to Grantors :

1. Integration with SemGroup Accounting and Finance Operating Systems
 - a. Oracle
 - b. Hyperion
 - c. Right Angle
 - d. Hyland Onbase
 - e. Workiva
 - f. Sharepoint
2. Integration with SemGroup Tax Operating Systems
 - a. Vertex
3. Insurance
 - a. SemGroup insurance policies
4. General
 - a. Customary allocations of overhead expenses
 - b. Microsoft Exchange
 - c. SemGroup network

Affiliate arrangements with respect to OpCo Intermediate Parent, HFOTCO and Subsidiaries of HFOT CO:

1. Integration with SemGroup Accounting and Finance Operating Systems
 - a. Oracle
 - b. Hyperion

- c. Right Angle
 - d. Hyland Onbase
 - e. Workiva
 - f. Sharepoint
2. Integration with SemGroup Tax Operating Systems
- a. Vertex
3. Integration with SemGroup Human Resources and Payroll Operating Systems
- a. Ultipro
 - b. ETrade
4. Integration with SemGroup Operations
- a. SCADA Systems
5. Insurance
- a. SemGroup insurance policies
6. General
- a. Customary allocations of overhead expenses
 - b. Microsoft Exchange
 - c. SemGroup network

SemManagement L.L.C.
Waiver And Release
Agreement

This agreement, waiver and release (this “ Agreement ”), made as of the 2nd day of August, 2017, is made by and among SemManagement L.L.C. (together with all successors thereto, “ Company ”) and Candice L. Cheeseman (“ Employee ”).

WHEREAS, Employee received Restricted Stock Awards (the “ RSAs ”) under the SemGroup Corporation Equity Incentive Plan that vest pursuant to the terms of Award Agreements (the “ Award Agreements ”) on March 2, 2018 and March 1, 2019 (the “ Vesting Dates ”);

WHEREAS, Section 3(e) of the Award Agreements provides that the Equity Awards related thereto together with associated dividends will be forfeited by the Employee without any consideration if the Employee’s service is terminated other than in connection with a change of control, death, disability, or involuntary termination of service without cause;

WHEREAS, on February 24, 2011, the Compensation Committee of the Board of Directors of SemGroup Corporation (the “ Compensation Committee ”) adopted a cash-based Short-Term Incentive Program (the “ STIP ”);

WHEREAS, the Compensation Committee previously established the Employee’s target award, performance measures, and personal performance goals for the STIP performance year ending December 31, 2017 (the “ 2017 Performance Year ”);

WHEREAS, the Employee has notified the Company of her intention to retire prior to the end of the 2017 Performance Year and the Vesting Dates; and

WHEREAS, notwithstanding the Employee’s retirement and subject to the effectiveness of this Agreement, the Compensation Committee approved (i) the designation of the Employee as an “Eligible Employee” under the STIP with respect to the 2017 Performance Year to be eligible to receive a STIP award pro-rated for the period of 2017 during which the Employee was an employee of the Company (“ Pro-Rated STIP Eligibility ”) and (ii) the vesting of the RSAs and associated dividends (the “ Modified Vesting ”).

NOW THEREFORE, in consideration of Pro-Rated STIP Eligibility and the Modified Vesting and in consideration of the representations, covenants and mutual promises set forth in this Agreement, the parties agree as follows:

1. Termination. The parties have agreed that the at-will employment relationship between Employee and the Company is wholly and completely terminated in all respects, effective August 1, 2017 (the “ Retirement Date ”).

2. STIP Payment and Modified Vesting. In consideration of the representations, agreements, waivers, and releases set forth herein, and upon the terms and conditions herein described, the Employee will qualify for Pro-Rated STIP Eligibility and the Company will consummate the Modified Vesting. Employee understands and represents that Pro-Rated STIP Eligibility and the Modified Vesting constitute consideration to which she would not otherwise be entitled but for this Agreement. Employee acknowledges

that Pro-Rated STIP Eligibility may not result in an award or may result in an award significantly less than Employee's pro-rated target award for the 2017 Performance Year and agrees that, in such event, the Modified Vesting by itself is sufficient consideration for the representations, covenants and mutual promises set forth in this Agreement.

3. Time of Offer and Effectiveness . The offer of Pro-Rated STIP Eligibility and the Modified Vesting shall be open until the close of business twenty-one (21) calendar days from the Retirement Date. Pro-Rated STIP Eligibility and consummation of the Modified Vesting shall be subject to effectiveness of this Agreement and shall occur on the Effective Date as described in Section 8. Pro-Rated STIP Eligibility and any award with respect thereto shall be subject to the terms and provisions of the STIP.

4. Release ("Release"). Except with respect to Pro-Rated STIP Eligibility and the Modified Vesting, the Employee, and Employee's heirs, executors, assigns, agents, legal representatives, and personal representatives, hereby releases, acquits and forever discharges the Company, its agents, subsidiaries, affiliates, operating units and their respective officers, directors, agents, servants, employees, attorneys, stockholders, successors, assigns and affiliates, of and from any and all claims, liabilities, demands, obligations, promises, acts, agreements, causes of action, costs, expenses, attorneys fees, damages, indemnities and obligations of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to agreements, events, acts or conduct at any time prior to the day prior to execution of this Agreement that arose out of or were related to the Employee's employment with the Company or the Employee's termination of employment with the Company including, but not limited to, any and all claims or demands pursuant to Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991, which prohibits discrimination in employment based on race, color, national origin, religion or sex; the Civil Rights Act of 1866, 42 U.S.C. §2000e, et seq., 42 U.S.C. §1981, 1983 and 1985, which prohibits violations of civil rights; the Equal Pay Act of 1963, 29 U.S.C. § 206(d)(1), which prohibits unequal pay based upon gender; the Age Discrimination in Employment Act of 1967, as amended, and as further amended by the Older Workers Benefit Protection Act, 29 U.S.C. § 621, et seq ., which prohibits age discrimination in employment; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq ., which protects certain employee benefits; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq . and the Rehabilitation Act of 1973, which prohibit discrimination against the disabled; the Family and Medical Leave Act of 1993, as amended 29 U.S.C. § 2601, et seq ., which provides medical and family leave; the federal Worker Adjustment and Retraining Notification Act (as amended) and similar laws in other jurisdictions; the Oklahoma Anti-Discrimination Act, Okla. Stat., tit. 25, §§ 1101, et seq. , the Fair Labor Standards Act, 29 U.S.C. § 201, et seq ., including the Wage and Hour Laws relating to payment of wages, including, but not limited to, vacation pay, commissions, and bonuses; and all other federal, state or local laws or regulations prohibiting employment discrimination and/or governing the payment of wages, benefits, and other forms of compensation, and any claims for wrongful discharge, breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, discrimination, harassment, defamation, infliction of emotional distress, termination in violation of public policy, retaliation, including workers' compensation retaliation under state statutes, tort law; contract law; wrongful discharge; discrimination; fraud; libel; slander; defamation; harassment; emotional distress; breach of the implied covenant of good faith and fair dealing; or claims for retaliation, or other claims arising under any local, state or federal regulation, statute or common law. This Release does not apply to the payment of any and all benefits and/or monies earned, accrued, vested or otherwise owing, if any, to the Employee under the terms of a Company sponsored tax qualified retirement or savings plan, except that the Employee hereby releases and waives any claims that his termination was to avoid payment of such benefits or payments, and that, as a result of his termination, she is entitled to additional benefits or payments. Additionally, this Release does not apply to any of Employee's rights or obligations with respect to indemnification or directors' and officers' liability coverage to which Employee is entitled or subject in

his capacity as a former officer or employee of the Company or SemGroup Corporation. This Release does not apply to any claim or rights which might arise out of the actions of the Company after the date the Employee signs this Agreement. Further, notwithstanding anything herein to the contrary, nothing herein or otherwise shall release the Company from any claims, rights or damages that may not be released or waived as a matter of law.

5. No Inducement. Employee agrees that no promise or inducement to enter into this Agreement has been offered or made except as set forth in this Agreement, that the Employee is entering into this Agreement without any threat or coercion and without reliance or any statement or representation made on behalf of the Company or by any person employed by or representing the Company, except for the written provisions and promises contained in this Agreement.

6. Protected Rights. Employee understands that nothing contained in this Agreement limits Employee's ability to file a charge or complaint with the U.S. Equal Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state, or local governmental agency or commission (" Government Agencies "). Employee further understands that this Agreement does not limit Employee's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Agreement does not limit Employee's right to receive an award for information provided to any Government Agencies.

7. Damages. The parties agree that damages incurred as a result of a breach of this Agreement will be difficult to measure. It is, therefore, further agreed that, in addition to any other remedies, equitable relief will be available in the case of a breach of this Agreement.

8. Advice of Counsel; Time to Consider; Revocation. Employee acknowledges the following:

(a) Employee has read this Agreement, and understands its legal and binding effect. Employee is acting voluntarily and of Employee's own free will in executing this Agreement.

(b) Employee has been advised to seek and has had the opportunity to seek legal counsel in connection with this Agreement.

(c) Employee was given at least 21 days to consider the terms of this Agreement before signing it.

Employee understands that, if Employee signs this Agreement, Employee may revoke it within seven days after signing it by delivering written notification of intent to revoke within that seven day period. Employee understands that this Agreement will not be effective until after the seven-day period has expired (such date, the "Effective Date ").

9. Severability. If all or any part of this Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any other portion of this Agreement. Any section or a part of a section declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of the section to the fullest extent possible while remaining lawful and valid.

10. Amendment. This Agreement shall not be altered, amended, or modified except by written instrument executed by the Company and the Employee. A waiver of any portion of this Agreement shall not be deemed a waiver of any other portion of this Agreement.

11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.
12. Headings. The headings of this Agreement are not part of the provisions hereof and shall not have any force or effect.
13. Rules of Construction. Reference to a specific law shall include such law, any valid regulation promulgated thereunder, and any comparable provision of any future legislation amending, supplementing or superseding such section.
14. Applicable Law. The provisions of this Agreement shall be interpreted and construed in accordance with the laws of the State of Oklahoma without regard to its choice of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates specified below.

/s/ Candice Cheeseman

Candice L. Cheeseman

Date: August 2, 2017

SemManagement L.L.C., acting on behalf of itself and its Subsidiaries and Affiliates

By: /s/ Kay Kittleman

Kay Kittleman

Title: Vice President Human Resources

Date: August 2, 2017

ACKNOWLEDGMENT

I HEREBY ACKNOWLEDGE that SemManagement L.L.C. (the "Company"), in accordance with the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990, informed me in writing that:

- (1) I should consult with an attorney before signing the Waiver and Release Agreement ("Agreement") that was provided to me.
 - (2) I may review the Agreement for a period of up to 21 days prior to signing the Agreement. If I choose to take less than 21 days to review the Agreement, I do so knowingly, willingly and on advice of counsel.
 - (3) For a period of seven days following the signing of the Agreement, I may revoke the Agreement, and that the Agreement will not become effective or enforceable until the seven day revocation period has elapsed.
-

(4) The Company shall not accept my signed Agreement prior to the last day of my employment.

I HEREBY FURTHER ACKNOWLEDGE receipt of this Agreement on the 2nd day of August, 2017.

WITNESS:

<u>/s/ Mark D. Berman</u>	<u>/s/ Candice L. Cheeseman</u>
Mark D. Berman	Candice L. Cheeseman

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Carlin G. Conner, certify that:

1. I have reviewed this quarterly report on Form 10-Q of SemGroup Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2017

/s/ Carlin G. Conner

Carlin G. Conner

President and Chief Executive Officer

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Robert N. Fitzgerald, certify that:

1. I have reviewed this quarterly report on Form 10-Q of SemGroup Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2017

/s/ Robert N. Fitzgerald

Robert N. Fitzgerald

Senior Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of SemGroup Corporation (the "Company") on Form 10-Q for the quarter ended September 30, 2017, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Carlin G. Conner, President and Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2017

/s/ Carlin G. Conner

Carlin G. Conner

President and Chief Executive Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of SemGroup Corporation (the "Company") on Form 10-Q for the quarter ended September 30, 2017, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert N. Fitzgerald, Senior Vice President and Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2017

/s/ Robert N. Fitzgerald

Robert N. Fitzgerald

Senior Vice President and

Chief Financial Officer