

**Exhibit A**

**Purchase Agreement**

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**ASSET PURCHASE AND SALE AGREEMENT**

BY AND BETWEEN

SEMMATERIALS, L.P.,  
DAVISON PETROLEUM SUPPLY, LLC

and

for the limited purpose stated herein

GENESIS ENERGY, L.P.

Dated as of April 2, 2009

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## ASSET PURCHASE AND SALE AGREEMENT

This **ASSET PURCHASE AND SALE AGREEMENT**, dated as of April 2, 2009 (this "Agreement"), is made and entered into by and among SemMaterials, L.P., an Oklahoma limited partnership ("Seller"), Davison Petroleum Supply, LLC, a Delaware limited liability company ("Purchaser"), and, solely for purposes of Section 11.15, Genesis Energy, L.P., a Delaware limited partnership ("Parent"). Seller and Purchaser are sometimes herein referred to collectively as "Parties" and individually as a "Party."

### WITNESSETH:

WHEREAS, Seller is engaged in the business of purchasing, producing, storing, and distributing residual fuel and feedstocks throughout the United States (the "Business");

WHEREAS, commencing on July 22, 2008, Seller and certain of its Affiliates (as defined herein) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (as defined herein), which cases are pending in the Bankruptcy Court (as defined herein); and

WHEREAS, on the terms and subject to the conditions hereinafter set forth and pursuant to a Sale Order (as defined herein), the Parties hereby desire to enter into this Agreement, pursuant to which, among other things, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all of Seller's right, title and interest in and to the Transferred Assets (as defined herein).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 Definitions. For the purposes of this Agreement, capitalized terms used herein shall have the meanings set forth in Exhibit A attached hereto.

#### Section 1.2 Other Definitional Provisions.

(a) The words "hereof", "herein", and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

(c) Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".

(d) The terms "day" and "days" mean and refer to calendar day(s).

(e) The terms "year" and "years" mean and refer to calendar year(s).

(f) The word "or" is inclusive and not exclusive.

(g) Any reference in this Agreement to \$ means United States dollars.

(h) Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(i) All Article and Section references herein are to Articles and Sections of this Agreement, unless otherwise specified.

(j) The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule to which such disclosure may apply to the extent that the nature and scope of such disclosure makes clear on its face the relevance of such disclosure to such other Schedule(s). Disclosure of any item or matter on any Schedule shall not constitute an admission or indication that such item or matter is material or would have a Seller Material Adverse Effect. No disclosure on a Schedule relating to a possible breach or violation of any Contract, Law or Order shall be construed as an admission or indication that breach or violation exists or has actually occurred. The disclosure of a particular item of information in a Schedule shall not be taken as an admission by the Party making such disclosure that such disclosure is required to be made. Any capitalized terms used in any Schedule or Exhibit, but not otherwise defined therein, shall be defined as set forth in this Agreement.

(k) This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.



## ARTICLE II

### PURCHASE AND SALE

#### Section 2.1 Purchase and Sale of Transferred Assets; Assumption of Assumed Liabilities.

(a) Transferred Assets. On the terms and subject to the conditions set forth herein and in the Sale Order and subject to Section 2.1(b), at the Closing, Seller shall sell, convey, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, free and clear of any and all Liens (other than Permitted Liens), all right, title and interest in and to the Transferred Assets as in existence on the Closing Date.

(b) Retained Assets. Purchaser expressly understands and agrees that any right, title or interest in or to any assets and properties owned by Seller other than the Transferred Assets (collectively, the "Retained Assets") shall be retained by Seller, notwithstanding any other provision hereof. The Parties acknowledge and agree that the Transferred Assets shall not include any right, title or interest that Seller may have to (i) the SGLP Assets or any claims that Seller may have against SGLP or any of its Affiliates with respect to the SGLP Assets or (ii) any Intellectual Property, which assets referred to in clauses (i) and (ii) shall constitute Retained Assets.

(c) Assumed Liabilities. On the terms and subject to the conditions set forth herein, Purchaser shall, effective as of the Closing Date, in consideration for the sale, assignment, conveyance, transfer and delivery of the Transferred Assets to Purchaser, assume and pay, discharge, perform and otherwise satisfy when due, in accordance with their respective terms, all Liabilities related to the Transferred Assets whether relating to periods on or after the Closing Date, including Environmental Liabilities and Obligations, occurring or attributable to periods on or after the Closing Date (collectively, the "Assumed Liabilities").

(d) Cure Amounts. At the Closing and pursuant to Section 365 of the Bankruptcy Code, Seller shall assume and assign to Purchaser and Purchaser shall assume from Seller, the Assumed Contracts. The cure amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all losses, if any, that have resulted from such defaults under the Assumed Contracts, shall be paid by Seller on or before the Closing. Purchaser shall have the right to terminate this Agreement as a result of the failure by Seller to assume and assign to Purchaser any Assumed Contract (on terms and conditions no less favorable than those in existence as of the date hereof).

## ARTICLE III

### PURCHASE PRICE

#### Section 3.1 Purchase Price.

(a) The aggregate purchase price to be paid by Purchaser to Seller for the Transferred Assets (the "Aggregate Purchase Price") shall be the sum of: (i) \$2,500,000 (the "Base Purchase Price"), plus (ii) an amount in cash equal to the Inventory Valuation, as determined in accordance with the provisions of Section 3.1(b), plus (iii) an amount in cash equal to the Prepaid Expenses, as determined in accordance with the provisions of this Article III, plus (iv) an amount in cash equal to the Accounts Receivable, as determined in accordance with the provisions of this Article III.

(b) The purchase price for the Inventory (the "Inventory Valuation") shall be based on the findings of an independent, third party inspector as to quantity and quality. All Inventory shall be located in tanks which are not subject to re-lease or a similar services agreement as of the date of Closing. The purchase price for on-spec Number 6 Fuel Oil shall be US Gulf Coast Platts 3% Resid (closing of business one day prior to Closing or other mutually agreeable date) minus \$8/BBL. The purchase price for on-spec VGO shall be Crude Light WTI settle (closing of business one day prior to Closing or other mutually agreeable date) minus \$2/BBL.

### Section 3.2 Deposit.

(a) Upon the execution of this Agreement, Purchaser shall deposit with Wilmington Trust, in its capacity as Escrow Agent (the "Escrow Agent"), pursuant to that certain Deposit Escrow Agreement, dated of even date herewith, by and among Seller, Purchaser and the Escrow Agent, which is attached as Exhibit B hereto (the "Escrow Agreement"), by certified check or wire transfer of immediately available funds, the sum of \$250,000 (the "Escrow Amount").

(b) Pursuant to the Escrow Agreement, the Escrow Amount shall either (i) be applied as a deposit towards the Closing Date Payment as provided in Section 3.3; (ii) be returned to Purchaser (with any accrued interest actually paid thereon and less the Escrow Agent's fees and expenses) in the event that this Agreement is terminated either (A) pursuant to Section 4.2(a), (c), (d) or (e), (B) so long as Purchaser is not then in breach of its obligations hereunder in any material respect, pursuant to Section 2.1(d) or (C) pursuant to Section 4.2(b) in the event that the Closing does not occur on or before the Outside Date due to Seller's failure to satisfy its closing conditions or the non-occurrence of any Purchaser closing condition as set forth in Section 8.2, as applicable; or (iii) be paid to Seller (with any accrued interest actually paid thereon and less the Escrow Agent's fees and expenses) in the event that this Agreement is terminated (A) pursuant to Section 4.2(f) or (B) pursuant to Section 4.2(b) in the event that the Closing does not occur on or before the Outside Date due to Purchaser's failure to satisfy its closing conditions set forth in Section 8.3 (including payment of the Closing Date Payment pursuant to Section 3.3).

### Section 3.3 Payment of Purchase Price.

(a) Not later than three (3) Business Days prior to the Closing Date, Seller shall provide Purchaser with a statement (the "Estimated Closing Statement") setting forth Seller's estimation of (i) the Inventory Valuation based on the valuation

procedure set forth in Section 3.1(b) (the "Estimated Inventory Valuation"), (ii) the Prepaid Expenses (the "Estimated Prepaid Expenses"), and (iii) the Accounts Receivable (the "Estimated Accounts Receivable").

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller, by wire transfer of immediately available funds into an account designated in writing by Seller, the "Closing Date Payment", which shall be calculated as follows:

- (i) an amount equal to the Base Purchase Price;
- (ii) minus an amount equal to the Escrow Amount (plus any accrued interest actually paid thereon and less the Escrow Agent's fees and expenses);
- (iii) plus the Estimated Inventory Valuation;
- (iv) plus the Estimated Prepaid Expenses;
- (v) plus the Estimated Accounts Receivable.

(c) At the Closing, the Parties shall instruct the Escrow Agent to transfer to Seller the Escrow Amount (plus any accrued interest actually paid thereon and less the Escrow Agent's fees and expenses) being held by the Escrow Agent pursuant to the terms of the Escrow Agreement, by wire transfer of immediately available funds into such account designated in writing by Seller.

#### Section 3.4 Purchase Price Adjustment.

(a) No later than thirty (30) days after the Closing Date, Purchaser shall cause to be prepared and delivered to Seller a closing statement (the "Closing Statement") and a certificate based on such Closing Statement setting forth Purchaser's calculation of (i) the Final Inventory Valuation, (ii) the Final Prepaid Expenses, and (iii) the Final Accounts Receivable (collectively, the "Closing Items"). The Closing Items set forth in the Closing Statement shall be used for purposes of determining changes as from the Estimated Closing Statement and shall be calculated, in the case of the Final Inventory Valuation, in accordance with the procedures set forth in Section 3.1(b).

(b) If Seller disagrees with Purchaser's calculation of any item set forth in the Closing Statement, Seller may, within thirty (30) days after delivery of the Closing Statement, deliver a notice to Purchaser stating that Seller disagrees with such calculation and specifying in reasonable detail those items or amounts as to which Seller disagrees and the basis therefor (a "Closing Statement Objection"). Seller shall be deemed to have agreed with all other items and amounts contained in the Closing Statement for which a Closing Statement Objection has not been delivered by Seller to Purchaser within such thirty (30) day period.

(c) If a Closing Statement Objection is duly delivered pursuant to Section 3.4(b), Seller and Purchaser shall, during the thirty (30) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed

items or amounts in order to determine, as may be required, the Closing Items. If during such period, Seller and Purchaser are unable to reach such agreement, they shall promptly thereafter cause a nationally recognized accounting firm mutually agreeable to Seller and Purchaser (the "Independent Accountant") to review this Agreement and the disputed items or amounts for the purpose of calculating the Closing Items (it being understood that in making such calculation, the Independent Accountant shall be functioning as an expert). If Seller and Purchaser are unable to agree upon the Independent Accountant, Seller shall select one independent accounting firm and Purchaser shall select one independent accounting firm, and those two accounting firms shall jointly select the Independent Accountant. Each of Seller and Purchaser agree that it shall not engage, or agree to engage the Independent Accountant to perform any services other than as the Independent Accountant pursuant hereto until the Final Amounts have been finally determined pursuant to this Section 3.4. Each Party agrees to execute, if requested by the Independent Accountant, a reasonable engagement letter. In making such calculation, the Independent Accountant shall consider only those items or amounts in the Closing Statement and Seller's calculation of the Closing Items as to which Seller has disagreed in its Closing Statement Objection duly delivered pursuant to Section 3.4(b). In making its determination, the Independent Accountant shall not, as to any item, assign an amount that is higher than the highest amount or lower than the lowest amount requested by Seller or Purchaser, as applicable. The Independent Accountant shall deliver to Seller and Purchaser, as promptly as practicable (but in any case no later than thirty (30) days from the date of engagement of the Independent Accountant), a report setting forth such calculation. Such report shall be final and binding upon Seller and Purchaser. The Independent Accountant shall determine the allocation of the cost of its review and report based on the inverse of the percentage its determination (before such allocation) bears to the total amount of the total items in dispute as originally submitted to the Independent Accountant. For example, should the items in dispute total in amount to \$1,000 and the Independent Accountant awards \$600 in favor of Seller's position, 60% of the costs of its review would be borne by Purchaser and 40% of the costs would be borne by Seller.

(d) The Parties shall, and shall cause their respective Representatives to, cooperate and assist in the preparation of the Closing Statement and the calculation of the Final Amounts and in the conduct of the review referred to in this Section 3.4, including making available, to the extent necessary, books, records, work papers and personnel.

#### Section 3.5 Post-Closing Adjustment Amount.

(a) If the Net Adjustment Amount (as defined below) is positive, Purchaser shall pay to Seller, in the manner and with interest as provided in Section 3.5(c), the amount of such excess. If the Net Adjustment Amount is negative, Seller shall pay to Purchaser the amount of such deficit, in the manner and with interest as provided in Section 3.5(c). For purposes of clarity, if the Net Adjustment Amount is equal to zero, no adjustment shall be made.

(b) "Net Adjustment Amount" means an amount equal to zero plus or minus the following amounts:

(i) either (A) plus the amount by which the Estimated Inventory Valuation is less than the Final Inventory Valuation; or (B) minus the amount by which the Estimated Inventory Valuation is greater than the Final Inventory Valuation;

(ii) either (A) plus the amount by which the Estimated Prepaid Expenses is less than the Final Prepaid Expenses; or (B) minus the amount by which the Estimated Prepaid Expenses is greater than the Final Prepaid Expenses; and

(iii) either (A) plus the amount by which the Estimated Accounts Receivable is less than the Final Accounts Receivable; or (B) minus the amount by which the Estimated Accounts Receivable is greater than the Final Accounts Receivable.

(c) Any payment pursuant to Section 3.5(a) shall be made at a mutually convenient time and place within five (5) Business Days after the Final Amounts have been determined by wire transfer by Purchaser or Seller, as the case may be, of immediately available funds to the account of such other Party as may be designated in writing by such other Party. The amount of any payment to be made pursuant to this Section 3.5(c) shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the Prime Rate.

Section 3.6 Purchase Price Allocation. Within sixty (60) days after the Closing, Purchaser shall prepare and deliver to Seller an allocation of the Aggregate Purchase Price among the Transferred Assets and Assumed Liabilities in accordance with Section 1060 of the Code (the "Proposed Allocation"). Seller shall have thirty (30) days after receipt of the Proposed Allocation, to notify Purchaser in writing of any objections. If Seller does not object in writing during such thirty (30) day period, the Proposed Allocation shall be final and binding on all Parties. If Seller objects in writing during such thirty (30) day period, the Parties shall cooperate in good faith to reach a mutually agreeable allocation of the Aggregate Purchase Price, which allocation shall be binding on all Parties. If the Parties are unable to reach an agreement within sixty (60) days of Seller's receipt of the Proposed Allocation, any disputed items shall be referred to the Independent Accountant for resolution. The determination of the Independent Accountant shall be final and binding on all Parties, and the fees and expenses of the Independent Accountant shall be paid fifty percent (50%) by Seller and fifty percent (50%) by Purchaser. Purchaser and Seller each agree to file all income Tax Returns and reports consistent with the foregoing and in accordance with Section 1060 of the Code.

#### ARTICLE IV

#### CLOSING AND TERMINATION

Section 4.1 Time and Place of Closing. The closing of the purchase and sale provided for in Article II (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP in Dallas, Texas at 10:00 a.m. local time, on the second (2nd) Business Day after the conditions to Closing set forth in Article IX (excluding conditions that, by

their terms, cannot be satisfied until the Closing) have been satisfied (or waived by the Party entitled to waive such condition), or at such other place, date and time as the Parties may agree in writing (the "Closing Date").

Section 4.2 Termination of Agreement. This Agreement may be terminated prior to the Closing Date as follows:

(a) At any time prior to the Closing Date by the written agreement of the Parties;

(b) By either Party, if the Closing has not occurred on or before April 23, 2009 (as may be extended pursuant to this clause (b) or by written agreement of the Parties, the "Outside Date"); provided, however, that the terminating Party is not in breach of its obligations hereunder in any material respect; provided, further, however, that if the Closing shall not have occurred on or before April 23, 2009 due to the failure of the Bankruptcy Court to enter the Sale Order then neither Party may terminate this Agreement prior to May 11, 2009;

(c) By either Party, if the Bankruptcy Court shall enter an order approving a Competing Transaction and Seller shall execute a definitive agreement for such Competing Transaction, subject to the limitations set forth in the Bidding Procedures Order;

(d) By either Party, if there shall be any Applicable Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited (and such Law is not overturned or otherwise made inapplicable to the transactions contemplated hereby within a period of one hundred twenty (120) days) or if an Order is entered by a Governmental Authority of competent jurisdiction having valid enforcement authority permanently restraining, prohibiting or enjoining either Party from consummating the transactions contemplated hereby and such Order shall become final and non-appealable;

(e) By Purchaser, so long as Purchaser is not then in breach of its obligations hereunder in any material respect, upon a material breach of any covenant or agreement of Seller set forth herein, or if any representation or warranty of Seller shall have been or becomes untrue, in each case such that the conditions set forth in Section 8.2(a) or Section 8.2(b), as the case may be, would not be satisfied and such breach or untruth cannot be cured by the Outside Date; and

(f) By Seller, so long as Seller is not then in breach of its obligations hereunder in any material respect, upon a material breach of any covenant or agreement of Purchaser set forth herein, or if any representation or warranty of Purchaser shall have been or becomes untrue, in each case such that the conditions set forth in Section 8.3(a) or Section 8.3(b), as the case may be, would not be satisfied and such breach or untruth cannot be cured by the Outside Date.

Section 4.3 Effect of Termination. No termination of this Agreement pursuant to Section 4.2 shall be effective until notice thereof is given to the non-terminating Party

specifying the provision hereof pursuant to which such termination is made. If validly terminated pursuant to Section 4.2, this Agreement shall become wholly void and of no further force and effect without Liability to Purchaser or Seller, or any of their respective Affiliates or Representatives, and each shall be fully released and discharged from any Liability under or resulting from this Agreement and Purchaser shall have no other remedy or cause of action under or relating to this Agreement or any Applicable Law including for reimbursement of expenses, except that the obligations of Purchaser under the Confidentiality Agreement and the obligations of the Parties under the Escrow Agreement, Sections 4.4, 7.7 and 7.8 and Article XI including, without limitation, Section 11.2, shall remain in full force and effect.

Section 4.4 Break-Up Fee. In the event this Agreement is terminated pursuant to Section 4.2(c) upon but not prior to the consummation of a Competing Transaction, Seller agrees to pay Purchaser the Break-Up Fee; provided, however, any such Break-Up Fee shall not be due and payable if (a) a Purchaser Material Adverse Effect shall have occurred or (b) Purchaser shall have breached any of its obligations, representations or warranties contained herein in any material respect. Upon payment of the Break-Up Fee, Seller, its Affiliates and their respective Representatives shall be fully released and discharged from any Liability under or resulting from this Agreement and Purchaser shall not have any other remedy or cause of action under or relating to this Agreement or any Applicable Law.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows:

Section 5.1 Organization and Good Standing. Seller is an entity duly organized, validly existing, in good standing and duly qualified to transact business under the laws of the State of Oklahoma, and is duly qualified or licensed to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, except where the failure to be so qualified would not have a Seller Material Adverse Effect and, subject to the limitations imposed on Seller as a result of having filed a petition for relief under the Bankruptcy Code, or pursuant to any Order entered by the Bankruptcy Court, Seller has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

Section 5.2 Authorization of Agreement. Subject to the entry of the Sale Order and, with respect to Seller's obligations under Section 4.4, the entry of the Bidding Procedures Order, Seller has the requisite power and authority to execute this Agreement and each of the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. Subject to the entry of the Sale Order, the execution and delivery by Seller of this Agreement and the Transaction Documents to which it is a party and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the

part of Seller. This Agreement and the Transaction Documents to which it is a party have been duly executed and delivered by Seller and, assuming the due execution and delivery by Purchaser and the entry of the Sale Order, and, with respect to Seller's obligations under Section 4.4, the entry of the Bidding Procedures Order, constitute valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

Section 5.3 No Violation; Consents.

(a) To the Knowledge of Seller, except as set forth on Schedule 5.3(a) and subject to receiving any consents or waivers referred to thereon or in Section 5.3(b) and the entry of the Sale Order, the execution and delivery by Seller of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any provision of the constituent documents of Seller, (ii) subject to the entry of the Sale Order, conflict with, require the consent of a third party under, violate, require or accelerate the time of any payment by Seller to any Person under, result in the breach of, constitute a default under, or give rise to any right of acceleration, cancellation or termination of any material right or obligation of Seller under any Assumed Contract, (iii) subject to the entry of the Sale Order, and, with respect to Seller's obligations under Section 4.4, the entry of the Bidding Procedures Order, violate any Order of any Governmental Authority to which Seller is bound or subject, (iv) subject to the entry of the Sale Order, and, with respect to Seller's obligations under Section 4.4, the entry of the Bidding Procedures Order, violate any Applicable Law, or (v) except as provided for herein and for Permitted Liens, result in the imposition or creation of any Lien upon the Transferred Assets, other than, in the case of clauses (ii) through (v), any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation, termination or Lien that would not have a Seller Material Adverse Effect.

(b) Except for (i) the entry of the Sale Order and (ii) with respect to Seller's obligations under Section 4.4, the entry of the Bidding Procedures Order, and as set forth on Schedule 5.3(b), no Order or Permit issued by, or declaration or filing with, or notification to, or waiver or consent from any Governmental Authority is required on the part of Seller in connection with the execution and delivery of this Agreement, or the compliance or performance by Seller with any provision contained in this Agreement, except for any such requirements, the failure of which to be obtained or made would not have a Seller Material Adverse Effect.

Section 5.4 Title to Transferred Assets. To the Knowledge of Seller and except as set forth on Schedule 5.4 and with such exceptions as would not have a Seller Material Adverse Effect, Seller has good and marketable title to the Transferred Assets free and clear of all claims arising by, through or under Seller, but not otherwise, other than the Permitted Liens.

Section 5.5 Assumed Contracts. To the Knowledge of Seller, except as set forth on Schedule 5.5, all of the Assumed Contracts are in full force and effect and are the legal, valid and binding obligations of the relevant party thereto, with such exceptions that would not have a Seller Material Adverse Effect.



Section 5.6 Litigation. Except (a) as set forth on Schedule 5.6, (b) for matters before the Bankruptcy Court involving Seller, and (c) any matters that will otherwise be resolved by the Sale Order, there is no Action or Order pending or, to the Knowledge of Seller, overtly threatened against Seller, to the extent primarily related to the Transferred Assets, which, if adversely determined, would have a Seller Material Adverse Effect.

Section 5.7 Compliance with Laws. Except as set forth on Schedule 5.7, and excluding those matters covered under Section 5.9, to the Knowledge of Seller, Seller, to the extent primarily related to the Transferred Assets, is in compliance with all Applicable Laws, except where the failure to be in compliance would not have a Seller Material Adverse Effect. Seller has all Permits from any Governmental Authority that are required to own and operate the Transferred Assets, except for those the absence of which would not have a Seller Material Adverse Effect.

Section 5.8 Taxes. Except as set forth on Schedule 5.8:

(a) all material Tax Returns required to be filed by Seller, to the extent primarily related to the Transferred Assets, on or prior to the Closing Date have been filed and all Taxes that were shown to be due on such Tax Returns have been paid, except where the failure to file such Tax Returns or to pay such Taxes would not have a Seller Material Adverse Effect;

(b) there are no outstanding agreements extending or waiving the statutory period of limitation applicable to any claim for, or the period for the collection or assessment or reassessment of, Taxes with respect to Seller, to the extent primarily related to the Transferred Assets, for any taxable period;

(c) there are no Liens for Taxes upon the Transferred Assets, except for Permitted Liens; and

(d) Seller has never been treated as a corporation for United States federal income Tax purposes.

Section 5.9 Environmental Matters. To the Knowledge of Seller, except as set forth on Schedule 5.9 and except for facts, circumstances or conditions that would not have a Seller Material Adverse Effect:

(a) the operations of Seller, to the extent primarily related to the Transferred Assets, are in compliance with applicable Environmental Laws, which compliance includes the possession and maintenance of, and compliance with, Permits required under applicable Environmental Laws;

(b) Seller, to the extent primarily related to the Transferred Assets, is not the subject of any outstanding Order with any Governmental Authority respecting Environmental Laws;

(c) there are no investigations of Seller, to the extent primarily related to the Transferred Assets, pending or overtly threatened that could reasonably be expected to result in Seller incurring any Environmental Liabilities and Obligations; and

(d) Seller, to the extent primarily related to the Transferred Assets, is not subject to any pending or overtly threatened Action, whether judicial or administrative, alleging noncompliance with or potential liability under any applicable Environmental Law.

The provisions of this Section 5.9 are the exclusive representations of Seller with respect to matters arising under Environmental Law or relating to Hazardous Materials.

Section 5.10 Insurance. Set forth on Schedule 5.10 is a list of all material policies of insurance by which the Transferred Assets are covered as of the date hereof. Except as set forth on Schedule 5.10, to the Knowledge of Seller, all such policies of insurance are in full force and effect and there are no claims pending as of the date hereof under any of such policies where underwriters have reserved their rights or disclaimed coverage under such policy with such exceptions that would not have a Seller Material Adverse Effect.

Section 5.11 Inventory. Except as set forth on Schedule 5.11, the Inventory is, in all material respects, in good condition, is saleable in the Ordinary Course of Business and does not consist of any items held (a) on consignment or (b) by a bailee.

Section 5.12 Financial Advisors. Except as set forth on Schedule 5.12, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated hereunder and Purchaser is not or will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated hereunder based upon any arrangement made by or on behalf of Seller.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

Section 6.1 Organization and Good Standing. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

Section 6.2 Authorization of Agreement. Purchaser has the requisite power and authority to execute this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents to which Purchaser is a party and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Purchaser. This Agreement and the other Transaction Documents to which it is a party

have been duly executed and delivered by Purchaser and, assuming due execution and delivery by Seller and entry of the Sale Order, constitute valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms.

Section 6.3 No Violation; Consents.

(a) The execution and delivery by Purchaser of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any provision of the constituent documents of Purchaser, (ii) conflict with, require the consent of a third party under, violate, result in the breach of, constitute a default under, or give rise to any right of acceleration, cancellation or termination of any material right or obligation of Purchaser under any material agreement or other instrument to which Purchaser is a party or by which Purchaser or any of its properties or assets are bound, (iii) violate any Order of any Governmental Authority to which Purchaser is bound or subject, or (iv) violate any Applicable Law, other than, in the case of clauses (ii) through (iv), any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation or termination that would not have a Purchaser Material Adverse Effect.

(b) Except as set forth on Schedule 6.3(b), no Order or Permit issued by, or declaration or filing with, or notification to, or waiver or consent from, any Governmental Authority is required on the part of Purchaser in connection with the execution and delivery of this Agreement, or the compliance or performance by Purchaser with any of the provisions contained hereunder.

Section 6.4 Litigation. There is no Action or Order pending or, to the knowledge of Purchaser, overtly threatened against Purchaser or any of its Affiliates that would have a Purchaser Material Adverse Effect.

Section 6.5 Financial Capability. Purchaser has and will have on the Closing Date sufficient cash and cash equivalents and/or existing credit facilities with sufficient borrowing capacity thereunder (and has provided Seller with satisfactory evidence thereof) to purchase the Transferred Assets and to consummate the transactions contemplated by this Agreement, including the payment of all fees and expenses contemplated hereunder.

Section 6.6 Bankruptcy. There are no bankruptcy, reorganization or arrangement proceedings pending against, being contemplated by, or to the knowledge of Purchaser, threatened against Purchaser.

Section 6.7 Solvency. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement:

(a) the fair saleable value (determined on a going concern basis) of the assets of Purchaser shall be greater than the total amount of their Liabilities (including all Liabilities, whether or not reflected in a balance sheet prepared in accordance with

GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed);

(b) Purchaser shall be able to pay its debts and obligations in the Ordinary Course of Business as they become due; and

(c) Purchaser shall have adequate capital to carry on its businesses and all businesses in which it is about to engage.

Section 6.8 Financial Advisors. Except as set forth on Schedule 6.8, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the transactions contemplated hereunder and no Person is entitled to any fee or commission or like payment in respect thereof. Seller is not or will not become obligated to pay any fees, commissions or like payments to any of the Persons listed on Schedule 6.8.

## ARTICLE VII

### COVENANTS

Section 7.1 Access to Information. Prior to the Closing, Seller shall permit Purchaser and its Representatives to have reasonable access, during normal business hours and upon reasonable advance written notice, to the properties, books, records and personnel of Seller, to the extent related to the Transferred Assets; provided, that in no event shall Seller be obligated to provide (a) access or information in violation of Applicable Law, (b) bids, letters of intent, expressions of interest or other proposals received from other Persons in connection with the transactions contemplated by this Agreement, or other transactions not related to the sale of the Transferred Assets, and information and analysis relating to any of such communications or (c) any information, the disclosure of which would jeopardize any privilege available to Seller or any of its Affiliates relating to such information or would cause Seller or any of its Affiliates to breach a confidentiality obligation to which it is bound. Notwithstanding anything stated herein, Purchaser's access shall not include the right to collect or analyze soil, water or other materials located at, on or under any of Seller's properties. In connection with such access, Purchaser's Representatives shall cooperate with Seller's Representatives and shall use their commercially reasonable efforts to minimize any disruption to the Business. Purchaser shall abide by the terms of the Confidentiality Agreement and any safety rules or rules of conduct reasonably imposed by Seller with respect to such access and any information furnished to them or their Representatives pursuant to this Section 7.1. Purchaser shall indemnify, defend and hold harmless Seller from and against any and all losses asserted against or suffered by them relating to, resulting from, or arising out of, examinations or inspections made by Purchaser or its Representatives pursuant to this Section 7.1.

Section 7.2 Preservation of the Transferred Assets Pending the Closing. Except as otherwise contemplated by this Agreement and the Schedules attached hereto or with the prior written consent of Purchaser (which consent shall not be unreasonably

withheld, delayed or conditioned), and except for any violations that, in the aggregate, would not have a Seller Material Adverse Effect, during the period from the date hereof to and through the Closing Date, Seller shall (subject to receipt of the Sale Order) use commercially reasonable efforts to preserve in all material respects the Transferred Assets. For the avoidance of doubt, the foregoing shall not require Seller to make any payments, incur any costs, or enter into or amend any contractual arrangements, agreements or understandings, unless such payment, incurrence or other action is required by Applicable Law or to operate in the Ordinary Course of Business.

**Section 7.3 Appropriate Action; Filings.** Through the Closing Date, the Parties shall cooperate with each other and use (and shall cause their respective Affiliates to use) commercially reasonable efforts (subject, in the case of Seller, to receipt of the Sale Order) (i) to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary, proper or advisable on its part under this Agreement, Applicable Law or otherwise to consummate and make effective the transactions contemplated hereby, (ii) to obtain promptly from any Governmental Authority any Orders or Permits required to be obtained by the Parties or any of their respective Affiliates in connection with the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, (iii) to promptly make all necessary filings and thereafter make any other required submissions with respect to this Agreement and prompt consummation of the transactions contemplated hereby required under any Applicable Law, and (iv) to provide prompt notification to the other Parties of any actions pursuant to clauses (i) – (iii) of this Section 7.3(a); provided, however, that nothing in this Section 7.3(a) shall be construed as altering the rights of Seller under Section 7.5; provided, further, Seller shall not be obligated to pay any consideration or incur any costs to obtain any approvals or consents from third parties, whether or not they may be necessary, proper or advisable to consummate the transactions contemplated hereby. Seller shall have no liability to Purchaser in the event Seller is unable to obtain any approvals or consents.

**Section 7.4 Bankruptcy Matters.** Seller shall file with the Bankruptcy Court one or more motions which, collectively, seek the entry of the Bidding Procedures Order and the Sale Order. The Parties shall use commercially reasonable efforts to cooperate, assist and consult with each other to secure the entry of the Sale Order following the date hereof, and to consummate the transactions contemplated hereby in accordance with the Sale Order. In the event any Orders of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Order), subject to Section 4.2(b), the Parties shall cooperate in taking such steps to diligently defend against such appeal, petition or motion and the Parties shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion. Purchaser shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets other than those motions or pleadings filed by Seller.

Section 7.5 Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids. Except as permitted by this Section 7.5 and except with respect to the auction for the sale of the Transferred Assets to be conducted by Seller in accordance with the procedures set forth in the Bidding Procedures Order, after the date hereof and prior to the earlier of the Closing or a valid termination of this Agreement by Seller or Purchaser in accordance with Section 4.2, Seller agrees that it shall not, and shall cause its Representatives not to, (a) solicit, initiate or encourage, or take any other action to facilitate, any inquiries or the making of any proposal or offer by any Person other than Purchaser or its Representatives (a "Third Party") with respect to any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of a material portion of the Transferred Assets to a purchaser or purchasers other than Purchaser or effecting any other transaction (including a plan of reorganization or liquidation) the consummation of which would be substantially inconsistent with the transactions contemplated herein (a "Competing Transaction"), or (b) participate in any discussions or negotiations regarding, or knowingly furnish to any Third Party any non-public information regarding any proposed Competing Transaction. After the date hereof and prior to the earlier of the termination of this Agreement or the entry of the Sale Order, Seller may furnish information to a Third Party (and their Representatives) in response to an unsolicited proposal regarding a Competing Transaction and engage in discussions or negotiations with such Third Party (and its Representatives) relating to any such proposal. Seller shall promptly notify Purchaser of any unsolicited proposal regarding a Competing Transaction that it receives from a Third Party; provided, however, that Seller shall not be required to disclose to Purchaser the identity of the Person making the proposal or any of the material terms of such proposal. Neither Seller nor any of its Affiliates shall have any Liability to Purchaser, either under or relating to this Agreement or any Applicable Law, by virtue of entering into or seeking Bankruptcy Court approval of such definitive agreement for a Competing Transaction pursuant to this Section 7.5; provided, that Purchaser is paid the Break-Up Fee to the extent required pursuant to Section 4.4 at the time provided for therein.

Section 7.6 Preservation of Records; Cooperation. The Parties shall (and shall cause their respective Affiliates to) (a) preserve and keep in their possession all records held by them on and after the date hereof relating to the Transferred Assets for a period of three (3) years or such longer period as may be required by Applicable Law; (provided, however, that in no event shall Seller be required to preserve such records after the Bankruptcy Cases are closed) and (b) make such records and personnel available to the other Party as may reasonably be required by such Party, including in connection with any insurance claims or legal proceedings related to the Transferred Assets, or any governmental investigations of the other Party or any of its Affiliates related to the Transferred Assets or in order to enable either Party or any of their respective Affiliates to comply with their respective obligations hereunder and each other agreement, document or instrument contemplated hereby or otherwise; provided, however, that in no event shall Seller be obligated to provide any information the disclosure of which would jeopardize any privilege available to Seller or any of its Affiliates relating to such information or which would cause Seller or any of its Affiliates to breach a confidentiality obligation to which it is bound. Purchaser further acknowledges that

Seller or its Affiliates shall be entitled to copy any such records, at Seller's sole cost and expense, and to retain such records. After the expiration of any applicable retention period, before Purchaser shall dispose of any of such records, at least ninety (90) days' prior written notice to such effect shall be given by Purchaser to Seller or its successor (or a Person designated by Seller) and Seller or its successor (or a Person designated by Seller) shall have the opportunity (but not the obligation), at its or their sole cost and expense, to remove and retain all or any part of such records as it may in its sole discretion select.

**Section 7.7 Confidentiality.** The Parties acknowledge that Parent and SemGroup previously executed a confidentiality agreement dated March 12, 2009 (the "Confidentiality Agreement"), which Confidentiality Agreement shall terminate only with respect to the Transferred Assets upon the earlier of (a) the expiration of the term set forth in the Confidentiality Agreement and (b) the Closing Date. The Parties acknowledge and understand that this Agreement may be made available by Seller to prospective bidders. The Parties agree that such disclosure shall not be deemed to violate any confidentiality obligations owing to any Party, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise. Notwithstanding the foregoing, this Section 7.7 shall not in any way limit (a) the disclosure of information by Seller or its Affiliates in connection with the administration of the Bankruptcy Cases, pursuant to any provision of the Bankruptcy Code or any Order of the Bankruptcy Court, or (b) any other action or disclosure permitted to be made by Seller or its Affiliates pursuant to Section 7.5.

**Section 7.8 Public Announcements.** Prior to the Closing Date, except as contemplated by Section 7.5 and Section 7.7, none of the Parties nor any of their respective Affiliates, or any of their Representatives, shall issue any press release or public statement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party, unless such disclosure is required by Applicable Law, Order or obligations pursuant to any agreement with any national securities exchange or with respect to filings to be made with the Bankruptcy Court in connection with the Bankruptcy Cases; provided, that the Party intending to make such release shall give the other Party prior written notice and shall use its commercially reasonable efforts consistent with such Applicable Law, Order or obligation to consult with the other Party with respect to the text thereof.

**Section 7.9 Further Assurances.** The Parties agree that from and after the Closing Date, each of them shall, and shall cause their respective Affiliates to, execute and deliver such further instruments of conveyance and transfer and take such other action as may reasonably be requested by any Party to carry out the purposes and intent hereof, at the expense of the requesting Party.

**Section 7.10 Third Party Consents.** With respect to any approval or consent required to be obtained in connection with the consummation of the transactions contemplated hereunder, as soon as practicable after execution hereof, (a) Seller shall use commercially reasonable efforts to obtain any third party consents to the transactions contemplated herein and (b) Purchaser shall reasonably cooperate with Seller's efforts to obtain such approvals. Seller shall not be obligated to pay any consideration or incur any

costs to obtain any consents from third parties. Seller shall have no Liability to Purchaser in the event Seller is unable to obtain any approvals or consents.

Section 7.11 Supplements to Schedules and Exhibits. Seller may, from time to time prior to or at the Closing by written notice to Purchaser, supplement or amend the Schedules and Exhibits. Such supplements or amendments shall be effective to cure and correct, for all purposes, any breach of any representation or warranty which would have existed if Seller had not made such supplements or amendments, so long as such supplements or amendments individually, or in the aggregate, do not reflect events which would constitute a Seller Material Adverse Effect; provided, however, if Purchaser shall not object, within ten (10) days after receiving notice thereof, to such breach constituting any Seller Material Adverse Effect, then Purchaser shall be deemed to have waived any right or claim pursuant to the terms hereof or otherwise with respect to such breach, including termination rights provided in Section 4.2. All references to Schedules and Exhibits which are supplemented or amended pursuant to this Section 7.11 shall be deemed to be a reference to such Schedules and Exhibits as supplemented or amended.

Section 7.12 Environmental Filings. From and after the Closing Date, Purchaser shall be solely responsible for submitting all required reports, notices, submissions and other filings of any kind to any Governmental Authority which may be required to be submitted by any Environmental Law with respect to the Transferred Assets, regardless of whether such submissions relate to matters, events or circumstances which occurred prior to, on or after the Closing Date.

Section 7.13 Transfer Taxes. All sales, transfer, filing, recordation, registration, documentary, stamp, and similar Taxes and fees (collectively, "Transfer Taxes") arising from or associated with the transactions contemplated hereunder, whether levied on Purchaser or Seller, shall be borne by Purchaser. Purchaser shall, at its own expense, file any necessary Tax Returns and other documentation with respect to any Transfer Taxes and provide to Seller evidence of filing and payment of all such Transfer Taxes. Purchaser agrees to indemnify and hold Seller harmless from any and all claims for such Transfer Taxes, including penalties or interest arising therefrom.

Section 7.14 Non-Solicitation. Except as expressly provided herein, Purchaser agrees that, for a period of twelve (12) months from the date hereof, it shall not, and shall cause its Affiliates and its and their Representatives not to, without the prior written consent of SemGroup, directly or indirectly, solicit for employment any consultant or employee of SemGroup or any of their respective Affiliates or Subsidiaries (excluding Seller) who is not directly and primarily involved in the Business. The phrase "solicit for employment" shall not be deemed to include general solicitations of employment (whether through non-targeted employment advertisements or by recruiting professionals, provided that such recruiting professionals have not been directed by Purchaser to solicit such employees).

## ARTICLE VIII

### CONDITIONS TO CLOSING



Section 8.1 Conditions Precedent to Obligations of Each Party. The respective obligations of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions:

(a) there shall not be in effect any Order by a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(b) the Bankruptcy Court shall have entered (i) the Bidding Procedures Order and (ii) a Sale Order approving this Agreement in the Bankruptcy Cases; and

(c) any waiting period (including any extension thereof) applicable to the purchase and sale of the Transferred Assets to Purchaser under the regulations of any applicable governmental antitrust or competition authority shall have terminated or expired.

Section 8.2 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the transactions contemplated hereunder is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser, in whole or in part, subject to Applicable Law):

(a) the representations and warranties of Seller contained herein shall be true and correct on and as of the Closing Date, except those representations and warranties of Seller that speak as of a certain date, which representations and warranties shall have been true and correct as of such date; provided, however, that this condition shall be deemed to have been satisfied so long as any failure of such representations and warranties to be true and correct would not result in a Seller Material Adverse Effect;

(b) Seller shall have performed and complied in all material respects with all material obligations and covenants required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date; and

(c) Purchaser shall have been furnished with the documents referred to in Section 9.1.

Section 8.3 Conditions Precedent to Obligations of Seller. The obligation of Seller to consummate the transactions contemplated hereunder is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Seller, in whole or in part, subject to Applicable Law):

(a) the representations and warranties of Purchaser contained herein shall be true and correct on and as of the Closing Date, except those representations and warranties of Purchaser that speak as of a certain date, which representations and warranties shall have been true and correct as of such date; provided, however, this condition shall be deemed to have been satisfied so long as any failure of such representations and warranties to be true and correct, individually or in the aggregate, would not result in a Purchaser Material Adverse Effect;

(b) Purchaser shall have performed and complied in all material respects with all material obligations and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date;

(c) Purchaser shall have arranged for the letters of credit, performance bonds, guarantees and similar assurances set forth on Schedule 8.3(c) that are related to the Assumed Contracts (collectively, the "Existing Letters of Credit") to be replaced with other letters of credit, performance bonds, guarantees or assurances, as applicable, with the same or, to the extent acceptable to the applicable counterparty, substantially similar terms (collectively, the "Replacement Letters of Credit"); and

(d) Seller shall have been furnished with the documents referred to in Section 9.2.

If Seller decides to waive the condition set forth in Section 8.3(c), then from the Closing (a) Purchaser shall continue to use its best efforts to obtain Replacement Letters of Credit that it did not obtain prior to Closing and (b) until Replacement Letters of Credit relating to Contracts that will be assumed by Purchaser have been provided for all Existing Letters of Credit, Purchaser shall post cash collateral with Seller securing the Existing Letters of Credit in an aggregate amount equal to at least 105% of the outstanding face amount of the Existing Letters of Credit.

Section 8.4 Frustration of Closing Conditions. Neither Seller nor Purchaser may rely on the failure of any condition set forth in Section 8.1, Section 8.2 or Section 8.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

## ARTICLE IX

### DOCUMENTS TO BE DELIVERED

Section 9.1 Documents to Be Delivered by Seller. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

(a) a counterpart of the Bill of Sale, Assignment and Assumption Agreement (in sufficient counterparts to facilitate recording) substantially in the form of Exhibit C attached hereto (the "Assignment Agreement"), and such other instruments of conveyance reasonably necessary for the transfer of the Transferred Assets, duly executed by Seller;

(b) a certified copy of the Sale Order;

(c) a certificate of an officer of Seller certifying that the closing conditions set forth in Section 8.2(a) and Section 8.2(b) have been satisfied; and

(d) an affidavit of non-foreign status of Seller that complies with Section 1445 of the Code.

Section 9.2 Documents to Be Delivered by Purchaser. At the Closing, Purchaser shall deliver to Seller the following:

- (a) evidence of the wire transfers referred to in Section 3.3;
- (b) a counterpart of the Assignment Agreement, duly executed by Purchaser; and
- (c) a certificate of an officer of Purchaser certifying that the closing conditions set forth in Sections 8.3(a) and 8.3(b) have been satisfied.

## ARTICLE X

### LIMITATIONS

#### Section 10.1 Purchaser's Review.

(a) No Reliance. Purchaser has reviewed and has had access to all documents, records and information which it has desired to review, and has had the opportunity to ask questions, and has received sufficient answers, in connection with its decision to enter into this Agreement, and to consummate the transactions contemplated hereby. In connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, Purchaser has not relied upon, and Purchaser expressly waives and releases Seller from any Liability for any claims (including claims based upon fraudulent inducement) relating to or arising from, any representation, warranty, statement, advice, document, projection, or other information of any type provided by Seller or its Affiliates or any of their respective Representatives, except for those representations and warranties expressly set forth in Article V. In deciding to enter into this Agreement, and to consummate the transactions contemplated hereby, Purchaser has relied solely upon its own knowledge, investigation, judgment and analysis (and that of its Representatives) and not on any disclosure or representation made by, or any duty to disclose on the part of, Seller or its Affiliates or any of their respective Representatives, other than the express representations and warranties of Seller set forth in Article V.

(b) Limited Duties. Any and all duties and obligations which any Party may have to any other Party with respect to or in connection with the Transferred Assets, this Agreement or the transactions contemplated hereby are limited to those specifically set forth in this Agreement. Neither the duties nor obligations of any Party, nor the rights of any Party, shall be expanded beyond the terms of this Agreement on the basis of any legal or equitable principle or on any other basis whatsoever. Neither any equitable or legal principle nor any implied obligation of good faith or fair dealing nor any other matter requires any Party to incur, suffer or perform any act, condition or obligation contrary to the terms of this Agreement, whether or not existing and whether foreseeable or unforeseeable. Each of the Parties acknowledges that it would be unfair, and that it does not intend, to increase any of the obligations of any other Party hereunder on the basis of any implied obligation or otherwise.

Section 10.2 LIMITATION OF REPRESENTATIONS AND WARRANTIES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V, SELLER IS NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SELLER, THE TRANSFERRED ASSETS OR LIABILITIES OF SELLER AND IT IS UNDERSTOOD THAT PURCHASER, WITH SUCH EXCEPTIONS, TAKES THE TRANSFERRED ASSETS "AS IS" AND "WHERE IS". PURCHASER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER HAS NOT MADE, AND SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND PURCHASER HEREBY EXPRESSLY WAIVES, ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE RELATING TO, AND PURCHASER HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY AND ALL RIGHTS, CLAIMS AND CAUSES OF ACTION AGAINST SELLER AND ITS AFFILIATES AND EACH OF THEIR RESPECTIVE REPRESENTATIVES IN CONNECTION WITH THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) HERETOFORE FURNISHED TO PURCHASER OR ITS REPRESENTATIVES BY OR ON BEHALF OF SELLER OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE REPRESENTATIVES IN CONNECTION THEREWITH. WITHOUT LIMITING THE FOREGOING, SELLER IS NOT MAKING ANY REPRESENTATION OR WARRANTY TO PURCHASER WITH RESPECT TO ANY FINANCIAL PROJECTION OR FORECAST RELATING TO THE TRANSFERRED ASSETS OR LIABILITIES OF SELLER. WITH RESPECT TO ANY PROJECTION OR FORECAST DELIVERED ON BEHALF OF SELLER TO PURCHASER OR ITS REPRESENTATIVES, PURCHASER ACKNOWLEDGES THAT (A) THERE ARE UNCERTAINTIES INHERENT IN ATTEMPTING TO MAKE SUCH PROJECTIONS AND FORECASTS, (B) IT IS FAMILIAR WITH SUCH UNCERTAINTIES, (C) IT IS TAKING FULL RESPONSIBILITY FOR MAKING ITS OWN EVALUATION OF THE ADEQUACY AND ACCURACY OF ALL SUCH PROJECTIONS AND FORECASTS FURNISHED TO IT, AND (D) IT SHALL HAVE NO CLAIM AGAINST SELLER OR ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES WITH RESPECT THERETO.

Section 10.3 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. EXCEPT AS SET FORTH IN SECTION 11.2, NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO ANY OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, DAMAGES BASED ON ANY MULTIPLIER OF PROFITS OR OTHER VALUATION METRIC, COST OF CAPITAL, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

Section 10.4 No Recourse. No past, present or future Representative and/or Affiliate of Seller or any Affiliate thereof (excluding any successor-in-interest to Seller) shall have any Liability to Purchaser for any obligations of Seller hereunder.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Nonsurvival of Representations and Warranties. No representation or warranty or pre-closing covenant of the Parties made herein, in any Transaction Document or in any other instrument delivered pursuant to this Agreement shall survive beyond the Closing and there shall be no Liability in respect thereof, whether such Liability has accrued prior to or after the Closing, on the part of any Party or any of its Representatives. Except as set forth in Section 11.2, no representation or warranty or pre-closing covenant of the Parties made herein, in any Transaction Document or in any other instrument delivered pursuant to this Agreement shall survive beyond the termination of this Agreement and there shall be no Liability in respect thereof, whether such Liability has accrued prior to or after such termination, on the part of any Party or any of its Representatives.

#### Section 11.2 Remedies.

(a) The Parties acknowledge and agree that, in addition to the remedies set forth in subsection (c) below and any other remedies available under Applicable Law, the following remedies shall be available upon the following occurrences:

(i) the sole remedy for a breach of any representation or warranty made by Seller, or any covenant required to be performed by Seller prior to the Closing, shall be Purchaser's option to terminate this Agreement pursuant to and to the extent permitted by Section 4.2(b), Section 4.2(c) or Section 4.2(e) and to receive the Break-Up Fee if this Agreement is terminated pursuant to Section 4.2(c) and if due and payable in accordance with Section 4.4 and to receive the Escrow Amount to the extent provided in Section 3.2(b); and

(ii) upon a breach of any representation or warranty made by Purchaser, or any covenant required to be performed by Purchaser prior to the Closing, Seller shall have the option to terminate this Agreement pursuant to and to the extent provided in Section 4.2(b) or Section 4.2(f) and to receive the Escrow Amount to the extent provided in Section 3.2(b).

(b) If any Party seeks to enforce the terms and provisions of this Agreement, then the prevailing Party in such Action shall be entitled to recover from the non-prevailing Party, in addition to the remedies provided in Section 11.2(a) or Section 12.2(c), all costs incurred in connection with such Action, including reasonable legal fees, expenses and costs incurred at the trial court, all appellate courts and during negotiations.

(c) Each Party acknowledges and agrees that the breach of this Agreement would cause irreparable damage to the other Parties and that no Party shall have an adequate remedy at law. Therefore, the obligations of Seller hereunder, including its obligation to sell the Transferred Assets to Purchaser, and the obligations of Purchaser hereunder, including its obligation to purchase and acquire the Transferred Assets from Seller and to assume the Assumed Liabilities, shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith.

Section 11.3 Expenses. Except as otherwise set forth in this Agreement, each of the Parties shall each bear its own expenses (including attorneys' fees) incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated hereby and the consummation of the transactions contemplated hereby and thereby.

Section 11.4 Submission to Jurisdiction.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all Actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 11.11; provided, however, that if the Bankruptcy Cases have been fully and finally dismissed, the Parties agree to and hereby unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute.

(b) The Parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in any court specified in Section 11.4(a), or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the Parties hereby consents to process being served by any Party in any suit, Action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 11.11; provided, however, that such service shall not be effective until the actual receipt thereof by the Party being served.

Section 11.5 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY

APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (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 HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.5.

Section 11.6 No Right of Set-Off. Purchaser for itself and for its Subsidiaries, Affiliates, successors and assigns hereby unconditionally and irrevocably waives any rights of set-off, netting, offset, recoupment, or similar rights that Purchaser or any of its Subsidiaries, Affiliates, successors and assigns has or may have with respect to the payment of the Aggregate Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith.

Section 11.7 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 11.8 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits hereto), the Confidentiality Agreement and the other Transaction Documents represent the entire understanding and agreement between the Parties with respect to the subject matter hereof and can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 11.9 Governing Law. THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING HEREUNDER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN

ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION).

Section 11.10 Table of Contents and Headings. The table of contents and section headings of this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement.

Section 11.11 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given (a) when delivered personally or by prepaid overnight courier, with a record of receipt, (b) the third (3rd) day after mailing if mailed by certified mail, return receipt requested, or (c) the day of transmission, if sent by facsimile or telecopy during regular business hours or the Business Day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the Parties at the following addresses or telecopy numbers (or to such other address or telecopy number as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Seller:

SemMaterials, L.P.  
c/o SemGroup, L.P.  
Two Warren Place  
6120 S. Yale Avenue, Suite 700  
Tulsa, Oklahoma 74136  
Phone: 918-524-8100  
Fax: 918-524-8290  
Attention: President and Chief Executive Officer

With a copy to:

Weil, Gotshal & Manges LLP  
200 Crescent Court, Suite 300  
Dallas, Texas 75201  
Phone: 214-746-7700  
Fax: 214-746-7777  
Attention: Michael A. Saslaw, Esq.

If to Purchaser:

Davison Petroleum Supply, LLC  
2000 Farmerville Highway  
Ruston, LA 71270  
Phone: 318-242-5328



Fax: 318-255-8936  
Attention: Todd Davison

With a copy to:

Genesis Energy, L.P.  
919 Milam, Suite 2100  
Houston, TX 77002  
Phone: 713-860-2528  
Fax: 713-860-2728  
Attention: General Counsel

Section 11.12 Severability. If any term or provision of this Agreement is invalid, illegal or incapable of being enforced by Law or public policy, all other terms and provisions hereof shall nevertheless remain in full force and effect so long as the legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 11.13 Binding Effect; Assignment. This Agreement shall be binding solely upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person who is not a Party. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Party (by operation of law or otherwise) without the prior written consent of the other Party and any attempted assignment without the required consents shall be void.

Section 11.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 11.15 Guaranty. Parent joins herein solely to guaranty Purchaser's obligation to pay the Aggregate Purchase Price pursuant to Section 3.1 and any payment required to be made by Purchaser pursuant to Section 3.5.

[The Remainder of This Page Is Intentionally Left Blank.]

[Signature Pages Follows.]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective officers thereunto duly authorized, as applicable, all as of the date first above written.

**SEMMATERIALS, L.P.**

By: SEMOPERATING G.P., L.L.C.,  
its General Partner

By: Kevin C. Clement  
Name: Kevin Clement 4-2-09  
Title: Authorized Signatory

**DAVISON PETROLEUM SUPPLY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

Solely for purposes of Section 11.15:

**GENESIS ENERGY, L.P.**

By: GENESIS ENERGY, LLC,  
its General Partner

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective officers thereunto duly authorized, as applicable, all as of the date first above written.

**SEMMATERIALS, L.P.**

By: SEMOPERATING G.P., L.L.C.,  
its General Partner

By: \_\_\_\_\_  
Name: Kevin Clement  
Title: Authorized Signatory

**DAVISON PETROLEUM SUPPLY, LLC**

By: Ron A Benavides  
Name: Ron A Benavides  
Title: General Counsel

Solely for purposes of Section 11.15:

**GENESIS ENERGY, L.P.**

By: GENESIS ENERGY, LLC,  
its General Partner

By: Joseph A. Bount Jr.  
Name: JOSEPH A. BOUNT JR.  
Title: PRESIDENT & COO