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

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 or 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2020

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 001-33503

BLUEKNIGHT ENERGY PARTNERS, L.P.

(Exact name of registrant as specified in its charter)

Delaware	**20-8536826**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

6060 American Plaza, Suite 600
Tulsa, Oklahoma 74135
(Address of principal executive offices, zip code)

Registrant's telephone number, including area code: (918) 237-4000

(Former name, former address and former fiscal year, if changed since last report)

Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Units representing limited partner interests	BKEP	Nasdaq Global Market
Series A Preferred Units representing limited partner interests	BKEPP	Nasdaq Global Market

Securities Registered Pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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 every Interactive Data File required to be submitted 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 such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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. (Check one):

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒	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 ☒

As of June 30, 2020, the aggregate market value of the registrant's common units held by non-affiliates of the registrant was approximately $53.0 million, based on $1.40 per common unit, the closing price of the common units as reported on the Nasdaq Global Market on the last business day preceding that date.

As of March 4, 2021, there were 35,125,202 Series A Preferred Units and 41,468,125 common units outstanding.

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DEFINITIONS

We use the following terms in this report:

Feedstock: A raw material required for an industrial process such as petrochemical manufacturing.

Finished asphalt products: As used herein, the term refers to liquid asphalt cement sold directly to end users and to asphalt emulsions, asphalt cutbacks, polymer modified asphalt cement, and related asphalt products processed using liquid asphalt cement. The term is also used to refer to various residual fuel oil products directly sold to end users.

Liquid asphalt: A dark brown to black cementitious material that is primarily produced by petroleum distillation. When crude oil is separated in distillation towers at a refinery, the heaviest hydrocarbons with the highest boiling points settle at the bottom. These tar-like fractions, called residuum, require relatively little additional processing to become products such as liquid asphalt cement or residual fuel oil. Liquid asphalt cement is primarily used in the road construction and maintenance industry. Residual fuel oil is primarily used as a burner fuel in numerous industrial and commercial business applications. As used herein, the term refers to both liquid asphalt cement and residual fuel oils.

Preferred Units: Series A Preferred Units representing limited partnership interests in our partnership.

Terminalling: The receipt of products for storage into storage tanks and other appurtenant equipment where the products may be commingled with other products of similar quality or where the products may be manufactured and changed; the storage of the products; and the delivery of the products as directed by a distributor into a truck or other transportation vessels.

Throughput: The volume of product transported or passing through a plant, terminal or other facility.

PART I.

As used in this annual report, unless we indicate otherwise: (1) "Blueknight," "our," "we," "us" and similar terms refer to Blueknight Energy Partners, L.P., together with its subsidiaries, (2) our "General Partner" refers to Blueknight Energy Partners G.P., L.L.C., and (3) "Ergon" refers to Ergon, Inc., its affiliates and subsidiaries (other than our General Partner and us).

Forward-Looking Statements

This report contains "forward-looking statements" within the meaning of the federal securities laws. Statements included in this annual report that are not historical facts (including any statements regarding plans and objectives of management for future operations or economic performance, or assumptions or forecasts related thereto) are forward-looking statements. These statements can be identified by the use of forward-looking terminology including "may," "will," "should," "believe," "expect," "intend," "anticipate," "estimate," "continue," or other similar words. These statements discuss future expectations, contain projections of results of operations or of financial condition, or state other "forward-looking" information. We and our representatives may from time to time make other oral or written statements that are also forward-looking statements.

Such forward-looking statements are subject to various risks and uncertainties that could cause actual results to differ materially from those anticipated as of the date of this report. Although we believe that the expectations or assumptions reflected in these forward-looking statements are based on reasonable assumptions, no assurance can be given that these expectations will prove to be correct. Important factors that could cause our actual results to differ materially from the expectations reflected in these forward-looking statements include, among other things, those set forth in "Item 1A-Risk Factors," included in this annual report, and those set forth from time to time in our filings with the Securities and Exchange Commission ("SEC"), which are available through the Investors - SEC Filings page at www.bkep.com and through the SEC's Electronic Data Gathering and Retrieval System ("EDGAR") at www.sec.gov.

All forward-looking statements included in this report are based on information available to us on the date of this report. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained throughout this report.

Item 1. Business.

Overview

Blueknight is a publicly traded master limited partnership with operations in 26 states. We have the largest independent asphalt facility footprint in the nation, and through that we provide integrated terminalling services for companies engaged in the production, distribution, and handling of liquid asphalt that are providing the basic materials for the infrastructure and construction needed to maintain and expand the U.S. economy. We manage our operations through a single segment, asphalt terminalling services.

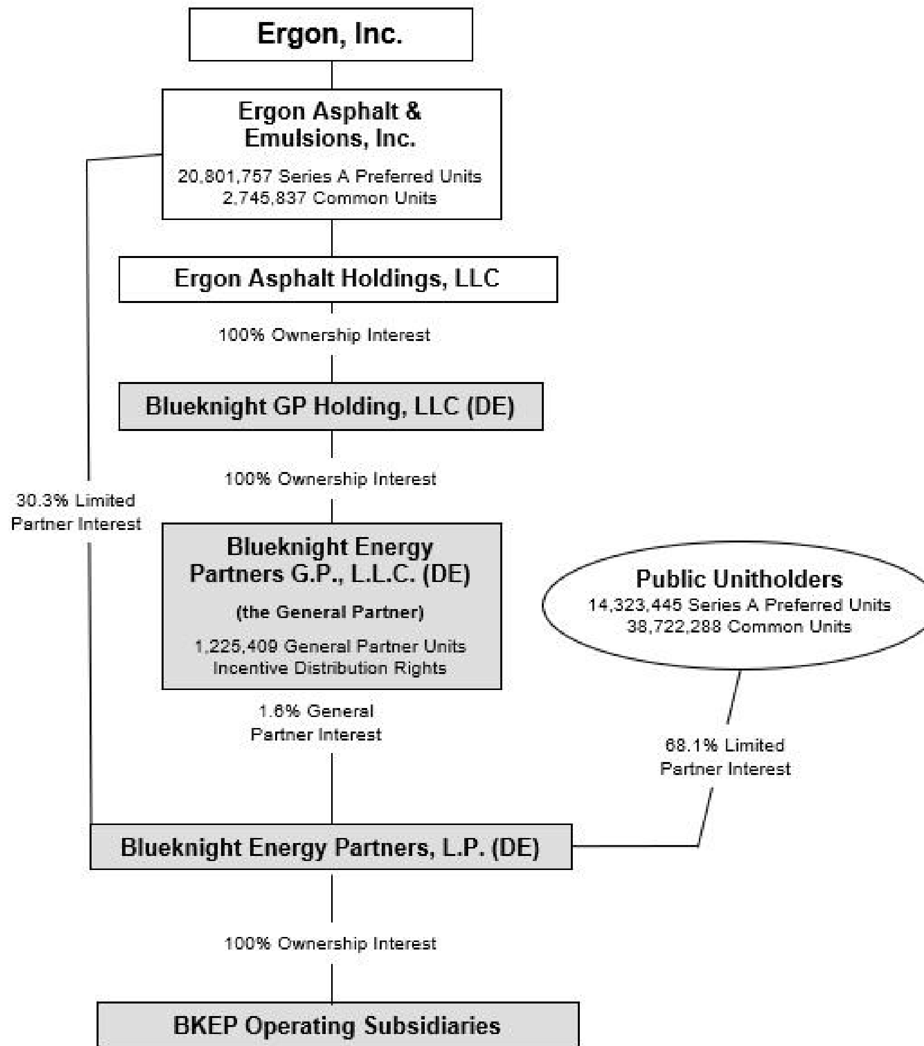
We previously provided integrated terminalling, gathering, and transportation services for companies engaged in the production, distribution, and marketing of crude oil in three different operating segments: (i) crude oil terminalling services, (ii) crude oil pipeline services, and (iii) crude oil trucking services. On December 21, 2020, we announced we had entered into multiple definitive agreements to sell these segments, and these segments are presented as discontinued operations. The transaction related to the crude oil pipeline services segment closed on February 1, 2021, and the transactions relating to the crude oil trucking services segment closed on December 15, 2020, and February 2, 2021. The transaction related to the crude oil terminalling services segment closed on March 1, 2021.

Our Operations

We were formed as a Delaware limited partnership in 2007. Our operating assets are owned by, and our operations are conducted through, our subsidiaries. Our General Partner has sole responsibility for conducting our business and for managing our operations. Ergon owns 100% of the outstanding membership interest of Blueknight GP Holding, L.L.C., which owns 100% of the membership interest of our General Partner.

Our General Partner has no business or operations other than managing our business. In addition, outside of its investment in us, our General Partner owns no assets or property other than a minimal amount of cash, which has been distributed by us to our General Partner in respect of its interest in us. Our partnership agreement imposes no additional material liabilities upon our General Partner or obligations to contribute to us other than those liabilities and obligations imposed on general partners under the Delaware Revised Uniform Limited Partnership Act.

The following diagram depicts our organizational structure, including our relationship with our affiliates and subsidiaries, as of March 4, 2021:



Our Strengths and Strategies

Business strategy. Our new go-forward strategy is to transform Blueknight into a pure-play, downstream terminalling solutions provider focused on infrastructure and transportation end markets. During the first quarter of 2021, we completed the transformational divestitures of our three crude oil business segments. Through these divestitures, we have improved our balance sheet and achieved financial flexibility to pursue accretive growth investments. We have refocused expansion activities on core competencies and inherent competitive advantages in specialty terminalling markets. We will redeploy capital and maximize risk-adjusted returns in both organic and non-organic growth projects.

Strategically placed assets. We own 53 asphalt terminalling facilities in 26 states, consisting of approximately 8.7 million barrels of liquid asphalt storage, which we believe are well positioned to provide services in the market areas they serve throughout the continental United States. In addition, we have a focus on leveraging this existing site footprint to increase utilization for other complementary specialty products.

Growth opportunities. We evaluate growth opportunities from multiple angles, including growth through third-party acquisitions and optimizing our existing asset base. In addition, Ergon has indicated that it views us as a potential vehicle for growth opportunities. We cannot say with any certainty whether or not Ergon will pursue future acquisition or expansion opportunities with us, or if we will choose to pursue any such opportunity Ergon presents.

Experienced management team. Our General Partner has an experienced and knowledgeable management team with extensive experience as a service provider in the product handling and construction materials industries. We expect to directly benefit from this management team's strengths, including significant relationships throughout these industries with customers of our terminalling services.

Our relationship with Ergon. Ergon owns our General Partner and therefore controls our operations. Ergon is a privately held company formed in 1954 and is based in Jackson, Mississippi, with over 3,000 employees globally. Ergon and its subsidiaries are engaged in a wide range of operations that are categorized into six primary business segments: Refining & Marketing, Specialty Chemicals, Asphalt & Emulsions, Midstream & Logistics, Oil & Gas, and Construction & Real Estate. This relationship may provide us with additional capital sources for future growth as well as increased opportunities to provide terminalling, gathering and transportation services. While this relationship may benefit us, it may also be a source of potential conflicts. Ergon is not restricted from competing with us and may acquire, construct or dispose of additional assets in the future without any obligation to offer us the opportunity to purchase or construct those assets.

Asphalt Industry Overview

Liquid asphalt is one of the oldest engineering materials. Liquid asphalt's adhesive and waterproofing properties have been used for building structures, waterproofing ships, mummification, and numerous other applications.

Production of liquid asphalt begins with the refining of crude oil. When crude oil is separated in distillation towers at a refinery, the heaviest hydrocarbons with the highest boiling points settle at the bottom. These tar-like fractions, called residuum, require relatively little additional processing to become products such as liquid asphalt. Liquid asphalt production typically represents only a small portion of the total product production in the crude oil refining process. The liquid asphalt produced by petroleum distillation can be sold by the refinery either directly into the wholesale and retail liquid asphalt markets or to a liquid asphalt marketer.

In its normal state, liquid asphalt is too viscous to be used at ambient temperatures. For paving applications, asphalt can be heated (hot mix asphalt), diluted or cut back with petroleum solvents (cutback asphalts), or emulsified in a water base with emulsifying chemicals by a colloid mill (asphalt emulsions). Hot mix asphalt is produced by mixing hot asphalt cement and heated aggregate (stone, sand and/or gravel). The hot mix asphalt is loaded into trucks for transport to the paving site, where it is placed on the road surface by paving machines and compacted by rollers. Hot mix asphalt is used for new construction, reconstruction, and for thin maintenance overlay on existing roads.

Asphalt emulsions and cutback asphalts are used for a variety of applications, including spraying as a tack coat between an old pavement and a new hot mix asphalt overlay, cold mix pothole patching material, and preventive maintenance surface applications such as chip seals. Asphalt emulsions are also used for fog seal, slurry seal, scrub seal, sand seal and microsurfacing maintenance treatments, warm mix emulsion/aggregate mixtures, base stabilization, and both central plant and in-place recycling. Asphalt emulsions and cutback asphalts are generally sold directly to government agencies but are also sold to contractors.

The asphalt industry in the United States is characterized by a high degree of seasonality. Much of this seasonality is due to the impact that weather conditions have on road construction schedules, particularly in cold weather states. Refineries produce liquid asphalt year-round, but the peak asphalt demand season is during the warm weather months when most of the road construction activity in the United States takes place. Liquid asphalt marketers and finished asphalt product producers with access to storage capacity possess the inherent advantage of being able to purchase supply from refineries on a year-round basis and then sell finished asphalt products in the peak summer demand season.

Asphalt Terminalling Services

We provide asphalt terminalling services to marketers and distributors of liquid asphalt and asphalt-related products. We do not take title to the product. With approximately 8.7 million barrels of asphalt cement storage capacity, we are able to provide our customers the ability to effectively manage their liquid asphalt inventories while allowing significant flexibility in their processing and marketing activities. As of March 4, 2021, we have 53 terminals located in 26 states and, as such, are well-positioned to provide asphalt terminalling services in the market areas we serve throughout the continental United States.

We serve the asphalt industry by providing our customers access to their market areas through a combination of leasing our liquid asphalt facilities and providing terminalling services at certain facilities. We generate revenues by charging a fee for the lease of a facility or for services provided as asphalt products are terminalled in our facilities.

As of March 4, 2021, we have leases and terminalling agreements relating to all of our asphalt facilities, including 28 under contract with Ergon. Our agreements have, based on a weighted average by remaining fixed revenue, approximately 5.8 years remaining under their terms. Based on tank capacity, approximately 20% of capacity, all with third parties, expire in late 2021 if not renewed with the current customer or a new customer, and the remaining capacity expires at varying times thereafter, through 2027. We may not be able to extend, renegotiate or replace these contracts when they expire and the terms of any renegotiated contracts may not be as favorable as the contracts they replace.

At facilities where we have terminalling agreements, we receive, store and/or process our customers' asphalt products until we deliver those products to our customers or other third parties. Our asphalt assets include the logistics assets, such as docks and rail spurs and the piping and pumping equipment necessary to facilitate the unloading of liquid asphalt into our terminalling and storage facilities, as well as the processing and manufacturing equipment required for the processing of asphalt emulsions, asphalt cutbacks, polymer modified asphalt cement, and other related finished asphalt products. After initial unloading, the liquid asphalt is moved via heat-traced pipe into storage tanks. Those tanks are insulated and contain heating elements that allow the liquid asphalt to be stored in a heated state. The liquid asphalt can then be directly sold by our customers to end users or used as a raw material for the processing of asphalt emulsions, asphalt cutbacks, polymer modified asphalt cement, and related finished asphalt products that we process in accordance with the formulations and specifications provided by our customers. Depending on the product, the processing of asphalt entails combining asphalt cement and various other products such as emulsifying chemicals and polymers to achieve the desired specification and application requirements.

At leased facilities, our customers conduct the operations at the asphalt facility, including the storage and processing of asphalt products, and we collect a monthly rental fee relating to the lease of such facility. Generally, under the terms of those leases, (i) title to the asphalt, raw materials or finished asphalt products received, unloaded, stored, or otherwise handled at such asphalt facility is in the name of the lessee; (ii) the lessee is responsible for complying with environmental, health, safety, transportation and security laws; (iii) the lessee is required to obtain and maintain necessary permits, licenses, plans, approvals, or other such authorizations and is responsible for insuring such asphalt facility; and (iv) most routine maintenance and repairs of such asphalt facility are the responsibility of the lessee.

We do not take title to or have marketing responsibility for the liquid asphalt product at terminals we operate. As a result, our asphalt operations have minimal direct exposure to changes in commodity prices, but the volumes of liquid asphalt we terminal are indirectly affected by commodity prices.

The following table provides an overview of our asphalt facilities as of March 4, 2021:

Location	**Number of Facilities**	**Total Tankage (in thousands of bbls)(1)**
Alabama	1	205
Arizona	1	66
Arkansas	1	21
California	1	66
Colorado	4	401
Georgia	2	192
Idaho	1	285
Illinois	2	232
Indiana	1	156
Kansas	5	662
Missouri	3	662
Mississippi	1	202
Montana	1	123
Nebraska	1	292
New Jersey	1	459
Nevada	1	280
North Carolina	1	243
Ohio	1	38
Oklahoma	7	1,420
Pennsylvania	1	59
Tennessee	4	770
Texas	4	248
Utah	2	300
Virginia	2	635
Washington	3	468
Wyoming	1	220
Total	**53**	**8,705**

(1) Total tankage refers to the approximate total capacity of all tanks.

Our asphalt assets range in age from one year to over 50 years, and we expect that our storage tanks and related assets will have an average remaining life in excess of 20 years.

Significant Customers. For the year ended December 31, 2020, Ergon accounted for at least 40% but not more than 45% of our total asphalt terminalling services revenue. Two third-party customers each accounted for at least 10% but not more than 15% of asphalt terminalling services revenue in 2020. The loss of any of those customers could have a material adverse effect on our business, cash flows and results of operations. No other customer accounted for more than 10% of our a revenue during 2020. As of March 4, 2021, we have terminalling agreements or operating leases with Ergon for 28 of our asphalt facilities. For more information regarding the Ergon agreements, please see Note 12 to our consolidated financial statements.

Competition

We compete with national, regional, and local liquid asphalt terminalling companies of widely varying sizes, financial resources, and experience. We are subject to competition from other terminalling operations that may be able to supply our customers with the same or comparable services on a more competitive basis.

The asphalt industry is highly fragmented and regional or local in nature. Participants range in size from major oil companies to small family-owned businesses. Participants in the asphalt business include: (i) refiners such as BP p.l.c., Flint Hills Resources, L.P., CHS, Inc., ExxonMobil Corporation, Phillips 66, NuStar Energy L.P., Ergon Refining, Inc., Marathon Petroleum Company LLC, Alon USA LP, Suncor Energy Inc., and Valero Energy Corporation; (ii) resellers such as Associated Asphalt Partners, LLC, Idaho Asphalt Supply, Inc., and Asphalt Materials, Inc.; and (iii) large road construction firms such as Old Castle Materials, Inc. and Colas SA. We compete for asphalt terminalling services with the national, regional and local industry participants.

Our ability to compete could be harmed by factors we cannot control, including the perception that another company can provide better service or a decision by our competitors to acquire or construct asphalt terminalling assets and provide terminalling services in geographic areas, or to customers, served by our assets and services.

If we are unable to compete effectively with services offered by other asphalt terminalling companies, our financial results and ability to make distributions to our unitholders may be adversely affected. Additionally, we also compete with national, regional, and local companies for asset acquisitions and expansion opportunities. Some of these competitors are substantially larger than us and have greater financial resources and lower costs of capital than we do.

Environmental, Health and Safety Risk

Federal, state and local laws and regulations related to zoning, land use, air emissions (including greenhouse gases), water discharges, waste management and disposal, noise, odor and dust control, and other environmental, health and safety and security matters govern our operations. Some of our operations require permits or other government-issued authorizations, which may impose additional operating standards, and are subject to modification renewal and revocation. We commit resources to achieve and maintain compliance with all applicable laws and regulations, however the risk of liabilities, particularly environmental liabilities, is inherent in the operation of our businesses. These potential liabilities could result in material costs, including for fines or personal injury or damages claims, which could have an adverse impact on our operations and profitability.

Future events, including changes in existing laws or regulations or enforcement policies, or further investigation or evaluation of the potential health hazards of the products handled or business activities may result in additional or unanticipated compliance and other costs. We could be required to invest in preventive or remedial action, like control equipment, which could be substantial, or which could result in restrictions on our operations or delays in obtaining required permits or other approvals.

Our operations are subject to manufacturing, operating, and handling risks associated with the products we produce and the products we use in our operations, including the related storage and associated transportation of raw materials by truck, rail and water, finished products, hazardous substances, and wastes. We are exposed to potential hazards including storage tank leaks, explosions, discharges or releases of hazardous substances, health hazard exposure, documentation and reporting failures and the operation of mobile equipment and manufacturing machinery. These risks can subject us to potential liabilities relating to personal injury or death, or property damage, and may result in civil or criminal penalties, which could hurt our productivity or profitability. We may be called upon to investigate and remediate environmental contamination relating to our prior or current operations, as well as operations we have acquired from others, or we may be named as a defendant in litigation brought by governmental agencies or private parties.

Operational Hazards and Insurance

Terminals and similar facilities may experience damage as a result of an accident or natural disaster. These hazards can cause personal injury and loss of life, severe damage to and destruction of property and equipment, pollution or environmental damage and suspension of operations. We maintain insurance of various types and varying levels of coverage which we consider adequate under the circumstances to cover our operations and properties, including coverage for pollution-related events. However, such insurance does not cover every potential risk associated with operating terminals and other facilities. In 2020, we experienced increased costs as insurers are increasing premiums to ameliorate recent losses. Through the utilization of deductibles and retentions, we self-insure the “working layer” of loss activity to create a more efficient and cost-effective program. The working layer consists of high-frequency/low-severity losses that are best retained and managed in-house. We continue to monitor our retentions as they relate to the overall cost and scope of our insurance program.

Employees

As of December 31, 2020, we had approximately 147 employees related to our continuing operations. None of these employees are represented by labor unions or covered by any collective bargaining agreement.

Financial Information about Segments

We operate our asphalt terminalling facilities under a single operating segment.

Available Information

We provide public access to our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to these reports filed with the SEC under the Securities and Exchange Act of 1934. These documents may be accessed free of charge on our website, www.bkep.com, as soon as is reasonably practicable after their filing with the SEC. Information contained on our website is not incorporated by reference in this report or any of our other filings. The SEC also maintains a website which contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. The SEC’s website is www.sec.gov.

Item 1A. Risk Factors.

Limited partner interests are inherently different from the capital stock of a corporation, although many of the business risks to which we are subject are similar to those that would be faced by a corporation engaged in a similar business. You should carefully consider the following risk factors together with all of the other information included in this report. If any of the following risks were actually to occur, our business, financial condition, results of operations and cash flows could be materially adversely affected. In that case, we might not be able to pay distributions on our units, the trading price of our units could decline and our unitholders could lose all or part of their investment.

Risks Related to our Business

We may not have sufficient cash from operations following the establishment of cash reserves and payment of fees and expenses, including cost reimbursements to our General Partner, to enable us to make cash distributions to holders of our units at our current distribution rate.

In order to make cash distributions on our Preferred Units at the preference distribution rate of $0.17875 per unit per quarter, or $0.715 per unit per year, and on our common units at the current quarterly distribution of $0.04 per unit per quarter, or $0.16 per unit per year, we will require available cash of approximately $8.1 million per quarter, or $32.4 million per year. We may not have sufficient available cash from operating surplus each quarter to enable us to make cash distributions on our Preferred Units at the preference rate or on our common units at the current quarterly distribution rate. The amount of cash we can distribute on our units principally depends upon the amount of cash we generate from our operations, which will fluctuate from quarter to quarter based on, among other things, the risks described herein.

In addition, the actual amount of cash we will have available for distribution will depend on other factors, including:

- the level of capital expenditures we make;
- the cost of acquisitions;
- our debt service requirements and other liabilities;
- fluctuations in our working capital needs;
- our ability to borrow funds and access capital markets;
- restrictions contained in our credit facility or other debt agreements; and
- the amount of cash reserves established by our General Partner.

We depend on certain key customers for a portion of our revenues and are exposed to credit risks of these customers. The loss of or material nonpayment or nonperformance by any of these key customers could adversely affect our financial condition, results of operations and cash flows.

We rely on certain key customers for a portion of our revenues. For example, Ergon Asphalt and Emulsion, Inc., a wholly-owned subsidiary of Ergon, Inc., represented at least 40% but not more than 45% of our total revenue in 2020. Ergon is a private company and we have limited information regarding its financial condition. Ergon comprised 13% of total accounts receivable at December 31, 2020.

In addition to Ergon, we have two other key customers that each accounted for at least 10% but not more than 15% of total revenue in 2020. Three third-party customers each accounted for between 10% and 25% of accounts receivable at December 31, 2020.

We may be unable to negotiate extensions or replacements of contracts with key customers on favorable terms. In addition, some of these key customers may experience financial problems which could have a significant effect on their creditworthiness. Severe financial problems encountered by our customers could limit our ability to collect amounts owed to us or to enforce performance of obligations under contractual arrangements. Additionally, many of our customers finance their activities through cash flows from operations, the incurrence of debt or the issuance of equity. The reduction of cash flows resulting from a reduction in borrowing bases under credit facilities, the lack of availability of debt or equity financing, or any combination of such factors may result in a significant reduction of our customers' liquidity and limit their ability to make payments or perform on their obligations to us. Furthermore, some of our customers may be highly leveraged and subject to their own operating and regulatory risks, which increases the risk that they may default on their obligations to us. The loss of all or even a portion of the contracted fees of these key customers, as a result of competition, creditworthiness or otherwise, could have a material adverse effect on our business, cash flows, ability to make distributions to our unitholders, unit price, results of operations and ability to conduct our business.

The amount of cash we have available for distribution to holders of our units depends primarily on our cash flows and not solely on earnings reflected in our financial statements. Consequently, even if we are profitable and are otherwise able to pay distributions, we may not be able to make cash distributions to holders of our units.

Our unitholders should be aware that the amount of cash we have available for distribution depends primarily upon our cash flows and not solely on earnings reflected in our financial statements, which will be affected by non-cash items. As a result, we may make cash distributions, if permitted by our credit agreement, during periods when we record losses for financial accounting purposes and may not make cash distributions during periods when we record net earnings for financial accounting purposes.

Our debt levels under our credit agreement may limit our ability to make distributions and our flexibility in obtaining additional financing and in pursuing other business opportunities.

As of December 31, 2020, we had approximately $252.6 million in outstanding indebtedness, excluding approximately $1.7 million in outstanding letters of credit, under our $400.0 million credit agreement. Our level of debt under the credit agreement could have important consequences for us, including the following:

- Our ability to obtain additional financing, if necessary, for working capital, capital expenditures, acquisitions or other purposes may be impaired or such financing may not be available on favorable terms.
- We will need a substantial portion of our cash flows to make principal and interest payments on our debt, reducing the funds that would otherwise be available for operations, future business opportunities and distributions to unitholders.
- We could be more vulnerable to competitive pressures or a downturn in our business or the economy generally.
- Our flexibility in responding to changing business and economic conditions may be limited.

Our ability to service our debt will depend upon, among other things, our future financial and operating performance, which will be affected by prevailing economic conditions and financial, business, regulatory and other factors. Our ability to service debt under our credit agreement also will depend on market interest rates, since the interest rates applicable to our borrowings will fluctuate with the eurodollar rate or the prime rate. If our operating results are not sufficient to service our current or future indebtedness, we will be forced to take actions such as reducing distributions, reducing or delaying our business activities, acquisitions, investments or capital expenditures, selling assets, restructuring or refinancing our debt or seeking additional equity capital. We may not be able to effect any of these actions on satisfactory terms, or at all.

Restrictions in our credit agreement could materially adversely affect our business, financial condition, results of operations, ability to make cash distributions to unitholders and value of our units.

We are dependent upon the earnings and cash flows generated by our operations to meet our debt service obligations and to make cash distributions to our unitholders. The operating and financial restrictions and covenants in our credit agreement and any future financing agreements could restrict our ability to finance future operations or capital needs or to expand or pursue our business activities, which may, in turn, limit our ability to make cash distributions to our unitholders. For example, our credit agreement restricts our ability to, among other things:

- incur or guarantee certain additional debt;
- make certain cash distributions on or redeem or repurchase certain units;
- make certain investments and acquisitions;
- make certain capital expenditures;
- incur certain liens or permit them to exist;
- enter into certain types of transactions with affiliates;
- merge or consolidate with another company or otherwise engage in a change of control transaction; and
- transfer, sell or otherwise dispose of certain assets.

Our credit agreement also contains covenants requiring us to maintain certain financial ratios and meet certain financial tests. Our ability to meet those financial ratios and financial tests can be affected by events beyond our control, and we cannot guarantee that we will meet those ratios and tests.

The provisions of our credit agreement may affect our ability to obtain future financing and pursue attractive business opportunities as well as affect our flexibility in planning for, and reacting to, changes in business conditions. In addition, a failure to comply with the provisions of our credit agreement could result in a default or an event of default that could enable our lenders to declare the outstanding principal of that debt, together with accrued and unpaid interest, to be immediately due and payable. If we were unable to repay the accelerated amounts, the lenders under our credit agreement could proceed against the collateral granted to them to secure such debt. If the payment of our debt is accelerated, our assets may be insufficient to repay such debt in full, and our unitholders could experience a partial or total loss of their investment. The credit agreement also has cross default provisions that apply to any other indebtedness we may have, and the indentures have cross default provisions that apply to certain other indebtedness.

We may not be able to raise sufficient capital to grow our business.

As of March 4, 2021, we have aggregate unused credit availability under our credit agreement, plus cash on hand, of approximately $248.4 million. Our ability to borrow funds under our credit facility may be limited by the financial covenants in our credit agreement. Our ability to access the public capital markets on terms acceptable to us or at all may be limited due to, among other things, general economic conditions, rising interest rates, capital market volatility, the uncertainty of our future cash flows, adverse business developments and other contingencies. In addition, we may have difficulty obtaining a credit rating or any credit rating that we do obtain may be lower than it otherwise would be due to these uncertainties. The lack of a credit rating or a low credit rating may also adversely impact our ability to access capital markets on terms acceptable to us or at all, and may increase significantly the costs of financing our growth potential.

If we fail to raise additional capital or an event of default occurs under our credit agreement, we may be forced to sell assets or take other action that could have a material adverse effect on our business, unit price and results of operations. In addition, if we are unable to access the capital markets for acquisitions or expansion projects on terms acceptable to us or at all, or if the financing cost related to any such acquisitions or expansion projects increases, it may have a material adverse effect on our business, cash flows, ability to make distributions to our unitholders, unit price, results of operations and ability to conduct our business.

If we borrow funds to make any permitted quarterly distributions, our ability to pursue acquisitions and other business opportunities may be limited and our operations may be materially and adversely affected.

Available cash for the purpose of making distributions to unitholders includes working capital borrowings. If we borrow funds to pay one or more quarterly distributions, such amounts will incur interest and must be repaid in accordance with the terms of our credit agreement. In addition, any amounts borrowed for permitted distributions to our unitholders will reduce the funds available to us for other purposes under our credit agreement, including amounts available for use in connection with acquisitions and other business opportunities. If we are unable to pursue our growth strategy due to our limited ability to borrow funds, our operations may be materially and adversely affected.

Our revenues from third-party customers are generated under contracts that must be renegotiated periodically and that allow the customer to reduce or suspend performance in some circumstances, which could cause our revenues from those contracts to decline and reduce our ability to make distributions to our unitholders.

Some of our contract-based revenues from customers are generated under contracts with terms which allow the customer to reduce or suspend performance under the contract in specified circumstances, such as the occurrence of a catastrophic event to our or the customer's operations. The occurrence of an event which results in a material reduction or suspension of our customer's performance could have a material adverse effect on our financial condition, results of operations and cash flows.

Our contracts with some of our customers have remaining terms of one year or less. As these contracts expire, they must be extended and renegotiated or replaced. We may not be able to extend and renegotiate or replace these contracts when they expire, and the terms of any renegotiated contracts may not be as favorable as the contracts they replace. In particular, our ability to extend or replace contracts could be harmed by numerous competitive factors, such as those described above under "Item 1. Business - Competition." If we cannot successfully renew significant contracts or must renew them on less favorable terms, or if we incur substantial costs in modifying our terminals, our revenues from these arrangements could decline, which could have a material adverse effect on our financial condition, results of operations and cash flows.

Certain of our asphalt terminalling services contracts have short remaining terms, and certain leases relating to our asphalt operations may be terminated upon short notice.

As of March 4, 2021, we had leases or terminalling agreements with customers for all of our 53 asphalt facilities. Approximately 20% of our tank capacity, all with third-parties, will expire by the end of 2021 if not renewed with the current customer or a new customer. We may not be able to renew or extend our existing contracts or enter into new leases or storage agreements when such contracts expire on terms acceptable to us or at all. In addition, certain key customers account for a significant portion of our asphalt terminalling services revenues, the loss of which could result in a significant decrease in revenues from our asphalt operations. A significant decrease in the revenues we receive from our asphalt operations could result in violations of covenants under our credit agreement and could have a material adverse effect on our business, cash flows, ability to make distributions to our unitholders, unit price, results of operations, and ability to conduct our business.

In addition, certain of our asphalt facilities are located on land that we lease from third parties. Some of these leases may be terminated by the lessor with as short as thirty days' notice. We also have not yet received consent from certain of the lessors to sublease such facilities, which may result in a default under such lease or invalidate the subleases. If such leases were terminated, it could have a material adverse effect on our ability to provide asphalt terminalling services, which could have a material adverse effect on our business, cash flows, ability to make distributions to our unitholders, unit price, results of operations, and ability to conduct our business. In addition, in certain instances we have not entered into new leases with a lessor, although we continue to operate under expired leases and make payments to the lessor and are in the process of negotiating new leases. If it were determined that we did not have rights under these expired leases, it could have a material adverse effect on our ability to conduct our asphalt operations and on our financial condition, results of operations and cash flows.

We may not be fully insured against all risks incident to our business and could incur substantial liabilities as a result.

We may not be able to maintain or obtain insurance of the type and amount we desire at reasonable rates. As a result of changing market conditions, premiums and deductibles for certain of our insurance policies may increase substantially in the future. In some instances, certain insurance could become unavailable or available only for reduced amounts of coverage. If we were to incur a significant liability for which we were not fully insured, it could have a material adverse effect on our business, cash flows, ability to make distributions to our unitholders, unit price, results of operations, and ability to conduct our business.

A significant decrease in demand for liquid asphalt products in the areas served by our operations could reduce our ability to make distributions to our unitholders.

A sustained decrease in demand for liquid asphalt products in the areas served by our terminalling facilities could significantly reduce our revenues and, therefore, reduce our ability to make or increase distributions to our unitholders. Factors that could lead to a decrease in market demand for liquid asphalt products include: lower demand by consumers for refined products, including asphalt products, as a result of (i) recession or other adverse economic conditions; (ii) higher prices caused by an increase in the market price of crude oil; or (iii) higher taxes or other governmental or regulatory actions that increase, directly or indirectly, the cost of gasoline or other refined products.

A material decrease in the production of liquid asphalt could materially reduce our ability to make distributions to our unitholders.

The throughput at our asphalt facilities depends on the availability of attractively priced liquid asphalt produced from the various liquid asphalt producing refineries. Liquid asphalt production may decline for a number of reasons, including refiners processing more light, sweet crude oil or refiners installing coker units which further refine heavy residual fuel oil bottoms such as liquid asphalt. If our customers are unable to replace volumes lost due to a temporary or permanent material decrease in production from the suppliers of liquid asphalt, our throughput could decline, reducing our revenue and cash flows and adversely affecting our financial condition and results of operations.

If we are unable to make acquisitions on economically acceptable terms, our future growth may be limited.

Our ability to grow in the future will depend, in part, on our ability to make acquisitions that result in an increase in the cash generated per unit from operations. Ergon has indicated that it views us as a vehicle of growth. We cannot say with any certainty whether or not Ergon will pursue future acquisition or expansion opportunities with us, or if we will choose to pursue any such opportunity Ergon presents.

We may also make acquisitions directly from third parties. If we are unable to make accretive acquisitions because we are (i) unable to acquire projects when they are available; (ii) unable to identify attractive acquisition candidates or negotiate acceptable purchase contracts with them; (iii) unable to obtain financing for these acquisitions on economically acceptable terms; or (iv) outbid by competitors, then our future growth and ability to increase distributions may be limited. Furthermore, even if we do make acquisitions that we believe will be accretive, these acquisitions may nevertheless result in a decrease in the cash generated from operations per unit.

Any acquisition involves potential risks, including, among other things:

- mistaken assumptions about volumes, revenues and costs, including synergies;
- an inability to integrate successfully the businesses we acquire;
- an inability to hire, train or retain qualified personnel to manage and operate our business and assets;
- the assumption of unknown liabilities;
- limitations on rights to indemnity from the seller;
- mistaken assumptions about the overall costs of equity or debt;
- the diversion of management’s and employees’ attention from other business concerns;
- unforeseen difficulties operating in new product areas or new geographic areas; and
- customer or key employee losses at the acquired businesses.

If we consummate any future acquisitions, our capitalization and results of operations may change significantly and our unitholders likely will not have the opportunity to evaluate the economic, financial, and other relevant information that we will consider in determining the application of these funds and other resources.

If we acquire assets that are distinct and separate from our existing terminalling operations, it could subject us to additional business and operating risks.

We may acquire assets that have operations in new and distinct lines of business from our liquid asphalt operations. Integration of a new business is a complex, costly and time-consuming process. Failure to timely and successfully integrate acquired entities' lines of business with our existing operations may have a material adverse effect on our business, financial condition, results of operations and cash flows. The difficulties of integrating a new business with our existing operations include, among other things:

- operating distinct businesses which require different operating strategies and different managerial expertise;
- the necessity of coordinating organizations, systems and facilities in different locations;
- integrating personnel with diverse business backgrounds and organizational cultures; and
- consolidating corporate and administrative functions.

In addition, the diversion of our attention and any delays or difficulties encountered in connection with the integration of a new business, such as unanticipated liabilities or costs, could harm our existing business, results of operations, financial condition, and prospects. Furthermore, new lines of business may subject us to additional business and operating risks. These new business and operating risks could have a material adverse effect on our financial condition, results of operations and cash flows.

Expanding our business by constructing new assets subjects us to risks that projects may not be completed on schedule and that the costs associated with projects may exceed our expectations and budgets, which could cause our cash available for distribution to our unitholders to be less than anticipated.

The construction of additions or modifications to our existing assets and the construction of new assets involves numerous regulatory, environmental, political, legal, and operational uncertainties and requires the expenditure of significant amounts of capital. If we undertake these types of projects, they may not be completed on schedule or at all or within the budgeted cost. Moreover, we may construct facilities to capture anticipated future growth in demand in a market in which such growth does not materialize.

Our expansion projects may not immediately produce operating cash flows.

Expansion projects require significant capital investments over time and we will incur financing costs during the planning and construction phases of these projects; however, the operating cash flows we expect these projects to generate will not materialize, if at all, until sometime after the projects are completed and placed into service. As a result, to the extent we finance our projects with borrowings, our leverage may increase during the period prior to the generation of those operating cash flows and, to the extent we finance our projects with equity, our cash available for distribution on a common unit basis may decrease during the period prior to the generation of those operating cash flows. If we experience unanticipated or extended delays in generating operating cash flows from construction projects, or if such operating cash flows do not materialize as expected, we may need to reduce or reprioritize our capital budget in order to meet our capital requirements, and our liquidity and capital position could be adversely affected.

Our business involves many hazards and operational risks, including adverse weather conditions, which could cause us to incur substantial liabilities.

Our operations are subject to the many hazards inherent in the terminalling of liquid asphalt cement, including:

- explosions, earthquakes, fires and accidents;
- extreme weather conditions, such as hurricanes, which are common in the Gulf Coast, and tornadoes and flooding, which are common in the Midwest and other areas of the United States in which we operate;
- damage to our terminals and equipment;
- leaks or releases of liquid asphalt product into the environment; and
- acts of terrorism or vandalism.

If any of these events were to occur, we could suffer substantial losses because of personal injury or loss of life, severe damage to and destruction of property and equipment and pollution or other environmental damage resulting in curtailment or suspension of our related operations. In addition, mechanical malfunctions, faulty measurement or other errors may result in significant costs or lost revenues.

We could be negatively impacted by the outbreak of coronavirus (COVID-19).

In light of the uncertain situation relating to the spread of the coronavirus (COVID-19), this public health concern could pose a risk to our employees, our customers, our vendors and the communities in which we operate, which could negatively impact our business. The extent to which the coronavirus (COVID-19) may impact our business will depend on future developments, which are uncertain and cannot be predicted at this time. We continue to monitor the situation, have actively implemented policies and practices to address the situation, and may adjust our current policies and practices as more information and guidance become available.

We do not own all of the land on which our facilities are located, which could disrupt our operations.

We do not own all of the land on which our asphalt facilities have been constructed, and we are therefore subject to the possibility of more onerous terms and/or increased costs to retain necessary land use if any material real property leases are invalid, lapse or terminate. We obtain the rights to construct and operate some of our asphalt facilities on land owned by third parties and governmental agencies for a specific period of time. Our loss of these rights through our inability to renew leases, could have a material adverse effect on our business, results of operations, financial condition, cash flows and ability to make cash distributions to our unitholders. In addition, we are in the process of obtaining consents from the lessors for certain leased property that was transferred to us as part of the acquisition of our asphalt assets. If any consent is denied, it could have a material adverse effect on our business, results of operations, financial condition, cash flows and our ability to make cash distributions to our unitholders.

Terrorist or cyber-attacks and threats, escalation of military activity in response to these attacks or acts of war could have a material adverse effect on our business, financial condition or results of operations.

Terrorist attacks and threats, cyber-attacks, escalation of military activity or acts of war may have significant effects on general economic conditions, fluctuations in consumer confidence and spending and market liquidity, each of which could materially and adversely affect our business. Terrorist or cyber-attacks, rumors or threats of war, actual conflicts involving the United States or its allies or military or trade disruptions may significantly affect our operations and those of our customers. Strategic targets, such as energy-related assets, may be at greater risk of future attacks than other targets in the United States. We do not maintain specialized insurance for possible exposures resulting from a cyber-attack on our assets that may shut down all or part of our business. Disruption or significant increases in energy prices could result in government-imposed price controls. It is possible that any of these occurrences, or a combination of them, could have a material adverse effect on our business, financial condition and results of operations.

The threat and impact of cyberattacks may adversely impact our operations and could result in information theft, data corruption, operational disruption, and/or financial loss.

We depend on digital technology, including information systems and related infrastructure as well as cloud applications and services, to store, transmit, process, and record sensitive information (including trade secrets, employee information and financial and operating data), communicate with our employees and business partners and for many other activities related to our business. Our business processes depend on the availability, capacity, reliability and security of our information technology infrastructure and our ability to expand and continually update this infrastructure in response to our changing needs and, therefore, it is critical to our business that our facilities and infrastructure remain secure. While we have implemented strategies to mitigate impacts from these types of events, we cannot guarantee that measures taken to defend against cybersecurity threats will be sufficient for this purpose. The ability of the information technology function to support our business in the event of a security breach or a disaster such as fire or flood and our ability to recover key systems and information from unexpected interruptions cannot be fully tested, and there is a risk that, if such an event occurs, we may not be able to address immediately the repercussions of the breach or disaster. In that event, key information and systems may be unavailable for a number of days or weeks, leading to our inability to conduct business or perform some business processes in a timely manner. Moreover, if any of these events were to materialize, they could lead to losses of sensitive information, critical infrastructure, personnel or capabilities essential to our operations and could have a material adverse effect on our reputation, financial condition or results of operations.

Our employees have been and will continue to be targeted by parties using fraudulent “spoof” and “phishing” emails to misappropriate information or to introduce viruses or other malware through “trojan horse” programs to our computers. These emails appear to be legitimate emails but direct recipients to fake websites operated by the sender of the email or request that the recipient send a password or other confidential information through email or download malware. “Spoof” and “phishing” activities are a serious risk that may damage our information technology infrastructure.

If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud. In addition, potential changes in accounting standards might cause us to revise our financial results and disclosure in the future.

Effective internal controls are necessary for us to provide timely and reliable financial reports and effectively prevent fraud. If we cannot provide timely and reliable financial reports or prevent fraud, our reputation and operating results would be harmed. We continue to enhance our internal controls and financial reporting capabilities. These enhancements require a significant commitment of resources, personnel and the development and maintenance of formalized internal reporting procedures to ensure the reliability of our financial reporting. Our efforts to update and maintain our internal controls may not be successful, and we may be unable to maintain adequate controls over our financial processes and reporting now or in the future, including future compliance with the obligations under Section 404 of the Sarbanes-Oxley Act of 2002. Any failure to maintain effective controls or difficulties encountered in the effective improvement of our internal controls could prevent us from timely and reliably reporting our financial results and may harm our operating results. Ineffective internal controls could also cause investors to lose confidence in our reported financial information. In addition, the Financial Accounting Standards Board or the SEC could enact new accounting standards that might affect how we are required to record revenues, expenses, assets and liabilities. Any significant change in accounting standards or disclosure requirements could have a material effect on our business, results of operations, financial condition and ability to comply with our debt obligations.

Risks Inherent in an Investment in Us

Ergon controls our General Partner, which has sole responsibility for conducting our business and managing our operations. Our General Partner has conflicts of interest with us and limited fiduciary duties, which may permit it to favor its own interests to the detriment of our unitholders.

Ergon owns and controls our General Partner. Some of our General Partner’s directors are directors and officers of Ergon. Therefore, conflicts of interest may arise between our General Partner, on the one hand, and us and our unitholders, on the other hand. In resolving those conflicts of interest, our General Partner may favor its own interests and the interests of its affiliates over the interests of our unitholders. Although the conflicts committee of the board of directors of our General Partner (the “Board”) may review such conflicts of interest, the Board is not required to submit such matters to the conflicts committee. These conflicts include, among others, the following situations:

- Neither our partnership agreement nor any other agreement requires our General Partner or Ergon to pursue a business strategy that favors us. Such persons may make decisions in their best interest, which may be contrary to our interests.
- Our General Partner is allowed to consider the interests of parties other than us and our unitholders, such as Ergon and its affiliates, in resolving conflicts of interest.
- If we do not have sufficient available cash from operating surplus, our General Partner could cause us to use cash from non-operating sources, such as asset sales, issuances of securities and borrowings, to pay distributions, which means that we could make distributions that deteriorate our capital base and that our General Partner could receive distributions on its incentive distribution rights to which it would not otherwise be entitled if we did not have sufficient available cash from operating surplus to make such distributions.
- Ergon is a holder of our Preferred Units and may favor its own interests in actions relating to such units, including causing us to make distributions on such units even if no distributions are made on the common units.
- Ergon may compete with us, including with respect to future acquisition opportunities.
- Ergon may favor its own interests in proposing the terms of any acquisitions we make directly from them, and such terms may not be as favorable as those we could receive from an unrelated third party.
- Our General Partner has limited liability and reduced fiduciary duties and our unitholders have restricted remedies available for actions that, without the limitations, might constitute breaches of fiduciary duty.
- Our General Partner determines the amount and timing of asset purchases and sales, borrowings, issuance of additional partnership securities and reserves, each of which can affect the amount of cash that is distributed to unitholders.
- Our General Partner determines the amount and timing of any capital expenditures and whether a capital expenditure is a maintenance capital expenditure, which reduces operating surplus, or an expansion capital expenditure, which does not reduce operating surplus. This determination can affect the amount of cash that is distributed to our unitholders.
- Our General Partner may decide to receive a quantity of our Class B units in exchange for resetting the target distribution levels related to its incentive distribution rights without the approval of the conflicts committee of our General Partner or our unitholders.
- Our General Partner determines which costs incurred by it and its affiliates are reimbursable by us.
- Our partnership agreement does not restrict our General Partner from causing us to pay it or its affiliates for any services rendered to us or entering into additional contractual arrangements with any of these entities on our behalf.
- Our General Partner intends to limit its liability regarding our contractual and other obligations and, in some circumstances, is entitled to be indemnified by us.
- Our General Partner may exercise its limited right to call and purchase common units if it and its affiliates own more than 80% of the common units.
- Our General Partner controls the enforcement of obligations owed to us by our General Partner and its affiliates.
- Our General Partner decides whether to retain separate counsel, accountants or others to perform services for us.

Our partnership agreement limits the fiduciary duties our General Partner owes to holders of our units and restricts the remedies available to holders of our units for actions taken by our General Partner that might otherwise constitute breaches of fiduciary duty.

Our partnership agreement contains provisions that reduce the fiduciary standards to which our General Partner would otherwise be held by state fiduciary duty laws. For example, our partnership agreement:

- permits our General Partner to make a number of decisions in its individual capacity, as opposed to in its capacity as our General Partner. This entitles our General Partner to consider only the interests and factors that it desires, and it has no duty or obligation to give any consideration to any interest of, or factors affecting, us, our affiliates or any limited partner. Examples include the exercise of its right to receive a quantity of our Class B units in exchange for resetting the target distribution levels related to its incentive distribution rights, the exercise of its limited call right, the exercise of its rights to transfer or vote the units it owns, the exercise of its registration rights and its determination whether or not to consent to any merger or consolidation of the partnership or amendment to the partnership agreement;

- provides that our General Partner will not have any liability to us or our unitholders for decisions made in its capacity as a general partner so long as it acted in good faith, meaning it believed the decision was in the best interests of our partnership;
- generally provides that affiliated transactions and resolutions of conflicts of interest not approved by the conflicts committee of the Board acting in good faith and not involving a vote of unitholders must be on terms no less favorable to us than those generally being provided to or available from unrelated third parties or must be "fair and reasonable" to us, as determined by our General Partner in good faith. In determining whether a transaction or resolution is "fair and reasonable," our General Partner may consider the totality of the relationships between the parties involved, including other transactions that may be particularly advantageous or beneficial to us;
- provides that our General Partner and its officers and directors will not be liable for monetary damages to us, our limited partners or assignees for any acts or omissions unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that our General Partner or its officers and directors acted in bad faith or engaged in fraud or willful misconduct or, in the case of a criminal matter, acted with knowledge that the conduct was criminal; and
- provides that in resolving conflicts of interest, it will be presumed that in making its decision, our General Partner acted in good faith, and in any proceeding brought by or on behalf of any limited partner or us, the person bringing or prosecuting such proceeding will have the burden of overcoming such presumption.

By purchasing a common unit, a common unitholder will become bound by the provisions in the partnership agreement, including the provisions discussed above.

Ergon may compete with us, which could adversely affect our existing business and limit our ability to acquire additional assets or businesses.

Neither our partnership agreement nor any other agreement with Ergon prohibits Ergon from owning assets or engaging in businesses that compete directly or indirectly with us. In addition, Ergon may acquire, construct or dispose of assets in the future, without any obligation to offer us the opportunity to purchase or construct any of those assets. Ergon is a privately held company engaged in a wide range of operations. Ergon has significantly greater resources and experience than we have, which may make it more difficult for us to compete with Ergon with respect to commercial activities as well as for acquisition candidates. As a result, competition from Ergon could adversely impact our results of operations and cash available for distribution.

Cost reimbursements due to our General Partner and its affiliates for services provided, which are determined by our General Partner, may be substantial and will reduce our cash available for distribution to our unitholders.

Pursuant to our partnership agreement, our General Partner is entitled to receive reimbursement for the payment of expenses related to our operations and for the provision of various general and administrative services for our benefit. Payments for these services may be substantial and reduce the amount of cash available for distribution to unitholders. In addition, under Delaware partnership law, our General Partner has unlimited liability for our obligations, such as our debts and environmental liabilities, except for our contractual obligations that are expressly made without recourse to our General Partner. To the extent our General Partner incurs obligations on our behalf, we are obligated under our partnership agreement to reimburse or indemnify our General Partner. If we are unable or unwilling to reimburse or indemnify our General Partner, our General Partner may take actions to cause us to make payments of these obligations and liabilities. Any such payments would reduce the amount of cash otherwise available for distribution to our unitholders.

Holders of our Preferred Units and common units have limited voting rights and are not entitled to elect our General Partner or its directors.

Unlike the holders of common stock in a corporation, unitholders have only limited voting rights on matters affecting our business and, therefore, limited ability to influence management's decisions regarding our business. Unitholders did not elect our General Partner or the Board and have no right to elect our General Partner or the Board on an annual or other continuing basis. The Board is chosen by Ergon. Furthermore, if the unitholders are dissatisfied with the performance of our General Partner, they have little ability to remove our General Partner. Amendments to our partnership agreement may be proposed only by or with the consent of our General Partner. As a result of these limitations, the price at which the common units will trade could be diminished because of the absence or reduction of a takeover premium in the trading price.

Control of our General Partner may be transferred to a third party without unitholder consent.

Our General Partner may transfer its general partner interest to a third party in a merger or in a sale of all or substantially all of its assets without the consent of the unitholders. Furthermore, our partnership agreement does not restrict the ability of Ergon, the owner of our General Partner, from transferring all or a portion of its ownership interest in our General Partner to a third party. The new owner of our General Partner would then be in a position to replace the Board and officers of our General Partner with its own choices and thereby influence the decisions made by the Board and officers.

We may issue additional units without approval of our unitholders, which would dilute our unitholders' ownership interests.

Except in the case of the issuance of units that rank equal to or senior to the Preferred Units, our partnership agreement does not limit the number or price of additional limited partner interests we may issue at any time without the approval of our unitholders. In addition, because we are a limited partnership, we will not be subject to the shareholder approval requirements relating to the issuance of securities (other than in connection with the establishment or material amendment of a stock option or purchase plan or the making or material amendment of any other equity compensation arrangement) contained in Nasdaq Marketplace Rule 5635. The issuance by us of additional common units or other equity securities of equal or senior rank may have any or all of the following effects, among others:

- Our unitholders' proportionate ownership interest in us will decrease.
- The amount of cash available for distribution on each unit may decrease.
- The ratio of taxable income to distributions may increase.
- The relative voting strength of each previously outstanding unit may be diminished.
- The market price of the common units may decline.

Our partnership agreement restricts the voting rights of unitholders, other than our General Partner and its affiliates, including Ergon, owning 20% or more of any class of our partnership securities.

Unitholders' voting rights are further restricted by the partnership agreement, which provides that any units held by a person that owns 20% or more of any class of units then outstanding, other than our General Partner, its affiliates, their transferees and persons who acquired such units with the prior approval of the Board, cannot vote on any matter. Our partnership agreement also contains provisions limiting the ability of unitholders to call meetings or to acquire information about our operations, as well as other provisions.

Even if our public unitholders are dissatisfied with our General Partner, it will be difficult for them to remove our General Partner without its consent.

It will be difficult for our public unitholders to remove our General Partner without its consent because our General Partner and its affiliates own a substantial number of our units. The vote of the holders of at least 66 2/3% of all outstanding units voting together as a single class is required to remove the General Partner. As of March 4, 2021, Ergon owned approximately 30.7% of our aggregate outstanding Preferred Units and common units.

Affiliates of our General Partner may sell units in the public markets, which sales could have an adverse impact on the trading price of the units.

As of March 4, 2021, the executive officers and directors of our General Partner beneficially own an aggregate of 465,712 common units and Ergon owns 2,795,837 common units and 20,801,757 Preferred Units. The sale of these units in the public markets could have an adverse impact on the public trading price of the units or on any trading market that may develop.

Our General Partner has a limited call right that may require our unitholders to sell their units at an undesirable time or price.

If at any time our General Partner and its affiliates own more than 80% of any class of units then outstanding, our General Partner will have the right, but not the obligation, which it may assign to any of its affiliates or to us, to acquire all, but not less than all, of such class of units held by unaffiliated persons at a price not less than the then-current market price. As a result, our unitholders may be required to sell their units at an undesirable time or price and may not receive any return on their investment. Our unitholders also may incur a tax liability upon a sale of their units. As of March 4, 2021, Ergon owned 59.2% of our outstanding Preferred Units.

Holders of our Preferred Units have a distribution preference and a liquidation preference, which may adversely impact the value of our common units.

The Preferred Units rank prior to our common units as to both distributions of available cash and distributions upon liquidation. Holders of our Preferred Units are entitled to preferred quarterly distributions of $0.17875 per unit per quarter (or $0.715 per unit on an annual basis). If we fail to pay in full any distribution on our Preferred Units, the amount of such unpaid distribution will accrue and accumulate from the last day of the quarter for which such distribution is due until paid in full. If we are liquidated, we may not have sufficient funds remaining after payment of amounts to our creditors and to holders of our Preferred Units to make any distribution to holders of our common units.

The conversion rate applicable to the Preferred Units will not be adjusted for all events that may be dilutive.

The number of our common units issuable upon conversion of the Preferred Units is subject to adjustment only for subdivisions, splits or certain combinations of our common units. The number of common units issuable upon conversion is not subject to adjustment for other events, such as employee option grants, offerings of our common units for cash or in connection with acquisitions or other transactions that may increase the number of outstanding common units and dilute the ownership of existing common unitholders. The terms of the Preferred Units do not restrict our ability to offer common units in the future or to engage in other transactions that could dilute our common units.

We have rights to require our preferred unitholders to convert their Preferred Units into common units, and we may exercise this mandatory conversion right at an undesirable time.

We have the right in certain circumstances to force the conversion of all outstanding Preferred Units to common units. These circumstances include a situation in which if the holders of a certain number of Preferred Units elect to convert the Preferred Units that they hold to common units, we could then force all remaining outstanding Preferred Units to convert to common units. Ergon, the owner of our General Partner, owns enough Preferred Units such that if they were all converted to common units, we would be able to exercise this mandatory conversion right. In addition, we also have the right to force the conversion of the outstanding Preferred Units at any time if (i) the daily volume-weighted average trading price of our common units is greater than $8.45 for 20 out of the trailing 30 trading days ending two trading days before we furnish notice of conversion and (ii) the average trading volume of our common units has exceeded 20,000 common units for 20 out of the trailing 30 trading days ending two trading days before we furnish notice of conversion. In addition, the conversion provisions may be modified with the consent of a majority of the outstanding Preferred Units. As of March 4, 2021, Ergon owned 59.2% of our outstanding Preferred Units and has the ability to consent to amendments to such conversion provisions. As a result, our preferred unitholders may be required to convert their Preferred Units at an undesirable time and may not receive their expected return on investment.

Ergon, as the holder of a majority of the outstanding Preferred Units, has the ability to consent to the amendments to the provisions of the Preferred Units.

The Preferred Units have voting rights that are identical to the voting rights of common units and vote with the common units as a single class, so that each Preferred Unit is entitled to one vote for each common unit into which such Preferred Unit is convertible on each matter with respect to which each common unit is entitled to vote. In addition, the approval of a majority of the Preferred Units, voting separately as a class, is necessary on any matter that adversely affects any of the rights of the Preferred Units or amends or modifies the terms of the Preferred Units in any material respect or affects the holders of the Preferred Units disproportionately in relation to the holders of common units, including, without limitation, any action that would (i) reduce the distribution amount to the Preferred Units or change the time or form of payment of distributions, (ii) reduce the amount payable to the Preferred Units upon the liquidation of our partnership, (iii) modify the conditions relating to the conversion of the Preferred Units or (iv) issue any equity security that, with respect to distributions or rights upon liquidation, ranks equal to or senior to the Preferred Units or issue any additional Preferred Units. As of March 4, 2021, Ergon owned 59.2% of our outstanding Preferred Units and has the ability to consent to amendments to the terms of the Preferred Units without the consent of other unitholders.

Holders of the Preferred Units will not have rights to distributions as holders of common units until they acquire our common units.

Until our preferred unitholders acquire common units upon conversion of the Preferred Units, such preferred unitholders will have no rights with respect to distributions on our common units. Upon conversion, our preferred unitholders will be entitled to exercise the rights of a holder of our common units only as to matters for which the record date occurs after the date on which such Preferred Units were converted to our common units.

The Preferred Units are limited partner interests in our partnership and therefore are subordinate to any indebtedness.

The Preferred Units are limited partner interests in our partnership and do not constitute indebtedness. As such, the Preferred Units will rank junior to all indebtedness and other non-equity claims on our partnership with respect to assets available to satisfy claims on our partnership, including in a liquidation of our partnership.

Market interest rates may affect the value of our units.

One of the factors that will influence the price of our units will be the distribution yield on our units relative to market interest rates. An increase in market interest rates could cause the market price of the units to go down. The trading price of the units will also depend on many other factors, which may change from time to time, including:

- the market for similar securities;
- government action or regulation;
- general economic conditions or conditions in the financial markets; and
- our financial condition, performance and prospects.

Our unitholders' liability may not be limited if a court finds that unitholder action constitutes control of our business.

A general partner of a partnership generally has unlimited liability for the obligations of the partnership, except for those contractual obligations of the partnership that are expressly made without recourse to the general partner. Our partnership is organized under Delaware law and we conduct business in a number of other states. The limitations on the liability of holders of limited partner interests for the obligations of a limited partnership have not been clearly established in some of the other states in which we do business.

Our unitholders could be liable for our obligations as if they were a general partner if:

- a court or government agency determined that we were conducting business in a state but had not complied with that particular state's partnership statute; or
- a unitholder's right to act with other unitholders to remove or replace the general partner, to approve some amendments to our partnership agreement or to take other actions under our partnership agreement constitute "control" of our business.

Unitholders may have liability to repay distributions that were wrongfully distributed to them.

Under certain circumstances, unitholders may have to repay amounts wrongfully returned or distributed to them. Under Section 17-607 and 17-804 of the Delaware Revised Uniform Limited Partnership Act, we may not make a distribution to our unitholders if the distribution would cause our liabilities to exceed the fair value of our assets. Delaware law provides that for a period of three years from the date of the impermissible distribution, limited partners who received the distribution and who knew at the time of the distribution that it violated Delaware law will be liable to the limited partnership for the distribution amount. Substituted limited partners are liable for the obligations of the assignor to make contributions to the partnership that are known to the substituted limited partner at the time it became a limited partner and for unknown obligations if the liabilities could be determined from the partnership agreement. Liabilities to partners on account of their partnership interests and liabilities that are non-recourse to the partnership are not counted for purposes of determining whether a distribution is permitted.

Tax Risks to Unitholders

Our tax treatment depends on our status as a partnership for federal income tax purposes, as well as us not being subject to a material amount of entity-level taxation by individual states. If the IRS were to treat us as a corporation, or if we were to become subject to a material amount of entity-level taxation for state tax purposes, then our cash available for distribution to our unitholders would be substantially reduced.

The anticipated after-tax economic benefit of an investment in our common units depends largely on us being treated as a partnership for federal income tax purposes. If less than 90% of the gross income of a publicly traded partnership, such as us, for any taxable year is "qualifying income" from sources such as the transportation, marketing (other than to end users) or processing of crude oil, natural gas or products thereof, interest, dividends or similar sources, that partnership will be taxable as a corporation under Section 7704 of the Internal Revenue Code for federal income tax purposes for that taxable year and all subsequent years. We have not requested and do not plan to request a ruling from the IRS with respect to our treatment as a partnership for federal income tax purposes.

If we were treated as a corporation for federal income tax purposes, then we would pay federal income tax on our taxable income at the corporate tax rate, which is currently a maximum of 21%, and would likely pay additional state income tax at varying rates. Distributions would generally be taxed again to unitholders as corporate distributions and none of our income, gains, losses, deductions or credits would flow through to our unitholders. Because a tax would be imposed upon us as a corporation, cash available for distribution to our unitholders would be substantially reduced. Therefore, treatment of us as a corporation would result in a material reduction in the anticipated cash flows and after-tax return to unitholders and thus would likely result in a substantial reduction in the value of our units.

In addition, changes in current state or local law may subject us to additional entity-level taxation by individual states and localities. Imposition of such a tax on us may reduce the cash available for distribution to our unitholders.

Our partnership agreement provides that if a law is enacted or an existing law is modified or interpreted in a manner that subjects us to taxation as a corporation or otherwise subjects us to entity-level taxation for federal, state or local income tax purposes, the minimum quarterly distribution amount and the target distribution amounts will be adjusted to reflect the impact of that law on us. No such adjustments have been made to date, but there can be no assurance that no such adjustments will be made in the future.

The tax treatment of publicly traded partnerships or an investment in our common units could be subject to potential legislative, judicial or administrative changes and differing interpretations, possibly on a retroactive basis.

The present federal income tax treatment of publicly traded partnerships, including us or an investment in our common units, may be modified by administrative, legislative or judicial interpretation at any time. Any modification to the federal income tax laws and interpretations thereof may or may not be applied retroactively. Moreover, any such modification could make it more difficult or impossible for us to meet the exception which allows publicly traded partnerships that generate qualifying income to be treated as partnerships (rather than corporations) for U.S. federal income tax purposes, affect or cause us to change our business activities or affect the tax consequences of an investment in our common units. From time to time, members of Congress have proposed and considered substantive changes to existing federal income tax laws that would affect the tax treatment of certain publicly traded partnerships. We are unable to predict whether any of these changes or other proposals will ultimately be enacted. Any such changes could negatively impact the value of an investment in our units.

Our unitholders have been and will be required to pay taxes on their share of our taxable income even if they have not received or do not receive any cash distributions from us.

Because our unitholders are treated as partners to whom we allocate taxable income which could be different in amount than the cash we distribute, our unitholders will be required to pay any federal income taxes and, in some cases, state and local income taxes, on their share of our taxable income, even if our unitholders receive no cash distributions from us. Our unitholders may not receive cash distributions from us equal to their share of our taxable income or even equal to the actual tax liability that results from that income.

If the IRS contests any of the federal income tax positions we take, the market for our common units may be adversely affected, and the costs of any such contest will reduce our cash available for distribution to our unitholders.

We have not requested a ruling from the IRS with respect to our treatment as a partnership for federal income tax purposes or any other matter affecting us. The IRS may adopt positions that differ from the conclusions of our counsel or from the positions we take. It may be necessary to resort to administrative or court proceedings to sustain some or all of our counsel’s conclusions or the positions we take. A court may not agree with some or all of our counsel’s conclusions or the positions we take. Any contest with the IRS may materially and adversely impact the market for our units and the price at which they trade. In addition, the costs of any contest with the IRS will be borne indirectly by our unitholders and our General Partner because the costs will reduce our cash available for distribution.

There are limits on the deductibility of losses that may adversely affect unitholders.

In the case of taxpayers subject to the passive activity loss rules (generally individuals, closely-held corporations and regulated investment companies), any losses generated by us will only be available to offset our future income and cannot be used to offset income from other activities, including other passive activities or investments. Unused losses may be deducted when the unitholder disposes of the unitholder’s entire investment in us in a fully taxable transaction with an unrelated party. A unitholder’s share of our net passive income may be offset by unused losses from us carried over from prior years, but not by losses from other passive activities, including losses from other publicly traded partnerships.

Other limitations that may further restrict the deductibility of our losses by a unitholder include the at-risk rules and the prohibition against loss allocations in excess of the unitholder’s tax basis in its units.

Unitholders may be subject to limitation on their ability to deduct interest expense incurred by us.

Under the Tax Cuts and Jobs Act, as modified by the Coronavirus Aid, Relief and Economic Security Act, for taxable years beginning after December 31, 2017, our ability to deduct interest on indebtedness properly allocable to our trade or business is limited to an amount equal to the sum of our business interest income and a certain percentage of our adjusted taxable income for such taxable year.

For purposes of this limitation, our adjusted taxable income is computed without regard to any business interest income or business interest expense, and in the case of taxable years beginning before January 1, 2022, any deduction allowable for depreciation, amortization or depletion to the extent such depreciation, amortization or depletion is not capitalized into the cost of goods sold with respect to inventory. If our business interest expense is limited under these rules, our unitholders will be limited in their ability to deduct their share of any business interest expense that has been allocated to them. As a result, unitholders may be subject to limitation on their ability to deduct business interest expense incurred by us.

Tax gain or loss on the disposition of our units could be more or less than expected.

If our unitholders sell their units, they will recognize a gain or loss equal to the difference between the amount realized and their tax basis in those units. Because distributions to a unitholder that exceed the total net taxable income allocated to the unitholder decrease the unitholder's tax basis in his or her units, any such prior excess distribution will, in effect, become taxable income to the unitholder if the units are sold by the unitholder at a price greater than their tax basis, even if the price the unitholder receives is less than the original cost. Furthermore, a substantial portion of the amount realized, whether or not representing gain, may be taxed as ordinary income to the selling unitholder due to potential recapture items, including depreciation recapture. In addition, because the amount realized includes a unitholder's share of our non-recourse liabilities, a unitholder who sells common units may incur a tax liability in excess of the amount of cash received from the sale.

If the IRS makes audit adjustments to our income tax returns for tax years beginning after 2017, it may collect any resulting taxes (including any applicable penalties and interest) directly from us, in which case our cash available for distribution to our unitholders might be substantially reduced.

If the IRS makes audit adjustments to income tax returns for tax years beginning after 2017, it may assess and collect taxes (including any applicable penalties and interest) directly from us in the year in which the audit is completed. If we are required to make payments of taxes, penalties and interest resulting from audit adjustments, our cash available for distribution to our unitholders might be substantially reduced. In addition, because payment would be due for the taxable year in which the audit is completed, unitholders during that taxable year would bear the expense of the adjustment even if they were not unitholders during the audited taxable year.

Tax-exempt entities and non-United States persons face unique tax issues from owning units that may result in adverse tax consequences to them.

Investment in our units by tax-exempt entities, such as individual retirement accounts (known as IRAs), pension plans and non-U.S. persons raises issues unique to them. For example, virtually all of our income allocated to organizations exempt from federal income tax, including individual retirement accounts and other retirement plans, will be unrelated business taxable income and will be taxable to them. Distributions to non-U.S. persons will be reduced by withholding taxes at the highest applicable effective tax rate, and non-U.S. persons will be required to file U.S. federal income tax returns and pay tax on their share of our taxable income. If a potential unitholder is a tax-exempt entity or a non-U.S. person, it should consult its tax advisor before investing in our units.

We will treat each purchaser of our common units as having the same tax benefits without regard to the specific common units purchased. The IRS may challenge this treatment, which could adversely affect the value of the common units.

Because we cannot match transferors and transferees of common units and because of other reasons, we will adopt depreciation and/or amortization positions that may not conform with all aspects of existing Treasury regulations. A successful IRS challenge to those positions could adversely affect the amount of tax benefits available to our unitholders. It also could affect the timing of these tax benefits or the amount of gain from their sale of common units and could have a negative impact on the value of our common units or result in audit adjustments to our unitholders' tax returns.

Our unitholders likely will be subject to state and local taxes and return filing or withholding requirements in states in which they do not live as a result of investing in our units.

In addition to federal income taxes, our unitholders will likely be subject to other taxes, such as state and local income taxes, unincorporated business taxes and estate, inheritance or intangible taxes that are imposed by the various jurisdictions in which we conduct business or own property. Our unitholders may be required to file state and local income tax returns and pay state and local income taxes in certain of these various jurisdictions. Further, our unitholders may be subject to penalties for failure to comply with those requirements. We currently own property and conduct business in several states, most of which currently impose income taxes on corporations, and many of which impose income taxes on other entities and nonresident individuals. We may own property or conduct business in other states or foreign countries in the future. It is each unitholder's responsibility to file all federal, state, local and foreign tax returns.

We hold certain assets located at certain of our liquid asphalt facilities in a subsidiary taxed as a corporation. Such subsidiary is subject to entity-level federal and state income taxes on its net taxable income and, if a material amount of entity-level taxes were incurred, then our cash available for distribution to our unitholders could be substantially reduced.

We hold certain of our liquid asphalt processing assets and related fee income through BKEP Asphalt, L.L.C., a subsidiary taxed as a corporation. Such subsidiary is required to pay federal income tax on its income at the corporate tax rate, which is currently a maximum of 21%, and will likely pay state (and possibly local) income tax at varying rates. We may elect to conduct additional operations in corporate form in the future. If a material amount of corporate-level taxes is incurred by such a subsidiary, then our cash available for distribution to our unitholders could be substantially reduced.

We prorate our items of income, gain, loss and deduction between transferors and transferees of our common units each month based upon the ownership of our common units on the first day of each month, instead of on the basis of the date a particular common unit is transferred. The IRS may challenge this treatment, which could change the allocation of items of income, gain, loss and deduction among our common unitholders.

We prorate our items of income, gain, loss and deduction between transferors and transferees of our common units each month based upon the ownership of our common units on the first day of each month, instead of on the basis of the date a particular unit is transferred. The use of this proration method may not be permitted under existing Treasury regulations. The U.S. Department of the Treasury and the IRS issued final Treasury regulations pursuant to which a publicly traded partnership may use a similar monthly simplifying convention to allocate tax items among transferor and transferee unitholders, although such tax items must be prorated on a daily basis. However, these Treasury regulations do not specifically authorize the use of the proration method we have adopted. If the IRS were to successfully challenge our proration method, we may be required to change the allocation of items of income, gain, loss and deduction among our unitholders.

A unitholder whose units are loaned to a "short seller" to effect a short sale of units may be considered as having disposed of those units. If so, such unitholder would no longer be treated for tax purposes as a partner with respect to those units during the period of the loan and may recognize gain or loss from the disposition.

Because a unitholder whose units are loaned to a "short seller" to effect a short sale of units may be considered as having disposed of the loaned units, such unitholder may no longer be treated for tax purposes as a partner with respect to those units during the period of the loan to the short seller and the unitholder may recognize gain or loss from such disposition. Moreover, during the period of the loan to the short seller, any of our income, gain, loss or deduction with respect to those units may not be reportable by the unitholder, and any cash distributions received by the unitholder as to those units could be fully taxable as ordinary income. Unitholders desiring to assure their status as partners and avoid the risk of gain recognition from a loan to a short seller are urged to consult a tax advisor to discuss whether it is advisable to modify any applicable brokerage account agreements to prohibit their brokers from borrowing their units.

Unitholders converting Preferred Units into common units could under certain limited circumstances receive a gross income allocation that may materially increase the taxable income allocated to such unitholders.

Under our partnership agreement and in accordance with Treasury regulations, immediately after the conversion of a Preferred Unit, we will adjust the capital accounts of all of our partners to reflect any positive difference ("Unrealized Gain") or negative difference ("Unrealized Loss") between the fair market value and the carrying value of our assets at such time as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such asset for an amount equal to its fair market value at the time of such conversion. Such Unrealized Gain or Unrealized Loss (or items thereof) will be allocated first to the converting preferred unitholder in respect to common units received upon the conversion until the capital account of each such common unit is equal to the per unit capital account for each existing common unit. This allocation of Unrealized Gain or Unrealized Loss will not be taxable to the converting preferred unitholder or to any other unitholders. If the Unrealized Gain or Unrealized Loss allocated as a result of the conversion of a Preferred Unit is not sufficient to cause the capital account of each common unit received upon such conversion to equal the per unit capital account for each existing common unit, then capital account balances will be reallocated among the unitholders as needed to produce this result. In the event that such a reallocation is needed, a converting preferred unitholder would be allocated taxable gross income in an amount equal to the amount of any such reallocation to it.

We may adopt certain valuation methodologies and monthly conventions for federal income tax purposes that may result in a shift of income, gain, loss or deduction between our General Partner and our common unitholders. The IRS may challenge this treatment, which could adversely affect the value of our outstanding units.

When we issue additional units or engage in certain other transactions, we will determine the fair market value of our assets and allocate any unrealized gain or loss attributable to our assets to the capital accounts of our common unitholders and our General Partner. Our methodology may be viewed as understating the value of our assets. In that case, there may be a shift of income, gain, loss or deduction between certain common unitholders and our General Partner, which may be unfavorable to such unitholders. Moreover, under our valuation methods, subsequent purchasers of units may have a greater portion of their Internal Revenue Code Section 743(b) adjustment allocated to our tangible assets and a lesser portion allocated to our intangible assets. The IRS may challenge our valuation methods, or our allocation of the Section 743(b) adjustment attributable to our tangible and intangible assets, and allocations of taxable income, gain, loss or deduction between our General Partner and certain of our common unitholders.

A successful IRS challenge to these methods or allocations could adversely affect the amount of taxable income or loss being allocated to our common unitholders. It also could affect the amount of taxable gain from our unitholders' sale of units and could have a negative impact on the value of the units or result in audit adjustments to our unitholders' tax returns without the benefit of additional deductions.

Compliance with and changes in tax law could adversely affect our performance.

We are subject to extensive tax laws and regulations, including federal and state income taxes and transactional taxes such as excise, sales/use, payroll, franchise and ad valorem taxes. New tax laws and regulations and changes in existing tax laws and regulations are continuously being enacted that could result in increased tax expenditures in the future. Many of these tax liabilities are subject to audits by the respective taxing authority. These audits may result in additional taxes as well as interest and penalties.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

A description of our properties is contained in "Item 1-Business."

Title to Properties

Our asphalt assets are on real property owned or leased by us. Some of the real property leases that were transferred to us as part of the acquisition of our asphalt assets required the consent of the counterparty to such lease. In certain instances, we have not entered into new leases with a lessor although we continue to use such leases and make payments to the lessor and are in the process of negotiating new leases.

Other than as described above, we believe that we have satisfactory title to or rights in all of our assets. Although title or rights to such properties is subject to encumbrances in certain cases, such as customary interests generally retained in connection with acquisition of real property, liens related to environmental liabilities associated with historical operations, liens for current taxes and other burdens and minor easements, restrictions and other encumbrances to which the underlying properties were subject at the time of acquisition by our predecessor or us, we believe that none of these burdens will materially interfere with their use in the operation of our business.

Item 3. Legal Proceedings.

The information required by this item is included under the caption “Commitments and Contingencies” in Note 15 to our consolidated financial statements and is incorporated herein by reference thereto.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II. OTHER INFORMATION

Item 5. Market for Registrant’s Common Equity, Related Unitholder Matters and Issuer Purchases of Equity Securities.

Our common units are traded on the Nasdaq Global Market under the symbol “BKEP” and our Preferred Units are traded on the Nasdaq Global Market under the symbol “BKEPP”.

On March 4, 2021, there were 41,468,125 common units outstanding, held by approximately 695 unitholders of record and 35,125,202 Preferred Units outstanding held by approximately 1 unitholders of record. The actual number of unitholders is greater than the number of holders of record. Ergon holds 6.7% of the common units and 59.2% of the Preferred Units.

Distributions of Available Cash

Our partnership agreement requires that, within 45 days after the end of each quarter, we distribute all of our available cash (as defined in our partnership agreement) to unitholders of record on the applicable record date.

Available cash, for any quarter, consists of all cash on hand at the end of that quarter:

- less the amount of cash reserves established by our General Partner to:
  - provide for the proper conduct of our business;
  - comply with applicable law, any of our debt instruments or other agreements; or
  - provide funds for distributions to our unitholders for any one or more of the next four quarters;
- plus all additional cash and cash equivalents on hand on the date of determination of available cash for the quarter resulting from working capital borrowings made after the end of the quarter. Working capital borrowings are generally borrowings that are made under a credit facility, commercial paper facility or similar financing arrangement, and in all cases are used solely for working capital purposes or to pay distributions to partners and with the intent of the borrower to repay such borrowings within 12 months.

Pursuant to our credit agreement, we are permitted to make quarterly distributions of available cash to unitholders so long as no default exists under the credit agreement on a pro forma basis after giving effect to such distribution.

Our partnership agreement requires that we make distributions of available cash from operating surplus for any quarter in the following manner:

- first, 98.4% to the holders of Preferred Units, pro rata, and 1.6% to our General Partner, until we distribute for each outstanding Preferred Unit an amount equal to the Series A quarterly distribution amount discussed below;
- second, 98.4% to the holders of Preferred Units, pro rata, and 1.6% to our General Partner, until we distribute for each outstanding Preferred Unit an amount equal to any arrearages in the payment of the Series A quarterly distribution amount for any prior quarters;
- third, 98.4% to all common unitholders and Class B unitholders (if any), pro rata, and 1.6% to our General Partner, until we distribute for each outstanding common and Class B unit an amount equal to the minimum quarterly distribution of $0.11 per unit for that quarter; and
- thereafter, in the manner described in “General Partner Interest and Incentive Distribution Rights” below.

The Preferred Units are convertible at the holders’ option into common units. Holders of the Preferred Units are entitled to quarterly distributions of $0.17875 per unit per quarter. If the Partnership fails to pay in full any distribution on the Preferred Units, the amount of such unpaid distribution will accrue and accumulate from the last day of the quarter for which such distribution is due until paid in full. The preceding discussion is based on the assumptions that our General Partner maintains its 1.6% general partner interest and that we do not issue additional classes of equity securities.

General Partner Interest and Incentive Distribution Rights

The following discussion assumes that our General Partner maintains its approximate 1.6% general partner's interest and continues to own the incentive distribution rights.

Our partnership agreement provides that our General Partner will be entitled to approximately 1.6% of all distributions that we make prior to our liquidation. Our General Partner has the right, but not the obligation, to contribute a proportionate amount of capital to us to maintain its approximate 1.6% general partner interest if we issue additional units. Our General Partner's approximate 1.6% interest, and the percentage of our cash distributions to which it is entitled, will be proportionately reduced if we issue additional units in the future (other than the issuance of partnership securities issued in connection with a reset of the incentive distribution target levels relating to our General Partner's incentive distribution rights or the issuance of partnership securities upon conversion of outstanding partnership securities) and our General Partner does not contribute a proportionate amount of capital to us in order to maintain its then current general partner interest. Our General Partner will be entitled to make a capital contribution in order to maintain its then current general partner interest.

Incentive distribution rights represent the right to receive an increasing percentage (13.0%, 23.0% and 48.0%) of quarterly distributions of available cash from operating surplus after the minimum quarterly distribution and the target distribution levels have been achieved. Our General Partner currently holds the incentive distribution rights, but may transfer these rights separately from its general partner interest, subject to restrictions in the partnership agreement.

If for any quarter:

- we have distributed available cash from operating surplus to the holders of our Preferred Units in an amount equal to the Series A Quarterly Distribution Amount;
- we have distributed available cash from operating surplus to the holders of our Preferred Units in an amount necessary to eliminate any cumulative arrearages in the payment of the Series A Quarterly Distribution Amount; and
- we have distributed available cash from operating surplus to the common unitholders and Class B unitholders in an amount equal to the minimum quarterly distribution;

then our partnership agreement requires that we distribute any additional available cash from operating surplus for that quarter among the unitholders and our General Partner in the following manner:

- first, 98.4% to all unitholders holding common units or Class B units, pro rata, and 1.6% to our General Partner, until each unitholder receives a total of $0.1265 per unit for that quarter (the "first target distribution");
- second, 85.4% to all unitholders holding common units or Class B units, pro rata, and 14.6% to our General Partner, until each unitholder receives a total of $0.1375 per unit for that quarter (the "second target distribution");
- third, 75.4% to all unitholders holding common units or Class B units, pro rata, and 24.6% to our General Partner, until each unitholder receives a total of $0.1825 per unit for that quarter (the "third target distribution"); and
- thereafter, 50.4% to all unitholders holding common units or Class B units, pro rata, and 49.6% to our General Partner.

For equity compensation plan information, see "Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters-Securities Authorized for Issuance under Equity Compensation Plans."

Unregistered Sales of Securities

None.

Item 6. Selected Financial Data.

We are a "smaller reporting company" as defined by Regulation S-K and as such, we are not required to provide the information required by Item 6.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Overview

We are a publicly traded master limited partnership with operations in 26 states. We have the largest independent asphalt facility footprint in the nation, and through that we provide integrated terminalling services for companies engaged in the production of liquid asphalt. We manage our operations through a single operating segment, asphalt terminalling services.

We previously provided integrated terminalling, gathering, and transportation services for companies engaged in the production, distribution, and marketing of crude oil in three different operating segments: (i) crude oil terminalling services, (ii) crude oil pipeline services, and (iii) crude oil trucking services. On December 21, 2020, we announced we had entered into multiple definitive agreements to sell these segments. The transactions closed in February and March 2021, and these segments are presented as discontinued operations.

Our 53 asphalt facilities are well-positioned to provide asphalt terminalling services in the market areas they serve throughout the continental United States. With our approximately 8.7 million barrels of total liquid asphalt storage capacity, we are able to provide our customers the ability to effectively manage their liquid asphalt inventories while allowing significant flexibility in their processing and marketing activities. Our asphalt terminalling business delivers a stable cash flow profile underpinned by long-term take-or-pay contracts that generally have original terms of 5 to 10 years with options to extend the term. The stability comes from the contract structure that is comprised primarily of fixed fees and cost reimbursements, which make up approximately 95% of our revenues. The remaining revenue is variable, primarily consisting of volume based throughput fees.

We have agreements for all our 53 asphalt terminalling facilities throughout the 26 states. We lease certain facilities for operation by our customers and at the remaining facilities we store, process, blend, and manufacture products, among other things, to meet our customers' specifications. The agreements have, based on a weighted average by remaining fixed revenue, approximately 5.8 years remaining under their terms as of March 4, 2021. Approximately 20% of our tank capacity will expire at the end of 2021 if not renewed with the current customer or a new customer, and the remaining capacity expires at varying times thereafter, through 2027. Our varying contract expiration dates provide for staggered renewals, which provides additional stability to the cash flow.

Potential Impact of Certain Factors on Future Revenues

Due to the high percentage of fixed and reimbursement revenue from our long-term contracts, our focus and our primary risk is renewing contracts at favorable terms. Our ability to renew agreements on favorable terms, or at all, could be impacted if our customers experience negative market conditions. These factors include infrastructure spending, the strength of state and local economies, and the level of allocations of tax funding to transportation spending from state or federal funds. Public transportation infrastructure projects historically have been a relatively stable portion of state and federal budgets and represent a significant share of the United States construction market. Federal funds are allocated on a state-by-state basis, and each state is required to match a portion of the federal funds that it receives. Currently, from a macroeconomic view, there are positive indicators for the infrastructure and construction sector, such as continued discussion and support for infrastructure spending from all sides of the federal government, low interest rates, and a recovering economy since mid-2020. However, due to COVID-19, as discussed below, some uncertainty exists.

Due to the global pandemic related to the coronavirus disease, COVID-19, the economy experienced a significant downturn in 2020 that subsequently has been recovering. Despite this economic volatility, our cash flows remained stable in 2020 and are expected to remain stable moving into 2021. While our customers may be impacted by the recent economic volatility, they are primarily high-quality counterparties, with over 50% of our revenues earned from those that are investment grade quality, which minimizes our counterparty credit risk. As of March 4, 2021, we do not expect any supply chain disruptions from COVID-19 to affect our customers. Management is also actively monitoring the states and regions in which we operate, and, as of now, our operations are excluded from mandatory closings due to the essential designation of our assets. In addition, our business is related to infrastructure spending at the federal, state, and local levels, and the U.S. government has continued to indicate its support for infrastructure spending. At the same time, state revenue is down due to COVID-19, so we remain cautious about future spending on infrastructure and road construction absent an infrastructure bill passed by the federal government to support funding efforts. While we are unaware of any potential negative impact of COVID-19 on our business at this time, we are continuing to monitor the situation and have prepared our employees to take precautions and planning for unexpected events, which may include disruptions to our workforce, customers, vendors, facilities and communities in which we operate. In an effort to protect the health and safety of our employees and the customers and vendors we interact with, we took proactive action to adopt social distancing policies at our locations, including working from home, limiting the number of employees attending meetings, reducing the number of people in our sites at any one time, and suspending employee travel.

Another factor impacting us and our customers, from a short-term perspective, is weather patterns. Our customers' volumes could be significantly impacted by prolonged rain or snow seasons or any severe weather that occurs. Damage to our terminal facilities from severe weather, such as flooding or hurricanes, could impact our operating results through additional costs and/or loss of revenue.

Ergon Agreements

Twenty-eight of our asphalt facilities are contracted to Ergon under multiple agreements. Service revenues under these agreements are primarily based on contracted monthly fees under the applicable agreement at rates, which we believe are fair and reasonable to us and our unitholders and are comparable with the rates we charge third parties. Agreements for six of the facilities expire in late 2025, and agreements for the remaining 22 facilities expire on December 31, 2027. We may not be able to extend, renegotiate or replace these contracts when they expire and the terms of any renegotiated contracts may not be as favorable as the contracts they replace. The Board's conflicts committee reviewed and approved these agreements in accordance with our procedures for approval of related-party transactions and the provisions of the partnership agreement. For the years ended December 31, 2019 and 2020, we recognized revenues of $36.1 million and $44.4 million, respectively, for services provided to Ergon under these agreements.

Results of Operations

Non-GAAP Financial Measures

To supplement our financial information presented in accordance with GAAP, management uses additional measures that are known as "non-GAAP financial measures" in its evaluation of past performance and prospects for the future. The primary measure used by management is operating margin excluding depreciation and amortization.

Management believes that the presentation of this additional financial measure provides useful information to investors regarding our performance and results of operations because this measure, when used in conjunction with related GAAP financial measures, (i) provides additional information about our core operating performance and ability to generate and distribute cash flow; (ii) provides investors with the financial analytical framework upon which management bases financial, operational, compensation and planning decisions; and (iii) presents measurements that investors, rating agencies and debt holders have indicated are useful in assessing us and our results of operations. This additional financial measure is reconciled to the most directly comparable measures as reported in accordance with GAAP, and should be viewed in addition to, and not in lieu of, our consolidated financial statements and footnotes.

The table below summarizes our financial results for the years ended December 31, 2019 and 2020, and presents a reconciliation of our non-GAAP financial measure reconciled to the most directly comparable GAAP measure:

Operating Results (dollars in thousands)	**Year ended December 31,**		**Favorable/(Unfavorable) 2019-2020**	
	2019	**2020**	**$**	**%**
Fixed fee revenue	$ 87,218	$ 91,879	$ 4,660	5%
Variable cost recovery revenue	14,312	12,664	(1,648)	(12)%
Variable throughput and other revenue	4,988	5,702	714	14%
Total revenue	106,518	110,245	3,726	3%
Operating expenses, excluding depreciation and amortization	(46,367)	(49,396)	(3,028)	(7)%
Total operating margin	60,151	60,849	698	1%
Depreciation and amortization	15,196	13,416	1,780	12%
General and administrative expense	13,388	14,182	(794)	(6)%
Asset impairment expense	2,476	-	2,476	100%
Loss on sale of assets	131	67	64	49%
Operating income	28,960	33,184	4,224	15%
Other income (expenses):				
Other income	530	1,169	639	121%
Interest expense	(7,447)	(5,665)	1,782	24%
Provision for income taxes	(44)	7	51	116%
Income from continuing operations	21,999	28,695	6,696	30%
Loss from discontinued operations, net	(3,587)	(42,175)	(38,588)	(1076)%
Net income(loss)	$ 18,412	$ (13,480)	(31,892)	30%

Revenues. Total revenues were consistent with prior year which was expected based on the structure of our contracts, which consist primarily of fixed fees for items such as storage and minimum throughput requirements, with consideration of annual CPI index increases built into a majority of our agreements. We experienced a slight increase in variable throughput and other revenue due to a strong asphalt season that resulted in additional excess throughput. Variable reimbursement revenue is driven by certain reimbursable operating expenses, such as utility costs, and therefore have no net impact on operating margin or net income.

Operating expenses, excluding depreciation and amortization. Operating expense, excluding depreciation and amortization increased by 7%, or $3.0 million for 2020 as compared to 2019. Significant factors contributing to this change include certain facilities changing from a lease arrangement to an operating arrangement, insurance premiums due to overall market conditions, and maintenance and repair expenses due to the timing of required inspections.

Depreciation and amortization. Depreciation and amortization decreased to $13.4 million for 2020 compared to $15.2 million for 2019. The decrease is primarily the result of assets reaching the end of their depreciable lives.

General and administrative expense. General and administrative expense was $14.2 million for the year ended December 31, 2020, compared to $13.4 million for 2019. The increase from 2019 to 2020 is primarily due to legal and professional fees incurred with several different projects in 2020, including the crude asset sale transactions.

Asset impairment expense. We incurred an asset impairment expense of $2.2 million for the year ended December 31, 2019, related to a pipeline project that was cancelled. As this project was never put in service, the impairment was recorded at the corporate level. We had no asset impairment expense related to continuing operations for the year ended December 31, 2020.

Gain on sale of assets. Gain on disposal of assets was immaterial for 2020 and 2019.

Other income. Other income for the year ended December 31, 2020 and 2019, primarily reflects insurance recoveries related to 2019 flood damages at certain asphalt facilities.

Income from discontinued operations. Income from discontinued operations represents the results of our former crude oil trucking, pipeline, and terminalling services segments that were sold in February and March of 2021. The year ended December 31, 2020, included $39.1 million of losses on disposal and classification as held for sale the crude oil trucking and pipeline services segments based on the net book value of the assets compared to expected net proceeds under the sale agreements.

Interest expense. Interest expense was $5.7 million for 2020 compared to $7.4 million for 2019. Interest expense represents interest on borrowings under our credit agreement, as well as amortization of debt issuance costs. The following table presents the significant components of interest expense:

	Year ended December 31,		Favorable/(Unfavorable) 2019-2020	
	2019	2020	$	%
Credit agreement interest	$ 6,414	$ 4,611	$ 1,803	28%
Amortization of debt issuance costs	1,005	1,005	-	0%
Other	28	49	(21)	(75)%
Total interest expense	$ 7,447	$ 5,665	$ 1,782	24%

The decrease in interest expense was primarily driven by lower floating eurodollar interest rates and continued reductions in borrowings outstanding under the revolving loan facility.

Income Taxes

As part of the process of preparing the consolidated financial statements, we are required to estimate the federal and state income taxes in each of the jurisdictions in which our subsidiary that is taxed as a corporation operates. This process involves estimating the actual current tax exposure together with assessing temporary differences resulting from differing treatment of items, such as depreciation, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included in our consolidated balance sheets. We must then assess, using all available positive and negative evidence, the likelihood that the deferred tax assets will be recovered from future taxable income. If we believe that recovery is not likely, we must establish a valuation allowance. To the extent we establish a valuation allowance or increase or decrease this allowance in a period, we must include an expense or reduction of expense within the tax provisions in the consolidated statements of operations.

Under *ASC 740 – Accounting for Income Taxes*, an enterprise must use judgment in considering the relative impact of negative and positive evidence. The weight given to the potential effect of negative and positive evidence should be commensurate with the extent to which it can be objectively verified. The more negative evidence that exists (a) the more positive evidence is necessary and (b) the more difficult it is to support a conclusion that a valuation allowance is not needed for some portion, or all of the deferred tax asset. Among the more significant types of evidence that we consider are:

- taxable income projections in future years;
- future revenue and operating cost projections that will produce more than enough taxable income to realize the deferred tax asset based on existing service rates and cost structures; and
- our earnings history exclusive of the loss that created the future deductible amount coupled with evidence indicating that the loss is an aberration rather than a continuing condition.

Based on the consideration of the above factors for our subsidiary that is taxed as a corporation for purposes of determining the likelihood of realizing the benefits of the deferred tax assets, we have provided a full valuation allowance against our deferred tax asset as of December 31, 2020.

Effects of Inflation

In recent years, inflation has been modest and has not had a material impact upon the results of our operations.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements as defined by Item 303 of Regulation S-K.

Liquidity and Capital Resources

Cash Flows and Capital Expenditures

The following table summarizes our sources and uses of cash for the years ended December 31, 2019 and 2020 (in millions):

	Year ended December 31,	
	2019	2020
Net cash provided by operating activities	$ 49.8	$ 61.2
Net cash used in investing activities	(4.3)	(22.7)
Net cash used in financing activities	(46.4)	(38.3)

Operating Activities. Net cash provided by operating activities was $61.2 million for the year ended December 31, 2020, as compared to $49.8 million for the year ended December 31, 2019. The increase in cash provided by operating activities is primarily the result of improved margins in our pipeline supply and marketing business that is included in the crude oil pipeline services segment discontinued operations, and changes in working capital.

Investing Activities. Net cash used in investing activities was $22.7 million for the year ended December 31, 2020, Capital expenditures of $16.3 million were offset by $5.9 million of proceeds from the sale of assets. Capital expenditures included maintenance capital expenditures of $10.1 million, net of reimbursable expenditures of $2.2 million, and expansion capital expenditures of $6.2 million, net of reimbursable expenditures of $0.3 million. The year ended December 31, 2020, also included a $12.2 million payment to Ergon related to our purchase of Ergon's DEVCO entity associated with Cimarron Express.

Net cash used in investing activities was $4.3 million for the year ended December 31, 2019. Total capital expenditures of $12.7 million were offset by proceeds from the sale of assets of $8.4 million. Of such proceeds, $2.6 million related to the December 2018 sale of linefill for which the cash consideration was not received until January 2019. Capital expenditures included maintenance capital expenditures of $8.9 million, net of reimbursable expenditures of $0.2 million, and expansion capital expenditures of $3.5 million, net of reimbursable expenditures of $0.1 million.

Financing Activities. Net cash used in financing activities was $38.3 million for the year ended December 31, 2020, and included net payments under our credit agreement of $3.0 million and distributions to unitholders of $32.4 million.

Net cash used in financing activities was $46.4 million for the year ended December 31, 2019, and primarily comprised of net payments under our credit agreement of $10.0 million and distributions to unitholders of $34.0 million.

Our Liquidity and Capital Resources

Cash flows from operations and borrowings under our credit agreement are our primary sources of liquidity. Our ability to borrow funds under our credit agreement may be limited by financial covenants. At December 31, 2020, we had a working capital deficit of $11.1 million. This is primarily a function of our approach to cash management. At December 31, 2020, we had approximately $252.6 million of revolver borrowings and approximately $1.7 million of letters of credit outstanding under the credit agreement, leaving us with $145.7 million of availability under our revolving loan facility, subject to covenant restrictions, which limited our availability to $61.3 million. In conjunction with the closing of our asset sale transactions, our available credit facility was reduced from $400.0 million to $350.0 million. At March 4, 2021, we had approximately $99.6 million of revolver borrowings and approximately $1.7 million of letters of credit outstanding under the credit agreement, leaving us with $248.7 million of availability under our revolving loan facility, which is reflective of the decrease in the total loan facility. The Partnership's ability to borrow such funds may be limited by the financial covenants in the credit agreement.

The Partnership has certain financial covenants associated with its credit agreement which include a maximum permitted consolidated total leverage ratio. The consolidated total leverage ratio is assessed quarterly based on the trailing twelve months of EBITDA, as defined in the credit agreement. The maximum permitted consolidated total leverage ratio as of December 31, 2020, and for every quarter thereafter, is 4.75 to 1.00. The Partnership's consolidated total leverage ratio was 3.83 to 1.00 as of December 31, 2020.

Management evaluates whether conditions and/or events raise substantial doubt about the Partnership's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued (the "assessment period"). In performing this assessment, management considered the risk associated with its ongoing ability to meet the financial covenants.

Based on the Partnership's forecasted EBITDA during the assessment period, management believes that it will meet these financial covenants (as described below). However, there are certain inherent risks associated with our continued ability to comply with our consolidated total leverage ratio covenant. These risks relate, among other things, to potential future (a) decreases in storage volumes and rates as well as throughput and transportation rates realized; (b) weather phenomenon that may potentially hinder the Partnership's asphalt business activity; and (c) other items affecting forecasted levels of expenditures and uses of cash resources. Violation of the consolidated total leverage ratio covenant would be an event of default under the credit agreement, which would cause our $252.6 million in outstanding debt, as of December 31, 2020, to become immediately due and payable. If this were to occur, the Partnership would not expect to have sufficient liquidity to repay these outstanding amounts then due, which could cause the lenders under the credit facility to pursue other remedies. Such remedies could include exercising their collateral rights to the Partnership's assets. Based on our current forecasts, we believe we will be able to comply with the consolidated total leverage ratio during the assessment period. However, we cannot make any assurances that we will be able to achieve our forecasts. If we are unable to achieve our forecasts, further actions may be necessary to remain in compliance with our consolidated total leverage ratio covenant including, but not limited to, cost reductions, common and preferred unitholder distribution curtailments, and/or asset sales. We can make no assurances that we would be successful in undertaking these actions, or that we will remain in compliance with the consolidated total leverage ratio during the assessment period.

Capital Requirements. Our capital requirements consist of the following:

- maintenance capital expenditures, which are capital expenditures made to maintain the existing integrity and operating capacity of our assets and related cash flows further extending the useful lives of the assets; and
- expansion capital expenditures, which are capital expenditures made to expand or to replace partially or fully depreciated assets or to expand the operating capacity or revenue of existing or new assets, whether through construction, acquisition or modification.

The following table breaks out capital expenditures for the years ended December 31, 2019 and 2020 (in thousands):

	Year ended December 31,			
	2019		2020	
	Continuing Operations	Discontinued Operations	Continuing Operations	Discontinued Operations
Acquisitions	$ -	$ -	$ 12,221	$ -
Expansion capital expenditures	$ 884	$ 2,709	$ 723	$ 5,571
Reimbursable expenditures	(93)	-	(289)	-
Net expansion capital expenditures	$ 791	$ 2,709	$ 434	$ 5,571
Gross Maintenance capital expenditures	$ 6,974	$ 2,179	$ 8,260	$ 1,778
Reimbursable expenditures	(223)	-	(2,084)	(120)
Net maintenance capital expenditures	$ 6,751	$ 2,179	$ 6,176	$ 1,658

We currently expect our 2021 expansion capital expenditures for organic growth projects to be approximately $0.4 million and our maintenance capital expenditures to be approximately $6.0 million, each net of reimbursable expenditures. Our sources of liquidity for expansion and maintenance capital expenditures in 2020 were a combination of cash flows from operations and borrowings under our credit agreement, and we expect to use the same sources in 2021.

Our Ability to Grow Depends on Our Ability to Access External Expansion Capital. Our partnership agreement requires that we distribute all of our available cash to our unitholders. Available cash is reduced by cash reserves established by our General Partner to provide for the proper conduct of our business (including for future capital expenditures) and to comply with the provisions of our credit agreement. We may not grow as quickly as businesses that reinvest their available cash to expand ongoing operations because we distribute all of our available cash.

Description of Credit Agreement. On May 11, 2017, we entered into an amended and restated credit agreement. On June 28, 2018, the credit agreement was amended to, among other things, reduce the revolving loan facility from $450.0 million to $400.0 million and amend the maximum permitted consolidated total leverage ratio as discussed below. On January 8, 2021, the credit agreement was amended to, among other things, reduce the revolving loan facility to $350.0 million in conjunction with the closing of the crude oil terminal transaction.

Our credit agreement is guaranteed by all of our existing subsidiaries. Obligations under our credit agreement are secured by first priority liens on substantially all of our assets and those of the guarantors.

Our credit agreement includes procedures for adding financial institutions as revolving lenders or for increasing the revolving commitment of any currently committed revolving lender, subject to the consent of the new or increasing lenders and an aggregate maximum of $600.0 million for all revolving loan commitments under our credit agreement.

The credit agreement will mature on May 11, 2022, and all amounts outstanding under our credit agreement shall become due and payable on such date. The credit agreement requires mandatory prepayments of amounts outstanding thereunder with the net proceeds from certain asset sales, property or casualty insurance claims and condemnation proceedings, unless we reinvest such proceeds in accordance with the credit agreement, but these mandatory prepayments will not require any reduction of the lenders' commitments under the credit agreement.

Borrowings under our credit agreement bear interest, at our option, at either the reserve-adjusted eurodollar rate (as defined in the credit agreement) plus an applicable margin which ranges from 2.0% to 3.25% or the alternate base rate (the highest of the agent bank's prime rate, the federal funds effective rate plus 0.5%, and the 30-day eurodollar rate plus 1.0%) plus an applicable margin which ranges from 1.0% to 2.25%.

We pay a per annum fee on all letters of credit issued under the credit agreement, which fee equals the applicable margin for loans accruing interest based on the eurodollar rate, and we pay a commitment fee on the unused commitments under the credit agreement. The applicable margins for the interest rate, the letters of credit fee and the commitment fee vary quarterly based on our consolidated total leverage ratio (as defined in the credit agreement, being generally computed as the ratio of consolidated total debt to consolidated earnings before interest, taxes, depreciation, amortization and certain other non-cash charges).

The credit agreement includes financial covenants which are tested on a quarterly basis, based on the rolling four-quarter period that ends on the last day of each fiscal quarter.

Prior to the date on which we issue qualified senior notes in an aggregate principal amount (when combined with all other qualified senior notes previously or concurrently issued) that equals or exceeds $200.0 million, the maximum permitted consolidated total leverage ratio is 4.75 to 1.00 for the fiscal quarter ending December 31, 2020, and each fiscal quarter thereafter; provided that the maximum permitted consolidated total leverage ratio will be 5.25 to 1.00 for certain quarters based on the occurrence of a specified acquisition (as defined in the credit agreement, but generally being an acquisition for which the aggregate consideration is $15.0 million or more).

From and after the date on which we issue qualified senior notes in an aggregate principal amount (when combined with all other qualified senior notes previously or concurrently issued) that equals or exceeds $200.0 million, the maximum permitted consolidated total leverage ratio is 5.00 to 1.00; provided that from and after the fiscal quarter ending immediately preceding the fiscal quarter in which a specified acquisition occurs to and including the last day of the second full fiscal quarter following the fiscal quarter in which such acquisition occurred, the maximum permitted consolidated total leverage ratio is 5.50 to 1.00.

The maximum permitted consolidated senior secured leverage ratio (as defined in the credit agreement, but generally computed as the ratio of consolidated total secured debt to consolidated earnings before interest, taxes, depreciation, amortization and certain other non-cash charges) is 3.50 to 1.00, but this covenant is only tested from and after the date on which we issue qualified senior notes in an aggregate principal amount (when combined with all other qualified senior notes previously or concurrently issued) that equals or exceeds $200.0 million.

The minimum permitted consolidated interest coverage ratio (as defined in the credit agreement, but generally computed as the ratio of consolidated earnings before interest, taxes, depreciation, amortization and certain other non-cash charges to consolidated interest expense) is 2.50 to 1.00.

In addition, the credit agreement contains various covenants that, among other restrictions, limit our ability to:

- create, issue, incur or assume indebtedness;
- create, incur or assume liens;
- engage in mergers or acquisitions;
- sell, transfer, assign or convey assets;
- repurchase the Partnership's equity, make distributions to unitholders and make certain other restricted payments;
- make investments;
- modify the terms of certain indebtedness, or prepay certain indebtedness;
- engage in transactions with affiliates;
- enter into certain hedging contracts;
- enter into certain burdensome agreements;
- change the nature of the Partnership's business; and
- make certain amendments to the Fourth Amended and Restated Agreement of Limited Partnership of the Partnership (the "Partnership's partnership agreement").

At December 31, 2020, our consolidated total leverage ratio was 3.83 to 1.00 and our consolidated interest coverage ratio was 6.66 to 1.00. We were in compliance with all covenants of our credit agreement as of December 31, 2020.

The credit agreement permits us to make quarterly distributions of available cash (as defined in our partnership agreement) to unitholders so long as no default or event of default exists under the credit agreement on a pro forma basis after giving effect to such distribution. We are currently allowed to make distributions to our unitholders in accordance with this covenant; however, we will only make distributions to the extent we have sufficient cash from operations after establishment of cash reserves as determined by the General Partner in accordance with our cash distribution policy, including the establishment of any reserves for the proper conduct of our business.

In addition to other customary events of default, the credit agreement includes an event of default if:

(i) our General Partner ceases to own 100% of our general partner interest or ceases to control us;
(ii) Ergon ceases to own and control 50.0% or more of the membership interests of our General Partner; or
(iii) during any period of 12 consecutive months, a majority of the members of the Board of our General Partner ceases to be composed of individuals:
 (A) who were members of the Board on the first day of such period;
 (B) whose election or nomination to the Board was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of the Board; or
 (C) whose election or nomination to the Board was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of the Board, provided that any changes to the composition of individuals serving as members of the Board approved by Ergon will not cause an event of default.

If an event of default relating to bankruptcy or other insolvency events occurs with respect to our General Partner or us, all indebtedness under our credit agreement will immediately become due and payable. If any other event of default exists under our credit agreement, the lenders may accelerate the maturity of the obligations outstanding under our credit agreement and exercise other rights and remedies. In addition, if any event of default exists under our credit agreement, the lenders may commence foreclosure or other actions against the collateral.

If any default occurs under our credit agreement, or if we are unable to make any of the representations and warranties in our credit agreement, we will be unable to borrow funds or have letters of credit issued under our credit agreement.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements. We prepared these consolidated financial statements in conformity with accounting principles generally accepted in the United States of America. As such, we are required to make certain estimates, judgments and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the periods presented. We based our estimates on historical experience, available information and various other assumptions we believe to be reasonable under the circumstances. On an ongoing basis, we evaluate our estimates; however, actual results may differ from these estimates under different assumptions or conditions. The accounting policies that we believe require our most difficult, subjective or complex judgments and are the most critical to our reporting of results of operations and financial position are as follows:

Use of Estimates. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosure of contingencies. Management makes significant estimates including: (1) allowance for doubtful accounts receivable; (2) estimated useful lives of assets, which impacts depreciation; (3) estimated cash flows and fair values inherent in impairment tests; (4) accruals related to revenues and expenses; (5) the estimated fair value of financial instruments; and (6) liability and contingency accruals. Although management believes these estimates are reasonable, actual results could differ from these estimates.

Property, Plant and Equipment. Property, plant and equipment are recorded at cost. Expenditures for maintenance and repairs that do not add capacity or extend the useful life of an asset are expensed as incurred. The carrying value of the assets is based on estimates, assumptions and judgments relative to useful lives and salvage values. As assets are disposed of or sold, the cost and related accumulated depreciation are removed from the accounts, and any resulting gain or loss is included in operating income in the consolidated statements of operations.

We calculate depreciation using the straight-line method based on estimated useful lives of our assets. These estimates are based on various factors, including age (in the case of acquired assets), manufacturing specifications, technological advances and historical data concerning useful lives of similar assets. Uncertainties that impact these estimates include changes in laws and regulations relating to restoration and abandonment requirements, economic conditions and supply and demand in the area. When assets are put into service, we make estimates with respect to useful lives and salvage values that we believe to be reasonable. However, subsequent events could cause us to change our estimates, thus impacting the future calculation of depreciation and amortization. The estimated useful lives of our asset groups are as follows:

Asset Group	**Estimated Useful Lives (Years)**
Land improvements	10-20
Storage and terminal facilities	10-35
Office property and equipment and other	3-30

We capitalize certain costs directly related to the construction of assets, including interest and engineering costs. Upon disposition or retirement of property, plant and equipment, any gain or loss is included in operating income in the consolidated statements of operations.

We have contractual obligations to perform dismantlement and removal activities in the event that some of our assets are abandoned. These obligations include varying levels of activity, including completely removing the assets and returning the land to its original state. We have determined that the settlement dates related to the retirement obligations are indeterminate. The assets with indeterminate settlement dates have been in existence for many years and with regular maintenance will continue to be in service for many years to come. In addition, it is not possible to predict when demands for our services will cease, and we do not believe that such demand will cease for the foreseeable future. Accordingly, we believe the date when these assets will be abandoned is indeterminate. With no reasonably determinable abandonment date, we cannot reasonably estimate the fair value of the associated asset retirement obligations. We believe that if our asset retirement obligations were settled in the foreseeable future the potential cash flows that would be required to settle the obligations based on current costs are not material. We will record asset retirement obligations for these assets in the period in which sufficient information becomes available for us to reasonably determine the settlement dates.

Impairment of Long-Lived Assets. Long-lived assets with recorded values that are not expected to be recovered through future cash flows are written down to estimated fair value. Assets are tested for impairment when events or circumstances indicate that their carrying values may not be recoverable. The carrying value of a long-lived asset is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. If the carrying value exceeds the sum of the undiscounted cash flows, an impairment loss equal to the amount the carrying value exceeds the fair value of the asset is recognized. Fair value is generally determined from estimated discounted future net cash flows.

Goodwill. Goodwill represents the excess of the cost of acquisitions over the amounts assigned to assets acquired and liabilities assumed. Goodwill is not amortized, but is tested annually for impairment and when events and circumstances warrant an interim evaluation. Goodwill is tested for impairment at a level of reporting referred to as a reporting unit. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is not considered to be impaired. The impairment test is generally based on the estimated discounted future net cash flows of the respective reporting unit, utilizing discount rates and other factors in determining the fair value of the reporting unit. Inputs in the Partnership’s estimated discounted future net cash flows include existing and estimated future asset utilization, estimated growth rates in future cash flows and estimated terminal values. No impairment expense was recorded in 2019 or 2020.

Recent Accounting Pronouncements

For information regarding recent accounting developments that may affect our future financial statements, see Note 20 to our consolidated financial statements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

As a smaller reporting company, we are not required to provide the information required by Item 7A.

Item 8. Financial Statements and Supplementary Data.

Our consolidated financial statements, together with the reports of our independent registered public accounting firms, are set forth on pages F-1 through F-24 of this report and are incorporated herein by reference.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of disclosure controls and procedures. Our General Partner’s management, including the Chief Executive Officer and Chief Financial Officer, the principal executive officer and principal financial officer, respectively, of our General Partner, evaluated as of the end of the period covered by this report, the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer of our General Partner concluded that our disclosure controls and procedures were effective as of December 31, 2020.

Management's Report on Internal Control Over Financial Reporting. Our General Partner's management is responsible for establishing and maintaining adequate internal control over financial reporting. Our General Partner's management, including the Chief Executive Officer and Chief Financial Officer of our General Partner, conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its evaluation under the framework in *Internal Control - Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2020.

Changes in internal control over financial reporting. There were no changes to our internal control over financial reporting that occurred during the three months ended December 31, 2020, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART III.

Item 10. Directors, Executive Officers and Corporate Governance.

Our General Partner manages our operations and activities. Our General Partner is not elected by our unitholders and will not be subject to re-election on a regular basis in the future. The directors of our General Partner oversee our operations. Unitholders are not entitled to elect the directors of our General Partner or directly or indirectly participate in our management or operations. Our General Partner owes a limited fiduciary duty to our unitholders. Our General Partner will be liable, as general partner, for all of our debts (to the extent not paid from our assets), except for indebtedness or other obligations that are made specifically nonrecourse to it. Our General Partner, therefore, may cause us to incur indebtedness or other obligations that are nonrecourse to it. Borrowings under our existing credit facility are nonrecourse to our General Partner.

Directors and Executive Officers

The Board currently consists of W. R. "Lee" Adams (affiliated with Ergon), Edward D. Brooks (affiliated with Ergon), Joel D. Pastorek (affiliated with Ergon), Robert H. Lampton (affiliated with Ergon), William W. Lampton (affiliated with Ergon), Duke R. Ligon (an independent director), Steven M. Bradshaw (an independent director) and John A. Shapiro (an independent director). Mr. Ligon serves as the Chairman of the Board, the chairman of the audit committee and a member of the compensation committee and the conflicts committee of the Board. Mr. Bradshaw serves as the chairman of the conflicts committee and a member of the compensation committee and the audit committee of the Board. Mr. Shapiro serves as the chairman of the compensation committee and a member of the conflicts committee and the audit committee of the Board.

The following table shows information regarding the current directors and executive officers of our General Partner as of March 4, 2021:

Name	Age	Position with Blueknight Energy Partners G.P., L.L.C.
D. Andrew Woodward	38	Chief Financial Officer
Matthew R. Lewis	34	Chief Financial Officer
Joel W. Kanvik	51	Chief Legal Officer and Secretary
Michael McLanahan	38	Chief Accounting Officer
Jeffery A. Speer	54	Chief Operating Officer
Duke R. Ligon	79	Director, chairman of the Board and audit committee
Steven M. Bradshaw	72	Director, chairman of the conflicts committee
John A. Shapiro	69	Director, chairman of the compensation committee
W.R. "Lee" Adams	52	Director
Edward D. Brooks	38	Director
Joel D. Pastorek	38	Director
Robert H. Lampton	60	Director
William W. Lampton	65	Director

Our directors hold office until the earlier of their death, resignation, removal or disqualification or until their successors have been elected and qualified. Officers serve at the discretion of the Board. Robert H. Lampton and William W. Lampton are brothers. There are no other family relationships between officers and directors.

D. Andrew Woodward became the Chief Executive Officer of our General Partner in June 2020, after serving as the Chief Financial Officer of our General Partner since April 2019. Mr. Woodward has substantial financial experience across investment banking, corporate development, and corporate finance within the energy and midstream industry. Mr. Woodward previously served as Vice President, Finance and Treasurer of Andeavor Logistics (NYSE: ANDX), where he was appointed by its board of directors to be the principal financial officer. Prior to this appointment, he led investor relations for ANDX and started his career with Andeavor, now Marathon Petroleum, in corporate development leading valuation, structuring and economic analysis on corporate and asset transactions. Before joining Andeavor, Mr. Woodward served as Vice President at RBC Capital Markets within its energy investment banking group where he advised on numerous large scale mergers and acquisitions and capital markets transactions. Mr. Woodward received his Bachelor of Arts in economics and philosophy from Colorado College and his Master of Business Administration from the University of Texas at Austin.

Matthew R. Lewis became the Chief Financial Officer of our General Partner in September 2020. Mr. Lewis has substantial financial experience having previously served in a number of corporate and operational finance roles in addition to middle market leveraged finance activities. Mr. Lewis previously served as Chief Financial Officer at Streamline Innovations, Inc., a privately held company providing specialty solutions for water and gas treating processes within energy and industrial markets. Prior to Streamline, Mr. Lewis was Director of Business Planning & Analysis at Andeavor Logistics (NYSE: ANDX), where he served on the extended leadership team and coordinated all business planning and analysis activities. Previously, Mr. Lewis served in multiple roles at Mid-Con Energy Partners, LP (NASDAQ: MCEP), prior to being appointed Vice President & Chief Financial Officer in 2016. Mr. Lewis received his Bachelor of Business Administration in Finance from Texas Tech University and his Master of Business of Administration from Southern Methodist University.

Jeffery A. Speer has served as Chief Operating Officer of our General Partner since July 2013. Mr. Speer served as Senior Vice President-Operations of our General Partner from February 2010 to July 2013. Previously, Mr. Speer served as the Vice President of Operations of our asphalt and emulsion subsidiary since June 2009. Prior to joining our team, Mr. Speer served as Vice President of Operations for Koch Industries, Inc. and had operational responsibility for Koch’s crude oil, pipeline and trucking divisions in Oklahoma, Texas and Canada, as well as Koch’s agricultural and asphalt businesses. Mr. Speer has more than 30 years of experience in the energy industry and received his Bachelor of Science in mechanical engineering from Kansas State University.

Joel W. Kanvik has served as Chief Legal Officer of our General Partner since November 2016 and as Secretary since September 2018. Mr. Kanvik previously served as the Director of U.S. Law and Assistant Secretary for Enbridge Energy Company, Inc., which he joined in January 2001. He provided legal and business counsel to a family of corporations/limited partnerships, including the development and execution for large-scale construction/acquisition projects, mergers and acquisitions, contracts and licenses, intellectual property, litigation management and corporate governance. Mr. Kanvik received his Bachelor of Arts in political science from Northwestern University and his Juris Doctor from the University of Wisconsin.

Michael McLanahan has served as the Chief Accounting Officer of our General Partner since April 2019. Mr. McLanahan previously served the Partnership in various accounting roles, including the Corporate Controller, and prior to joining the Partnership, he served as an audit manager for the public accounting firm of Ernst & Young LLP. Mr. McLanahan received his Bachelor of Arts in accounting from Ouachita Baptist University, and is a certified public accountant in the state of Oklahoma.

Duke R. Ligon has served as a director of our General Partner since October 2008. He is an attorney and the current owner and manager of Mekusukey Oil Company, LLC. He served as Senior Vice President and General Counsel of Devon Energy Corporation from January 1997 until he retired in February 2007. From February 2007 to February 2010, Mr. Ligon served in the capacity of Strategic Advisor to Love’s Travel Stops & Country Stores, Inc., based in Oklahoma City, Oklahoma, and previously acted as Executive Director of the Love’s Entrepreneurship Center at Oklahoma City University. He is also a member of the board of directors of Heritage Trust Company, Security State Bank (in which he has a 14% beneficial ownership), Cavaloz Holdings, Inc. and Pardus Oil and Gas. He was formerly on the board of directors of PostRock Energy Corporation, System One, Orion California LP, Emerald Oil, Inc., SteelPath MLP, TransMontaigne Partners L.P., Pre-Paid Legal Services, Inc., Panhandle Oil and Gas Inc., Vantage Drilling Company and TEPPCO Partners, L.P. Mr. Ligon received his undergraduate degree in chemistry from Westminster College and his law degree from the University of Texas School of Law. Mr. Ligon was selected to serve as a director on the Board due to his extensive business and leadership experience derived from his background as a director of various companies in the energy industry, as well as his financial and legal expertise.

Steven M. Bradshaw has served as a director of our General Partner since November 2009. He has over 35 years of experience in the global logistics and transportation industry and currently serves as the Managing Director at Global Logistics Solutions. From 2005 to 2009, Mr. Bradshaw served as Vice President-Administration of Premium Drilling, Inc., an offshore drilling contractor that provides jack-up drilling services to the international oil and gas industry. Previously, he served as Executive Vice President of Skaugen PetroTrans, Inc. from 2001 to 2003. He also served for 16 years in various operating and marketing capacities at Kirby Corporation, including as President-Refined Products Division from 1992 to 1996. Mr. Bradshaw also served as an officer in the United States Navy. He received his Master of Business Administration from Harvard University and a bachelor’s degree in mathematics from the University of Missouri. Mr. Bradshaw was selected to serve as a director on the Board due to his business judgment and extensive industry knowledge and experience.

John A. Shapiro has served as a director of our General Partner since November 2009. Mr. Shapiro retired as an officer at Morgan Stanley & Co., where he had served for more than 24 years in various capacities, most recently as Global Head of Commodities. While an officer at Morgan Stanley, Mr. Shapiro participated in the successful acquisitions of TransMontaigne Inc. and Heidmar Inc., and served as a member of the board of directors of both companies. Prior to joining Morgan Stanley & Co., Mr. Shapiro worked for Conoco, Inc. and New England Merchants National Bank. Mr. Shapiro has been a lecturer at Princeton University, Harvard University School of Government, HEC Business School (Paris, France) and Oxford University Energy Program (Oxford, UK). In addition, he serves on the board of directors of Citymeals-on-Wheels and serves as a senior advisor to Mountain Capital Partners, a Houston-based private equity firm focused on upstream E&P investments. Mr. Shapiro has served on the board of directors of Blue Wolf Mongolia Holdings. He received his Master of Business Administration from Harvard University and his bachelor’s degree in economics from Princeton University. Mr. Shapiro was selected to serve as a director on the Board due to his financial expertise and extensive industry experience developed through his work at Morgan Stanley & Co., and by serving as a director of other energy companies.

W.R. "Lee" Adams has served as a director of our General Partner since February 2018. Mr. Adams joined Ergon, Inc. as the Vice President of Internal Audit in 2011 and currently serves as Senior Vice President - Finance. He also serves as Chairman of Ergon's Senior Management Team. He is a certified public accountant in the state of Mississippi and previously worked at Arthur Anderson and Haddox Reid Burkes & Calhoun, PLLC, where he specialized in assurance and advisory services in the areas of oil and gas, manufacturing, investments and employee benefit plans. Mr. Adams received his Bachelor of Accountancy from Mississippi State University, and holds the designations of Chartered Global Management Accountant, Certified Fraud Examiner and Certified Internal Auditor. Mr. Adams currently serves as a member of the advisory council for Mississippi State's Adkerson School of Accountancy and is the Chairman of the Board of Hartfield Academy. He has previously served as Chairman/President of the Petroleum Accounting Society of Mississippi and of the Mississippi Society of Certified Public Accountants, a 2,600-member trade association for CPAs practicing in the state of Mississippi. Mr. Adams was selected to serve as a director on the Board due to his affiliation with Ergon and his financial and business expertise.

Edward D. Brooks has served as a director of our General Partner since October 2016. Mr. Brooks has been the Vice President of Business Development for Ergon Asphalt & Emulsions, Inc. since 2013. Mr. Brooks joined Ergon in 2007 to serve as the Manager of Business Development. Prior to joining Ergon, Mr. Brooks worked with Haddox Reid Burkes & Calhoun, PLLC as a manager in the assurance services division. Mr. Brooks received his Bachelor of Science in Business Administration in accounting and his Master of Business Administration from Mississippi College and is a certified public accountant in the state of Mississippi. He also holds a Chartered Global Management Accountant designation. Mr. Brooks was selected to serve as a director on the Board due to his affiliation with Ergon and his financial and business expertise.

Joel D. Pastorek has served as a director of our General Partner since August 2018. Mr. Pastorek serves as the Executive Vice President - Midstream & Logistics and as President of Ergon Terminalling, Inc. He also serves as the Vice Chairman of the Ergon Senior Management Team. Mr. Pastorek joined Ergon in 2005. Prior to taking the role of Executive Vice President, Mr. Pastorek held various positions within Ergon including Senior Project Manager, Manager of Corporate Maintenance, General Manager - Ergon Terminaling, Inc., Vice President - Ergon Terminaling, Inc., and President - Ergon Terminaling, Inc. Mr. Pastorek received his Bachelor of Science in mechanical engineering from Mississippi State University and is a licensed professional engineer in the state of Mississippi. Mr. Pastorek was selected to serve as a director on the Board due to his affiliation with Ergon and his financial and business expertise.

Robert H. Lampton has served as a director of our General Partner since October 2016. Mr. Lampton has been with Ergon since 1983, and currently serves as President of the Supply and Distribution Division. He previously served as President of Ergon Terminalling, Inc., Ergon Trucking, Inc., Ergon Marine and Industrial Supply and Ergon Properties, Inc. He is a member of Ergon, Inc.'s board of directors. He was a board member for Mississippi Valley Title Company from 2005 to 2015. Mr. Lampton received his degree in business administration with a minor in business psychology from The University of Mississippi. Mr. Lampton was selected to serve as a director on the Board due to his affiliation with Ergon and his financial and business expertise.

William W. Lampton has served as a director of our General Partner since October 2016. Mr. Lampton has been with Ergon since 1979, and currently is a member of Ergon's board of directors. He previously served as President of Ergon's Asphalt Groups and as Chairman of the board of directors of Ergon Asphalt & Emulsions, Inc. Mr. Lampton currently is a board member of Mississippi Economic Council, Boy Scouts of America, Andrew Jackson Council, Greater Jackson Chamber Partnership (of which he is a past chairman), and Mississippi Baptist Health Foundation. He is a member of the Dean's Advisory Council of Mississippi State University's Bagley College of Engineering, and served as co-chair of the Mississippi Works initiative under Governor Phil Bryant. Mr. Lampton was selected to serve as a director on the Board due to his affiliation with Ergon and his financial and business expertise.

Independence of Directors

Our General Partner currently has eight directors, three of whom (Messrs. Bradshaw, Ligon and Shapiro) are "independent" as defined under the independence standards established by Nasdaq. Nasdaq's independence definition includes a series of objective tests, including that the director is not an employee of the company and has not engaged in various types of business dealings with the company. In addition, the Board has made a subjective determination as to each independent director that no relationships exist which, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, the directors reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities as they may relate to us and our management. Nasdaq does not require a listed limited partnership like us to have a majority of independent directors on the Board or to establish a nominating committee.

In addition, the members of the audit committee also each qualify as "independent" under special standards established by the SEC for members of audit committees, and the audit committee includes at least one member who is determined by the Board to meet the qualifications of an "audit committee financial expert" in accordance with SEC rules, including that the person meets the relevant definition of an "independent" director. John A. Shapiro is the independent director who has been determined to be an audit committee financial expert. Unitholders should understand that this designation is a disclosure requirement of the SEC related to experience and understanding with respect to certain accounting and auditing matters. The designation does not impose any duties, obligations or liability that are greater than are generally imposed on a member of the audit committee and the Board, and the designation of a director as an audit committee financial expert pursuant to this SEC requirement does not affect the duties, obligations or liability of any other member of the audit committee or the Board.

Board Leadership Structure and Risk Oversight

The Chief Executive Officer and chairman of the Board positions of our General Partner are held by separate individuals in recognition of the differences between the two roles. We have taken this position to achieve an appropriate balance with regard to our strategic direction, oversight of management, unitholder interests and director independence. Our General Partner's Chief Executive Officer is responsible for setting our strategic direction and overseeing our day-to-day performance. Our General Partner's chairman of the Board is an independent director who provides guidance to the Chief Executive Officer and sets the agenda for and presides over Board meetings.

Our Board is engaged in the oversight of risk through regular updates from our management team regarding those risks confronting us, the actions and strategies necessary to mitigate those risks and the status and effectiveness of those actions and strategies. These regular updates are provided at meetings of the Board and the audit committee as well as other meetings with the chairman of the Board, the Chief Executive Officer and other members of our General Partner's management team.

Board Committees

We have standing conflicts, audit and compensation committees of the Board. Each member of the audit, compensation and conflicts committees is an independent director in accordance with Nasdaq and applicable securities laws. Each of the audit, compensation and conflicts committees has a written charter approved by the Board. The written charter for each of these committees is available on our web site at www.bkep.com under the "Investors - Corporate Governance" section. We will also provide a copy of any of our committee charters to any of our unitholders without charge upon written request to the attention of Investor Relations at 6060 American Plaza, Suite 600, Tulsa, Oklahoma 74135. The current members of the audit, compensation and conflicts committees of the Board and a brief description of the functions performed by each committee are set forth below.

Conflicts Committee. The members of the conflicts committee are Messrs. Bradshaw (chairman), Ligon and Shapiro. The primary responsibility of the conflicts committee is to review matters that the directors believe may involve conflicts of interest. The conflicts committee determines if the resolution of the conflict of interest is fair and reasonable to us. The conflicts committee may retain independent legal and financial advisors to assist in its evaluation of a transaction. The members of the conflicts committee may not be officers or employees of our General Partner or directors, officers or employees of its affiliates and must meet the independence standards to serve on an audit committee of a board of directors established by any national securities exchange upon which our common units are traded and the SEC. Any matters approved by the conflicts committee will be conclusively deemed to be fair and reasonable to us, approved by all of our partners and not a breach by our General Partner of any duties it may owe us or our unitholders.

Audit Committee. The members of the audit committee are Messrs. Bradshaw, Ligon (chairman) and Shapiro. The primary responsibilities of the audit committee are to assist the Board in its general oversight of our financial reporting, internal controls and audit functions, and it is directly responsible for the appointment, retention, compensation and oversight of the work of our independent auditors.

For information regarding our audit committee financial expert, see "Independence of Directors" above.

Compensation Committee. The members of the compensation committee are Messrs. Bradshaw, Ligon and Shapiro (chairman). The primary responsibility of the compensation committee is to oversee compensation decisions for the outside directors of our General Partner and executive officers of our General Partner, as well as administer the General Partner's Long-Term Incentive Plan.

Code of Ethics and Business Conduct

Our General Partner has adopted a Code of Business Conduct and Ethics applicable to all of our General Partner's employees, including all officers, and including our General Partner's independent directors, who are not employees of our General Partner, with regard to their activities relating to us. The Code of Business Conduct and Ethics incorporates guidelines designed to deter wrongdoing and to promote honest and ethical conduct and compliance with applicable laws and regulations. It also incorporates our expectations of our General Partner's employees that enable us to provide accurate and timely disclosure in our filings with the Securities and Exchange Commission and other public communications. The Code of Business Conduct and Ethics is publicly available under the "Investors - Corporate Governance - Code of Business Conduct and Ethics" section of our website at www.bkep.com. The information contained on, or connected to, our website is not incorporated by reference into this annual report on Form 10-K and should not be considered part of this or any other report that we file with, or furnish to, the SEC. We will also provide a copy of the Code of Business Conduct and Ethics to any of our unitholders without charge upon written request to the attention of Investor Relations at 6060 American Plaza, Suite 600, Tulsa, Oklahoma 74135. If any substantive amendments are made to the Code of Business Conduct and Ethics, or if we or our General Partner grant any waiver, including any implicit waiver, from a provision of the code to any of our General Partner's executive officers and directors, we will disclose the nature of such amendment or waiver on that web site or in a current report on Form 8-K.

Reimbursement of Expenses of our General Partner

Pursuant to our partnership agreement, our General Partner and its affiliates are entitled to receive reimbursement for the payment of expenses related to our operations and for the provision of various general and administrative services for our benefit.

Item 11. Executive Compensation

Throughout this section, each person who served as the Principal Executive Officer ("PEO") during 2020, the two most highly compensated executive officers other than the PEO serving at December 31, 2020, and up to two additional individuals for whom disclosure would have been provided but for the fact that the individual was not serving as an executive officer at December 31, 2020, are referred to as the Named Executive Officers ("NEOs"). The NEOs during 2020 were:

- Mark A. Hurley, Chief Executive Officer through June 2020;
- D. Andrew Woodward, Chief Executive Officer effective June 2020, Chief Financial Officer through June 2020;
- Jeffery A. Speer, Chief Operating Officer; and
- Joel Kanvik, Chief Legal Officer.

As is the case with many publicly traded partnerships, we have not historically directly employed any persons responsible for managing or operating us or for providing services relating to day-to-day business affairs. Our General Partner manages our operations and activities, and its Board and officers make decisions on our behalf. The compensation for the NEOs for services rendered to us is determined by the compensation committee of our General Partner.

Employment Agreements. Mr. Woodward has entered into an employment agreement with BKEP Management, Inc., a subsidiary of our General Partner. Mr. Woodward's employment agreement has an initial term of three years and will automatically renew for subsequent one-year periods unless either party gives 90 days advance notice of termination. Pursuant to Mr. Woodward's employment agreement, Mr. Woodward's initial annual base salary was $350,000. In conjunction to his promotion to Chief Executive Officer in June 2020, Mr. Woodward's annual compensation was increased to $400,000. Pursuant to his offer of employment referenced in his employment agreement, Mr. Woodward also received a $50,000 initial bonus that was paid following 90 days of employment and a $50,000 grant of long-term incentive units that was awarded following 30 days of employment, which will vest June 1, 2022. The offer of employment also provided for an incentive compensation bonus of $160,000 and a grant of $160,000 of long-term incentive units, both to be awarded as part of the Partnership's regular March 2020 compensation actions. Per the offer of employment, the long-term incentive units can be paid in units or cash equivalent, and in March 2020, it was determined to pay $85,000 in units and $75,000 in cash. The offer of employment also provided for make-whole payments to replace certain lost compensation opportunities with Mr. Woodward's prior employer totaling $550,000, with $150,000 paid on December 31, 2019, $200,000 paid on December 31, 2020 and $200,000 to be paid on December 31, 2021. The employment agreement also provides that Mr. Woodward is eligible to participate in any employee benefit plans maintained by the General Partner and is entitled to reimbursement for certain out-of-pocket expenses. Mr. Woodward has agreed not to disclose any confidential information obtained by him while employed under his employment agreement and has agreed to a one-year post-termination non-solicitation covenant.

Except in the event of termination for Cause as defined therein, termination by Mr. Woodward other than for Good Reason as defined therein, termination after the expiration of the term of Mr. Woodward's employment agreement or termination due to death or disability, Mr. Woodward's employment agreement provides for payment of any unpaid base salary and vested or unvested benefits under any incentive plans, a lump sum payment equal to 12 months of base salary, any unpaid make-whole payments and Mr. Woodward will also be entitled to continued participation in our General Partner's welfare benefit programs for a period of 12 months following termination. Based upon Mr. Woodward's current base salary and unpaid make-whole payments, the maximum amount of the lump sum severance payment would be approximately $0.6 million, in addition to continued participation in the General Partner's welfare benefit programs and the amounts of earned but unpaid base salary and benefits under any incentive plans.

Long-Term Incentive Plan. *General*. Our General Partner has adopted the Long-Term Incentive Plan ("LTIP"). The discussion of the LTIP contained herein does not purport to be complete and is qualified in its entirety by reference to the LTIP. Among other award types, the compensation committee may make grants of restricted units and phantom units under the LTIP to eligible individuals containing such terms, consistent with the LTIP, as the compensation committee may determine, including the period over which restricted units and phantom united granted will vest. The compensation committee may, at its discretion, base vesting on the grantee's completion of a period of service or upon the achievement of specified performance goals or other criteria.

Restricted units have been granted to the independent directors of our General Partner. A restricted unit is a common unit that is subject to forfeiture. Upon vesting, the forfeiture restrictions lapse and the recipient holds a common unit that is not subject to forfeiture.

Phantom units have been granted to employees, including executive officers. A phantom unit is a notional unit that entitles the grantee to receive a common unit upon the vesting of the phantom unit or, at the discretion of the compensation committee, cash equal to the fair market value of a common unit. The phantom units contain distribution equivalent rights, which are rights to receive all or a portion of the distributions otherwise payable on units during a specified time.

Unit Purchase Plan. The Partnership's unitholders have also approved the Blueknight Energy Partners, L.P. Employee Unit Purchase Plan (the "Unit Purchase Plan"). The Unit Purchase Plan provides employees of the General Partner and its affiliates who perform services for the Partnership the opportunity to acquire or increase their ownership of common units. A maximum of 1,000,000 common units may be delivered under the Unit Purchase Plan, subject to adjustment for a recapitalization, split, reorganization or similar event pursuant to the terms of the Unit Purchase Plan. Certain of the Partnership's executive officers participated in this plan in 2019 and 2020. As of December 31, 2020, 531,121 common units have been delivered under the Unit Purchase Plan.

Separation Agreement with Mr. Hurley. In connection with Mr. Hurley's departure as Chief Executive Officer on June 22, 2020 (the "Separation Date"), Mr. Hurley entered into a separation agreement and general release of claims (the "Separation Agreement") pursuant to which Mr. Hurley received cash payments in a total amount of $353,500. In addition, pursuant to the Separation Agreement, Mr. Hurley's outstanding and unvested award of 75,400 phantom units was accelerated in full and settled in common units. The payments and benefits set forth in the Separation Agreement were provided in exchange for Mr. Hurley providing a customary release of claims in favor of our partnership. In addition, the Separation Agreement provided that Mr. Hurley would provide assistance with respect to transitioning matters related to his job responsibilities for the 60-day period following the separation date.

Summary Compensation Table

The following table summarizes the compensation of our NEOs for the years ended 2020 and 2019. Mr. Kanvik was not an NEO in 2019.

Name and Position	Year	Salary ($)	Bonus ($)(1)	Stock Awards ($)(2)	All Other Compensation ($)(3)	Total ($)
Mark A. Hurley,	2020	216,634	—	67,860	416,378	700,872
Chief Executive Officer through June 22, 2020	2019	450,000	150,000	—	24,888	624,888
D. Andrew Woodward,	2020	378,602	500,000	72,102	54,878	1,005,582
CEO effective June 22, 2020; CFO through June 22, 2020	2019	238,718	435,000	49,861	63,123	786,702
Jeffery A. Speer,	2020	294,000	220,000	66,733	52,040	632,773
Chief Operating Officer	2019	285,000	165,000	71,668	48,680	570,348
Joel Kanvik, Chief Legal Officer	2020	283,000	180,000	43,180	35,163	541,343

(1) Included in Mr. Woodward's bonus for 2020 is a make-whole payment of $200,000. Included in Mr. Woodward's bonus for 2019 is a signing bonus of $50,000 and make-whole payments of $150,000.
(2) Dollar amounts represent the grant date fair value of awards granted in each year with respect to phantom unit grants under the LTIP. Mr. Hurley was not granted an award in 2019.
(3) We provide distribution equivalent rights ("DERs") under the LTIP, reimbursement of certain deductibles and co-pays for medical expenses and discretionary matching and profit sharing contributions to our 401(k) plan to our NEOs. Mr. Hurley also received a severance payment in 2020. In 2020, payments related to these items were as follows:

	DERs	Severance	401(k) plan contributions	Other	Total
Mark A. Hurley	$ 6,032	$ 353,500	$ 14,250	$ 42,596	$ 416,378
D. Andrew Woodward	$ 17,000	$ -	$ 14,250	$ 23,628	$ 54,878
Jeffery A. Speer	$ 23,708	$ -	$ 14,250	$ 14,082	$ 52,040
Joel Kanvik	$ 15,171	$ -	$ 14,250	$ 5,742	$ 35,163

Outstanding Equity Awards at Fiscal Year-End 2020

The following table provides information concerning all outstanding equity awards made to a NEO as of December 31, 2020, under our General Partner's LTIP.

	Stock Awards	
Name	Number of Units That Have Not Vested (#)	Market Value of Units That Have Not Vested ($)(1)
D. Andrew Woodward	80,113 (2)	159,425
	46,168 (3)	91,874
Jeffery A. Speer	74,148 (2)	147,555
	62,867 (3)	125,105
	29,700 (4)	59,103
Joel Kanvik	47,978 (2)	95,476
	38,558 (3)	76,730
	20,278 (4)	40,353

(1) Market value of awards is calculated as the product of the closing market price of $1.99 of the Partnership's common units at December 31, 2020, and the number of phantom units outstanding at December 31, 2020.
(2) Represents phantom units granted in 2020 under our General Partner's LTIP. These phantom units will vest on January 1, 2023. All of the distribution equivalent rights associated with these phantom units are currently payable.
(3) Represents phantom units granted in 2019 under our General Partner's LTIP. Mr. Woodward's units will vest on June 1, 2022. Messers. Speer's and Kanvik's units will vest on January 1, 2022. All of the distribution equivalent rights associated with these phantom units are currently payable.
(4) Represents phantom units granted in 2018 under our General Partner's LTIP. These phantom units vested on January 1, 2021.

Director Compensation for Fiscal Year 2020

Name	Fees Earned or Paid in Cash ($)	Stock Awards[2] ($)	Total ($)
Duke R. Ligon	195,000	11,708	206,708
Steven M. Bradshaw	185,000	11,708	196,708
John A. Shapiro	185,000	11,708	196,708
Edward D. Brooks[1]	—	—	—
Joel D. Pastorek[1]	—	—	—
W.R. “Lee” Adams[1]	—	—	—
Robert H. Lampton[1]	—	—	—
William W. Lampton[1]	—	—	—

(1) Affiliated with Ergon.
(2) These amounts represent the grant date fair value of restricted and unrestricted units awarded under the LTIP. The grant date fair value of these awards is computed in accordance with *ASC 718 - Compensation—Stock Compensation*.

Directors who are not officers or employees of any controlling entity or their affiliates receive compensation for attending meetings of the Board and committees thereof. Such directors receive the following:

(i) $75,000 per year as an annual retainer fee paid in cash;
(ii) $5,000 per year for each Board committee on which such director serves (except that the chairperson of each committee will receive $10,000 per year for serving as chairperson of such committee);
(iii) $10,000 per year if Chairman of the Board;
(iv) $2,000 per diem for each Board or committee meeting attended;
(v) 5,000 restricted units upon becoming a director, vesting in one-third increments over a three-year period;
(vi) 2,500 restricted units per year, vesting in one-third increments over a three-year period;
(vii) reimbursement for out-of-pocket expenses associated with attending Board or committee meetings; and
(viii) director and officer liability insurance coverage.

In addition, each director is fully indemnified by us for actions associated with being a director to the fullest extent permitted under Delaware law.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Unitholder Matters.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth the beneficial ownership of our units as of March 4, 2021, held by:

- each person or group of persons who beneficially own 5% or more of the then outstanding common units or Preferred Units;
- all of the directors of our General Partner;
- each NEO of our General Partner; and
- all current directors and executive officers of our General Partner as a group.

Except as indicated by footnote, the persons named in the table below have sole voting and investment power with respect to all units shown as beneficially owned by them, subject to community property laws where applicable. Percentage of total common and Preferred Units beneficially owned is based on 41,468,125 common units and 35,125,202 Preferred Units outstanding as of March 4, 2021.

Name of Beneficial Owner(1)	Common Units Beneficially Owned	Percentage of Common Units Beneficially Owned	Preferred Units Beneficially Owned	Percentage of Preferred Units Beneficially Owned	Percentage of Total Common and Preferred Units Beneficially Owned
Ergon Asphalt & Emulsions, Inc.(2)	2,745,837	6.6%	20,801,757	59.2%	30.7%
D. Andrew Woodward(3)	72,892	*	—	—	*
Jeffery A. Speer(3)	106,542	*	—	—	*
Joel W. Kanvik(3)	25,691	*	—	—	*
Duke R. Ligon(4)	81,052	*	—	—	*
Steven M. Bradshaw(4)	59,182	*	—	—	*
John A. Shapiro(4)	57,592	*	—	—	*
W.R. "Lee" Adams(2)(5)	50,000	*	—	—	*
Edward D. Brooks(2)(5)	—	*	—	—	*
Joel D. Pastorek(2)(5)	—	*	—	—	*
Robert H. Lampton(2)(5)	—	*	—	—	*
William W. Lampton(2)(5)	—	*	—	—	*
Zazove Associates, Inc.(6)	3,035,178	7.3%	—	—	4.0%
Invesco Ltd.(7)	2,921,669	7.0%	—	—	3.8%
DG Capital Management, Inc.(8)	2,447,437	5.9%	1,112,623	3.2%	4.6%
All current executive officers and directors as a group (13 persons)	465,712	1.1%	—	—	0.6%

* Less than 1%.

(1) Unless otherwise indicated, the address for all beneficial owners in this table is 6060 American Plaza, Suite 600, Tulsa, Oklahoma 74135.

(2) Ergon Asphalt & Emulsions, Inc. owns Ergon Asphalt Holdings, LLC. The address for Ergon is 2829 Lakeland Drive, Suite 2000, Jackson, Mississippi 39215. Ergon Asphalt Holdings, LLC owns 100% of Blueknight GP Holding, LLC, which owns the membership interest in our General Partner.

(3) Does not include unvested phantom units granted under the Long-Term Incentive Plan, none of which will vest within 60 days of the date hereof.

(4) Does not include unvested restricted units granted under the Long-Term Incentive Plan, none of which will vest within 60 days of the date hereof.

(5) Messrs. Adams, Brooks, Pastorek, R. Lampton and W. Lampton are affiliated with Ergon.

(6) Based on a Schedule 13G filed January 20, 2021, by Zazove Associates, Inc. with the SEC. Their address as reported in such Schedule 13G is 1001 Tahoe Blvd., Incline Village, NV 89451.

(7) Based on a Schedule 13G filed February 9, 2021, by Invesco Ltd. with the SEC. Their address as reported in such Schedule 13G is 1555 Peachtree Street NE, Suite 1800, Atlanta, GA 30309.

(8) Based on a Schedule 13G/A filed February 11, 2021, by DG Capital Management, LLC with the SEC. The filing was made jointly with Dov Gertzulin, and reports that they have shared voting power with respect to 2,447,437 common units and 1,112,623 Preferred Units. Their address as reported in such Schedule 13G/A is 460 Park Avenue, 22nd Floor, New York, New York 10022.

Securities Authorized for Issuance under Equity Compensation Plans (as of March 4, 2021)

Equity Compensation Plan Information[1]

	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	1,020,370	$ —	4,981,888
Equity compensation plans not approved by security holders	N/A	N/A	N/A
Total	1,020,370	$ —	4,981,888

(1) Our General Partner has adopted and maintains the LTIP and Unit Purchase Plan for employees, consultants and directors of our General Partner and its affiliates who perform services for us. An aggregate of 1,000,057 phantom units that have been granted under the LTIP to our executive officers and other employees remain outstanding and have not yet vested. Excluding phantom unit grants, the responses are as follows: (a) 20,313, (b) $0 and (c) 5,981,945. No value is shown in column (b) of the table because the phantom units and restricted units do not have an exercise price. For more information about the LTIP, please see "Item 11-Executive Compensation-Compensation Discussion and Analysis-Long-Term Incentive Plan." As of March 4, 2021, 563,817 common units had been delivered under the Unit Purchase Plan. For more information about the Unit Purchase Plan, please see "Item 11-Executive Compensation-Compensation Discussion and Analysis-Unit Purchase Plan."

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Distributions and Payments to Our General Partner and Its Affiliates

Our General Partner is owned by Ergon, which also owns 20,801,757 of the 35,125,202 outstanding Preferred Units and 2,795,837 of the 41,468,125 outstanding common units, representing an aggregate 30.8% limited partner interest in us as of March 4, 2021. In addition, our General Partner owns a 1.6% general partner interest in us and the incentive distribution rights. For a description of the distributions and payments our General Partner is entitled to receive, see "Item 5-Market for Registrant's Common Equity, Related Unitholder Matters and Issuer Purchases of Equity Securities-General Partner Interest and Incentive Distribution Rights."

Agreements with Related Parties and Affiliates

For information regarding material agreements with related parties and affiliates, see Note 12 to our consolidated financial statements.

Indemnification of Directors and Officers

Under our partnership agreement, in most circumstances, we will indemnify the following persons, to the fullest extent permitted by law, from and against all losses, claims, damages or similar events:

- our General Partner;
- any departing general partner;
- any person who is or was an affiliate of a general partner or any departing general partner;
- any person who is or was a director, officer, member, partner, fiduciary or trustee of any entity set forth in the preceding three bullet points;
- any person who is or was serving as director, officer, member, partner, fiduciary or trustee of another person at the request of our General Partner or any departing general partner; and
- any person designated by our General Partner.

Any indemnification under these provisions will only be out of our assets. Unless it otherwise agrees, our General Partner will not be liable for, or have any obligation to contribute or lend funds or assets to us to enable us to effectuate, indemnification. We may purchase insurance against liabilities asserted against us and expenses incurred by persons for our activities, regardless of whether we would have the power to indemnify the person against liabilities under our partnership agreement.

We and our General Partner have also entered into separate indemnification agreements with each of the directors and officers of our General Partner. The terms of the indemnification agreements are consistent with the terms of the indemnification provided by our partnership agreement and our General Partner's limited liability company agreement. The indemnification agreements also provide that we and our General Partner must advance payment of certain expenses to such indemnified directors and officers, including fees of counsel, subject to receipt of an undertaking from the indemnitee to return such advance if it is it is ultimately determined that the indemnitee is not entitled to indemnification.

Approval and Review of Related-Party Transactions

If we contemplate entering into a transaction, other than a routine or ordinary course of business transaction, in which a related person will have a direct or indirect material interest, the proposed transaction is submitted for consideration to the Board of our General Partner or to our management, as appropriate. If the Board is involved in the approval process, it determines whether to refer the matter to the conflicts committee of the Board, as constituted under our limited partnership agreement. If a matter is referred to the conflicts committee, it obtains information regarding the proposed transaction from management and determines whether to engage independent legal counsel or an independent financial advisor to advise the members of the committee regarding the transaction. If the conflicts committee retains such counsel or financial advisor, it considers such advice and, in the case of a financial advisor, such advisor's opinion as to whether the transaction is fair and reasonable to us and to our unitholders.

Director Independence

Please see "Item 10-Directors, Executive Officers and Corporate Governance" of this report for a discussion of director independence matters.

Item 14. Principal Accountant Fees and Services.

PricewaterhouseCoopers LLP was engaged as our principal accountant through the first quarter of 2020. We engaged Ernst & Young as our principal accountant in June 2020. The following table summarizes fees we have paid PricewaterhouseCoopers LLP and Ernst & Young for independent auditing, tax and related services for each of the last two fiscal years during the period in which they were engaged as principal accountant:

	Year ended December 31,	
	2019	2020
Audit fees(1)	$ 736,774	$ 480,510
Audit-related fees(2)	-	-
Tax fees(3)	280,705	164,526
All other fees(4)	-	-

(1) Audit fees represent amounts billed for each of the years presented for professional services rendered in connection with (a) the audit of our annual financial statements and internal controls over financial reporting, (b) the review of our quarterly financial statements and (c) those services normally provided in connection with statutory and regulatory filings or engagements, including comfort letters, consents and other services related to SEC matters.

(2) Audit-related fees represent amounts billed for each of the years presented for assurance and related services that are reasonably related to the performance of the annual audit or quarterly reviews.

(3) Tax fees represent amounts billed for each of the years presented for professional services rendered in connection with tax compliance, tax advice and tax planning. This category primarily includes services relating to the preparation of unitholder annual K-1 statements by PricewaterhouseCoopers LLP. Ernst & Young does not provide us tax services.

(4) All other fees represent amounts billed for each of the years presented for services not classifiable under the other categories listed in the table above.

All audit and non-audit services provided by PricewaterhouseCoopers LLP and Ernst & Young were/are subject to pre-approval by our audit committee to ensure that the provisions of such services do not impair the auditor's independence. Under our pre-approval policy, the audit committee is informed of each engagement of the independent auditor to provide services under the policy. The audit committee of our General Partner has approved the use of Ernst & Young as our independent principal accountant.

PART IV. FINANCIAL INFORMATION

Item 15. Exhibits, Financial Statement Schedules.

(a) Financial Statements and Schedules

(1) See the Index to Financial Statements on page F-1.

(2) All schedules have been omitted because they are either not applicable, not required or the information called for therein appears in the consolidated financial statements or notes thereto

(3) Exhibits

INDEX TO EXHIBITS

Exhibit Number	Description
3.1	Amended and Restated Certificate of the Partnership, dated November 19, 2009, but effective as of December 1, 2009 (filed as Exhibit 3.1 to the Partnership's Current Report on Form 8-K, filed on November 25, 2009, and incorporated herein by reference).
3.2	First Amendment to the Certificate of the Partnership, dated July 18, 2019, (filed as Exhibit 3.2 to the Partnership's Current Report on Form 8-K, filed on July 22, 2019, and incorporated herein by reference.
3.3	Fourth Amended and Restated Agreement of Limited Partnership of the Partnership, dated September 14, 2011 (filed as Exhibit 3.1 to the Partnership's Current Report on Form 8-K, filed on September 14, 2011, and incorporated herein by reference).
3.4	Amended and Restated Certificate of Formation of the General Partner, dated November 20, 2009, but effective as of December 1, 2009 (filed as Exhibit 3.2 to the Partnership's Current Report on Form 8-K, filed on November 25, 2009, and incorporated herein by reference).
3.5	First Amendment to the Certificate of Formation of the General Partner, dated July 18, 2019 (filed as Exhibit 3.1 to the Partnership's Current Report on Form 8-K, filed on July 22, 2019, and incorporated herein by reference.
3.6	Second Amended and Restated Limited Liability Company Agreement of the General Partner, dated December 1, 2009 (filed as Exhibit 3.2 to the Partnership's Current Report on Form 8-K, filed on December 7, 2009, and incorporated herein by reference).
4.1	Specimen Unit Certificate (included in Exhibit 3.2).
4.2	Registration Rights Agreement, dated as of October 25, 2010, by and among Blueknight Energy Partners, L.P., Blueknight Energy Holding, Inc. and CB-Blueknight, LLC (filed as Exhibit 4.1 to the Partnership's Current Report on Form 8-K, filed on October 25, 2010, and incorporated herein by reference).
4.3	Specimen Series A Preferred Unit Certificate (filed as Exhibit 4.3 to the Partnership's Current Report on Form 8-K, filed on September 27, 2011, and incorporated herein by reference).
4.4	Amended and Restated Registration Rights Agreement, dated December 1, 2017, by and among Blueknight Energy Partners, L.P., Ergon Asphalt & Emulsions, Inc., Ergon Terminaling, Inc. and Ergon Asphalt Holdings, LLC (filed as Exhibit 4.1 to the Partnership's Current Report on Form 8-K, filed on December 1, 2017, and incorporated herein by reference).
4.5	Description of Blueknight Energy Partners, L.P. securities registered under Section 12 of the Exchange Act (filed as Exhibit 4.5 to the Partnership's Annual Report on Form 10-K, filed on March 26, 2020, and incorporated herein by reference.
10.1†	Blueknight Energy Partners G.P., L.L.C. Long-Term Incentive Plan (incorporated by reference to Annex A to the Partnership's Definitive Proxy Statement on Schedule 14-A filed on October 9, 2020).

10.2†	Form of Phantom Unit Agreement (filed as Exhibit 10.9 to the Partnership's Annual Report on Form 10-K, filed on March 8, 2018, and incorporated herein by reference).
10.3†	Form of Director Restricted Common Unit Agreement (filed as Exhibit 10.11 to the Partnership's Annual Report on Form 10-K, filed on March 8, 2018, and incorporated herein by reference).
10.4†	Employment Agreement, dated July 19, 2019, between D. Andrew Woodward and BKEP Management, Inc. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed on July 23, 2019, and incorporated herein by reference).
10.5†	Offer of Employment Letter, dated March 29, 2019, between D. Andrew Woodard and BKEP Management, Inc (filed as Exhibit 10.8 to the Partnership's Annual Report on Form 10-K, filed on March 26, 2020, and incorporated herein by reference).
10.6†	Form of Indemnification Agreement (filed as Exhibit 10.7 to the Partnership's Registration Statement on Form S-1 (Reg. No. 333-141196), filed on May 25, 2007, and incorporated herein by reference).
10.7	Separation Agreement and General Release of Claims, dated as of June 22, 2020, between Mark Hurley and Blueknight Energy Partners, L.P. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed on June 22, 2020, and incorporated herein by reference).
10.8	Mutual Easement Agreement, dated as of April 7, 2009 to be effective as of 11:59 PM CDT March 31, 2009, among SemCrude, L.P., SemGroup Energy Partners, L.L.C., and SemGroup Crude Storage, L.L.C. (filed as Exhibit 10.12 to the Partnership's Current Report on Form 8-K, filed on April 10, 2009, and incorporated herein by reference).
10.9	Pipeline Easement Agreement, dated as of April 7, 2009 to be effective as of 11:59 PM CDT March 31, 2009, by and among White Cliffs Pipeline, L.L.C., SemGroup Energy Partners, L.L.C., and SemGroup Crude Storage, L.L.C. (filed as Exhibit 10.13 to the Partnership's Current Report on Form 8-K, filed on April 10, 2009, and incorporated herein by reference).
10.10†	Blueknight Energy Partners, L.P. Employee Unit Purchase Plan, dated to be effective as of June 23, 2014 (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed on June 27, 2014, and incorporated herein by reference).
10.11	Second Amended and Restated Credit Agreement, dated as of May 11, 2017, by and among Blueknight Energy Partners, L.P. Wells Fargo Bank, National Association, as Administrative Agent, and the several lenders from time to time party thereto (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed May 12, 2017 (Commission File No. 001-33503), and incorporated herein by reference).
10.12	First Amendment to Second Amended and Restated Credit Agreement, dated as of June 28, 2018, by and among the Partnership, Wells Fargo Bank, National Association, as Administrative Agent, and the lenders party thereto (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed June 29, 2018, and incorporated herein by reference).
10.13	Second Amendment to Second Amended and Restated Credit Facility, dated as of January 8, 2021, by an among Blueknight Energy Partners, L.P., Wells Fargo Bank, National Association, as Administrative Agent, and the several lenders from time to time party thereto (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed January 14, 2021, and incorporated herein by reference).
10.14#	Storage, Throughput and Handling Agreement, dated October 5, 2016, by and among BKEP Materials, L.L.C., BKEP Terminalling, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed on October 5, 2016, and incorporated herein by reference).
10.15#	First Amendment to the Storage, Throughput and Handling Agreement, dated July 12, 2018, by and between BKEP Materials, L.L.C., BKEP Terminalling, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed July 13, 2018, and incorporated herein by reference).
10.16	Second Amendment to the Storage, Throughput and Handling Agreement, dated January 8, 2020, by and between BKEP Materials, L.L.C., BKEP Terminalling, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.3 to the Partnership's Current Report on Form 8-K, filed January 13, 2020, and incorporated herein by reference).
10.17	Amendment to the Storage, Throughput and Handling Agreement, effective January 1, 2019, by and between BKEP Materials, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.18 to the Partnership's Annual Report on Form 10-K, filed on March 12, 2019, and incorporated herein by reference.
10.18#	Amended and Restated Omnibus Agreement, dated July 12, 2018, by and between Ergon Asphalt & Emulsions, Inc., Blueknight Energy Partners G.P., L.L.C., Blueknight Energy Partners, L.P., Blueknight Terminalling, L.L.C., BKEP Materials, L.L.C. and BKEP Asphalt, L.L.C. (filed as Exhibit 10.2 to the Partnership's Current Report on Form 8-K, filed July 13, 2018, and incorporated herein by reference).
10.19	Agreement, dated May 9, 2018, by and between Ergon Terminalling, Inc. and Blueknight Energy Partners, L.P. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed May 18, 2018, and incorporated herein by reference).
10.20	Membership Interest Purchase Agreement, dated January 2, 2020, by and between Blueknight Energy Partners, L.P. and Ergon, Inc. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed January 6, 2020, and incorporated herein by reference).
10.21	Domestic Crude Oil and Condensate Agreement, dated March 28, 2018, by and between Ergon Oil Purchasing, Inc. and BKEP Supply and Marketing, LLC (filed as Exhibit 10.3 to the Partnership's Quarterly Report on Form 10-Q, filed August 2, 2018, and incorporated herein by reference).

10.22	Partial Lease Termination No. 5 to Master Facilities Lease Agreement, dated March 7, 2018, by and between BKEP Materials, L.L.C, BKEP Asphalt, L.L.C and Ergon Asphalt & Emulsions, Inc (filed as Exhibit 10.26 to the Partnership's Annual Report on Form 10-K, filed March 8, 2018, and incorporated herein by reference).
10.23	Fifth Amendment to Master Facilities Lease Agreement, dated March 7, 2018, by and between BKEP Materials, L.L.C, BKEP Asphalt, L.L.C and Ergon Asphalt & Emulsions, Inc (filed as Exhibit 10.27 to the Partnership's Annual Report on Form 10-K, filed March 8, 2018, and incorporated herein by reference).
10.24	Lessee Operated Facilities Lease Agreement, dated January 1, 2019, by and between BKEP Materials, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.28 to the Partnership's Annual Report on Form 10-K, filed on March 12, 2019, and incorporated herein by reference.
10.25	Amendment to Lessee Operated Facilities Lease Agreement, dated January 8, 2020, by and between BKEP Materials, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed January 13, 2020, and incorporated herein by reference).
10.26	Owner Operated Storage, Throughput and Handling Agreement, dated January 1, 2019, by and between BKEP Materials, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. filed as Exhibit 10.29 to the Partnership's Annual Report on Form 10-K, filed on March 12, 2019, and incorporated herein by reference.
10.27	Amendment to Owner Operated Storage, Throughput and Handling Agreement, dated January 8, 2020, by and between BKEP Materials, L.L.C., BKEP Asphalt, L.L.C., and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.2 to the Partnership's Current Report on Form 8-K, filed January 13, 2020, and incorporated herein by reference).
10.28	Master Storage, Throughput and Handling Agreement, dated effective August 1, 2020, by and between BKEP Materials, L.L.C., BKEP Terminalling, L.L.C., BKEP Asphalt, L.L.C. and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.1 to the Partnership's Current Report on Form 8-K, filed on August 5, 2020, and incorporated herein by reference).
10.29	Operating and Maintenance Agreement, dated effective August 1, 2020, by and between BKEP Materials, L.L.C., BKEP Terminalling, L.L.C., BKEP Asphalt, L.L.C. and Ergon Asphalt & Emulsions, Inc. (filed as Exhibit 10.2 to the Partnership's Current Report on Form 8-K, filed on August 5, 2020, and incorporated herein by reference).
10.30*&	Membership Interest Purchase Agreement, dated as of December 20, 2020, by and among BKEP Crude, L.L.C., BKEP Supply and Marketing, LLC, Coffeyville Resources Crude Transportation, LLC and Coffeyville Resources Refining & Marketing, LLC.
10.31*&	Membership Interest Purchase Agreement, dated as of December 18, 2020, by and between BKEP Crude, L.L.C. and Enbridge Storage (Cushing) L.L.C.
21.1*	List of Subsidiaries of Blueknight Energy Partners, L.P.
23.1*	Consent of Ernst & Young LLP.
23.2	Consent of PricewaterhouseCoopers, L.L.P.
31.1*	Certifications of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certifications of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C., Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. Pursuant to SEC Release 34-47551, this Exhibit is furnished to the SEC and shall not be deemed to be "filed."
101**	The following financial information from Blueknight Energy Partners, L.P.'s Annual Report on Form 10-K for the year ended December 31, 2020 formatted in XBRL (eXtensible Business Reporting Language): (i) Document and Entity Information; (ii) Consolidated Balance Sheets as of December 31, 2019 and 2020; (iii) Consolidated Statements of Operations for the years ended December 31, 2019 and 2020; (iv) Consolidated Statement of Changes in Partners' Capital(Deficit) for the years ended December 31, 2019 and 2020; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2019 and 2020; and (vi) Notes to Consolidated Financial Statements.

* Filed herewith.

** Furnished herewith

\# Certain portions of this exhibit are subject to a request for confidential treatment by the Securities and Exchange Commission. The omitted portions have been separately filed with the Securities and Exchange Commission.

† As required by Item 15(a)(3) of Form 10-K, this exhibit is identified as a compensatory plan or arrangement.

& Certain schedules and exhibits to this agreement have been omitted in accordance with Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished supplementally to the SEC upon its request.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

BLUEKNIGHT ENERGY PARTNERS, L.P.

By: Blueknight Energy Partners G.P., L.L.C.
Its General Partner

March 10, 2021

By: /s/ Matthew R. Lewis
Matthew R. Lewis
Chief Financial Officer

March 10, 2021

By: /s/ Michael McLanahan
Michael McLanahan
Chief Accounting Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on March 10, 2021

Signature	Title
/s/ D. Andrew Woodward D. Andrew Woodward	Chief Executive Officer and Director (Principal Executive Officer)
/s/ Matthew R. Lewis Matthew R. Lewis	Chief Financial Officer (Principal Financial Officer)
/s/ Michael McLanahan Michael McLanahan	Chief Accounting Officer (Principal Accounting Officer)
/s/ Duke R. Ligon Duke R. Ligon	Director
/s/ Steven M. Bradshaw Steven M. Bradshaw	Director
/s/ John A. Shapiro John A. Shapiro	Director
/s/ W.R. “Lee” Adams W.R. “Lee” Adams	Director
/s/ Edward D. Brooks Edward D. Brooks	Director
/s/ Joel D. Pastorek Joel D. Pastorek	Director
/s/ Robert H. Lampton Robert H. Lampton	Director
/s/ William W. Lampton William W. Lampton	Director

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Report of Independent Registered Public Accounting Firm

To the Board of Directors of Blueknight Energy Partners G.P., L.L.C. as the general partner of Blueknight Energy Partners, L.P. and unit holders of Blueknight Energy Partners, L.P.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Blueknight Energy Partners, L.P. (the Partnership) as of December 31, 2020, the related consolidated statement of operations, partners' capital (deficit) and cash flows for the year in the period ended December 31, 2020, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Partnership at December 31, 2020, and the results of its operations and its cash flows for the year ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on the Partnership's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Partnership in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Partnership is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

Critical Audit Matters

Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. We determined that there are no critical audit matters.

/s/ Ernst & Young LLP

We have served as the Partnership's auditor since 2020.
Tulsa, Oklahoma
March 10, 2021

Report of Independent Registered Public Accounting Firm

To the Board of Directors of Blueknight Energy Partners G.P., L.L.C as the general partner of Blueknight Energy Partners, L.P. and unit holders of Blueknight Energy Partners, L.P.

Opinion on the Financial Statements

We have audited the consolidated balance sheet of Blueknight Energy Partners, L.P. and its subsidiaries (the "Partnership") as of December 31, 2019, and the related consolidated statements of operations, of changes in partners' capital (deficit) and of cash flows for the year then ended, including the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Partnership as of December 31, 2019, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

The consolidated financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on the Partnership's consolidated financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Partnership in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of the consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

Tulsa, Oklahoma

March 26, 2020, except for the effects of discontinued operations discussed in Note 5 to the consolidated financial statements, as to which the date is March 10, 2021

We served as the Partnership's auditor from 2007 to 2019.

BLUEKNIGHT ENERGY PARTNERS, L.P.
CONSOLIDATED BALANCE SHEETS
(in thousands, except per unit data)

	As of December 31,	
	2019	2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 589	$ 805
Accounts receivable, net	2,686	3,297
Receivables from related parties, net	1,110	507
Other current assets	2,378	2,355
Current assets of discontinued operations	27,359	96,945
Total current assets	34,122	103,909
Property, plant and equipment, net of accumulated depreciation of $185,845 and $197,561 at December 31, 2019 and 2020, respectively	107,373	104,709
Goodwill	6,728	6,728
Debt issuance costs, net	2,344	1,340
Operating lease assets	9,901	8,548
Intangibles assets, net	9,913	7,531
Other noncurrent assets	393	252
Noncurrent assets of discontinued operations	131,166	-
Total assets	$ 301,940	$ 233,017
LIABILITIES AND PARTNERS' CAPITAL (DEFICIT)		
Current liabilities:		
Accounts payable	$ 2,433	1,635
Accounts payable to related parties	2,460	31
Contingent liability with related party (Note 12)	12,221	-
Accrued interest payable	293	274
Accrued property taxes payable	1,709	1,757
Unearned revenue	1,504	1,789
Unearned revenue with related parties	2,934	4,603
Accrued payroll	3,357	4,977
Current operating lease liability	1,856	1,684
Other current liabilities	1,531	1,349
Current liabilities of discontinued operations	24,278	17,248
Total current liabilities	54,576	35,347
Long-term unearned revenue with related parties	2,149	4,153
Other long-term liabilities	1,596	168
Noncurrent operating lease liability	8,219	6,980
Noncurrent liabilities of discontinued operations	1,131	-
Long-term debt	255,592	252,592
Commitments and contingencies (Note 15)		
Partners' capital (deficit):		
Common unitholders (40,830,051 and 41,214,856 units issued and outstanding at December 31, 2019 and 2020, respectively)	356,777	312,591
Preferred unitholders (35,125,202 units issued and outstanding at both dates)	253,923	253,923
General partner interest (1.6% interest with 1,225,409 general partner units outstanding at both dates)	(632,023)	(632,737)
Total partners' capital (deficit)	(21,323)	(66,223)
Total liabilities and partners' capital (deficit)	$ 301,940	$ 233,017

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

BLUEKNIGHT ENERGY PARTNERS, L.P.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per unit data)

	Year ended December 31,	
	2019	**2020**
Service revenue:		
Third-party revenue	$ 28,689	$ 29,171
Related-party revenue	15,696	18,028
Lease revenue:		
Third-party revenue	41,690	36,630
Related-party revenue	20,443	26,416
Total revenue	106,518	110,245
Costs and expenses:		
Operating expense	61,563	62,812
General and administrative expense	13,388	14,182
Asset impairment expense	2,476	-
Total costs and expenses	77,427	76,994
Loss on sale of assets	(131)	(67)
Operating income	28,960	33,184
Other income (expenses):		
Other income	530	1,169
Interest expense	(7,447)	(5,665)
Income before income taxes	22,043	28,688
Provision for income taxes	44	(7)
Income from continuing operations	21,999	28,695
Loss from discontinued operations, net	(3,587)	(42,175)
Net income(loss)	$ 18,412	$ (13,480)
Allocation of net income (loss) for calculation of earnings per unit:		
General partner interest in net income (loss)	$ 337	$ (213)
Preferred interest in net income	$ 25,115	$ 25,115
Net loss available to limited partners	$ (7,040)	$ (38,382)
Basic and diluted net loss from discontinued operations per common unit	$ (0.08)	$ (0.98)
Basic and diluted net income(loss) from continuing operations per common unit	$ (0.09)	$ 0.07
Basic and diluted net loss per common unit	$ (0.17)	$ (0.91)
Weighted average common units outstanding - basic and diluted	40,755	$ 41,104

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

BLUEKNIGHT ENERGY PARTNERS, L.P.
CONSOLIDATED STATEMENTS OF CHANGES IN PARTNERS' CAPITAL (DEFICIT)
(in thousands)

	Common Unitholders	Preferred Unitholders	General Partner Interest	Total Partners' Capital(Deficit)
Balance, December 31, 2018	$ 370,972	$ 253,923	$ (631,791)	$ (6,896)
Net income (loss)	(6,990)	25,115	287	18,412
Equity-based incentive compensation	953	-	20	973
Distributions	(8,334)	(25,115)	(539)	(33,988)
Proceeds from sale of 161,971 common units pursuant to the Employee Unit Purchase Plan	176	-	-	176
Balance, December 31, 2019	$ 356,777	$ 253,923	$ (632,023)	$ (21,323)
Net income (loss)	(38,382)	25,115	(213)	(13,480)
Equity-based incentive compensation	804	-	12	816
Distributions	(6,778)	(25,115)	(513)	(32,406)
Proceeds from sale of 158,326 common units pursuant to the Employee Unit Purchase Plan	170	-	-	170
Balance, December 31, 2020	$ 312,591	$ 253,923	$ (632,737)	$ (66,223)

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

BLUEKNIGHT ENERGY PARTNERS, L.P.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year ended December 31,	
	2019	**2020**
Cash flows from operating activities:		
Net income(loss)	$ 18,412	$ (13,480)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	25,533	23,068
Amortization and write-off of debt issuance costs	1,005	1,004
Loss on disposal/classification of held for sale for discontinued operations	-	39,096
Tangible asset impairment charge	274	6,416
Other impairment charge (Note 12)	2,202	-
Gain on sale of assets	(453)	(1,123)
Equity-based incentive compensation	973	816
Changes in assets and liabilities:		
Decrease in accounts receivable	9,325	6,461
Decrease (increase) in receivables from related parties	(67)	603
Decrease in other current assets	2,672	4,094
Decrease in other non-current assets	2,964	2,324
Decrease in accounts payable	(702)	(557)
Decrease in payables to related parties	(282)	(1,792)
Decrease in accrued crude oil purchases	(7,243)	(2,838)
Increase (decrease) in accrued crude oil purchases to related parties	1,588	(2,965)
Decrease in accrued interest payable	(172)	(19)
Increase (decrease) in accrued property taxes	158	(671)
Decrease in unearned revenue	(1,961)	(1,618)
Increase (decrease) in unearned revenue from related parties	(1,966)	2,954
Increase in accrued payroll	1,156	1,617
Decrease in other accrued liabilities	(3,579)	(2,223)
Net cash provided by operating activities	49,837	61,167
Cash flows from investing activities:		
Acquisition of DEVCO from Ergon (Note 12)	-	(12,221)
Capital expenditures	(12,746)	(16,332)
Proceeds from sale of assets	8,410	5,896
Net cash used in investing activities	(4,336)	(22,657)
Cash flows from financing activities:		
Payments on other financing activities	(2,586)	(3,027)
Borrowings under credit agreement	291,000	228,000
Payments under credit agreement	(301,000)	(231,000)
Proceeds from equity issuance	176	170
Distributions	(33,988)	(32,406)
Net cash used in financing activities	(46,398)	(38,263)
Net increase (decrease) in cash and cash equivalents	(897)	247
Cash and cash equivalents at beginning of period	1,455	558
Cash and cash equivalents at end of period	$ 558	$ 805
Supplemental disclosure of non-cash financing and investing cash flow information:		
Non-cash changes in property, plant and equipment	$ 1,590	$ (259)
Increase in accrued liabilities related to insurance premium financing agreement	$ 2,356	$ 2,324
Cash paid for interest, net of amounts capitalized	$ 15,150	$ 10,009
Cash paid for income taxes	$ 227	$ 30

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

BLUEKNIGHT ENERGY PARTNERS, L.P.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. ORGANIZATION AND NATURE OF BUSINESS

Blueknight Energy Partners, L.P. and subsidiaries (collectively, the "Partnership") is a publicly traded master limited partnership with operations in 26 states. The Partnership provides integrated terminalling, gathering and transportation services for companies engaged in the production, distribution and marketing of liquid asphalt and crude oil. The Partnership manages its operations through one operating segment, asphalt terminalling services. The Partnership's common units and Preferred Units, which represent limited partnership interests in the Partnership, are listed on the Nasdaq Global Market under the symbols "BKEP" and "BKEPP," respectively. The Partnership was formed in February 2007 as a Delaware master limited partnership.

The Partnership previously provided integrated terminalling, gathering, and transportation services for companies engaged in the production, distribution, and marketing of crude oil in three different operating segments: (i) crude oil terminalling services, (ii) crude oil pipeline services, and (iii) crude oil trucking services. On December 21, 2020, we announced we had entered into multiple definitive agreements to see these segments. The transaction related to the crude oil pipeline services segment closed on February 1, 2021, the final transaction related to crude oil trucking services closed on February 2, 2021, and the transaction related to crude oil terminalling services closed on March 1, 2021. These segments are presented as discontinued operations for all periods presented. Unless otherwise noted, information in these notes to the consolidated financial statements relates to continuing operations. As the Partnership is only operating through one operating segment, a segment footnote is no longer required.

2. BASIS OF CONSOLIDATION AND PRESENTATION

The accompanying consolidated financial statements and related notes present and discuss the Partnership's consolidated financial position as of December 31, 2019 and 2020, and the consolidated results of the Partnership's operations, cash flows and changes in partners' capital (deficit) for the years ended December 31, 2019 and 2020. The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). All significant intercompany accounts and transactions have been eliminated in the preparation of the accompanying consolidated financial statements. Certain reclassifications have been made to the prior period consolidated financial statements to conform to the current period presentation.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

USE OF ESTIMATES - The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts and disclosure of contingencies. Management makes significant estimates including: (1) allowance for doubtful accounts receivable; (2) estimated useful lives of assets, which impacts depreciation; (3) estimated cash flows and fair values inherent in impairment tests; (4) accruals related to revenues and expenses; (5) the estimated fair value of financial instruments; and (6) liability and contingency accruals. Although management believes these estimates are reasonable, actual results could differ from these estimates.

CASH AND CASH EQUIVALENTS - Cash and cash equivalents includes cash and all investments with original maturities of three months or less which are readily convertible into known amounts of cash.

ACCOUNTS RECEIVABLE - The Partnership reviews all outstanding accounts receivable balances on a monthly basis and records a reserve for amounts that the Partnership expects will not be fully recovered. Although the Partnership considers its allowance for doubtful trade accounts receivable to be adequate, there is no assurance that actual amounts will not vary significantly from estimated amounts. The Partnership had no amounts that qualified for a reserve at both December 31, 2019 and 2020.

PROPERTY, PLANT AND EQUIPMENT - Property, plant and equipment are recorded at cost. Expenditures for maintenance and repairs that do not add capacity or extend the useful life of an asset are expensed as incurred. The carrying values of the assets are based on estimates, assumptions and judgments relative to useful lives and salvage values. As assets are disposed of, the cost and related accumulated depreciation are removed from the accounts, and any resulting gain or loss is included in operating income in the consolidated statements of operations.

Depreciation is calculated using the straight-line method based on estimated useful lives of the assets. These estimates are based on various factors, including age (in the case of acquired assets), manufacturing specifications, technological advances and historical data concerning useful lives of similar assets. Uncertainties that impact these estimates include changes in laws and regulations relating to restoration and abandonment requirements, economic conditions and supply and demand in the area. When assets are put into service, management makes estimates with respect to useful lives and salvage values that it believes are reasonable. However, subsequent events could cause management to change its estimates, thus impacting the future calculation of depreciation.

The Partnership has contractual obligations to perform dismantlement and removal activities in the event that some of its liquid asphalt terminalling assets are abandoned (see Note 15). Such obligations are recognized in the period in which sufficient information becomes available for it to reasonably determine the settlement dates.

IMPAIRMENT OF LONG-LIVED ASSETS AND OTHER INTANGIBLE ASSETS - Long-lived assets with recorded values that are not expected to be recovered through future cash flows are written down to estimated fair value. A long-lived asset is tested for impairment when events or circumstances indicate that its carrying value may not be recoverable. The carrying value of a long-lived asset is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. If the carrying value exceeds the sum of the undiscounted cash flows, an impairment loss equal to the amount by which the carrying value exceeds the fair value of the asset is recognized. Fair value is generally determined from estimated discounted future net cash flows.

During the year ended December 31, 2019, the Partnership recognized fixed asset impairment expenses of approximately $0.3 million related to the flood damage at certain asphalt facilities and $2.2 million due to changes in estimates and accrued interest related to Ergon's investment in Cimarron Pipeline.

Acquired customer relationships are capitalized and amortized over useful lives ranging from approximately 5 to 10 years using the straight-line method of amortization. An impairment loss is recognized for definite-lived intangibles if the carrying amount of an intangible asset is not recoverable and its carrying amount exceeds its fair value. Intangible asset impairment charges are included in the line item "Asset impairment expense" on the consolidated statements of operations. The Partnership had no intangible asset impairment charges for the years ended December 31, 2019 and 2020.

DEBT ISSUANCE COSTS - Costs incurred in connection with the issuance of long-term debt related to the Partnership's credit agreement are capitalized and amortized using the straight-line method over the term of the related debt. Use of the straight-line method does not differ materially from the "effective interest" method of amortization.

GOODWILL - Goodwill represents the excess of the cost of acquisitions over the amounts assigned to assets acquired and liabilities assumed. Goodwill is not amortized but is tested annually in December for impairment or when events and circumstances warrant an interim evaluation. Goodwill is tested for impairment at a level of reporting referred to as a reporting unit. The Partnership currently has one reporting unit, asphalt terminalling services. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is not considered to be impaired. The impairment test is generally based on the estimated discounted future net cash flows of the respective reporting unit, utilizing discount rates and other factors in determining the fair value of the reporting unit. Inputs in the Partnership's estimated discounted future net cash flows include existing and estimated future asset utilization, estimated growth rates in future cash flows and estimated terminal values (these are all considered Level 3 inputs). There were no changes to the carrying amount of goodwill in 2020 or 2019. Impairment testing indicated there was no impairment of goodwill in 2019 or in 2020.

ENVIRONMENTAL MATTERS - Liabilities for loss contingencies, including environmental remediation costs, arising from claims, assessments, litigation, fines, penalties and other sources are charged to expense when it is probable that a liability has been incurred and the amount of the assessment and/or remediation can be reasonably estimated. The Partnership had no loss contingencies related to environmental matters as of December 31, 2019 and 2020.

REVENUE RECOGNITION - The Partnership recognizes service revenue in accordance with ASC 606 and lease revenue in accordance with ASC 842. See Note 4 for detailed discussion regarding the Partnership's revenue recognition policies.

INCOME AND OTHER TAXES - For federal and most state income tax purposes, the majority of income, gains, losses, deductions and tax credits generated by the Partnership flow through to the unitholders of the Partnership and are subject to income tax at the individual partner level. The Partnership is subject to the Texas state franchise (margin) tax, and the earnings associated with the Partnership's taxable subsidiary are subject to federal and state income taxes. The Partnership's estimated liability related to these taxes is immaterial for both the years ended December 31, 2019 and 2020, and is reflected on the Partnership's consolidated statements of operations as "Provision for income taxes." See Note 19 for a discussion of certain risks related to the Partnership's ability to be treated as a partnership for federal income tax purposes.

STOCK-BASED COMPENSATION - The Partnership's general partner adopted the Blueknight Energy Partners G.P. L.L.C. Long-Term Incentive Plan (the "LTIP"), under which 8.1 million units are reserved for issuance, subject to adjustment for certain events. The compensation committee of the Board administers the LTIP. Although other types of awards are contemplated under the LTIP, awards issued to date include "phantom" units, which convey the right to receive common units upon vesting, and "restricted" units, which are grants of common units restricted until the time of vesting. Certain of the phantom unit awards also include distribution equivalent rights ("DERs"). A DER entitles the grantee to a cash payment equal to the cash distribution paid on an outstanding common unit prior to the vesting date of the underlying award. Cash distributions paid on DERs are accounted for as partnership distributions. Recipients of restricted units are entitled to receive cash distributions paid on common units during the vesting period.

The Partnership classifies unit award grants as either equity or liability awards. All award grants made under the LTIP from its inception through December 31, 2020, have been classified as equity awards. Fair value for award grants classified as equity is determined on the grant date of the award and this value is recognized as compensation expense ratably over the requisite service period of unit award grants, which generally is the vesting period. Fair value for equity awards is calculated as the closing price of the Partnership's common units representing limited partner interests in the Partnership ("common units") on the grant date and is reduced by the present value of estimated cash distributions to be paid on common units during the vesting period to the extent a unit award does not include DERs. Compensation expense related to unit-based payments is included in operating and general and administrative expenses on the Partnership's consolidated statements of operations.

FAIR VALUE OF FINANCIAL INSTRUMENTS - The Partnership measures all financial instruments, including derivatives embedded in other contracts, at fair value and recognizes them in the consolidated balance sheets as an asset or a liability, depending on its rights and obligations under the applicable contract. The changes in the fair value of financial instruments are recognized currently in earnings in the consolidated statements of operations.

LEASES - A lease is a contract, or part of a contract, that conveys the right to control the use of identified property, plant, or equipment (an identified asset) for a period of time in exchange for consideration. At the inception of a contract, and upon certain modifications, the Partnership determines whether the contract is or contains a lease. In evaluating whether a contract conveys a right to control the use of an asset, considerations include whether the contract conveys the right to substantially all of the economic benefits from use of the identified asset for a period of time and the right to direct the use of the identified asset. The determination of whether an arrangement represents a lease involves judgment in certain instances.

The Partnership is both a lessee and a lessor. For lessee contracts, the length of lease agreements vary from less than one year to approximately twenty-five years. The Partnership has elected to not record lease assets and liabilities for leases with a lease term at commencement of 12 months or less; such leases are expensed as paid. If a lease contains an option to extend the lease term and there is reasonable certainty the option will be exercised, the option is considered in the lease term at inception. The Partnership has elected to not separate non-lease components (e.g., common area maintenance) from lease components on real estate leases, accordingly the recognized lease asset and lease liability incorporate in their measurement payments for non-lease components. Certain leases include variable lease payments as the amounts are subject to change over the lease term. When the interest rate implicit in the leases is unable to be determined, the incremental borrowing rate related to the Partnership's revolving credit facility is used to capitalize the right-of-use asset and lease liability. See Note 4 for the Partnership's policies on agreements in which it is the lessor.

4. REVENUE

There are two types of asphalt terminalling contracts: (i) operating lease contracts, under which customers operate the facilities, and (ii) storage, throughput and handling contracts, under which the Partnership operates the facilities. The operating lease contracts are accounted for in accordance with *ASC 842 - Leases.* The storage, throughput and handling contracts contain both lease revenue and non-lease service revenue. In accordance with ASC 842 and 606, fixed consideration is allocated to the lease and service components based on their relative stand-alone selling price. The stand-alone selling price of the lease component is calculated using the average internal rate of return under the operating lease agreements. The stand-alone selling price of the service component is calculated by applying an appropriate margin to the expected costs to operate the facility. The service component contains a single performance obligation that consists of a stand-ready obligation to perform activities as directed by the customer, and revenue is recognized on a straight-line basis over time as the customer receives and consumes benefits. The lease component is recognized on a straight-line basis over the term of the initial lease. Fixed consideration, consisting of the monthly storage and handling fees, is billed a month prior to the performance of services and is due by the first day of the month of service. Payments received in advance of the month of service are recorded as unearned revenue until the service is performed, and the service component is treated as a contract liability.

Asphalt storage, throughput and handling contracts also contain variable consideration in the form of reimbursements of utility, fuel and power expenses and throughput fees. Utility, fuel and power reimbursements are allocated entirely to the service component of the contracts. Utility, fuel and power reimbursements relate directly to the distinct monthly service that makes up the overall performance obligation and revenue is recognized in the period in which the service takes place. Variable consideration related to reimbursements of utility, fuel and power expenses is billed in the month subsequent to the period of service, and payment is due within 30 days of billing. Throughput fees are allocated to both the lease and service component of the contracts using the allocation percentages from contract inception. In accordance with ASC 842, the lease component of variable throughput fees is recognized in the period when the changes in facts and circumstances on which the variable payment is based occur. Additionally, under ASC 842, when variable consideration contains both a lease and non-lease service component, the service component cannot be recognized until the period in which the changes in facts and circumstances on which the variable payment is based occur. At that time, it can be recognized in accordance with ASC 606. The service component of variable throughput fees is treated as a change in estimate in the period in when the changes in facts and circumstances on which the variable payment is based occur and is then recognized on a straight-line basis over time as the customer receives and consumes benefits. Payment on variable throughput consideration is due within 30 days of billing.

Certain asphalt storage, throughput and handling contracts contain provisions for reimbursement of specified major maintenance costs. Reimbursements of specified major maintenance costs are allocated to both the lease and service component of the contracts using the allocation percentages from contract inception, and they are recognized on a straight-line basis over the remaining term of the contract.

The following table includes revenue associated with contractual commitments in place related to future performance obligations as of the end of the reporting period, which are expected to be recognized in revenue in the specified periods (in thousands):

	Revenue from Contracts with Customers(1)	Revenue from Leases
2021	$ 39,003	$ 58,265
2022	31,662	47,459
2023	27,985	40,265
2024	28,028	40,312
2025	26,711	37,397
Thereafter	37,374	42,603
Total revenue related to future performance obligations	$ 190,763	$ 266,301

(1) Excluded from the table is revenue that is either constrained or related to performance obligations that are wholly unsatisfied as of December 31, 2020.

Disaggregation of Revenue

Disaggregation of revenue from contracts with customers by revenue type is presented as follows (in thousands):

	Year ended December 31, 2019			
	Revenue from contracts with customers		Lease revenue	
	Third-party revenue	Related-party revenue	Third-party revenue	Related-party revenue
Fixed storage, throughput and other revenue	$ 19,865	$ 11,117	$ -	$ -
Fixed lease revenue	-	-	37,176	19,060
Variable cost recovery revenue	7,121	4,473	2,270	448
Variable throughput and other revenue	1,703	106	2,244	935
Total	$ 28,689	$ 15,696	$ 41,690	$ 20,443

	Year ended December 31, 2020			
	Revenue from contracts with customers		Lease revenue	
Fixed storage, throughput and other revenue	$ 20,303	$ 14,531	$ -	$ -
Fixed lease revenue	-	-	32,498	24,547
Variable cost recovery revenue	6,620	3,076	2,205	763
Variable throughput and other revenue	2,248	421	1,927	1,106
Total	$ 29,171	$ 18,028	$ 36,630	$ 26,416

Contract Balances

The timing of revenue recognition, billings and cash collections result in billed accounts receivable and unearned revenue (contract liabilities) on the consolidated balance sheets as noted in the contract discussions above. Accounts receivable are reflected in the line items “Accounts receivable” and “Receivables from related parties” on the consolidated balance sheets. Unearned revenue is included in the line items “Unearned revenue,” “Unearned revenue with related parties,” “Long-term unearned revenue with related parties” and “Other long-term liabilities” on the consolidated balance sheets.

Billed accounts receivable from contracts with customers were $2.1 million at both December 31, 2019 and 2020.

The Partnership records unearned revenues when cash payments are received in advance of performance. Unearned revenue related to contracts with customers was $2.2 million and $3.2 million at December 31, 2019 and 2020, respectively. For the year ended December 31, 2020, the Partnership recognized $1.8 million of revenues that were previously included in the unearned revenue balance for services provided during the period.

Practical Expedients and Exemptions

The Partnership does not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less.

5. DISCONTINUED OPERATIONS

On December 21, 2020, the Partnership announced executed agreements to sell its crude oil trucking services, crude oil pipeline services, and crude oil terminalling services segments. These segments are reported as discontinued operations in the results of operations and financial position for all periods presented. The crude oil trucking services agreement closed in two phases, one on December 15, 2020, and one on February 2, 2021. The crude oil pipeline services agreement closed on February 1, 2021. Loss recognized on the disposal and classification of held for sale of these assets is reflected in the Statement of Operations for Discontinued Operations for the year ended December 31, 2020 below. The transaction related to the crude oil terminalling services segment closed on March 1, 2021. The Partnership has allocated interest on debt that was required to be repaid as a result of the sales of the crude oil pipeline and terminalling services segment for the years ended December 31, 2019 and 2020.

As part of the crude oil pipeline sale, $1.5 million of the gross sale proceeds are currently being held in escrow, subject to post-closing settlement terms and conditions. The Partnership expects to receive the majority of this in increments each six months over the next two years.

Exit and disposal costs related to these sales, in the form of employee severance payments, are expected to total approximately $1.6 million.

During the year ended December 31, 2020, prior to entering into the executed agreements, the Partnership recorded a $1.3 million impairment on the crude oil trucking segment based on the expected future cash flows and market interest of the segment compared to the carrying value of its assets. In addition, an impairment of $4.9 million was recognized in the first quarter of 2020 to write-down the value of the Partnership's crude oil linefill based on the market price of crude oil as of March 31, 2020. Of this impairment, $2.3 million was recorded in the crude oil terminalling services segment, and $2.6 million was recorded in the crude oil pipeline services segment.

Assets and Liabilities of Discontinued Operations (in thousands)	As of December 31, 2019			
	Crude Oil Trucking Services	Crude Oil Pipeline Services	Crude Oil Terminalling Services	Total
ASSETS				
Accounts receivable, net	$ 822	$ 20,041	$ 166	$ 21,029
Other current assets	256	2,699	3,375	6,330
Plant, property, and equipment	3,120	62,590	59,692	125,402
Operating lease assets	745	113	-	858
Other noncurrent assets	211	2,657	2,038	4,906
Total assets of discontinued operations	$ 5,154	$ 88,100	$ 65,271	$ 158,525
LIABILITIES				
Current liabilities	$ 1,238	$ 21,277	$ 1,228	$ 23,743
Current operating lease liability	520	15	-	535
Noncurrent operating lease liability	223	88	-	311
Other liabilities	122	226	472	820
Total liabilities of discontinued operations	$ 2,103	$ 21,606	$ 1,700	$ 25,409

Assets and Liabilities of Discontinued Operations (in thousands)	As of December 31, 2020			
	Crude Oil Trucking Services	Crude Oil Pipeline Services	Crude Oil Terminalling Services	Total
ASSETS				
Accounts receivable, net	$ 81	$ 13,711	$ 167	$ 13,959
Plant, property, and equipment	442	23,541	52,854	76,837
Other assets	331	547	5,271	6,149
Total assets of discontinued operations	$ 854	$ 37,799	$ 58,292	$ 96,945
LIABILITIES				
Current liabilities	$ 1,017	$ 14,921	$ 1,310	$ 17,248
Total liabilities of discontinued operations	$ 1,017	$ 14,921	$ 1,310	$ 17,248

Statement of Operations for Discontinued Operations (in thousands)

	Year Ended December 31, 2019			
	Crude Oil Trucking Services	Crude Oil Pipeline Services	Crude Oil Terminalling Services	Total
Revenue:				
Third-party service revenue	$ 11,061	$ 6,686	$ 15,362	$ 33,109
Related-party service revenue	-	266	-	266
Intercompany service revenue	5,555	-	931	6,486
Third-party product sales revenue	-	231,051	-	231,051
Costs and expenses:				
Operating expense	16,763	16,088	9,012	41,863
Intercompany operating expense	-	6,486	-	6,486
Cost of product sales	-	83,319	-	83,319
Cost of product sales from related party	-	134,162	-	134,162
General and administrative expense	267	438	1	706
(Gain) loss on sale of assets	(1,497)	836	77	(584)
Interest expense	11	1,598	6,919	8,528
Income (loss) before income taxes	1,072	(4,924)	284	(3,568)
Provision for income taxes	15	4	-	19
Net income (loss) from discontinued operations	$ 1,057	$ (4,928)	$ 284	$ (3,587)

Statement of Operations for Discontinued Operations (in thousands)

	Year Ended December 31, 2020			
	Crude Oil Trucking Services	Crude Oil Pipeline Services	Crude Oil Terminalling Services	Total
Revenue:				
Third-party service revenue	$ 5,293	$ 1,689	$ 16,856	$ 23,838
Intercompany service revenue	5,587	-	-	5,587
Third-party product sales revenue	-	157,544	-	157,544
Costs and expenses:				
Operating expense	12,386	13,427	8,561	34,374
Intercompany operating expense	-	5,587	-	5,587
Cost of product sales	-	52,624	-	52,624
Cost of product sales from related party	-	86,247	-	86,247
General and administrative expense	284	385	-	669
Asset impairment expense	1,330	2,821	2,266	6,417
Gain on sale of assets	(11)	(445)	(734)	(1,190)
Interest expense	11	960	4,348	5,319
Loss on disposal/classification as held for sale(1)	1,847	37,249	-	39,096
Income (loss) before income taxes	(4,967)	(39,622)	2,415	(42,174)
Provision for income taxes	3	(2)	-	1
Net income (loss) from discontinued operations	$ (4,970)	$ (39,620)	$ 2,415	$ (42,175)

(1) Included in the crude oil trucking services segment is a loss on disposal recorded during December 2020 for the first phase closing of $1.1 million, and a loss on the classification on assets held for sale as of December 31, 2020, for the second phase closing on February 2, 2021, of $0.7 million.

Select cash flow information (in thousands)

	Year Ended December 31, 2019			
	Crude Oil Trucking Services	Crude Oil Pipeline Services	Crude Oil Terminalling Services	Total
Depreciation and amortization	$ 538	$ 5,332	$ 4,466	$ 10,336
Capital expenditures	$ 2,168	$ 1,846	$ 874	$ 4,888
	Year Ended December 31, 2020			
Depreciation and amortization	$ 719	$ 4,550	$ 4,383	$ 9,652
Capital expenditures	$ 2,074	$ 4,555	$ 720	$ 7,349

6. PROPERTY, PLANT AND EQUIPMENT

	Estimated Useful Lives (Years)	As of December 31, 2019	2020
		(dollars in thousands)	
Land	N/A	$ 21,876	$ 21,826
Land improvements	10-20	5,139	5,024
Storage and terminal facilities	10-35	241,733	249,977
Office property and equipment and other	3-30	21,099	23,278
Construction-in-progress	N/A	3,371	2,165
Property, plant and equipment, gross		293,218	302,270
Accumulated depreciation		(185,845)	(197,561)
Property, plant and equipment, net		$ 107,373	$ 104,709

Property, plant and equipment under operating leases at December 31, 2020, in which the Partnership is the lessor, had a cost basis of $295.4 million and accumulated depreciation of $191.0 million.

Depreciation expense for the years ended December 31, 2019 and 2020 was $12.8 million and $11.0 million, respectively.

7. INTANGIBLE ASSETS, NET

Intangible assets, net of accumulated amortization, consist of the following:

	As of December 31, 2019	2020
	(in thousands)	
Customer relationships	$ 16,022	$ 16,022
Accumulated amortization of intangible assets	(6,109)	(8,491)
Intangible assets, net	$ 9,913	$ 7,531

Amortization expense related to intangibles for each of the years ended December 31, 2019 and 2020, was $2.4 million. The estimated aggregate future amortization expense on amortizable intangible assets currently owned by the Partnership is as follows (in thousands):

For year ending:	
December 31, 2021	$ 2,382
December 31, 2022	2,382
December 31, 2023	958
December 31, 2024	958
December 31, 2025	851
Thereafter	-
Total estimated aggregate amortization expense	$ 7,531

Customer relationships include $7.6 million and $8.4 million related to the acquisition of asphalt facilities in March 2018 and February 2016, respectively. The customer relationships are being amortized over a range of 5 to 10 years.

8. DEBT

On May 11, 2017, the Partnership entered into an amended and restated credit agreement. On June 28, 2018, the credit agreement was amended to, among other things, reduce the revolving loan facility from $450.0 million to $400.0 million and amend the maximum permitted consolidated total leverage ratio as discussed below.

As of March 4, 2021, approximately $99.6 million of revolver borrowings and $1.7 million of letters of credit were outstanding under the credit agreement, leaving the Partnership with available capacity of approximately $248.7 million for additional revolver borrowings and letters of credit under the credit agreement, although the Partnership's ability to borrow such funds may be limited by the financial covenants in the credit agreement. The decrease in the outstanding debt balance from year end is due to payments made with the proceeds of the crude pipeline services and crude terminalling services business sales. The availability as of this date is reflective of a January 8, 2021, amendment which, among other things, reduced the revolving loan facility to $350.0 million in conjunction with the closing of the crude oil terminal transaction.

The credit agreement is guaranteed by all of the Partnership's existing subsidiaries. Obligations under the credit agreement are secured by first priority liens on substantially all of the Partnership's assets and those of the guarantors.

The credit agreement includes procedures for additional financial institutions to become revolving lenders, or for any existing lender to increase its revolving commitment thereunder, subject to an aggregate maximum of $600.0 million for all revolving loan commitments under the credit agreement.

The credit agreement will mature on May 11, 2022, and all amounts outstanding under the credit agreement will become due and payable on such date. The credit agreement requires mandatory prepayments of amounts outstanding thereunder with the net proceeds from certain asset sales, property or casualty insurance claims and condemnation proceedings, unless the Partnership reinvests such proceeds in accordance with the credit agreement, but these mandatory prepayments will not require any reduction of the lenders' commitments under the credit agreement.

Borrowings under the credit agreement bear interest, at the Partnership's option, at either the reserve-adjusted eurodollar rate (as defined in the credit agreement) plus an applicable margin which ranges from 2.0% to 3.25% or the alternate base rate (the highest of the agent bank's prime rate, the federal funds effective rate plus 0.5% and the 30-day eurodollar rate plus 1.0%) plus an applicable margin which ranges from 1.0% to 2.25%. The Partnership pays a per annum fee on all letters of credit issued under the credit agreement, which fee equals the applicable margin for loans accruing interest based on the eurodollar rate, and the Partnership pays a commitment fee ranging from 0.375% to 0.5% on the unused commitments under the credit agreement. The applicable margins for the Partnership's interest rate, the letters of credit fee and the commitment fee vary quarterly based on the Partnership's consolidated total leverage ratio (as defined in the credit agreement, being generally computed as the ratio of consolidated total debt to consolidated earnings before interest, taxes, depreciation, amortization and certain other non-cash charges).

The credit agreement includes financial covenants which are tested on a quarterly basis, based on the rolling four-quarter period that ends on the last day of each fiscal quarter.

Prior to the date on which the Partnership issues qualified senior notes in an aggregate principal amount (when combined with all other qualified senior notes previously or concurrently issued) that equals or exceeds $200.0 million, the maximum permitted consolidated total leverage ratio will be 4.75 to 1.00 for the fiscal quarter ending and December 31, 2020, and each fiscal quarter thereafter; provided that the maximum permitted consolidated total leverage ratio may be increased to 5.25 to 1.00 for certain quarters, based on the occurrence of a specified acquisition (as defined in the credit agreement, but generally being an acquisition for which the aggregate consideration is $15.0 million or more).

From and after the date on which the Partnership issues qualified senior notes in an aggregate principal amount (when combined with all other qualified senior notes previously or concurrently issued) that equals or exceeds $200.0 million, the maximum permitted consolidated total leverage ratio is 5.00 to 1.00; provided that from and after the fiscal quarter ending immediately preceding the fiscal quarter in which a specified acquisition occurs, to and including the last day of the second full fiscal quarter following the fiscal quarter in which such acquisition occurred, the maximum permitted consolidated total leverage ratio is 5.50 to 1.00.

The maximum permitted consolidated senior secured leverage ratio (as defined in the credit agreement, but generally computed as the ratio of consolidated total secured debt to consolidated earnings before interest, taxes, depreciation, amortization and certain other non-cash charges) is 3.50 to 1.00, but this covenant is only tested from and after the date on which the Partnership issues qualified senior notes in an aggregate principal amount (when combined with all other qualified senior notes previously or concurrently issued) that equals or exceeds $200.0 million.

The minimum permitted consolidated interest coverage ratio (as defined in the credit agreement, but generally computed as the ratio of consolidated earnings before interest, taxes, depreciation, amortization and certain other non-cash charges to consolidated interest expense) is 2.50 to 1.00.

In addition, the credit agreement contains various covenants that, among other restrictions, limit the Partnership's ability to:

- create, issue, incur or assume indebtedness;
- create, incur or assume liens;
- engage in mergers or acquisitions;
- sell, transfer, assign or convey assets;
- repurchase the Partnership's equity, make distributions to unitholders and make certain other restricted payments;
- make investments;
- modify the terms of certain indebtedness, or prepay certain indebtedness;
- engage in transactions with affiliates;
- enter into certain hedging contracts;
- enter into certain burdensome agreements;
- change the nature of the Partnership's business; and
- make certain amendments to the Partnership's partnership agreement.

At December 31, 2020, the Partnership's consolidated total leverage ratio was 3.83 to 1.00 and the consolidated interest coverage ratio was 6.66 to 1.00. The Partnership was in compliance with all covenants of its credit agreement as of December 31, 2020.

Management evaluates whether conditions and/or events raise substantial doubt about the Partnership's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued (the "assessment period"). In performing this assessment, management considered the risk associated with its ongoing ability to meet the financial covenants.

Based on the Partnership's forecasted EBITDA during the assessment period, management believes that it will meet these financial covenants. However, the Partnership cannot make any assurances that it will be able to achieve management's forecasts. If the Partnership is unable to achieve management's forecasts, further actions may be necessary to remain in compliance with the Partnership's consolidated total leverage ratio covenant, including, but not limited to, cost reductions, common and preferred unitholder distribution curtailments, and/or asset sales. The Partnership can make no assurances that it would be successful in undertaking these actions, or that the Partnership will remain in compliance with the consolidated total leverage ratio during the assessment period. Additionally, there are certain inherent risks associated with our continued ability to comply with our consolidated total leverage ratio covenant. These risks relate, among other things, to potential future (a) decreases in storage volumes and rates as well as throughput and transportation rates realized; (b) weather phenomenon that may potentially hinder the Partnership's asphalt business activity; and (c) other items affecting forecasted levels of expenditures and uses of cash resources. Violation of the consolidated total leverage ratio covenant would be an event of default under the credit agreement, which would cause our $252.6 million in outstanding debt, as of December 31, 2020, to become immediately due and payable. If this were to occur, the Partnership would not expect to have sufficient liquidity to repay these outstanding amounts then due, which could cause the lenders under the credit facility to pursue other remedies. Such remedies could include exercising their collateral rights to the Partnership's assets.

The credit agreement permits the Partnership to make quarterly distributions of available cash (as defined in the Partnership's partnership agreement) to unitholders so long as no default or event of default exists under the credit agreement on a pro forma basis after giving effect to such distribution. The Partnership is currently allowed to make distributions to its unitholders in accordance with this covenant; however, the Partnership will only make distributions to the extent it has sufficient cash from operations after establishment of cash reserves as determined by the Board of the General Partner in accordance with the Partnership's cash distribution policy, including the establishment of any reserves for the proper conduct of the Partnership's business. See Note 10 for additional information regarding distributions.

In addition to other customary events of default, the credit agreement includes an event of default if:

(i) the general partner ceases to own 100% of the Partnership's general partner interest or ceases to control the Partnership;
(ii) Ergon ceases to own and control 50.0% or more of the membership interests of the general partner; or
(iii) during any period of 12 consecutive months, a majority of the members of the Board of the general partner ceases to be composed of individuals:
    (A) who were members of the Board on the first day of such period;
    (B) whose election or nomination to the Board was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of the Board; or
    (C) whose election or nomination to the Board was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of the Board, provided that any changes to the composition of individuals serving as members of the Board approved by Ergon will not cause an event of default.

If an event of default relating to bankruptcy or other insolvency events occurs with respect to the general partner or the Partnership, all indebtedness under the credit agreement will immediately become due and payable. If any other event of default exists under the credit agreement, the lenders may accelerate the maturity of the obligations outstanding under the credit agreement and exercise other rights and remedies. In addition, if any event of default exists under the credit agreement, the lenders may commence foreclosure or other actions against the collateral.

If any default occurs under the credit agreement, or if the Partnership is unable to make any of the representations and warranties in the credit agreement, the Partnership will be unable to borrow funds or have letters of credit issued under the credit agreement.

Debt issuance costs are being amortized over the term of the credit agreement. Interest expense related to debt issuance cost amortization for both of the years ended December 31, 2019 and 2020, was $1.0 million.

During the years ended December 31, 2019 and 2020, the weighted average interest rate under the Partnership's credit agreement was 6.00% and 3.97%, respectively, resulting in interest expense of approximately $7.4 million and $5.6 million, respectively.

9. NET INCOME PER LIMITED PARTNER UNIT

For purposes of calculating earnings per unit, the excess of distributions over earnings or excess of earnings over distributions for each period are allocated to the Partnership's general partner based on the general partner's ownership interest at the time. The following sets forth the computation of basic and diluted net income per common unit (in thousands, except per unit data):

	Year ended December 31,	
	2019	**2020**
Net income(loss)	$ 18,412	$ (13,480)
General partner interest in net income (loss)	337	(213)
Preferred interest in net income	25,115	25,115
Net loss available to limited partners	$ (7,040)	$ (38,382)
Basic and diluted weighted average number of units:		
Common units	40,755	41,104
Restricted and phantom units	1,023	1,285
Total units	41,778	42,389
Basic and diluted net loss from discontinued operations per common unit	$ (0.08)	$ (0.98)
Basic and diluted net income(loss) from continuing operations per common unit	$ (0.09)	$ 0.07
Basic and diluted net loss per common unit	$ (0.17)	$ (0.91)

10. PARTNERS' CAPITAL (DEFICIT) AND DISTRIBUTIONS

In accordance with the terms of its partnership agreement, each quarter the Partnership distributes all of its available cash (as defined in the partnership agreement) to its unitholders. Generally, distributions are allocated as follows:

- first, 98.4% to the preferred unitholders and 1.6% to its general partner until the Partnership distributes for each Preferred Unit an amount equal to the Preferred Units quarterly distribution amount discussed below;
- second, 98.4% to the preferred unitholders and 1.6% to its general partner until the Partnership distributes for each Preferred Unit an amount equal to any Preferred Units cumulative distribution arrearage; and
- thereafter, 98.4% to the common unitholders and 1.6% to its general partner until the common unitholders receive the minimum quarterly distribution of $0.11 per unit.

The Preferred Units are convertible at the holders' option into common units. Holders of the Preferred Units are entitled to quarterly distributions of $0.17875 per unit per quarter. If the Partnership fails to pay in full any distribution on the Preferred Units, the amount of such unpaid distribution will accrue and accumulate from the last day of the quarter for which such distribution is due until paid in full.

The general partner receives incentive distribution rights. Incentive distribution rights represent the right to receive an increasing percentage (13.0%, 23.0% and 48.0%) of quarterly distributions of available cash from operating surplus after the minimum quarterly distribution and the target distribution levels have been achieved. The general partner currently holds the incentive distribution rights, but may transfer these rights separately from its general partner interest, subject to restrictions in the partnership agreement. If for any quarter:

- the Partnership has distributed available cash from operating surplus to the holders of our Preferred Units in an amount equal to the Preferred Units quarterly distribution amount;
- the Partnership has distributed available cash from operating surplus to the holders of our Preferred Units in an amount necessary to eliminate any cumulative arrearages in the payment of the Preferred Units quarterly distribution amount; and
- the Partnership has distributed available cash from operating surplus to the common unitholders and Class B unitholders in an amount equal to the minimum quarterly distribution;

then the partnership agreement requires that the Partnership distribute any additional available cash from operating surplus for that quarter among the unitholders and the general partner in the following manner:

- first, 98.4% to all unitholders holding common units or Class B units, pro rata, and 1.6% to the general partner, until each unitholder receives a total of $0.1265 per unit for that quarter (the "first target distribution");
- second, 85.4% to all unitholders holding common units or Class B units, pro rata, and 14.6% to the general partner, until each unitholder receives a total of $0.1375 per unit for that quarter (the "second target distribution");
- third, 75.4% to all unitholders holding common units or Class B units, pro rata, and 24.6% to the general partner, until each unitholder receives a total of $0.1825 per unit for that quarter (the "third target distribution"); and
- thereafter, 50.4% to all unitholders holding common units or Class B units, pro rata, and 49.6% to the general partner.

Distributions are also paid to the holders of restricted units and phantom units as disclosed in Note 13.

The Partnership paid the following distributions on the Preferred Units during the years ended December 31, 2019 and 2020 (in thousands):

Year Paid	Periods Covered	Total	Paid to Preferred Unitholders	Partner Paid to General
2019	Quarters ending December 31, 2018, March 31, 2019, June 30, 2019 and September 30, 2019	$ 25,521	$ 25,115	$ 406
2020	Quarters ending December 31, 2019, March 31, 2020, June 30, 2020 and September 30, 2020	$ 25,519	$ 25,115	$ 404

In addition, on January 26, 2021, the Board approved a cash distribution of $0.17875 per outstanding Preferred Unit for the quarter ending December 31, 2020. The Partnership paid this distribution on the Preferred Units on February 12, 2021, to unitholders of record as of February 5, 2021. The total distribution was approximately $6.4 million, with approximately $6.3 million and $0.1 million paid to the Partnership's preferred unitholders and general partner, respectively.

The Partnership paid the following distributions on the common units during the years ended December 31, 2019 and 2020 (in thousands):

Year Paid	Periods Covered	Total	Paid to Common Unitholders	Paid to General Partner	Paid to Phantom and Restricted Unitholders Under the LTIP
2019	Quarters ending December 31, 2018, March 31, 2019, June 30, 2019 and September 30, 2019	$ 8,468	$ 8,150	$ 135	$ 183
2020	Quarters ending December 31, 2019, March 31, 2020, June 30, 2020 and September 30, 2020	$ 6,887	$ 6,576	$ 109	$ 202

In addition, on January 26, 2021, the Board approved a cash distribution of $0.04 per outstanding common unit for the quarter ending December 31, 2020. The distribution was paid on February 12, 2021, to unitholders of record as of February 5, 2021. The total distribution was approximately $1.7 million, with approximately $1.7 million paid to the Partnership's common unitholders and less than $0.1 million paid to the both the Partnership's general partner and holders of phantom and restricted units pursuant to awards granted under the LTIP.

11. MAJOR CUSTOMERS AND CONCENTRATION OF CREDIT RISK

Significant customers are defined as those who represent 10% or more of our total consolidated revenues during the year.

For the year ended December 31, 2020, Ergon accounted for approximately 40% of the Partnership's total revenues. In addition, two third-party customers accounted for 12% and 15% of the Partnership's total revenues.

For the year ended December 31, 2019, Ergon accounted for approximately 34% of the Partnership's total revenues. In addition, two third-party customers accounted for 12% and 16% of the Partnership's total revenues.

12. RELATED-PARTY TRANSACTIONS

The Partnership leases facilities to Ergon and provides liquid asphalt terminalling services to Ergon. For the years ended December 31, 2019 and 2020, the Partnership recognized revenues of $36.1 million and $44.4 million, respectively, for services provided to Ergon. See additional discussion below regarding material asphalt operating lease contracts and storage, throughput and handling contracts. As of December 31, 2019 and 2020, the Partnership had receivables from Ergon of $1.1 million and $0.5 million, respectively.

Effective April 1, 2018, the Partnership entered into an agreement with Ergon under which the Partnership purchases crude oil in connection with its crude oil marketing operations. For the years ended December 31, 2019 and 2020, the Partnership made purchases of crude oil under this agreement totaling $133.5 million and $92.1 million, respectively. As of December 31, 2020. the Partnership had payables to Ergon related to this agreement of $8.7 million related to the December crude oil settlement cycle, and this balance was paid in full on January 20, 2021. This agreement terminated upon the closing of the sale of the crude oil pipeline services business on February 1, 2021.

As of December 31, 2019, the Partnership had a contingent liability to Ergon of $12.2 million related to the Cimarron Express project, a previously disclosed joint venture between Kingfisher Midstream and Ergon's development company ("DEVCO") that was cancelled in December 2018. The contingent liability reflected Ergon's investment in the joint venture and accrued interest, for which the Partnership, in accordance with the membership interest purchase agreement with Ergon, was meant to bear the risk of loss related to DEVCO's portion of the project. The Partnership recognized other impairment charges of $2.2 million related to the accrued interest during the year ended December 31, 2019, which was recorded at the corporate level. The Partnership paid this liability in full on January 3, 2020, and it is reflected as an acquisition of the DEVCO on the consolidated statement of cash flows for the year ended December 31, 2020.

Ergon 2016 Storage and Handling Agreement

In October 2016, the Partnership and Ergon entered into a storage, throughput and handling agreement (the "Ergon 2016 Storage and Handling Agreement") pursuant to which the Partnership provides Ergon storage and terminalling services at nine asphalt facilities. In July 2018, the Partnership sold one of the facilities to Ergon and the agreement was amended accordingly. The term of the Ergon 2016 Storage, Throughput and Handling Agreement commenced on October 5, 2016, and in August 2020, was replaced with the Ergon 2020 Master Storage, Throughput and Handling Agreement; see below. The Board's conflicts committee reviewed and approved this agreement in accordance with the Partnership's procedures for approval of related-party transactions and the provisions of the partnership agreement. During the years ended December 31, 2019 and 2020, the Partnership generated revenue under this agreement of $20.0 million and $12.0 million, respectively.

Ergon Fontana and Las Vegas Storage Throughput and Handling Agreement

In October 2016, the Partnership and Ergon entered into a storage, throughput and handling agreement (the "Ergon Fontana and Las Vegas Storage Throughput and Handling Agreement") pursuant to which the Partnership provides Ergon storage and terminalling services at two asphalt facilities. The original Ergon Fontana and Las Vegas Master Facilities Lease Agreement commenced on May 18, 2009, and was a part of previous agreement that expired in 2018. A new agreement was executed in March 2019 with an effective date of January 1, 2019, and, on August 1, 2020, was replaced with the Ergon 2020 Master Storage, Throughput and Handling Agreement (as defined below). The Board's conflicts committee reviewed and approved these agreements in accordance with the Partnership's procedures for approval of related-party transactions and the provisions of the partnership agreement. During the years ended December 31, 2019 and 2020, the Partnership generated revenues under this agreement of $6.0 million and $3.5 million, respectively.

Ergon Lessee Operated Facility Lease Agreement and Previous Agreements

In March 2019, the Partnership and Ergon entered into a facilities lease agreement (the "Ergon Lessee Operated Facility Lease Agreement") covering 12 facilities. The facilities covered by this agreement were previously accounted for under two separate agreements. This agreement was effective January 1, 2019, and on August 1, 2020, was replaced with the Ergon 2020 Master Storage, Throughput and Handling Agreement; see below. The Board's conflicts committee reviewed and approved this agreement in accordance with the Partnership's procedures for approval of related-party transactions and the provisions of the partnership agreement. During the years ended December 31, 2019 and 2020, the Partnership generated revenues under this agreement of $8.3 million and $4.4 million, respectively.

Ergon 2020 Master Storage, Throughput and Handling Agreement

In August 2020, the Partnership and Ergon entered into the "2020 Master Storage, Throughput and Handling Agreement", effective August 1, 2020, which replaced the three agreements noted above and all related amendments. Pursuant to this agreement, the Partnership provides Ergon with storage and terminalling services at 22 facilities through December 31, 2027. The Board's conflicts committee reviewed and approved this agreement in accordance with the Partnership's procedures for approval of related-party transactions and the provisions of the partnership agreement. During the year ended December 31, 2020, the Partnership generated revenues under this agreement of $16.8 million.

Ergon Operating and Maintenance Agreement

In August 2020, the Partnership and Ergon also entered into the Operating and Maintenance Agreement, effective August 1, 2020, pursuant to which Ergon will provide certain operations and maintenance services to the 22 facilities also under the 2020 Master Storage, Throughput and Handling Agreement through December 31, 2025, with automatic one-year renewals unless either party cancels. The Board's conflicts committee reviewed and approved this agreement in accordance with the Partnership's procedures for approval of related-party transactions and the provisions of the partnership agreement. During the year ended December 31, 2020, the Partnership recognized expense under this agreement of $7.7 million.

13. LONG-TERM INCENTIVE PLAN

In July 2007, the general partner adopted the LTIP, which is administered by the compensation committee of the Board. The Partnership's unitholders have approved 8.1 million common units to be reserved for issuance under the incentive plan, subject to adjustment for certain events. Although other types of awards are contemplated under the LTIP, currently outstanding awards include "phantom" units, which convey the right to receive common units upon vesting, and "restricted" units, which are grants of common units restricted until the time of vesting. Certain of the phantom unit awards also include DERs.

Subject to applicable earning criteria, a DER entitles the grantee to a cash payment equal to the cash distribution paid on an outstanding common unit prior to the vesting date of the underlying award. Recipients of restricted and phantom units are entitled to receive cash distributions paid on common units during the vesting period which are reflected initially as a reduction of partners' capital. Distributions paid on units that ultimately do not vest are reclassified as compensation expense. Awards granted to date are equity awards and, accordingly, the fair value of the awards as of the grant date is expensed over the vesting period.

In connection with each anniversary of joining the Board, restricted common units are granted to the independent directors. The units vest in one-third increments over three years. The following table includes information on grants made to the directors under the LTIP subject to vesting requirements:

Grant Date	Number of Units	Weighted Average Grant Date Fair Value	Grant Date Total Fair Value (in thousands)
December 2018	23,436	$ 1.20	$ 28
December 2019	7,500	$ 1.07	$ 8
December 2020	7,500	$ 2.06	$ 15

The Partnership also grants phantom units to employees. These grants are equity awards under *ASC 718 – Stock Compensation* and, accordingly, the fair value of the awards as of the grant date is expensed over the vesting period. The following table includes information on the outstanding grants:

Grant Date	Number of Units	Weighted Average Grant Date Fair Value	Grant Date Total Fair Value (in thousands)
March 2018	396,536	$ 4.77	$ 1,891
March 2019	524,997	$ 1.14	$ 598
June 2019	46,168	$ 1.08	$ 50
March 2020	600,396	$ 0.90	$ 540
October 2020	16,339	$ 1.53	$ 25

Compensation expense for the equity awards is calculated as the number of unit awards less forfeitures, multiplied by the grand date fair value of those awards. The Partnership estimates forfeiture rates based on historical forfeitures under the LTIP. The unrecognized estimated compensation cost relating to outstanding phantom and restricted units at December 31, 2019, was $0.5 million, which will be recognized over the remaining vesting period. On January 1, 2021, 279,581 units of the March 2018 grant vested.

The Partnership's equity-based incentive compensation expense for the years ended December 31, 2019 and 2020 was $0.9 million and $0.8 million, respectively.

Activity pertaining to phantom common units and restricted common unit awards granted under the LTIP is as follows:

	Number of Units	Grant Date Fair Value
Nonvested, December 31, 2019	1,068,343	$ 3.42
Granted	624,235	0.93
Vested	322,608	5.43
Forfeited	19,604	1.90
Nonvested, December 31, 2020	1,350,366	$ 1.81

14. EMPLOYEE BENEFIT PLAN

Under the Partnership's 401(k) Plan, which was instituted in 2009, employees who meet specified service requirements may contribute a percentage of their total compensation, up to a specified maximum, to the 401(k) Plan. The Partnership may match each employee's contribution, up to a specified maximum, in full or on a partial basis. The Partnership recognized expense of $0.6 million for both of the years ended December 31, 2019 and 2020, for discretionary contributions under the 401(k) Plan.

The Partnership may also make annual lump-sum contributions to the 401(k) Plan irrespective of the employee's contribution match. The Partnership may make a discretionary annual contribution in the form of profit sharing calculated as a percentage of an employee's eligible compensation. This contribution is retirement income under the qualified 401(k) Plan. Annual profit sharing contributions to the 401(k) Plan are submitted to the Board for approval. The Partnership recognized expense of $0.4 million and $0.6 million for the years ended December 31, 2019 and 2020, respectively, for discretionary profit sharing contributions under the 401(k) Plan.

Under the Partnership's Employee Unit Purchase Plan (the "Unit Purchase Plan"), which was instituted in January 2015, employees have the opportunity to acquire or increase their ownership of common units representing limited partner interests in the Partnership. Eligible employees who enroll in the Unit Purchase Plan may elect to have a designated whole percentage, up to a specified maximum, of their eligible compensation for each pay period withheld for the purchase of common units at a discount to the then current market value. A maximum of 1,000,000 common units may be delivered under the Unit Purchase Plan, subject to adjustment for a recapitalization, split, reorganization, or similar event pursuant to the terms of the Unit Purchase Plan. Expense for the Unit Purchase Plan was immaterial for both 2019 and 2020.

15. COMMITMENTS AND CONTINGENCIES

The Partnership is from time to time subject to various legal actions and claims incidental to its business. Management believes that these legal proceedings will not have a material adverse effect on the financial position, results of operations or cash flows of the Partnership. Once management determines that information pertaining to a legal proceeding indicates that it is probable that a liability has been incurred and the amount of such liability can be reasonably estimated, an accrual is established equal to its estimate of the likely exposure.

The Partnership has contractual obligations to perform dismantlement and removal activities in the event that some of its liquid asphalt terminalling assets are abandoned. These obligations include varying levels of activity, including completely removing the assets and returning the land to its original state. The Partnership has determined that the settlement dates related to the retirement obligations are indeterminate. The assets with indeterminate settlement dates have been in existence for many years and with regular maintenance will continue to be in service for many years to come. Also, it is not possible to predict when demands for the Partnership's terminalling services will cease, and the Partnership does not believe that such demand will cease in the foreseeable future. Accordingly, the Partnership believes the date when these assets will be abandoned is indeterminate. With no reasonably determinable abandonment date, the Partnership cannot reasonably estimate the fair value of the associated asset retirement obligations. Management believes that if the Partnership's asset retirement obligations were settled in the foreseeable future, the potential cash flows that would be required to settle the obligations based on current costs are not material. The Partnership will record asset retirement obligations for these assets in the period in which sufficient information becomes available for it to reasonably determine the settlement dates.

16. ENVIRONMENTAL REMEDIATION

The Partnership maintains insurance of various types with varying levels of coverage that it considers adequate under the circumstances to cover its operations and properties. The insurance policies are subject to deductibles and retention levels that the Partnership considers reasonable and not excessive. Consistent with insurance coverage generally available in the industry, in certain circumstances the Partnership's insurance policies provide limited coverage for losses or liabilities relating to gradual pollution, with broader coverage for sudden and accidental occurrences. Although the Partnership maintains a program designed to prevent and, as applicable, to detect and address such releases promptly, damages and liabilities incurred due to environmental releases from its assets may substantially affect its business.

At December 31, 2019 and 2020, the Partnership was aware of existing conditions that may cause it to incur expenditures in the future for the remediation of existing environmental matters. The Partnership had no environmental remediation loss contingencies as of December 31, 2019 and 2020. Changes in the Partnership's estimates and assumptions may occur as a result of the passage of time and the occurrence of future events.

17. FAIR VALUE MEASUREMENTS

The Partnership uses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow) and the cost approach (cost to replace the service capacity of an asset or replacement cost) to value these assets and liabilities as appropriate. The Partnership uses an exit price when determining the fair value. The exit price represents amounts that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants.

The Partnership utilizes a three-tier fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The following is a brief description of those three levels:

Level 1	Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities.
Level 2	Inputs other than quoted prices that are observable for these assets or liabilities, either directly or indirectly. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.
Level 3	Unobservable inputs in which there is little market data, which requires the reporting entity to develop its own assumptions.

This hierarchy requires the use of observable market data, when available, to minimize the use of unobservable inputs when determining fair value. In periods in which they occur, the Partnership recognizes transfers into and out of Level 3 as of the end of the reporting period. Transfers out of Level 3 represent existing assets and liabilities that were classified previously as Level 3 for which the observable inputs became a more significant portion of the fair value estimates. Determining the appropriate classification of the Partnership's fair value measurements within the fair value hierarchy requires management's judgment regarding the degree to which market data is observable or corroborated by observable market data.

Fair Value of Other Financial Instruments

The following disclosure of the estimated fair value of financial instruments is made in accordance with accounting guidance for financial instruments. The Partnership has determined the estimated fair values by using available market information and valuation methodologies. Considerable judgment is required in interpreting market data to develop the estimates of fair value. The use of different market assumptions or valuation methodologies may have a material effect on the estimated fair value amounts.

At December 31, 2020, the carrying values on the consolidated balance sheets for cash and cash equivalents (classified as Level 1), accounts receivable and accounts payable approximate their fair value because of their short-term nature.

Based on the borrowing rates currently available to the Partnership for credit agreement debt with similar terms and maturities and consideration of the Partnership's non-performance risk, long-term debt associated with the Partnership's credit agreement at December 31, 2020, approximates its fair value. The fair value of the Partnership's long-term debt was calculated using observable inputs (LIBOR for the risk-free component) and unobservable company-specific credit spread information. As such, the Partnership considers this debt to be Level 3.

18. LEASES

The Partnership leases certain office space and land under operating leases. Leases with an initial term of 12 months or less are not recorded on the balance sheet; lease expense for these leases is recognized as paid over the lease term. For real property leases, the Partnership has elected the practical expedient to not separate nonlease components (e.g., common-area maintenance costs) from lease components and to instead account for each component as a single lease component. For leases that do not contain an implicit interest rate, the Partnership uses its most recent incremental borrowing rate.

Some real property leases contain options to renew, with renewal terms that can extend indefinitely. The exercise of such lease renewal options is at the Partnership's sole discretion. The Partnership determines the lease term at the lease commencement date as the non-cancellable period of the lease, including options to extend or terminate the lease when such an option is reasonably certain to be exercised. The Partnership uses various data to analyze these options, including historical trends, current expectations and useful lives of assets related to the lease. Operating lease assets and liabilities are stated in separate line items on the consolidated balance sheets.

Future commitments, including options to extend lease terms that are reasonably certain of being exercised, related to leases at December 31, 2020 are summarized below (in thousands):

	Operating Leases
Twelve months ending December 31, 2021	$ 1,913
Twelve months ending December 31, 2022	1,502
Twelve months ending December 31, 2023	1,428
Twelve months ending December 31, 2024	798
Twelve months ending December 31, 2025	704
Thereafter	5,386
Total	11,731
Less: Interest	3,067
Present value of lease liabilities	$ 8,664

The following table summarizes the Partnership's total lease cost by type as well as cash flow information (in thousands):

	Classification	For the Year Ended December 31, 2019	2020
Total Lease Cost by Type:			
Operating lease cost(1)	Operating Expense	1,916	$ 1,953
Short-term lease cost	Operating Expense	247	$ 172
Net lease cost		$ 2,163	$ 2,125
Supplemental cash flow disclosures:			
Cash paid for amounts included in the measurement of lease liabilities:			
Payments on operating leases		$ 1,349	$ 1,400
Leased assets obtained in exchange for new operating lease liabilities		$ 1,714	$ 119

(1) Includes variable lease costs, which are immaterial.

	As of December 31, 2020
Lease Term and Discount Rate	
Weighted-average remaining operating lease term (years)	10.4
Weighted-average discount rate	5.87%

19. INCOME TAXES

The anticipated after-tax economic benefit of an investment in the Partnership's common units depends largely on the Partnership being treated as a partnership for federal income tax purposes. If less than 90% of the gross income of a publicly traded partnership, such as the Partnership, for any taxable year is "qualifying income" from sources such as the transportation, marketing (other than to end users) or processing of crude oil, natural gas or products thereof, interest, dividends or similar sources, that partnership will be taxable as a corporation under Section 7704 of the Internal Revenue Code for federal income tax purposes for that taxable year and all subsequent years.

If the Partnership were treated as a corporation for federal income tax purposes, then it would pay federal income tax on its income at the applicable corporate tax rate and would likely pay state income tax at varying rates. Distributions would generally be taxed again to unitholders as corporate distributions and none of the Partnership's income, gains, losses, deductions or credits would flow through to its unitholders. Because a tax would be imposed upon the Partnership as an entity, cash available for distribution to its unitholders would be substantially reduced. Treatment of the Partnership as a corporation would result in a material reduction in the anticipated cash flow and after-tax return to unitholders and thus would likely result in a substantial reduction in the value of the Partnership's common units.

The Partnership has entered into storage or lease contracts with third-party customers with respect to substantially all of its asphalt facilities. At the time of entering into such agreements, it was unclear under current tax law as to whether the rental income from the leases, and the fees attributable to certain of the processing services the Partnership provides under certain of the storage contracts, constitute "qualifying income." In the second quarter of 2009, the Partnership submitted a request for a ruling from the IRS that rental income from the leases constitutes "qualifying income." In October 2009, the Partnership received a favorable ruling from the IRS. As part of this ruling, however, the Partnership agreed to transfer, and has transferred, certain of its asphalt processing assets and related fee income to a subsidiary taxed as a corporation. This transfer occurred in the first quarter of 2010. Such subsidiary is required to pay federal income tax on its income at the applicable corporate tax rate and will likely pay state (and possibly local) income tax at varying rates. Distributions from this subsidiary will generally be taxed again to unitholders as corporate distributions and none of the income, gains, losses, deductions or credits of this subsidiary will flow through to the Partnership's unitholders.

20. RECENTLY ISSUED ACCOUNTING STANDARDS

In December 2019, the FASB issued ASU 2019-12, "Income Taxes (Topic 740)." The amendments in the update simplify the accounting for income taxes by removing certain exceptions to the general principles of Topic 740. The amendments also improve consistent application of and simplify GAAP for other areas of Topic 740 by clarifying and amending existing guidance. The Partnership has evaluated the impact of this guidance, which will be adopted beginning with the Partnership's quarterly report for the three-month period ending March 31, 2021, and does not expect a material impact on the Partnership's financial position, results of operations, or cash flows.

21. SUBSEQUENT EVENTS

On February 1 and 2, 2021, the Partnership closed on the final transactions to sell its crude oil pipeline and trucking services segments, respectively. On March 1, 2021, the Partnership closed on the transaction to sell its crude oil terminalling services segment. Net proceeds of approximately $164.0 million were used to pay down the Partnership's revolving debt facility. On January 8, 2021, the credit agreement was amended to, among other things, reduce the revolving loan facility to $350.0 million in conjunction with the closing of the crude oil terminal transaction.

Exhibit 10.30

MEMBERSHIP INTEREST PURCHASE AGREEMENT

by and among

BKEP CRUDE, L.L.C.,

and

BKEP SUPPLY AND MARKETING LLC,
(collectively as Seller)

and

COFFEYVILLE RESOURCES CRUDE TRANSPORTATION, LLC,

and

COFFEYVILLE RESOURCES REFINING & MARKETING, LLC
(collectively as Buyer)

December 20, 2020

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

This Membership Interest Purchase Agreement (this "***Agreement***") is entered into as of December 20, 2020, by and among **BKEP Crude, L.L.C.**, a Delaware limited liability company ("***BKEP Crude***"), **BKEP Supply and Marketing LLC**, a Delaware limited liability company ("***BKEP S&M***" and together with BKEP Crude, the "***Seller***"), **Coffeyville Resources Crude Transportation, LLC**, a Delaware limited liability company ("***CRCT***"), and **Coffeyville Resources Refining & Marketing, LLC**, a Delaware limited liability company ("***CRRM***" and together with CRCT, the "***Buyer***"). Each of the parties to this Agreement is referred to individually herein as a "***Party***" and collectively as the "***Parties***."

RECITALS

WHEREAS, BKEP Crude is the record and beneficial owner of 100% of the issued and outstanding limited liability company interests (the "***Acquired Interests***") of each of:

(i) BKEP Pipeline, L.L.C., a Delaware limited liability company ("***BKEP Pipeline***"); and

(ii) BKEP Red River System LLC, a Delaware limited liability company ("***BKEP RRS***")

(BKEP Pipeline and BKEP RRS are referred to herein collectively as the "***Acquired Companies***" and individually as an "***Acquired Company***");

WHEREAS, BKEP S&M is a party to certain supply and marketing contracts as listed on Annex B hereto (collectively, the "***S&M Contracts***");

WHEREAS, BKEP Crude wishes to sell to CRCT, and CRCT wishes to purchase from BKEP Crude, the Acquired Interests, upon the terms and conditions contained herein;

WHEREAS, BKEP S&M wishes to sell to CRRM, and CRRM wishes to purchase from BKEP S&M, the S&M Contracts, upon the terms and conditions contained herein; and

WHEREAS, in order to induce the Buyer to enter into this Agreement and consummate the transactions contemplated hereby, the Seller Guarantor, who will derive direct and indirect benefits from the Seller entering into this Agreement, shall execute and deliver the Seller Guaranty to the Buyer simultaneously with the execution of this Agreement.

NOW, THEREFORE, in consideration of the premises, agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and in reliance upon the mutual representations and warranties contained herein, the Parties agree as follows:

AGREEMENT

Article I
DEFINITIONS; CONSTRUCTION

1.1 Certain Definitions. Capitalized terms used in this Agreement but not defined in the body of this Agreement have the meanings ascribed to them in Exhibit A. Capitalized terms defined in the body of this Agreement are listed in Exhibit A by location of the definition of such terms in the body of this Agreement.

1.2 Construction.

(a) In this Agreement, unless a clear contrary intention appears: (i) the singular includes the plural and vice versa; (ii) reference to a Person includes such Person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (iii) reference to any gender includes each other gender; (iv) references to any Exhibit, Schedule, Section, Article, Annex, subsection and other subdivision refer to the corresponding Exhibits, Schedules, Sections, Articles, Annexes, subsections and other subdivisions of this Agreement unless expressly provided otherwise; (v) references in any Section, Article or definition to any clause means such clause of such Section, Article or definition; (vi) "hereunder," "hereof," "hereto" and words of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement; (vii) the word "or" and the phrase "and/or" is not exclusive, and the word "including" (in its various forms) means "including without limitation"; (viii) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP; (ix) references to "days" are to calendar days unless provided otherwise; (x) all references to money refer to the lawful currency of the United States; and (xi) if a word or phrase is defined, its other grammatical forms have a corresponding meaning. The words "shall" and "will" are used interchangeably and have the same meaning. The term "cost" includes expense, and the term "expense" includes cost. The Table of Contents and the Article and Section titles and headings in this Agreement are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement. Time periods within or following which any payment is to be made or an act is to be done shall be calculated by excluding the day on which the time period commences and including the day on which the time period ends and by extending the period to the next Business Day following if the last day of the time period is not a Business Day. For purposes of Article V or Article VI, the words "delivered to," "provided to," "made available to" or words of similar import mean (unless otherwise specifically provided) posted to the Data Room or physically delivered to the Buyer, in each case, as of the Execution Date.

(b) Each Party and its respective legal counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto shall be deemed the work product of the Parties and may not be construed against any Party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted it is of no application and is hereby expressly waived.

(c) The specification of any dollar amount in the representations and warranties or otherwise in this Agreement or in the Seller Disclosure Schedules is not intended and shall not be deemed to be an admission or acknowledgment of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the Parties to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement.

(d) Notwithstanding anything contained in this Agreement to the contrary, except as otherwise expressly provided in this Agreement, the Parties covenant and agree that no amount shall be (or is intended to be) included, in whole or in part (either as an increase or a reduction), more than once in the calculation of (including any component of) the Purchase Price or any component thereof or calculation relating thereto, or any other calculated amount pursuant to this Agreement if the effect of such additional inclusion (either as an increase or a reduction) would be to cause such amount to be over- or under-counted for purposes of the Contemplated Transactions. The Parties further covenant and agree that if any provision of this Agreement requires an amount or calculation to be "*determined in accordance with this Agreement and GAAP*" (or words of similar import), then to the extent that the terms of this Agreement conflict with, or are inconsistent with, GAAP in connection with such determination, then the provisions of GAAP shall control.

Article II
PURCHASE AND SALE; CLOSING

2.1 **Sale of the Acquired Interests**. Upon the terms and subject to the conditions of this Agreement, and for the consideration set forth in this Agreement, at the Closing BKEP Crude shall sell, transfer, convey and deliver the Acquired Interests to CRCT.

2.2 **Transfer and Assignment of the S&M Contracts**. Upon the terms and subject to the conditions of this Agreement, and for the consideration set forth in this Agreement, at the Closing BKEP S&M shall sell, transfer, assign, convey and deliver (or cause any applicable Affiliate of BKEP S&M to transfer and assign) all of BKEP S&M's (and any applicable Affiliate's) right, title and interest in and to the S&M Contracts, which arise or accrue under such S&M Contracts, or are attributable to the period, from and after the Measurement Time, to CRRM, except to the extent related to the Retained Liabilities.

2.3 **Purchase Price**.

(a) The total consideration to be paid by the Buyer to the Seller, at the Closing, for the sale, transfer, assignment, conveyance and delivery of the Acquired Interests and the S&M Contracts shall be an amount in cash equal to TWENTY MILLION DOLLARS ($20,000,000) (the "***Base Consideration***"), plus or minus the adjustments set forth in Article III (such Base Consideration, as finally adjusted, the "***Purchase Price***").

(b) At the Closing, the Buyer shall deliver, or cause to be delivered, to the Seller an amount (the "***Closing Date Payment***") equal to the Base Consideration:

(i) *minus*, the Signing Deposit actually funded (together with any interest earned thereon);

(ii) *minus*, the ROW Escrow Payment;

(iii) *minus,* the Estimated Seller Working Capital Payment (if any);

(iv) *plus,* the Estimated Buyer Working Capital Payment (if any); and

(v) *plus,* the Estimated Inventory Value.

(c) On the terms and subject to the conditions set forth in this Agreement, the Closing Date Payment will be payable, at the Closing, to the Seller by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 2.3(c) of the Seller Disclosure Schedules.

(d) At the Closing, the Buyer will pay to the Escrow Agent an amount equal to ONE MILLION FIVE HUNDRED THOUSAND ($1,500,000) (the "***ROW Escrow Payment***") into the ROW Escrow Account as specified in the ROW Escrow Agreement to be held pursuant to the terms of Section 8.17 and the ROW Escrow Agreement.

2.4 Signing Deposit Escrow.

(a) As promptly as possible following the execution of this Agreement, the Buyer will deposit with the Escrow Agent by wire transfer of immediately available funds an amount equal to $3,000,000 (the "***Signing Deposit***"), to be held in an escrow account pursuant to the Signing Deposit Escrow Agreement. If the Closing occurs, the Buyer and the Seller shall instruct the Escrow Agent to release the Signing Deposit (together with any interest earned thereon) to the Seller at the Closing and the Signing Deposit (together with any interest earned thereon) shall be applied as a credit toward the Purchase Price. If this Agreement is terminated prior to the Closing in accordance with Article XII, then the provisions of Section 12.2 shall apply and the Buyer and the Seller shall instruct the Escrow Agent to release the Signing Deposit (together with any interest earned thereon) in accordance therewith. Notwithstanding the foregoing, for the avoidance of doubt, the Buyer and the Seller acknowledge and agree that the funding of the Signing Deposit is not a condition to the Closing and the Buyer shall remain obligated, subject only to the satisfaction or waiver of the conditions set forth in Article IX of this Agreement, to consummate the Contemplated Transactions.

(b) As promptly as possible following the execution of this Agreement, the Buyer and the Seller shall execute, and obtain execution by the Escrow Agent of, the Signing Deposit Escrow Agreement.

2.5 Allocation of Consideration. The Parties agree to treat the acquisition of the Acquired Companies as a sale by BKEP Crude and a purchase by the Buyer of the assets, subject to the liabilities, of the Acquired Companies for U.S. federal income tax purposes (and for any applicable U.S. state or local or non-U.S. income Tax purposes that follow the U.S. federal income Tax treatment) as a result of each of the Acquired Companies being disregarded as an entity separate from Seller (or the Person from whom Seller is disregarded) pursuant to Treas. Reg. § 301.7701-3, and no Party or any of its Affiliates will take any position inconsistent with such treatment in notices to or filings with Tax Authorities, in audits or other proceedings with respect to Taxes, or in other documents or notices relating to the Contemplated Transactions unless required to do so by a "determination" as defined in Section 1313 of the Code. Not later than 60 days after the determination of the Final Net Working Capital, the Buyer shall deliver to the Seller a proposed allocation of the amounts paid pursuant to Section 2.3, and any other items constituting consideration for applicable U.S. federal income Tax purposes (to the extent known at such time) among the assets of the Acquired Companies and the S&M Contracts that complies with the principles of Section 1060 of the Code and the Treasury Regulations promulgated thereunder (the "***Allocation***"). Within 30 days after its receipt of the Buyer's proposed Allocation, the Seller shall provide to the Buyer any comments thereto (or otherwise the Parties shall be deemed to have agreed to Buyer's proposed Allocation). The Parties shall use commercially reasonable efforts to incorporate into the Allocation any reasonable and timely comments provided by the Seller. If the Parties reach an agreement (or are deemed to reach an agreement) with respect to the Allocation, (a) the Parties shall use commercially reasonable efforts to update the Allocation in a manner consistent with the principles of Section 1060 of the Code following any adjustment to the items constituting consideration, (b) the Parties shall (and shall cause their respective Affiliates to) report consistently with the Allocation in all Tax Returns (including IRS Form 8594, which the Parties shall timely file with the IRS, if applicable), and no Party shall take any position that is inconsistent with the Allocation, as adjusted, in each case, unless required to do so by a "determination" as defined in Section 1313 of the Code, and (c) each of the Parties agrees to promptly advise each other regarding the existence of any Tax audit, controversy or litigation related to the Allocation. Notwithstanding the foregoing, neither Party shall be unreasonably impeded in its ability and discretion to negotiate, compromise and/or settle in good faith any Tax audit, claim, or similar proceedings in connection with the Allocation. For the avoidance of doubt, if the Parties are unable to reach an agreement within a reasonable amount of time after the Seller's receipt of the draft Allocation from the Buyer, each of the Buyer and the Seller shall use its own allocation for all applicable U.S. federal income Tax purposes.

2.6 Withholding. The Buyer shall be entitled to deduct and withhold from any payment deliverable under this Agreement to the Seller such amounts that the Buyer is required to deduct and withhold under the Code or any other applicable Law pertaining to Taxes; *provided,* that prior to withholding from any payment deliverable under this Agreement, the Buyer shall notify the Seller and shall reasonably cooperate with the Seller's efforts to reduce or minimize such withholding. The Buyer shall timely remit any such deducted and withheld amounts to the applicable Tax Authority in accordance with applicable Law. To the extent such amounts are deducted, withheld, and remitted to the appropriate Tax Authority in accordance with applicable Law, such amounts shall be treated for all purposes of this Agreement as having been paid to the Seller in respect of which such deduction, withholding, and payment was made.

Article III
PURCHASE PRICE ADJUSTMENT

3.1 Estimated Net Working Capital Adjustment Procedures.

(a) The Parties acknowledge that the Purchase Price is based in part on the Acquired Companies having an aggregate consolidated Net Working Capital as of the Measurement Time equal to at least the Net Working Capital Threshold. The Base Consideration shall be adjusted in accordance with the procedures set forth in this Section 3.1. The Seller shall prepare and deliver, or cause to be prepared and delivered, to the Buyer, no later than three Business Days prior to the Closing Date its good faith estimate of the estimated consolidated Net Working Capital of the Acquired Companies as of the Measurement Time (the "***Estimated Net Working Capital***") along with documentation reasonably sufficient to support its good faith calculation of the Estimated Net Working Capital and shall reasonably respond to questions and comments from the Buyer regarding such submission prior to the Closing Date. If the Buyer requests additional reasonable documentation supporting the Seller's good faith calculation of the Estimated Net Working Capital, the Seller shall promptly provide such additional documentation. Such estimated Net Working Capital will be prepared in accordance with GAAP in a manner consistent with the preparation of the example working capital schedule attached to this Agreement as Annex A (the "***Example Working Capital Schedule***").

(b) If the aggregate Estimated Net Working Capital of the Acquired Companies exceeds the aggregate Net Working Capital Threshold (such amount in excess of the Net Working Capital Threshold, the "***Estimated Buyer Working Capital Payment***"), then the Closing Date Payment shall be increased by an amount equal to the Estimated Buyer Working Capital Payment (as contemplated by Section 2.3(b)).

(c) If the aggregate Net Working Capital Threshold exceeds the aggregate Estimated Net Working Capital of the Acquired Companies (such amount in excess of the aggregate Net Working Capital, the "***Estimated Seller Working Capital Payment***"), then the Closing Date Payment shall be reduced by an amount equal to the Estimated Seller Working Capital Payment (as contemplated by Section 2.3(b)).

3.2 Final Net Working Capital Adjustment Procedures.

(a) No later than 60 days after the Closing Date, for the purpose of confirming the Estimated Net Working Capital, the Buyer shall prepare, or cause to be prepared, and deliver to the Seller a calculation of aggregate consolidated Net Working Capital of the Acquired Companies as of the Measurement Time (the "***Final Net Working Capital***"), which will be prepared in accordance with GAAP in a manner consistent with the preparation of the Example Working Capital Schedule, together with a worksheet showing the difference, if any, between the Final Net Working Capital and the aggregate Estimated Net Working Capital of the Acquired Companies, along with documentation reasonably sufficient to support the Buyer's good faith calculation of the Final Net Working Capital, and the Buyer shall reasonably respond to questions and comments from the Seller regarding such submission. If the Seller requests additional reasonable documentation supporting the Buyer's good faith calculation of the Final Net Working Capital, the Buyer shall promptly provide such additional documentation.

(b) If within 30 days after the date of the delivery to the Seller of the Final Net Working Capital and all supporting documentation, the Seller disagrees with any portion of the Final Net Working Capital provided by the Buyer pursuant to the immediately preceding sentence (any such disputed items being the "***Disputed Items***"), then the Seller may deliver a written notice (a "***Dispute Notice***") to the Buyer within such 30-day period, which Dispute Notice shall set forth in reasonable detail the Seller's objections and the reasons therefor and the Seller's proposed resolution of the Disputed Items (including the Seller's determination of Final Net Working Capital taking into account such proposed resolution of the Disputed Items). Unless and to the extent the Seller timely delivers a valid Dispute Notice, the Final Net Working Capital provided by the Buyer shall become final and binding on the Parties. Except for the matters specifically set out in the Dispute Notice, the Seller shall be deemed to have agreed to and accepted the calculation of the Final Net Working Capital as provided by the Buyer. Until the final determination of the Final Net Working Capital, in accordance with this Section 3.2(b), the Seller and its representatives shall have full access to the Books and Records, the personnel of, and work papers prepared by, the Buyer or the Buyer's representatives to the extent that they relate to such matters and to such historical financial information (to the extent in the Buyer's possession) relating to such matters as the Seller may reasonably request for the purpose of reviewing the determination of the Final Net Working Capital, and to prepare a Dispute Notice; *provided,* that such access shall be in a manner that does not unreasonably interfere with the normal business operations of the Buyer. If the Buyer and the Seller are unable to resolve any disagreement among them with respect to such matters within 15 days (or such longer period as mutually agreed to by the Seller and the Buyer) after the delivery of a Dispute Notice by the Seller to the Buyer, then the unresolved Disputed Items (but no others) may be referred by the Seller or the Buyer for determination to a reputable accounting firm that is mutually selected by the Seller and the Buyer and is not otherwise affiliated with, and that has not provided a significant amount of non-audit work to, the Seller, the Acquired Companies or the Buyer or their respective Affiliates. If the Seller and the Buyer are unable to select an accounting firm within five Business Days, either the Seller or the Buyer may thereafter request that the American Arbitration Association make such selection (as applicable, the firm mutually selected by the Seller and the Buyer or the firm selected by the American Arbitration Association is referred to as the "***Independent Accountant***"). Each of the Seller and the Buyer shall provide the Independent Accountant and the other Party with a statement of its position as to the amount for each Disputed Item within 15 days from the date of the engagement of the Independent Accountant. The Independent Accountant shall make a written determination as promptly as practicable, but in any event within 30 days after the engagement of the Independent Accountant. If at any time the Seller and the Buyer resolve their dispute, then notwithstanding the preceding provisions of this Section 3.2(b), the Independent Accountant's involvement promptly shall be discontinued and the Final Net Working Capital shall be revised, if necessary, to reflect such resolution and thereupon shall be final and binding for all purposes of this Agreement. The Parties shall make readily available to the Independent Accountant all relevant Books and Records relating to such matters and all other items reasonably requested by the Independent Accountant in connection with resolving the Disputed Items. The costs and expenses of the Independent Accountant shall be borne 50% by the Seller and 50% by the Buyer. The decision of the Independent Accountant shall be final and binding for all purposes of this Agreement and the Final Net Working Capital shall be revised, if necessary, to reflect such decision and thereupon shall be final and binding for all purposes of this Agreement.

(c) Following the final determination of the Final Net Working Capital, in accordance with Section 3.2(b), the Buyer or the Seller, as applicable, shall make or cause to be made such true-up payments to one another as are required to place the Buyer and the Seller in the same position in which they would have been had the Final Net Working Capital been known at the Closing and had the Final Net Working Capital, rather than the Estimated Net Working Capital, been used to determine the Closing Date Payment at the Closing.

(d) Any true-up payment required to be made by the Seller pursuant to Section 3.2(c) is referred to as the "***Final Seller NWC Payment***." If the Seller is required to make a Final Seller NWC Payment, then the Seller shall promptly (but in any event within five Business Days following determination of the Final Seller NWC Payment) pay or cause to be paid an amount equal to the Final Seller NWC Payment to the Buyer by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 3.2(d) of the Buyer Disclosure Schedules.

(e) Any true-up payment required to be made by the Buyer pursuant to Section 3.2(c) is referred to as the "***Final Buyer NWC Payment***." If the Buyer is required to make a Final Buyer NWC Payment, then the Buyer shall promptly (but in any event within five Business Days following determination of the Final Buyer NWC Payment) pay or cause to be paid an amount equal to the Final Buyer NWC Payment to the Seller by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 2.3(c) of the Seller Disclosure Schedules.

3.3 Estimated Inventory Value Adjustment Procedures.

(a) The Base Consideration shall be adjusted in accordance with the procedures set forth in this Section 3.3. The Inventory shall be measured as of the Measurement Time in accordance with the procedures set forth in Exhibit C and shall be valued in accordance with the valuation formulas set forth in Exhibit C. Each Party shall be permitted to have representatives present to observe any measurements taken of the Inventory.

(b) At least five Business Days prior to the Closing Date, the Seller shall submit in writing to the Buyer its good faith estimate of the Inventory and the Inventory Value as of the Measurement Time (the "***Estimated Inventory Value***") setting forth the types, characteristics and volumes, on a tank, truck, pipeline, vessel or other location basis, along with documentation supporting its good faith calculation of the Estimated Inventory Value and shall reasonably respond to questions and comments from the Buyer regarding such submission prior to the Closing Date. The Base Consideration payable by the Buyer on the Closing Date shall be increased by the amount of the Estimated Inventory Value.

3.4 Final Inventory Value Adjustment Procedures.

(a) No later than 60 days after the Closing Date, the Buyer shall deliver to the Seller its written calculation (the "***Inventory Statement***") of the actual Inventory Value as of the Measurement Time (the "***Final Inventory Value***"). Unless and to the extent the Seller gives notice to the Buyer (an "***Inventory Protest Letter***") on or before the 30th day after the Seller's receipt of the Inventory Statement that the Seller disputes the Final Inventory Value specified in the Inventory Statement and setting forth in reasonable detail the amounts in dispute and the reasons therefor, then the Final Inventory Value as specified in the Inventory Statement shall become final and binding on the Parties. Except for the matters specifically set out in the Inventory Protest Letter, the Seller shall be deemed to have agreed to the Inventory Statement in full. If the Seller gives an Inventory Protest Letter to the Buyer on or before such 30th day that it disputes the Final Inventory Value specified in the Inventory Statement, then the Seller and the Buyer shall meet by telephone, or at a mutually agreeable location, to discuss in good faith and attempt to reconcile their differences with respect to the amount of the Final Inventory Value that is being challenged by the Seller (the "***Inventory Challenged Amount***").

(b) If the Parties are unable to mutually resolve the Inventory Challenged Amount within 20 days after receipt of the Inventory Protest Letter by the Seller, then the Independent Accountant will be engaged by the Parties to determine the Inventory Challenged Amount. The Independent Accountant: (i) will be jointly engaged by the Seller and the Buyer; (ii) will be provided, within 10 Business Days of accepting the engagement, with a definitive written statement from the Seller and the Buyer of their respective positions and a copy of the Inventory Statement and the Inventory Protest Letter; (iii) will be advised in the engagement letter that the Parties accept the Independent Accountant as the appropriate Person to interpret this Agreement for all purposes relevant to the resolution of the Inventory Challenged Amount; (iv) will be granted access to all records and personnel of the Acquired Companies; and (v) will have 45 days to carry out a review and prepare a written statement of its decision regarding the Inventory Challenged Amount, which shall be binding and final upon the Seller and the Buyer. In no event shall the Independent Accountant's determination be outside of the range of amounts claimed by the respective Parties with respect to those items in dispute. Each Party will be afforded the opportunity to present to the Independent Accountant any material such Party deems relevant to the determination. The decision of the Independent Accountant shall be final and binding upon the Parties except in the event of manifest error (when the relevant part of their determination shall be void and the matter shall be remitted to the Independent Accountant for correction) and shall be in substitution for and precludes the bringing of any Legal Proceedings, including in any court, in connection with any dispute under this Section 3.4. The costs and expenses of the Independent Accountant shall be borne 50% by the Seller and 50% by the Buyer.

(c) Following the final determination of the Final Inventory Value, in accordance with Section 3.4(b), the Buyer or the Seller, as applicable, shall make or cause to be made such true-up payments to one another as are required to place the Buyer and the Seller in the same position in which they would have been had the Final Inventory Value been known at the Closing and had the Final Inventory Value, rather than the Estimated Inventory Value, been used to determine the Purchase Price at the Closing.

(d) Any aggregate true-up payment required to be made by the Seller pursuant to Section 3.4(c) is referred to as the "***Final Seller Inventory Payment***." If the Seller is required to make the Final Seller Inventory Payment, then the Seller shall promptly (but in any event within five Business Days following determination of the Final Seller Inventory Payment) pay or cause to be paid an amount equal to the Final Seller Inventory Payment to the Buyer by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 3.2(d) of the Buyer Disclosure Schedules.

(e) Any aggregate true-up payment required to be made by the Buyer pursuant to Section 3.4(c) is referred to as the "***Final Buyer Inventory Payment***." If the Buyer is required to make the Final Buyer Inventory Payment, then the Buyer shall promptly (but in any event within five Business Days following determination of the Final Buyer Inventory Payment) pay or cause to be paid an amount equal to the Final Buyer Inventory Payment to the Seller by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 2.3(c) of the Seller Disclosure Schedules.

3.5 Adjustment to Purchase Price. All amounts to be paid under this Article III shall be deemed to be adjustments to the Purchase Price, except as otherwise required by applicable Law following a final determination (as defined in Section 1313 of the Code).

Article IV
ROW ESCROW

4.1 ROW Escrow Fund.

(a) At Closing, the Buyer, the Seller, and the Escrow Agent will enter into an escrow agreement (the "***ROW Escrow Agreement***") in substantially the form attached hereto as Exhibit D with such additional revisions as the Escrow Agent may require, subject to the prior approval of the Buyer and the Seller, such approval not to be unreasonably withheld; *provided,* that the Signing Deposit and the ROW Escrow Funds shall be held in separate accounts with the Escrow Agent. The ROW Escrow Agreement will provide that releases of any of the ROW Escrow Funds shall be made only in accordance with (i) written instructions that are jointly signed by the Seller and the Buyer, which instructions shall be in a form that complies with the requirements of the ROW Escrow Agreement (a "***Joint Instruction Letter***"), (ii) a final Order rendered pursuant to Section 14.5 or the ROW Escrow Agreement specifying the amount of ROW Escrow Funds to be released from the ROW Escrow Account and the Person or Persons to whom such ROW Escrow Funds shall be released, or (iii) as otherwise specifically provided in the ROW Escrow Agreement. The costs and expenses of the Escrow Agent shall be borne 50% by the Seller and 50% by the Buyer.

(b) In the event that the Seller becomes entitled to receive a distribution of any of the funds within the ROW Escrow Account in accordance with the terms of Section 8.17 and the ROW Escrow Agreement, then the Seller and the Buyer, if necessary, shall promptly (but in no event less than two Business Days) execute and deliver a Joint Instruction Letter to the Escrow Agent directing the Escrow Agent to release such funds to the Seller.

(c) If either the Seller or the Buyer shall fail to timely execute and deliver a Joint Instruction Letter when required under this Agreement, the Seller or the Buyer, as applicable, shall be entitled to seek an Order (in accordance with Section 14.5) or specific performance (in accordance with Section 14.10), in each case that will enable the Escrow Agent to release to the applicable Person or Persons the ROW Escrow Funds to which they are entitled under this Agreement.

Article V
REPRESENTATIONS AND WARRANTIES OF THE SELLER

BKEP Crude hereby represents and warrants to the Buyer solely with respect to BKEP Crude, and BKEP S&M hereby represents and warrants to the Buyer solely with respect to BKEP S&M, as of the Execution Date and as of the Closing Date as follows:

5.1 Authority; Enforceability. Each Seller has the requisite power and authority to execute each Transaction Document to which it is, or will be as of the Closing, a party, and to perform its obligations under each Transaction Document to which it is, or will be as of the Closing, a party. The execution, delivery and performance of each Transaction Document to which such Seller is, or will be as of the Closing, a party has been duly and validly authorized by all required limited liability company action of such Seller. This Agreement has been, and each of the other Transaction Documents to which such Seller is, or will be as of the Closing, a party has been or will be (when executed and delivered at the Closing), duly and validly executed and delivered by such Seller. Assuming the due authorization, execution and delivery by the other parties hereto and thereto, this Agreement constitutes, and each of the other Transaction Documents to which such Seller is, or will be as of the Closing, a party will constitute (when executed and delivered at the Closing), the valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting creditors' rights generally or by legal principles governing the availability of equitable remedies, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought at law or in equity) (such laws and principles being referred to herein as "***Creditors' Rights***").

5.2 Consents; Absence of Conflicts.

(a) Except for the consents, approvals and authorizations set forth in Section 5.2(a) of the Seller Disclosure Schedules (collectively, the "***Seller Approvals***"), no consent, approval or authorization of any Person (including any Governmental Authority) is required for the execution or delivery by such Seller of any Transaction Document to which such Seller is, or will be as of the Closing, a party or the consummation by such Seller of the transactions contemplated thereby, other than those consents, approvals and authorizations: (i) as have been obtained prior to the Execution Date or will be obtained prior to the Closing Date or (ii) the failure of which to obtain or give would not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of the Seller to perform its obligations under the Transaction Documents to which such Seller is, or will be as of the Closing, a party, or prevent or materially delay consummation of the transactions contemplated thereby.

(b) The execution and delivery of each Transaction Document to which such Seller is, or will be as of the Closing, a party, and the performance by such Seller of its obligations thereunder and the consummation of the transactions contemplated thereby by such Seller (assuming the Seller Approvals have been obtained) does not and will not:

(i) Breach any Laws applicable to such Seller or any Acquired Company;

(ii) conflict with or violate the Organizational Documents of such Seller or any Acquired Company;

(iii) require the prior consent or approval of any Person (other than the Seller Approvals and consents and approvals which, if not obtained, would not be reasonably likely to materially and adversely impact the operations of the Acquired Companies) under, conflict with, result in a Breach of, or constitute a default or to the Knowledge of the Seller, an event that, with or without notice or lapse of time or both, would constitute a Breach under, result in the acceleration of or create in any Person the right to accelerate, terminate, modify or cancel any Scheduled Contract or S&M Contract to which such Seller or any Acquired Company is a party or by which such Seller or any Acquired Company is bound or to which any of their respective properties and assets are subject; or

(iv) result in the creation of any Lien upon the Acquired Interests, the S&M Contracts or any Lien (other than Permitted Liens) arising through such Seller upon any of the assets or properties of any Acquired Company;

except, in the case of clause (i) or (ii) above, as would not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of such Seller to timely perform its obligations under the Transaction Documents to which such Seller is, or will be as of the Closing, a party or prevent or materially delay consummation of the transactions contemplated thereby.

5.3 Ownership. BKEP Crude is the sole record and beneficial owner of the Acquired Interests and the Acquired Interests constitute the only issued and outstanding Equity Interests in each Acquired Company. Except as set forth on Section 5.3 of the Seller Disclosure Schedules, the BKEP Crude's title to the Acquired Interests is free and clear of all Liens other than transfer restrictions of general applicability imposed thereon by applicable securities Laws. The Acquired Interests have been, and on the Closing Date shall be, duly and validly issued in accordance with the Organizational Documents of each Acquired Company. The Acquired Interests are not certificated. Except for the Acquired Interests, the Seller does not own of record or beneficially, or have any Equity Interest in, or right to acquire any other Equity Interest in, any Acquired Company. At the Closing, the transfer and assignment of the Acquired Interests to the Buyer in accordance with the terms of this Agreement will transfer good and marketable title to the Acquired Interests free and clear of any Liens other than transfer restrictions of general applicability imposed thereon by applicable securities Laws and Liens created by or for the benefit of the Buyer or its Affiliates.

5.4 Organization; Existence and Good Standing. Each Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware.

5.5 Legal Proceedings. There are no Legal Proceedings pending or, to the Knowledge of the Seller, threatened that (a) challenge the validity or enforceability of such Seller's obligations under any Transaction Document to which such Seller is, or will be as of the Closing, a party or (b) seek to prevent or delay, or otherwise would reasonably be expected to impair in any material respect the ability of the Seller to perform its obligations under the Transaction Documents to which such Seller is, or will be as of the Closing, a party.

5.6 Brokers' Fees. Except for Simmons Energy, a Division of Piper Sandler, no Seller is liable for any investment banking fee, finder's fee, brokerage payment or other like payment in connection with the origination, negotiation or consummation of the Contemplated Transactions and no such fees or payments will be the obligation of any of the Acquired Companies or the Buyer.

Article VI
REPRESENTATIONS AND WARRANTIES
REGARDING THE ACQUIRED COMPANIES

BKEP Crude hereby represents and warrants to the Buyer solely with respect to the Assets, the Acquired Companies and the Business, and BKEP S&M hereby represents and warrants to the Buyer solely with respect to the S&M Contracts, as of the Execution Date and as of the Closing Date as follows:

6.1 Organization; Existence and Good Standing. Each of the Acquired Companies is a legal entity duly formed, validly existing and in good standing under the laws of its respective state of formation. Each of the Acquired Companies has all requisite power and authority to own, lease and operate the properties and assets it currently owns, leases and operates and to carry on its business as such business is currently conducted. True, correct and complete copies of the Organizational Documents of each Acquired Company, as amended and presently in effect, have been provided to the Buyer. There is no pending or, to the Knowledge of the Seller, threatened Legal Proceeding for the dissolution, liquidation, insolvency, or rehabilitation of any Acquired Company.

6.2 Foreign Qualification. Each Acquired Company is duly qualified to do business as a foreign limited liability company and is in good standing in each jurisdiction in which the nature of its material business as currently conducted or the character of the property owned or leased by it makes such qualification necessary.

6.3 Capitalization; Subsidiaries.

(a) Section 6.3(a) of the Seller Disclosure Schedules sets forth: (i) all of the issued and outstanding Equity Interests in each Acquired Company and the record and beneficial owner of each respective Equity Interest; (ii) the jurisdiction of formation of each Acquired Company; (iii) the jurisdictions in which each Acquired Company is qualified or holds licenses to do business as a limited liability company; and (iv) a list of each Acquired Company's directors, managers and officers. The Equity Interests in each Acquired Company, as reflected on Section 6.3(a) of the Seller Disclosure Schedules, have been duly authorized and validly issued and are fully paid (to the extent required under the Organizational Documents of the Acquired Company) and non-assessable (except as such nonassessability may be affected by applicable Law) and were not issued in violation of, and, except as identified in Section 6.3(b) of the Seller Disclosure Schedules, are not subject to, any Preferential Right or any similar right. Upon consummation of the Contemplated Transactions, the Buyer shall own, directly and indirectly, all of the Equity Interests in each Acquired Company, free and clear of all Liens, other than transfer restrictions of general applicability imposed thereon by applicable securities laws.

(b) Except as set forth in Section 6.3(b) of the Seller Disclosure Schedules, there are no Contracts (including Preferential Rights, options, warrants, calls and preemptive rights) obligating any Acquired Company to (i) issue, sell, pledge, dispose of or encumber any Equity Interests of such Acquired Company or any securities convertible, exercisable or exchangeable into Equity Interests of such Acquired Company, or (ii) redeem, purchase or acquire in any manner any Equity Interests of such Acquired Company or any securities that are convertible, exercisable or exchangeable into any Equity Interests of such Acquired Company. No Contracts exist with respect to the voting of or prohibiting the transfer of the Equity Interests of any Acquired Company.

(c) Other than as set forth in Section 6.3(c) of the Seller Disclosure Schedules, (i) there are no Persons or joint ventures in which any of the Acquired Companies owns, of record or beneficially, any direct or indirect (through a Subsidiary or otherwise) Equity Interest, and (ii) there are no outstanding Obligations of any Acquired Company to provide funds to or make any investment (in either case, in the form of a loan, capital contribution, purchase of an Equity Interest or otherwise) in, any other Person.

6.4 Ordinary Course of Business. Except as set forth in Section 6.4 of the Seller Disclosure Schedules, since the Interim Financial Information Date:

(a) the Acquired Companies have conducted their business in, and such business has been operated and maintained in, the Ordinary Course of Business in all material respects; and

(b) there has been no merger or consolidation of any Acquired Company with any other Person or any acquisition by any Acquired Company of any Equity Interests or material assets or business of any other Person or any agreement with respect thereto.

6.5 Affiliate Transactions. Except as set forth in Section 6.5 of the Seller Disclosure Schedules and except for Contracts solely among one or more Acquired Companies, neither the Seller, nor any of its Affiliates (excluding the Acquired Companies) (a) is a party to any Contract with any Acquired Company, or (b) owns or leases any material property or right which is used by any Acquired Company.

6.6 Real Property.

(a) Section 6.6(a) of the Seller Disclosure Schedules sets forth a correct and complete list and description (containing a materially accurate description) (including the street addresses if applicable and a legal description for each parcel) of all real property (excluding Easements) in which any Acquired Company owns a fee ownership interest (the "***Owned Real Property***").

(b) Section 6.6(b) of the Seller Disclosure Schedules sets forth a correct and complete list and description (containing a materially accurate description) (including the street addresses if applicable and a legal description if available for each parcel) of all real property (excluding Easements) in which any Acquired Company owns a leasehold interest (the "***Leased Real Property***").

(c) Sections 6.6(a) and 6.6(b) of the Seller Disclosure Schedules, as applicable, list (containing a materially accurate description) (i) the street address of each parcel of real property (if applicable) and (ii) if such property is leased or subleased by the applicable Acquired Company, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property. The Owned Real Property constitutes all real property (other than Easements) reflected in the Interim Financial Information or acquired after the Interim Financial Information Date, other than properties and assets sold or otherwise disposed of in the Ordinary Course of Business since the Interim Financial Information Date.

(d) Except as set forth in Section 6.6(d) of the Seller Disclosure Schedules, the Acquired Companies have good and valid title to the Owned Real Property and a valid leasehold in the Leased Real Property in each case free and clear of Liens, except for Permitted Liens.

(e) Except as set forth in Section 6.6(e) or Section 6.10(a) of the Seller Disclosure Schedules, there are no subleases, assignments, occupancy agreements or other agreements granting to any Person (other than one or more Acquired Companies) the right of use or occupancy of any Owned Real Property or Leased Real Property and there is no Person (other than one or more Acquired Companies) in possession of any of such Owned Real Property or Leased Real Property other than customary Easements relating to power, water and other utilities and other immaterial Easements which do not materially and adversely impact the conduct of the Business by the Acquired Companies. Except as set forth in Section 6.6(e) of the Seller Disclosure Schedules, the Seller has delivered or made available to the Buyer true, correct and complete copies of any leases in its possession or control pertaining to the leasing of the Owned Real Property or the Leased Real Property.

(f) The Seller has delivered or made available to the Buyer true, correct and complete copies of all title insurance policies, opinions, abstracts and surveys in the possession or control of the Seller or the Acquired Companies relating to the Owned Real Property.

(g) There are no existing or, to the Knowledge of the Seller, threatened condemnation proceedings that affect the Owned Real Property or the Leased Real Property or any material portion thereof.

6.7 Easements. The Seller has made available to the Buyer (at the Acquired Companies' offices or via access to the Acquired Companies' Easements data base) true, correct and complete copies of the documents in its possession or control that create the Easements used by the Acquired Companies in the conduct of the Business. Except as set forth in Section 6.7 of the Seller Disclosure Schedules, and to the Knowledge of the Seller, (a) the Acquired Companies own or otherwise lawfully hold all Easements for the ownership and operation of the pipelines owned by the Acquired Companies and used in the Business, except for any such failures as would not reasonably be expected to materially impair the overall operations of the Acquired Companies, and (b) no Acquired Company is in Breach under any Easements which default would reasonably be expected to materially impair the overall operations of the Acquired Companies.

6.8 Personal Property. Except as set forth in Section 6.8 of the Seller Disclosure Schedules, the Acquired Companies have good and valid title to (or a valid leasehold interest in) the tangible personal property currently used in the conduct of the Business, and such title or leasehold interests are free and clear of Liens, except for Permitted Liens and other than any such failures as would not reasonably be expected to materially impair the overall operations of the Acquired Companies.

6.9 Legal Compliance; Permits. Except as set forth in Section 6.9 of the Seller Disclosure Schedules, (a) each Acquired Company is in compliance in all material respects with all applicable Laws, including applicable regulations of the US Department of Transportation Pipeline and Hazardous Materials Safety Administration with respect to the inspection and repair of tanks and pipelines owned, leased or operated by the Acquired Companies, (b) each Acquired Company holds all material Permits required to conduct its business as currently conducted, and (c) no Acquired Company is in Breach in any material respect of any term, condition or provision of any Permit (and no event has occurred which, with notice or the lapse of time or both, would constitute any such Breach in any material respect). Notwithstanding the foregoing, this Section 6.9 shall not apply to any matters relating to tax matters, employee, labor and employment matters, employee benefit plan matters or environmental matters as it is the Parties' intent that Sections 6.17, 6.19 and 6.20, respectively, shall cover such matters exclusively.

6.10 Contracts.

(a) Section 6.10(a) of the Seller Disclosure Schedules sets forth a correct and complete list as of the Execution Date of the following Contracts to which any Acquired Company is a party or by which any of them or their respective assets or properties are bound (collectively, the "***Scheduled Contracts***"):

(i) each Contract for lease of personal property involving aggregate payments in excess of $50,000 in any calendar year;

(ii) each Contract with respect to the lease or sublease of Leased Real Property (excluding Easements) involving aggregate payments in excess of $50,000 in any calendar year;

(iii) except for Contracts of the nature described in clauses (i) through (ii) above or clause (iv) below and except for Benefit Plans, each Contract involving aggregate payments by or to any Acquired Company in excess of $50,000 in any future calendar year that cannot be terminated by such Acquired Company upon 90 days' or less notice without payment penalty;

(iv) each employment Contract or for an independent contractor which is not cancelable without payment or penalty by the recipient of the services on notice of 90 days or less;

(v) each Contract that purports to limit the freedom of any Acquired Company to compete in any line of business or in any geographic area or that purports to limit the Persons to whom an Acquired Company may sell products or deliver services;

(vi) each partnership, joint venture, investment or other similar Contract, or Contract that provides for the sharing of profits of any Acquired Company with any third Person;

(vii) each financial derivatives master agreement or confirmation, or futures account opening agreements or brokerage statements, or similar Contract, evidencing financial or commodity hedging or similar trading activities;

(viii) each Contract that provides for the assumption of or indemnification by an Acquired Company with respect to any Tax liability or liability under any Environmental Law of any Person;

(ix) each Contract that requires any Acquired Company to purchase its total requirements of any product or service from a third party or that contains "take or pay" provisions, or minimum volume, exclusive purchaser, exclusive supplier or similar arrangements or commitments;

(x) each Contract for the sale of any material assets of any Acquired Company other than in the Ordinary Course of Business or for the grant to any Person of any Preferential Rights to purchase any material assets or Equity Interest of any Acquired Company, and each Contract that grants any right of first refusal with respect to any material assets of any Acquired Company;

(xi) any outstanding agreements of surety or indemnification, direct or indirect, by an Acquired Company not otherwise disclosed pursuant to the foregoing (other than as entered into by an Acquired Company in the Ordinary Course of Business without the primary purpose of indemnifying another Person);

(xii) all outstanding Acquired Company Guarantees;

(xiii) all Contracts with any Governmental Authority to which any Acquired Company is a party;

(xiv) any Contract between an Acquired Company, on the one hand, and the Seller or any of the Seller's Affiliates, on the other hand (including an Acquired Company) that is material to the operation of the Assets or the Business; and

(xv) any Contracts relating to services provided by a third party to any Acquired Company that are material to the operations of the Assets or the Business or that could result in aggregate payments by such Acquired Company in excess of $50,000 per year following the Closing.

(b) Except as specifically described in Section 6.10(b) of the Seller Disclosure Schedules, true, correct and complete copies of the Scheduled Contracts have been provided to the Buyer. Except as set forth in Section 6.10(b) of the Seller Disclosure Schedules, each Scheduled Contract is a valid and binding obligation of the Acquired Company party thereto and, to the Knowledge of the Seller, of each other party thereto in accordance with its respective terms, except as enforceability may be limited by Creditors' Rights and except for such Scheduled Contracts that have expired without default thereunder in accordance with their terms. None of the Acquired Companies party thereto nor, to the Knowledge of the Seller, any other party to such Scheduled Contracts, is (with or without the lapse of time or the giving of notice, or both) in Breach in any material respect thereunder, and to the Knowledge of the Seller, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a Breach thereunder.

(c) BKEP S&M has provided true, correct and complete copies of the S&M Contracts to the Buyer (which may be redacted in a customary manner so long as no redaction covers terms that would adversely affect the S&M Contracts). Each S&M Contract is a valid and binding obligation of BKEP S&M and, to the Knowledge of BKEP S&M, of each other party thereto in accordance with its respective terms, except as enforceability may be limited by Creditors' Rights. Neither BKEP S&M nor, to the Knowledge of BKEP S&M, any other party to such S&M Contracts, is (with or without the lapse of time or the giving of notice, or both) in Breach in any material respect thereunder, and to the Knowledge of BKEP S&M, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a Breach thereunder.

6.11 Intellectual Property. The Acquired Companies do not own any material Intellectual Property. The Acquired Companies have the right to use pursuant to license, sublicense, agreement or otherwise all material items of Intellectual Property used or required in the operation of the Business. No third party has asserted in writing to the Seller or its Affiliates that any Acquired Company is infringing, in any material respect, the Intellectual Property of such third party or has challenged or questioned the validity of such Acquired Company's rights to its owned or licensed Intellectual Property.

6.12 Receivables. Except as set forth in Section 6.12 of the Seller Disclosure Schedules, the accounts receivable reflected on the Interim Financial Information and the accounts receivable arising after the date thereof, in all material respects, (a) have arisen from bona fide and arm's length transactions entered into by the Acquired Companies involving the sale of goods or the rendering of services in the Ordinary Course of Business, (b) constitute only valid claims of the Acquired Companies which are not, to the Knowledge of the Seller, subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the Ordinary Course of Business, and (c) are anticipated to be collectible in full in the Ordinary Course of Business. The reserve for bad debts shown on the Interim Financial Information or, with respect to accounts receivable arising after the Interim Financial Information Date, on the accounting records of the Acquired Company have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes. No material account receivable is being disputed by any payor, and no payor has refused to pay a material account receivable or asserted a set off right as the basis for such non-payment.

6.13 Payables. No accounts payable in excess of $50,000 (individually or collectively) of the Acquired Companies as of the Closing Date are more than 60 days past due or have arisen from any obligations other than bona fide and arm's length transactions.

6.14 Bank Accounts. Section 6.14 of the Seller Disclosure Schedules sets forth the account numbers and names of each bank, broker or other depository institution at which any of the Acquired Companies maintains a depository account, and the names of all persons authorized to sign on or withdraw funds from each such account.

6.15 Financial Information.

(a) Section 6.15(a) of the Seller Disclosure Schedules sets forth true, correct and complete copies of the following (collectively the "***Financial Information***"):

(i) the trial balances for the Acquired Companies as of and for the year ended December 31, 2019, and

(ii) the trial balances for the Acquired Companies as of and for the nine-month period ended September 30, 2020 (such trial balance sheet being the "***Interim Financial Information***" and such date being the "***Interim Financial Information Date***").

(b) The Financial Information (i) has been prepared from the books and records of the Acquired Companies and in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except for the absence of notes and as otherwise noted therein, and subject to normal and recurring year-end adjustments, and (ii) fairly presents in all material respects the financial condition and results of operations of the Acquired Companies at the respective dates and for the respective periods described above. The Acquired Companies maintain a standard system of accounting established and administered in accordance with GAAP.

(c) To the Knowledge of the Seller, the Seller has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that, in all material respects, (i) all transactions related to the Acquired Companies are executed in accordance with management's general or specific authorization, (ii) all transactions related to the Acquired Companies are recorded as necessary to permit the preparation of the Financial Information in conformity with GAAP, consistently applied, and to maintain proper accountability for items, (iii) recorded accountability for items related to the Acquired Companies is compared with actual levels at reasonable intervals and appropriate action is taken with respect to any differences, and (iv) there are no material weaknesses or significant deficiencies in the internal accounting controls related to the Acquired Companies.

6.16 **Absence of Undisclosed Liabilities**. Except as and to the extent (a) reflected and reserved against in the Interim Financial Information, (b) set forth on the Seller Disclosure Schedules, or (c) incurred in the Ordinary Course of Business after the Interim Financial Information Date, since the Interim Financial Information Date, none of the Acquired Companies has any Liability that is, individually or in the aggregate, in excess of $250,000.

6.17 **Taxes**. Except as set forth in Section 6.17 of the Seller Disclosure Schedules:

(a) All material Tax Returns required to be filed by or with respect to each Acquired Company have been timely filed with the appropriate Tax Authorities, and all such Tax Returns are true, correct and complete in all material respects.

(b) All Taxes due and payable by each Acquired Company (whether or not shown on any Tax Return) have been paid in full, and no unsatisfied deficiency, delinquency or default for any Tax has been claimed, proposed, assessed against or, to the Knowledge of the Seller, threatened with respect to such Acquired Company or its assets or properties, nor has any Acquired Company or Seller received notice of any such deficiency, delinquency or default.

(c) Each Acquired Company has withheld or collected and paid over to the appropriate Tax Authorities all material Taxes required by Law to be withheld or collected, including withholding of employment Taxes and Taxes pursuant to Sections 1441 and 1442 of the Code or similar provisions under any state, local or foreign Tax Laws, and each Acquired Company has properly received and maintained any and all certificates, forms and other documents required by Law for any exemption from withholding and remitting any Taxes.

(d) There are no Liens for unpaid Taxes of or with respect to an Acquired Company or its assets or properties other than Permitted Liens.

(e) There are no Legal Proceedings pending against or with respect to any Liability of an Acquired Company for any Taxes, and to the Knowledge of the Seller, no such Legal Proceeding is proposed or threatened.

(f) Neither any Acquired Company nor the Seller has requested, or been granted, any waiver of any federal, state, local or foreign statute of limitations with respect to, or any extension of a period for the assessment of, any material Tax with respect to an Acquired Company, and (other than extensions that are automatically granted) no extension or waiver of time within which to file any Tax Return of, or applicable to, an Acquired Company or its assets or properties has been granted or requested which has not since expired.

(g) No claim that remains outstanding has ever been made by any Tax Authority in a jurisdiction where an Acquired Company has not filed a Tax Return that either such Acquired Company was required to file such a Tax Return with that Tax Authority or was or may be subject to taxation by such Tax Authority for Taxes that would be covered by such Tax Return. No Acquired Company has any operations outside of the United States and is not currently, and has never been, subject to Taxes in any jurisdiction outside of the United States.

(h) None of the assets of any Acquired Company includes any stock, partnership interests, limited liability company interests, legal or beneficial interests or any other equity interests in or of any Person, and none of such assets are subject to any Tax partnership agreement or provisions requiring a partnership income Tax Return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code.

(i) No Acquired Company (i) has entered into any agreement or arrangement with any Tax Authority that requires such Acquired Company to take any action or refrain from taking any action with respect to Tax matters, (ii) is a party to any agreement with any Tax Authority with respect to Tax matters that would be terminated or adversely affected as a result of the consummation of the Contemplated Transactions, (iii) has participated in, does not currently participate in, and has no liability for the payment of any Tax resulting from a Person’s participation in, any “reportable transaction” as defined in Section 6707A(c) of the Code and within the meaning of Treasury Regulations Section 1.6011-4(b) (and all predecessor Treasury Regulations) or any transaction requiring disclosure under a corresponding or similar provision of state, local or foreign Tax Law, (iv) is a party to any Tax sharing, allocation, indemnity or any similar written or unwritten agreement, arrangement, understanding or practice relating to Taxes, or (v) has ever been a member of a Consolidated Group and has any potential liability for the Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Tax Law), as a transferee or successor, by contract or otherwise.

(j) No Acquired Company will be required to include any material item of income in, or exclude any material item of deduction from, any taxable income for any Tax period (or portion thereof) ending after the Closing Date as a result of (i) any change in method of accounting for a taxable period ending on or prior to the Closing Date, (ii) any use of an improper method of accounting for a taxable period ending on or prior to the Closing Date, (iii) any "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax Law) executed on or prior to the Closing Date, (iv) any installment sale or open transaction disposition made on or prior to the Closing Date, or (v) any prepaid amount received on or prior to the Closing Date.

(k) Each Acquired Company has disclosed on its Tax Returns all positions taken therein that could reasonably be expected to give rise to a substantial understatement of Tax within the meaning of Section 6662 of the Code (or any similar provision of state, local or foreign law).

(l) No Acquired Company is a party to any agreement, contract, arrangement or plan that has resulted, or could result, individually or in the aggregate, (i) in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code, or (ii) an obligation to indemnify, gross-up or otherwise compensate any Person, in whole or in part, for any excise tax under Section 4999 of the Code that is imposed on such Person or any other Person.

(m) Since its formation, each Acquired Company has been classified as being disregarded as an entity separate from the Seller (or the Person from whom the Seller is disregarded) for U.S. federal income Tax purposes (and, where applicable, state, local and foreign Tax purposes), and no action has been taken or election has been filed on or prior to the Closing Date to cause a change of such classification for U.S. federal income Tax purposes (or, where applicable, state, local or foreign Tax purposes).

6.18 Legal Proceedings. Except as set forth in Section 6.18 of the Seller Disclosure Schedules, there are no Legal Proceedings pending or, to the Knowledge of the Seller, threatened against or by any Acquired Company (a) which would reasonably be likely to involve payments by or to an Acquired Company of $100,000 or more or (b) against or by any Acquired Company, the Seller or any Affiliate of the Seller that challenges or seeks to prevent, enjoin or otherwise delay the Contemplated Transactions beyond the Outside Date. Except as set forth in Section 6.18 of the Seller Disclosure Schedules, no Acquired Company is subject to any Order or similar decree of any Governmental Authority.

6.19 Employees, Employee Benefits and ERISA Compliance.

(a) None of the Acquired Companies have, and since January 1, 2016 have not had, any full-time or part-time employees.

(b) None of the Acquired Companies sponsors, maintains or contributes to any Benefit Plan, including any Benefit Plan that is subject to title IV of ERISA or Section 412 of the Code.

(c) (i) There are no collective bargaining or other labor union agreements to which any of the Acquired Companies or BKEP Management, Inc. (the "***Employer***") is a party or by which any of them are bound, with respect to the Business or the employees of the Employer who provide services to or for the benefit of any of the Acquired Companies (the "***Employees***"). Except as set forth in Section 6.19(c)(i) of the Seller Disclosure Schedules, none of the Acquired Companies or the Employer with respect to the Business or the Employees (A) is engaged in any unfair labor practices, has any unfair labor practice charges or complaints before the National Labor Relations Board pending or, to the Knowledge of the Seller, threatened against it or (B) has received any written notice of any Claims, charges, complaints or proceedings pending or, to the Knowledge of the Seller, threatened against it before the Equal Employment Opportunity Commission, Department of Labor or any other Governmental Authority responsible for regulating employment practices. No collective bargaining agreement is currently being negotiated by any of the Acquired Companies or the Employer with respect to the Business or the Employees. To the Knowledge of the Seller, there are no organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit that would affect the operations of the Acquired Companies or the Business as currently conducted.

(ii) Section 6.19(c)(ii) of the Seller Disclosure Schedules lists all Employees of the Employer as of the Execution Date, and includes, with respect to each Employee, his or her name, location, and position or job title. Compensation levels for such Employees (including base salary or hourly rate of pay, bonuses and commissions) has been made available or provided to the Buyer separately.

(iii) Except as set forth on Section 6.19(c)(iii) of the Seller Disclosure Schedules, there are no employment agreements between the Employer, on the one hand, and any of the Employees, on the other hand, and, to the Knowledge of Seller, there are no agreements with the Employees restricting their ability to accept employment with the Buyer or its Affiliates.

(iv) Except for any workers compensation claims by Employees listed on Section 6.19(c)(iv) of the Seller Disclosure Schedules, there are no material pending, or to the Knowledge of the Seller, threatened Legal Proceedings by any Employee against any of the Acquired Companies or the Employer alleging a violation of, or non-compliance with, statutory or common laws relating to employment, employment practices, or terms and conditions of employment.

(d) Section 6.19(d) of the Seller Disclosure Schedules sets forth a correct and complete list of each material Benefit Plan and each other material employee benefit policy, program or arrangement applicable to the Employees (or any of their dependents or beneficiaries), and the Seller has made provided to the Buyer reasonably detailed descriptions of such Benefit Plans.

6.20 Environmental Matters. Except as set forth in Section 6.20 of the Seller Disclosure Schedules:

(a) The assets and operations of the Acquired Companies and the Business are, and have been since January 1, 2017, in compliance in all material respects with all applicable Environmental Laws;

(b) Since January 1, 2017, all material Environmental Permits required to be obtained, filed or applied for by the Acquired Companies in connection with the Business or the ownership or operation of their respective assets as owned or operated prior to the Execution Date have been duly obtained, filed or applied for by the Acquired Companies, as applicable, and each of the Acquired Companies is and, since January 1, 2017, has been in compliance, in all material respects, with the terms and conditions of such Environmental Permits, as applicable;

(c) To the Knowledge of Seller, Section 6.20(c) of the Seller Disclosure Schedules sets forth a correct and complete list of all ongoing Remediation projects at, on or related to any of the properties or assets owned, leased or operated by or on behalf of the Acquired Companies;

(d) Section 6.20(d) of the Seller Disclosure Schedules sets forth a correct and complete list of all saltwater disposal wells owned, leased or used by any Acquired Company, since January 1, 2017.

(e) The Seller has, prior to the Execution Date, provided to the Buyer copies of (i) all material environmental site assessments, audits, investigations or studies that are in the possession or control of the Seller or the Acquired Companies relating to any Acquired Company's (A) compliance in all material respects with Environmental Laws, (B) receipt of material Environmental Claims, or (C) Release of Hazardous Materials or Environmental Condition, the Remediation of which has or is reasonably likely to result in any Acquired Company incurring Liabilities under Environmental Law in excess of $200,000; and (ii) all material documents concerning currently planned or anticipated material capital expenditures required under Environmental Law to Remediate or otherwise control pollution or emissions of pollutants, manage waste or otherwise ensure compliance in all material respects with current Environmental Laws (including costs of any material Remediation, material pollution control equipment and material operational changes, in each instance, in the next 12 months);

(f) There are no pending or, to the Knowledge of the Seller, threatened material Environmental Claims relating to the Acquired Companies or the ownership or operation of the Acquired Companies' assets or the Business;

(g) No Acquired Company is subject to any outstanding Order issued by a Governmental Authority under or pursuant to any Environmental Laws;

(h) No Acquired Company has assumed by contract any outstanding Liabilities arising under Environmental Laws of any other Person other than any of the other Acquired Companies; and

(i) Since January 1, 2017, no Acquired Company has disposed of or arranged for the disposal of any Hazardous Materials (excluding garbage and household or office trash) in the conduct of the Business to or at any third person disposal facility other than sales in the Ordinary Course of Business or as would not reasonably be expected to result in material liability to the Acquired Companies under Environmental Law.

6.21 Pipelines. There are no administrative or regulatory Legal Proceedings pending or, to the Knowledge of Seller, threatened against the Acquired Companies the results of which are reasonably likely to materially change, alter or modify the rates, charges or fees for transportation services related to the pipelines owned by the Acquired Companies or any other terms or conditions of service currently in effect under any tariffs issued by the Acquired Companies currently in effect.

6.22 Storage Tanks.

(a) Section 6.22(a) of the Seller Disclosure Schedules sets forth a correct and complete list (containing a materially accurate description) of all above ground tanks that are owned, leased or used or held for use by the Acquired Companies (including pursuant to terminalling agreements) that have a shell capacity of 300 barrels or greater and for each such tank lists its (a) location, (b) size (shell capacity), (c) whether such tank is active or idle, (d) the type of product(s) such tank contains, (e) the type of tank (i.e., fixed roof, internal floating roof, external floating roof, bullet, or dome), and (f) date of last API 653 internal inspection, if applicable.

(b) Section 6.22(b) of the Seller Disclosure Schedules sets forth a correct and complete list (containing a materially accurate description) of all underground storage tanks that are owned, leased or used or held for use by the Acquired Companies.

6.23 Condition and Sufficiency of the Assets. Except as set forth in Section 6.23 of the Seller Disclosure Schedules, the personal property and real property owned or leased by the Acquired Companies (including the Excluded Assets) constitute all of the rights (including contract rights), property and assets used by the Acquired Companies in the conduct of the Business as being conducted on the Execution Date in all material respects. The material buildings, plants, structures, machinery, equipment, pipelines, vehicles, and other items of tangible personal property of the Acquired Companies are in good operating condition and repair in all material respects taken as a whole for the continued conduct of the Business as being conducted on the Execution Date, subject to ordinary maintenance and repairs and ordinary wear and tear of no more than $100,000.

6.24 Insurance. Section 6.24 of the Seller Disclosure Schedules sets forth a true and complete list of all material policies, binders, and insurance contracts under which any Acquired Company, the Business or any of the Acquired Companies' assets is insured (the "***Insurance Policies***"). Each of the Insurance Policies is in full force and effect, and there has been no written notice of any cancellation or, to the Knowledge of the Seller, threatened cancellation of any Insurance Policy by any applicable insurance provider. There is no Claim by any Acquired Company pending under any Insurance Policy or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. To the Knowledge of the Seller (i) no event has occurred which, with notice or the lapse of time, would constitute a Breach, or permit termination of any such policies, (ii) since January 1, 2017, no policy limits of such Insurance Policies have been exhausted or materially eroded or reduced and policies providing substantially similar insurance coverage have been in effect continuously, (iii) the Acquired Companies have not failed to give any notice or present any material Claims under any applicable Insurance Policy in a due and timely fashion, (iv) since January 1, 2017, no insurer has denied, rejected, questioned or disputed any pending Claims, and (v) there are no open Claims with any insolvent carriers.

6.25 **Brokers' Fees**. Except as set forth in Section 6.25 of the Seller Disclosure Schedules, no Acquired Company is liable for any investment banking fee, finder's fee, brokerage payment or other like payment in connection with the origination, negotiation or consummation of the Contemplated Transactions that will be the obligation of any of the Acquired Companies.

6.26 **Waiver of Other Representations or Warranties**.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IT IS THE EXPLICIT INTENT OF EACH PARTY, AND THE PARTIES HEREBY AGREE, THAT NEITHER SELLER NOR ANY OF THEIR RESPECTIVE AFFILIATES OR REPRESENTATIVES HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY AS TO THE CONDITION, MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE S&M CONTRACTS, THE ACQUIRED INTERESTS, THE ACQUIRED COMPANIES, OR THE RESPECTIVE ASSETS OF THE ACQUIRED COMPANIES, THE BUSINESS OR ANY PART THEREOF, EXCEPT THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, AND WITHOUT IN ANY WAY LIMITING THE FOREGOING, THE SELLER MAKES NO REPRESENTATION OR WARRANTY TO BUYER WITH RESPECT TO THE S&M CONTRACTS AND ANY FINANCIAL PROJECTIONS OR FORECASTS RELATING TO THE ACQUIRED COMPANIES OR THE BUSINESS.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN OR IN THE OTHER TRANSACTION DOCUMENTS, THE S&M CONTRACTS, THE ACQUIRED INTERESTS AND THE ACQUIRED COMPANIES, AND THE RESPECTIVE ASSETS OF THE ACQUIRED COMPANIES, AND THEIR RESPECTIVE BUSINESSES ARE BEING TRANSFERRED "AS IS, WHERE IS, WITH ALL FAULTS," AND THE SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITY OF THE S&M CONTRACTS, THE ACQUIRED COMPANIES, AND THE RESPECTIVE ASSETS OF THE ACQUIRED COMPANIES, THE BUSINESS OR THE PROSPECTS (FINANCIAL OR OTHERWISE), RISKS AND OTHER INCIDENTS OF THE S&M CONTRACTS, THE ACQUIRED COMPANIES AND THE RESPECTIVE ASSETS OF THE ACQUIRED COMPANIES, AND THE BUSINESS.

Article VII
REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants, severally and not jointly, to the Seller as set forth below:

7.1 <u>Authority; Enforceability</u>. The Buyer has the requisite power and authority to execute each Transaction Document to which it is, or will be as of the Closing, a party, and to perform its obligations under each Transaction Document to which it is, or will be as of the Closing, a party. The execution, delivery and performance of each Transaction Document to which the Buyer is, or will be as of the Closing, a party, has been duly and validly authorized by all required action of the Buyer. This Agreement has been, and each of the other Transaction Documents to which the Buyer is, or will be as of the Closing, a party has been or will be (when executed and delivered at the Closing) duly and validly executed and delivered by the Buyer. Assuming the due authorization, execution and delivery by the other parties hereto and thereto, this Agreement constitutes and each of the other Transaction Documents to which the Buyer is, or will be as of the Closing, a party, will constitute (when executed and delivered at the Closing), the valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as enforceability may be limited by Creditors' Rights.

7.2 <u>Consents, Absence of Conflicts.</u>

(a) Except for the filings, consents, approvals and authorizations set forth opposite the Buyer's name in <u>Section 7.2(a)</u> of the Buyer Disclosure Schedules (the "***Buyer Approvals***"), no consent, approval or authorization of, any Person (including any Governmental Authority) is required for the execution or delivery of any Transaction Document to which the Buyer is, or will be as of the Closing, a party or the consummation by the Buyer of the transactions contemplated thereby, other than those filings, consents, approvals and authorizations: (i) as have been obtained or given prior to the Execution Date; or (ii) the failure of which to obtain or give would not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of the Buyer to perform its obligations under the Transaction Documents to which such Buyer is, or will be as of the Closing, a party, or prevent or materially delay consummation of the transactions contemplated thereby.

(b) The execution and delivery of each Transaction Document to which the Buyer is, or will be as of the Closing, a party, and the performance by the Buyer of its obligations thereunder and the consummation of the transactions contemplated thereby by the Buyer (assuming the Buyer Approvals have been made, given or obtained) will not:

(i) Breach any Laws applicable to the Buyer; or

(ii) conflict with or violate the Organizational Documents of the Buyer;

except, in the case of clause (i) or (ii) above, as would not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of the Buyer to timely perform its obligations under the Transaction Documents to which the Buyer is, or will be as of the Closing, a party or prevent or materially delay consummation of the transactions contemplated thereby.

7.3 <u>Organization; Existence and Good Standing</u>. The Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware. The Buyer has all requisite organizational power and authority to own, lease, and operate its properties and to carry on its business as it is now being conducted. True, correct and complete copies of the Organizational Documents of the Buyer, as amended to date and presently in effect, have been made available to the Seller.

7.4 <u>Foreign Qualification</u>. The Buyer is duly qualified, registered or licensed to do business as a foreign entity and is in good standing in each jurisdiction in which the nature of its business as now conducted or the character of the property owned or leased by it makes such qualification necessary, except as would not reasonably be expected to impair in any material respect the ability of the Buyer to timely perform its obligations under the Transaction Documents to which the Buyer is, or will be as of the Closing, a party or prevent or materially delay consummation of the transactions contemplated thereby.

7.5 Brokers' Fees. The Buyer is not liable for any investment banking fee, finder's fee, brokerage payment or other like payment in connection with the origination, negotiation or consummation of the transactions contemplated herein that will be the obligation of the Seller or any of their respective Affiliates, including any monitoring fees, financial services or similar fees payable to an Affiliate of the Buyer, and the Buyer is not a party to any agreement which might give rise to any valid Claim against the Seller or any of their respective Affiliates for any such fee or payment.

7.6 Independent Evaluation; Investment Interest.

(a) The Buyer is an experienced and knowledgeable investor in the gathering, transporting, treating, processing, and marketing of crude (including its constituents) and other related midstream services such as the installation of pipelines and equipment. The Buyer has had access to the S&M Contracts and the Acquired Companies' assets, properties and other facilities, the officers, consultants and other representatives of the Acquired Companies, and the books, records, and files of the Acquired Companies relating to the properties and business of the Acquired Companies. As of the Closing, (i) the Buyer has conducted its own independent investigation, review and analysis of the S&M Contracts and the condition, operation and business of the Acquired Companies, and the Buyer has been provided access to and an opportunity to review any and all information respecting the S&M Contracts and the Acquired Companies and their respective assets requested by the Buyer in order for the Buyer to make its own determination to proceed with the Contemplated Transactions; (ii) the Buyer has solely relied on, and is solely relying on, (A) the basis of its own independent due diligence investigation, and (B) the limited representations and warranties made by the Seller in Article V and Article VI and the Transaction Certificates, and the remedies specifically bargained for herein; and (iii) the Buyer has been advised by and has relied on its own expertise and legal, land, tax, engineering, and other professional counsel concerning this transaction.

(b) The Buyer acknowledges that it can bear the economic risk of its investment in the S&M Contracts and the Acquired Companies and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the S&M Contracts and the Acquired Companies.

(c) The Buyer acknowledges that the Acquired Interests have not been registered under applicable federal and state securities laws and that following the Closing, the Acquired Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is registered under applicable federal and state securities laws or pursuant to an exemption from registration under any federal or state securities laws.

(d) The Buyer is an accredited investor as defined in Regulation D under the Securities Act of 1933, as amended. The Buyer is acquiring the Acquired Interests for its own account for investment and not with a view to, or for sale or other disposition in connection with, any distribution of all or any part thereof, except in compliance with applicable federal and state securities laws.

7.7 Funds. The Buyer has, and at Closing will have, sufficient funds available to enable the Buyer to consummate the Contemplated Transactions and to pay the Closing Date Payment to the Seller and deposit the ROW Escrow Payment with the Escrow Agent.

Article VIII
COVENANTS AND OTHER AGREEMENTS

8.1 Covenants regarding the Acquired Companies.

(a) During the Interim Period, except as required by the other terms of this Agreement or as set forth in Section 8.1 of the Seller Disclosure Schedules, or consented to or approved in writing by the Buyer (which consent shall not be unreasonably conditioned, withheld or delayed), the Seller shall use commercially reasonably efforts to cause the Acquired Companies to: (i) conduct their business operations, activities and practices in the Ordinary Course of Business; and (ii) use commercially reasonable efforts to preserve the present business operations, organization and goodwill of the Acquired Companies and preserve the present relationships with Employees and Persons having business dealings with the Acquired Companies (including customers and suppliers), in each case in the Ordinary Course of Business. Without limiting the generality of the preceding sentence, during the Interim Period the Seller shall cause the Acquired Companies to continue to maintain (and repair if necessary) the material tangible assets and properties of the Acquired Companies in a manner consistent with past practices and in accordance with capital and expense budgets of the Acquired Companies existing as of the Execution Date.

(b) Except as set forth in Section 8.1 of the Seller Disclosure Schedules or otherwise expressly required or permitted by the other terms of this Agreement, without the consent or approval of the Buyer (which consent shall not be unreasonably conditioned, withheld or delayed), the Seller shall not authorize or permit any of the Acquired Companies to:

(i) amend its Organizational Documents;

(ii) (A) declare, set aside or pay any dividend or other distribution with respect to any Equity Interest of the Acquired Companies to the extent such dividend or distribution (when added with any previous dividend or distribution declared, set aside or paid during the Interim Period with respect to any Equity Interest of the Acquired Companies) would reasonably be expected to decrease the Net Working Capital below the Net Working Capital Threshold, or (B) issue, grant or sell any Equity Interests in such Acquired Company, accelerate the vesting of or cause the lapsing of any restrictions with respect to, any option (or equity-based) award, or issue any Preferential Right to purchase or subscribe for any of such securities or issue any securities convertible into Equity Interests in any Acquired Company;

(iii) (A) split, combine or reclassify any class or series of the Equity Interests of the Acquired Companies, or (B) purchase, redeem or otherwise acquire or retire for value any Equity Interests in such Acquired Company;

(iv) incur any Indebtedness or otherwise incur, assume or guarantee any indebtedness or issue or sell any debt securities, other than (A) borrowings in the Ordinary Course of Business and in an amount no greater than $100,000, or (B) intercompany loans among any Acquired Company in the Ordinary Course of Business;

(v) except in the Ordinary Course of Business, (A) Breach, terminate, amend in any material respect or grant a waiver of any material term of, or give any material consent with respect to, any Scheduled Contract or (B) enter into a Contract after the Execution Date that would be a Scheduled Contract if entered into prior to the Execution Date (other than Contracts providing for capital expenditures set forth in Section 8.1(b)(v) of the Seller Disclosure Schedules);

(vi) mortgage, pledge or subject to any Lien (other than Permitted Liens), any of the material assets or material properties of any Acquired Company;

(vii) other than as set forth in Section 8.1(b)(vii) of the Seller Disclosure Schedules or in the Ordinary Course of Business, or except as required by applicable Laws, (A) increase the annual base salary or base wages of any executive officer or other Employee, (B) grant any bonus or incentive compensation to any Employee, (C) materially increase the coverage or benefits available under any (or create any new) Benefit Plan or any severance pay, vacation pay, deferred compensation, bonus or other incentive compensation plan or arrangement made to, for, or with any Employee or otherwise amend any such plan or arrangement or (D) enter into any employment, deferred compensation, severance or similar agreement (or amend any such agreement) involving any Employee;

(viii) make, change or revoke any material election in respect of Taxes, make any agreement or settlement with any Tax Authority, file any amended Tax Return or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, in each case, except to the extent required by applicable Law;

(ix) except as may be required by applicable Laws or under GAAP, change in any material respect any accounting method;

(x) except in the Ordinary Course of Business, sell, assign, lease or otherwise dispose of any of its assets or properties, except sales of worn-out or obsolete or excess equipment or trade-ins of equipment in connection with capital expenditures;

(xi) make any capital expenditure or expenditures which (A) involves the purchase of real property or (B) except in the Ordinary Course of Business or as may be necessitated by an emergency situation, is in excess of $100,000 individually or $250,000 in the aggregate (excluding for purposes of such limitations the capital expenditures set forth in Section 8.1(b)(xi) of the Seller Disclosure Schedules);

(xii) directly or indirectly acquire by merging or consolidating with, or by purchasing all of or a substantial Equity Interest in, or by any other manner (including asset purchases), any Person or division, business or Equity Interest of any Person;

(xiii) adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization other than the Contemplated Transactions;

(xiv) destroy any books or records of such Acquired Company other than in the Ordinary Course of Business;

(xv) take or agree to take any of the actions described above;

(xvi) commit to new hedging or derivative arrangements; or

(xvii) enter into any material transactions with the Seller or its Affiliates (including the other Acquired Companies).

Nothing herein shall restrict an Acquired Company from taking any action in the event of an emergency which action the Acquired Company determines is necessary to protect and safeguard the assets and properties of the Acquired Companies and any third party.

(c) Notwithstanding the provisions of Section 8.1(b), the Seller and the Acquired Companies may use Cash for distributions or dividends in the Ordinary Course of Business or, in lieu of any such distributions or dividends in the Ordinary Course of Business, to pay any Transaction Costs or Indebtedness prior to Closing.

(d) Notwithstanding anything to the contrary herein, (i) nothing shall prevent the Seller or any Acquired Company from taking any action (including the establishment of any policy, procedure or protocol) in response to COVID-19 or any COVID-19 Measure that would otherwise violate or breach this Agreement, potentially be deemed to constitute an action taken outside of the Ordinary Course of Business, or otherwise potentially serve as a basis for the Buyer to terminate this Agreement or assert that any of the conditions to the Closing contained herein have not been satisfied, (ii) no consent of the Buyer shall be required with respect to any matter (A) to the extent that the requirement of such consent would violate applicable Law, (B) such action is taken, or omitted to be taken, by the Seller or the Acquired Companies pursuant to any Law, directive, pronouncement or guideline issued by a Governmental Authority or industry group providing for COVID-19 Measures, business closures, "sheltering-in-place" or other restrictions that relate to, or arise out of, COVID-19 and the response of any Governmental Authority thereto or any escalation or worsening thereof, or (C) such action is otherwise taken, or omitted to be taken, by the Seller or the Acquired Companies to protect the Business in response to COVID-19 or the response of any Governmental Authority in response thereto and any escalation or worsening thereof, as determined by the Seller or the Acquired Companies in their good faith and reasonable discretion and (iii) in making any determination as to whether the Seller and the Acquired Companies have discharged their obligations to operate in the "Ordinary Course of Business" or use "reasonable best efforts" or similar covenants, any actions or omissions should be assessed based on what is practicable or reasonable based on the circumstances created or influenced by COVID-19 and its effects on the domestic and international economy, as such circumstances may evolve from time to time prior to the Closing Date, including considering the direct or indirect impact of COVID-19 Measures and similar Laws; *provided*, that nothing in this Section 8.1(d) shall limit or impair the Buyer's rights, including its right to terminate this Agreement, to the extent any actions permissible hereunder result in a Material Adverse Effect to the Assets or Business to be acquired by the Buyer hereunder.

8.2 Information.

(a) Prior to the Closing, the Seller and the Buyer each shall keep the other Party apprised of the status of matters relating to completion of the Contemplated Transactions, including promptly furnishing the other Party with copies of notices or other communications from any Governmental Authority with respect to the Contemplated Transactions. Prior to the Closing, the Seller and the Buyer each shall give prompt notice to the other of any development or combination of developments that, individually or in the aggregate, is reasonably likely to prevent, materially delay or materially impair its ability to consummate the Contemplated Transactions.

(b) Prior to the Closing and for 90 days after the Closing Date, the Seller shall, upon reasonable request by the Buyer, use commercially reasonable efforts to provide to the Buyer copies of any information related to the Acquired Companies and in the Seller's possession or control to the extent necessary to facilitate any required filings by the Buyer with the SEC or any other Governmental Authority; *provided,* that any out-of-pocket costs incurred by the Seller in connection with the foregoing shall be promptly reimbursed by the Buyer; *provided, further*, that the Seller shall not be required to provide any such information if the Seller determines, in its sole reasonable discretion, that (i) providing such information would jeopardize any attorney-client or other legal privilege, (ii) providing such information would contravene any applicable Laws, fiduciary duty or binding agreement entered into prior to the Execution Date, (iii) the information to be accessed is pertinent to any litigation in which the Acquired Companies or any of their respective Affiliates, on the one hand, and the Buyer or any of its Affiliates, on the other hand, are adverse parties or (iv) the information to be accessed should not be disclosed due to its competitively sensitive nature.

(c) Within 30 days after the Closing Date, the Seller shall provide electronic copies of the trial balances in the same form as the Interim Financial Information reflecting the financial activities and balances for the Acquired Companies for all periods between the Interim Financial Information Date and the Closing Date.

8.3 Access During the Interim Period.

(a) During the Interim Period, the Seller shall (and shall cause the Acquired Companies to) afford the officers, attorneys, accountants and other authorized representatives of the Buyer reasonable access upon reasonable notice and during normal business hours to all management personnel, offices, properties, books and records of the Acquired Companies, so that the Buyer may have full opportunity to make such reasonable investigation as it shall desire to make of the management, business, properties and affairs of the Acquired Companies for any reasonable purpose related to the Acquired Companies, the S&M Contracts, this Agreement and the Contemplated Transactions; *provided*, *however*, that any such access shall be conducted at the Buyer's expense and in compliance with any other reasonable conditions notified by the Seller to the Buyer in writing, under the supervision of such Acquired Company's personnel and in such a manner as not unreasonably to interfere with the normal operations of such Acquired Company. Subject to applicable Laws, the Seller shall (and shall cause the Acquired Companies to) make available to the Buyer such financial and operating data and other information as to the Business as the Buyer shall reasonably request insofar as the Seller and the Acquired Companies may do so without breaching any confidentiality agreements or waiving any attorney/client, work product or like privilege. Notwithstanding the foregoing, the Buyer shall not have access during the Interim Period to personnel records of the Employer, the Seller or the Acquired Companies. Notwithstanding anything to the contrary in this Agreement, no Acquired Company shall be required to provide access to any information to the Buyer or its representatives if the Seller or such Acquired Company determines, in its sole reasonable discretion, that (i) such access would jeopardize any attorney-client or other legal privilege, (ii) such access would contravene any applicable Laws (including any applicable COVID-19 Measures), fiduciary duty or binding agreement entered into prior to the Execution Date, (iii) the information to be accessed is pertinent to any litigation in which the Acquired Companies or any of their respective Affiliates, on the one hand, and the Buyer or any of its Affiliates, on the other hand, are adverse parties (iv) the information to be accessed should not be disclosed due to its competitively sensitive nature, (v) the information to be accessed relates to any consolidated, combined or unitary Tax Return filed by the Seller, the Acquired Companies or any of their Affiliates or any of their respective predecessor entities or (vi) such access would jeopardize the health and safety of any employee providing services to the Acquired Companies. No invasive environmental testing, including Phase I or Phase II investigations, of any media comprising the environment, or any property, site, location or facility shall be permitted during the Interim Period without the prior written consent of the Seller, which consent Seller may withhold, condition or delay in its sole discretion.

(b) During the Interim Period, the Buyer shall, and shall cause its representatives to, abide by the written operating safety rules, regulations and operating policies provided to the Buyer of the Acquired Companies and any third Person operator of any of the Acquired Companies' assets while on any of the Acquired Companies' owned or leased sites.

(c) The Buyer hereby agrees to defend, indemnify and hold harmless each of the operators of the assets and each of the Seller Indemnified Parties from and against any and all Losses attributable to personal injury, death or physical or other property damage, or violation of the Seller's or any of its Affiliate's or any third Person operator's rules, regulations or operating policies of which the Buyer or the representatives of the Buyer associated with the Losses had been informed in writing, to the extent arising out of, resulting from or relating to the Buyer's or its representatives' presence or activities on leased or owned sites of the Acquired Companies during the Interim Period, except to the extent caused by the negligence or willful misconduct of the Seller Indemnified Parties.

(d) In order to facilitate the resolution of any claims made against or incurred by the Seller (as it relates to the Acquired Companies or the S&M Contracts), for a period of seven years after the Closing or, if shorter, the applicable period specified in the Buyer's document retention policy, the Buyer shall (i) retain the Books and Records of the Acquired Companies relating to periods prior to the Closing and (ii) afford the representatives of the Seller reasonable access (including the right to make, at the Seller's expense, photocopies), upon reasonable notice and during normal business hours, to such Books and Records; *provided*, *however*, that the Buyer shall notify the Seller in writing at least 30 days in advance of destroying any such Books and Records prior to the 7th year anniversary of the Closing Date in order to provide the Seller the opportunity to copy such Books and Records in accordance with this Section 8.3(d).

8.4 Commercially Reasonable Efforts. Subject to the terms and conditions of this Agreement, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the Contemplated Transactions and to ensure the satisfaction of its conditions to Closing set forth in this Agreement. Except as otherwise expressly provided herein, none of the Parties or any of their respective Affiliates shall be required to pay any amounts, or grant any financial accommodation, in connection with obtaining any third-party consent, waiver, approval or release.

8.5 Publicity. Following execution of this Agreement, if a Party issues a press release related to the Contemplated Transactions, the other Party shall have the reasonable opportunity to review and comment on the press release, and the Party issuing such press release shall consider such comments in good faith for inclusion in the press release so long as such comments were provided in a timely manner; *provided*, *however*, that nothing in this Agreement shall prevent a Party from publishing any such press releases or other public communications as such Party may consider necessary in order to satisfy such Party's obligations at Law or under the rules of any Governmental Authority or any applicable stock or commodities exchange after consultation with the other Party as is reasonable under the circumstances. Any such press release related to the Contemplated Transactions shall not contain any individual Party financial metrics.

8.6 Replacement of Acquired Company Guarantees. During the Interim Period, the Seller will terminate all outstanding Acquired Company Guarantees, including the guaranties listed on Section 8.6 of the Seller Disclosure Schedules, and obtain from the respective beneficiaries thereof, in form and substance reasonably satisfactory to the Buyer, a valid and binding full and unconditional release of each Acquired Company from all Liability, whether arising before, on or after the Closing Date, under the Acquired Company Guarantees effective as of the Closing.

8.7 Excluded Assets. The Buyer acknowledges and agrees that, at or prior to the Closing, the Acquired Companies shall transfer, assign or convey all of their right, title and interest in and to the Excluded Assets to the Seller or its designees.

8.8 Employee Matters.

(a) The Buyer or any of its Affiliates shall, during the Interim Period and after the Closing, have the right, but not the obligation, to discuss career opportunities under the Buyer's ownership of the Acquired Companies with any of the Employees and offer employment effective as of or following the Closing to any of the Employees, as the Buyer determines in its sole discretion. The Buyer or its Affiliate, as applicable, may communicate any such offers directly to the Employees, and conduct any customary employment screenings and related tests it may choose to carry out, during the Interim Period, and each said Employee shall have the right to accept employment with the Buyer or its Affiliate to begin after Closing; *provided,* that (i) in selecting to which Employees, if any, to offer employment, the Buyer and its Affiliates shall not violate any applicable Law including Laws concerning discrimination against any legally protected class; (ii) all such employment offers shall offer compensation and benefits opportunities generally comparable in the aggregate to the compensation and benefits of such Employee immediately prior to the Closing; and (iii) all such employment offers made during the Interim Period shall be contingent on the Closing. If the Buyer or its Affiliates act unlawfully with respect to the employee selection and employee offer process with respect to any Employee or if the Buyer violates the requirements of this Section 8.8, the Buyer shall indemnify and hold harmless the Seller and its Affiliates with respect to all Losses relating to or arising out of the Buyer's (or its Affiliate's) unlawful actions or the Buyer's violation of the requirements of this Section 8.8 (including any claim of discrimination or other illegality by the Buyer in such selection and offer process and also including any severance benefits that may become due and owing as a result of the Buyer's unlawful acts or violation of this Section 8.8), but only to the extent the Seller or its Affiliates suffer Losses directly related to such violations. Nothing in this Agreement shall give any Employee the right to be employed by the Employer, the Buyer or any of their respective Affiliates or restrict in any way the right of the Employer, the Buyer or their respective Affiliates to terminate any Employee's employment therewith. The Buyer and its Affiliates (including the Acquired Companies after the Closing) shall not have any Liability whatsoever with respect to the employment of the Employees by the Employer, the Seller or their Affiliates (including in the event the Buyer or its Affiliates offer employment to any Employees), including any severance benefits payable to such Employees related to their employment by the Employer, the Seller or their Affiliates, or any accrued, but unused, bonuses or vacation time ("***Pre-Closing Employee Liabilities***"). The Pre-Closing Employee Liabilities include any Liabilities owed to any Employee to the extent related to exposure to Hazardous Materials prior to the Closing Date. Additionally, the Pre-Closing Employee Liabilities include any Liabilities related to or arising from the Paycheck Protection Program obtained by the Employer or its Affiliates.

(b) With respect to any employee of the Seller or its Affiliates (including the Employer) that is not listed in Section 6.19(c)(ii) of the Seller Disclosure Schedules, for a period of 18 months following the Closing Date, none of the Buyer or its Affiliates (including the Acquired Companies) shall recruit, solicit for hire, or offer employment to such employee of the Seller or its Affiliates without the prior written consent of the Seller; *provided,* that the prohibition set forth in this Section 8.8(b) shall not apply to generally available or generally published advertisement or job listings with the Buyer and its Affiliates (including the Acquired Companies) that are not only targeted to any employees of Seller or its Affiliates.

(c) For a period of 12 months after the Closing Date, the Buyer will, or will cause its Affiliates to, provide each of the Employees who receives, accepts, and actually commences employment with the Buyer or its Affiliates (each, a "***Transferred Employee***") with employee benefits (excluding equity-based compensation) that are no less favorable in the aggregate than those generally available to similarly situated employees of the Buyer and its Affiliates. Buyer will, or will cause its Affiliates to, credit each Transferred Employee with his or her years of service with the Employer (and any predecessor employer to the extent such service was recognized by the Employer prior to the Closing Date) for purposes of eligibility and vesting under the Employer's employee benefit plans. Buyer will, or will cause its Affiliates to, use commercially reasonable efforts to credit each Transferred Employee with all applicable deductibles and annual out-of-pocket limits for expenses incurred in the plan year in which the Closing occurs under any welfare benefit plan in which such Transferred Employees participate after the Closing Date.

(d) Nothing in this Section 8.8 or otherwise in this Agreement, whether express or implied, will (i) create any third-party beneficiary or other rights in any employee or former employee of the Seller, the Employer, or any of their respective Affiliates (including any beneficiary or dependent thereof) or any other Person; or (ii) constitute or be deemed to constitute an amendment to any employee benefit plan, program, policy, agreement or arrangement sponsored or maintained by the Seller, the Employer, the Buyer or any of their Affiliates.

8.9 Managers', Directors' and Officers' Indemnification.

(a) The Buyer covenants, for itself and its Affiliates, that, following the Closing, the Buyer shall not (i) institute any action in any court or before any administrative agency or before any other tribunal against any of the current managers, directors and employees of the Acquired Companies, in their capacity as such, with respect to any liabilities, actions or causes of action, judgments, claims or demands of any nature or description (consequential, compensatory, punitive or otherwise), in each such case to the extent resulting from their service the any Acquired Company prior to the Closing Date or (ii) revise the Organizational Documents of any Acquired Company to impair, erode or eliminate the protections in a manner any less favorable to those currently afforded to managers, directors and officers as a result of their service with any Acquired Company prior to the Closing Date.

(b) The provisions of this Section 8.9 shall survive the consummation of the Closing and continue for a period of three years following the Closing. This Section 8.9 is intended to benefit the managers, directors, officers and employees of the Acquired Companies at the time of Closing, each of whom may enforce the provisions of this Section 8.9 (whether or not parties to this Agreement). Notwithstanding the provisions of Section 8.9(a) to the contrary, nothing in this Section 8.9 shall apply to limit the liabilities of current or former managers, directors or employees under the applicable Organizational Documents or applicable Law (or limit the ability of the Buyer or its Affiliates to bring any Legal Proceeding) arising from or relating to, in each case, gross negligence, actual fraud or willful misconduct of any current or former manager, director or employee of the Acquired Companies.

8.10 Use of Seller Marks. The Buyer shall obtain no right, title, interest, license or any other right whatsoever to use the word "Blueknight" or "BKEP" or any trademarks containing or comprising the foregoing, Seller's stylized horse logo, or any trademark confusingly similar thereto or dilutive thereof (collectively, the "***Seller Marks***"), except the limited right to use Seller Marks for the sole purpose of permitting the Buyer to complete the phase out of such use in compliance with this Section 8.10. From and after the Closing, the Buyer agrees (a) to cease using, and to cause the Acquired Companies to cease using, the Seller Marks in any manner, directly or indirectly, except for such limited uses as cannot be promptly terminated (*e.g*., signage, e-mail addresses, and as a referral or pointer to the acquired website), and to cease such limited usage of the Seller Marks as promptly as possible after the Closing and in any event within 30 days following the Closing Date, (b) to remove, permanently cover, strike over or otherwise obliterate all Seller Marks from the assets of the Acquired Companies and from all assets and all other materials owned, possessed or used by the Acquired Companies within 90 days after the Closing Date, (c) to use commercially reasonable efforts to cause any third parties using or licensing Seller Marks in respect of the assets of the Acquired Companies, or on behalf of or with the consent of the Acquired Companies, to remove, permanently cover, strike over or otherwise obliterate all Seller Marks from all materials owned, possessed or used by such third parties within 90 days after the Closing Date and (d) to file with the Secretary of the State of the State of Delaware sufficient amendments to the Organizational Documents of the Acquired Companies to remove the name "BKEP" from the names of the respective Acquired Companies and to amend all Organizational Documents of the Acquired Companies to reflect such name change within 15 days after the Closing Date. The Parties agree, because damages would be an inadequate remedy, that a Party seeking to enforce this Section 8.10 shall be entitled to seek specific performance and injunctive relief as remedies for any breach thereof in addition to other remedies available at law or in equity.

8.11 Seller's Access to Information.

(a) From and after the Closing Date, the Buyer shall (and shall cause the Acquired Companies and other Affiliates to), during normal business hours, upon reasonable notice and in accordance with the Buyer's (or its Affiliates') standard policies and procedures regarding such access, provide the Seller and its representatives (including counsel and independent auditors) with reasonable access to the assets and properties of the Acquired Companies and to all information, files, documents and records (written and computer) relating to the Acquired Companies or any of their businesses or operations for any and all periods prior to and including the Closing Date that they may require with respect to any reasonable business purpose (including any Tax matter) or in connection with any claim, dispute, action, cause of action, investigation or proceeding of any kind by or against any Person, and shall (and shall cause the Acquired Companies and other Affiliates to) cooperate fully with the Seller and its representatives (including counsel and independent auditors) in connection with the foregoing, including by making available tax, accounting and financial personnel and other appropriate employees and officers of the Acquired Companies.

(b) From and after the Closing Date, the Buyer shall, and shall cause the Acquired Companies to, preserve and keep the books, records, documents, instruments, accounts, correspondence, writings, evidences of title and other papers and electronic files relating to the pre-Closing business and activities of the Acquired Companies and the S&M Contracts in its possession or the possession of the Acquired Companies for not less than seven years, or for such longer period as may be required by applicable Law.

8.12 Tax Matters.

(a) The Seller shall prepare or cause to be prepared all Tax Returns of the Acquired Companies for all Pre-Closing Periods ("***Pre-Closing Tax Returns***"). Such Tax Returns shall be prepared on a basis consistent with past practice except to the extent otherwise required by applicable Law. Not later than 10 days prior to the due date for filing any such Tax Return, the Seller shall deliver a copy of such Tax Return to the Buyer for its review and reasonable comment, and the Seller shall consider in good faith any such comments. Not less than three days prior to the due date for filing any Pre-Closing Tax Return, the Seller shall pay to the Buyer an amount equal to the amount of Tax reflected as due and payable on such Pre-Closing Tax Return (subject to the provisions of Section 8.12(c)), and the Buyer will cause such Pre-Closing Tax Return (as revised by the Seller to incorporate those comments from the Buyer that the Seller elects to incorporate) to be timely filed and will provide a copy to the Seller.

(b) The Buyer shall prepare or cause to be prepared all Tax Returns of the Acquired Companies for all Straddle Periods ("***Straddle Tax Returns***"). Such Straddle Tax Returns shall be prepared on a basis consistent with past practice except to the extent otherwise required by applicable Law. Not later than 10 days prior to the due date for filing any such Straddle Tax Return the Buyer shall deliver a copy of such Straddle Tax Return, together with all supporting documentation and workpapers, to the Seller for its review and reasonable comment. Not less than three days prior to the due date for filing any Straddle Tax Return, the Seller shall pay to the Buyer an amount equal to the portion of the Tax reflected on such Straddle Tax Return (subject to the provisions of Section 8.12(c)) that is allocated to the Pre-Closing Period in accordance with Section 8.12(c), and the Buyer will cause such Straddle Tax Return (as revised by the Buyer to incorporate the reasonable comments of the Seller) to be timely filed and will provide a copy to the Seller.

(c) The portion of Taxes attributable to a Straddle Period that are allocated to the portion of the period ending on the Closing Date shall be determined as follows:

(i) In the case of any real property, personal property, ad valorem and similar Taxes (collectively, "***Property Taxes***"), the amount of such Property Taxes attributable to the portion of the period ending at 11:59 p.m. Central Standard Time on the day prior to the Measurement Time (which shall be the Taxes allocated to the Pre-Closing Period for purposes of Section 8.12(b)) shall be deemed to be the amount of such Property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending at 11:59 p.m. Central Standard Time on the day prior to the Measurement Time and the denominator of which is the number of days in the entire Straddle Period. Not later than 10 days prior to the Property Tax payment due date, the Buyer shall deliver to Seller for Seller's review and comment, a schedule reflecting the total payment amount and the amount attributable Seller for the Pre-Closing Period. Not less than 3 days prior to the payment due date, the Seller shall pay to the Buyer an amount equal to the portion of the Tax reflected on such schedule that is allocated to the Pre-Closing Period, and the Buyer will cause such Property Tax payment to be made.

(ii) In the case of any Taxes based upon or related to income, sales, revenue, receipts, payroll or similar items, or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible) or other Taxes not described in Section 8.12(c)(i), the amount of any such Taxes that is allocable to the Pre-Closing Period shall be determined based on an interim closing of the books as of the Measurement Time.

Notwithstanding the foregoing, any franchise Tax paid or payable with respect to any Acquired Company shall be allocated to the Tax period during which the gross receipts, income, operations, assets, margin, or capital comprising the base of such Tax is measured, regardless of whether the right to do business for another period is obtained by the payment of such franchise Tax, and if the Tax period to which such franchise Tax is so allocated is a Straddle Period, then such franchise Tax allocated to a Straddle Period shall be determined in the manner set forth in Section 8.12(c)(ii). If the Closing Date occurs before the applicable Tax rate or assessment is fixed for such Straddle Period, the allocations of Property Taxes shall be based upon the most recently ascertainable Property Tax bills; *provided,* that the Buyer and the Seller shall recalculate and re-prorate such Property Taxes and payments and make the necessary cash adjustments promptly upon the issuance, and on the basis, of the actual Property Tax bills received for the Straddle Period in which the Closing occurs.

(d) The Parties shall cooperate fully as and to the extent reasonably requested by any other Party, in connection with the filing of Tax Returns and any audit, litigation or other proceeding (each a "***Tax Proceeding***") with respect to Taxes imposed on or with respect to the assets, operations or activities of the Acquired Companies. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Notwithstanding the above, the control and conduct of any Tax Proceeding that is a Third-Party Claim relating to a Pre-Closing Tax Return shall be governed by Section 13.6. Notwithstanding Section 13.6, the Buyer shall control the conduct of Tax Proceedings relating to Straddle Periods; *provided*, that the Buyer shall keep the Seller informed with respect to the status and nature of any such Tax Proceeding, and will, in good faith, allow the Seller to consult with it regarding the conduct of or positions taken in any such Tax Proceedings and shall not settle or compromise any such Tax Proceeding without the consent of the Seller (such consent not to be unreasonably withheld, conditioned or delayed).

(e) Any and all sales, use, excise, value added, transfer, stamp, documentary, filing, recordation, registration, real estate transfer and other similar Taxes resulting from, relating to or arising in connection with the Contemplated Transactions (collectively, "***Transfer Taxes***") shall be borne equally by Buyer, on the one hand, and Seller, on the other hand. The party responsible under applicable Law for filing the Tax Return for a Transfer Tax shall be responsible, at its sole expense, for preparing and filing such Tax Return, and the other, non-filing party shall pay the filing party fifty (50%) of such Transfer Tax Liability no later than one (1) day prior to the due date of such Tax Return. Prior to, or in no event later than Closing, the Buyer shall provide to the Seller copies of any applicable exemption certificates necessary to establish the right to any exemption from Transfer Taxes.

(f) All Tax sharing, allocation, indemnity, or other similar written or unwritten agreements, arrangements, understandings, or practices relating to Taxes involving any Acquired Company (excluding provisions of Contracts entered into in the Ordinary Course of Business that do not relate primarily to Taxes, such as leases and licenses), if any, shall be terminated as of the day immediately prior to the Closing Date and, from and after the Closing Date, no Acquired Company shall be bound thereby or have any liability thereunder.

(g) The Seller will be entitled to (a) any Tax refunds that are received by the Buyer, any Acquired Company or any of their respective Affiliates attributable to a Pre-Closing Period (or the pre-Closing portion of any Straddle Period, determined in accordance with Section 8.12(c)) and (b) any amounts credited against Tax to which Buyer, any Acquired Company or any of their respective Affiliates for a Pre-Closing Period become entitled in a period other than a Pre-Closing Period as a result of an overpayment of any Tax in a Pre-Closing Period (or in the pre-Closing portion of any Straddle Period, as determined in accordance with Section 8.12(c)). The Buyer will use commercially reasonably efforts to take steps necessary to obtain any available refunds and will pay over to the Seller any such refund or the amount of any such credit within five days after actual receipt of such refund or credit against Taxes.

8.13 Confidentiality. For a period of two years following the Closing Date, each Party shall, and shall cause its respective Affiliates to, hold, and shall use commercially reasonable efforts to cause its or their respective representatives to hold, in confidence any and all information, whether written or oral, that primarily relates to the other Party, the Acquired Companies or the Business, except to the extent that such Party can show that such information (a) is generally available to or known by the public through no fault of such Party, any of its Affiliates or their respective representatives; or (b) is lawfully acquired by such Party, any of its Affiliates or their respective representatives from and after the Closing from sources which are not prohibited, to the Knowledge of such Party, from disclosing such information by a legal, contractual or fiduciary obligation. If a Party or any of its Affiliates or their respective representatives are compelled to disclose any such information by judicial or administrative process or by other requirements of Law, to the extent permitted by applicable Law, such Party shall promptly notify the other Party in writing and shall disclose only that portion of such information which such Party is advised by its counsel in writing is legally required to be disclosed.

8.14 **Releases**. Simultaneously with the Closing, the Seller, on behalf of itself and its Affiliates (other than the Acquired Companies), hereby unconditionally and irrevocably RELEASES AND FOREVER DISCHARGES, effective as of and forever after the Closing Date, to the fullest extent permitted by Law, each of the Acquired Companies from any and all debts, Obligations, Claims, Liabilities, Legal Proceedings, judgments or controversies of any kind whatsoever that the Seller and its Affiliates (other than the Acquired Companies) may possess, if any, against the Acquired Companies to the extent arising out of or based upon any agreement or understanding or act or failure to act (INCLUDING ANY ACT OR FAILURE TO ACT THAT CONSTITUTES ORDINARY OR GROSS NEGLIGENCE OR RECKLESS, WILLFUL OR WANTON MISCONDUCT), misrepresentation, omission, transaction, fact, event or other matter occurring prior to the Closing Date (whether based at law or in equity or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued), including: (a) claims by the Seller or its Affiliates with respect to repayment of loans or other Indebtedness; (b) any rights, titles and interests in, to or under any agreements, arrangements or understandings to which the Seller or any of its Affiliates (other than the Acquired Companies) is a party; and (c) claims by the Seller and its Affiliates (other than the Acquired Companies) with respect to dividends, distributions, violations of preemptive rights and the Seller's status as a member or other security holder of the Acquired Companies; *provided*, *however*, that this Section 8.14 shall not apply to any Claim or Obligation pursuant to this Agreement or the Transaction Documents.

8.15 **Data Room Documentation**. As promptly as practicable after the Execution Date (but not to exceed ten Business Days after the Execution Date), the Seller shall, at its expense, use its commercially reasonable efforts to copy to an non-encrypted USB flashdrive all documents posted to the Data Room as of the Execution Date (such documents to be copied in substantially similar order and under the substantially similar folders/files set forth in the Data Room) and deliver two copies of such USB flashdrive to the Buyer.

8.16 **Title Insurance and Surveys**. The Buyer, at its sole cost and expense, may procure owner's title insurance policies (the "***Title Policies***") from Title Company with respect to the Owned Real Property or the Leased Real Property insuring title or leasehold interest (as applicable); *provided*, that Buyer's ability or inability to obtain Title Policies from the Title Company on the Owned Real Property or the Leased Real Property shall not result in an adjustment to the Purchase Price. If the Buyer requests extended coverage policies or any endorsements to the Title Policies, the Buyer shall also be responsible for the cost of such extended coverage and endorsements and the delivery of any documentation required by the Title Company in connection with the issuance of such extended coverage and endorsements (including surveys or zoning reports), however, the Seller shall cause the Acquired Companies to deliver reasonable and customary documentation required by the Title Company in connection therewith as described below. At the Buyer's request, the Seller shall cause the Acquired Companies to reasonably cooperate with and assist the Buyer with any reasonable request in the Buyer's efforts to obtain the Title Policies and shall execute and deliver to the Title Company such affidavits, certificates and other documentation as are customary and reasonably requested to cause the Title Company to issue an ALTA Extended Coverage Policy for the Owned Real Property or the Leased Real Property (including assistance to obtain a "non-imputation" or similar endorsement). Prior to Closing, the Buyer may, at its sole cost and expense, obtain and update any surveys pertaining to the Owned Real Property or the Leased Real Property; *provided*, *however*, that any such surveys and survey updates shall be performed by a surveyor acceptable to the Seller, the approval of which shall not be unreasonably withheld, conditioned or delayed. Neither the Buyer's nor any of its lenders' receipt of any new or updated Title Policies or surveys shall constitute a condition to Closing or form the basis for delaying Closing; *provided*, *however*, that the Seller agrees to cause the Acquired Companies to reasonably cooperate with the Buyer prior to the Closing to permit the Buyer to attempt to procure any surveys of the Owned Real Property or the Leased Real Property that the Buyer reasonably deems necessary, all at the Buyer's sole risk, cost and expense.

8.17 <u>ROW Holdback</u>.

(a) In the event that all rights of the Easements set forth on <u>Section 8.17</u> of the Seller Disclosure Schedules are not renewed, restored, replaced and in full force and effect as of the Closing on terms and conditions substantially similar to their respective prior terms and conditions or, for those Easements for which prior terms and conditions are unavailable, on customary terms and conditions (the "***Expired ROWs***"), the Buyer shall, at the Seller's sole cost and expense, use commercially reasonable efforts to (i) first, promptly renew, restore or replace all Expired ROWs with the applicable landowners, tribes or agencies, as applicable, at a reasonable market cost and (ii) second, if such landowner, tribe or agency, as applicable, rejects in writing the Buyer's offer or refuses in writing to permit such action, then promptly obtain reasonable replacement rights-of-way or reasonably construct a pipeline around such Expired ROW at a reasonable market cost; *provided*, that in each case at least five days prior to any such renewal, restoration or replacement, as applicable, the Buyer shall provide the Seller with documentation reasonably sufficient to support the cost of such action and shall reasonably respond to questions and comments from the Seller prior to taking any such action; *provided, further*, that the Buyer shall not take any such action without the prior written consent of the Seller (which shall not be unreasonably withheld, conditioned or delayed), except that the Seller's consent shall be deemed granted if no written objection is received by the Buyer within five days following such notice. Notwithstanding the preceding sentence, the Buyer shall, subject to the provisions of <u>Section 4.1</u> and the ROW Escrow Agreement, have the right, to use the ROW Escrow Funds to pay all fees and expenses, including attorneys' fees, costs, fines, penalties and expenses, to renew and restore and replace, when applicable, the Expired ROWs, acquire replacement Easements reasonably necessary to circumvent the Expired ROWs, or relocate the existing pipelines owned by the applicable Acquired Company on such Expired ROW (collectively, "***ROW Expenses***").

(b) On the six-, twelve-, eighteen-, and twenty-four-month anniversaries of the Closing Date, the Parties shall review the progress of the Buyer in renewing, extending, or replacing the Expired ROWs. At the time of such reviews, the Seller and the Buyer shall determine the percentage of the Expired ROWs that have been renewed, extended, or replaced (the "***ROW Percentage***") which percentage shall be equal to the total miles of Expired ROWs fully renewed, extended, or replaced *divided by* the total miles of Expired ROWs as of the Closing Date. The Seller would then be entitled to promptly receive from the ROW Escrow Funds an amount (only if such amount is positive) equal to (i) the ROW Percentage *multiplied by* the sum of the ROW Escrow Payment *minus* the aggregate amounts released as of such date from the ROW Escrow Funds for ROW Expenses, *minus* (ii) the amount of the ROW Escrow Funds previously distributed to the Seller.

For example, in the event if on six month anniversary of the Closing Date, the Buyer has renewed, extended or replaced 2 miles of the Expired ROWs (and there were 10 total miles of Expired ROWs as of the Closing Date) and the aggregate ROW Expenses as of such date totaled $200,000, then the Seller we would be entitled to receive an amount equal to $260,000 [(2÷10) x ($1,500,000 - $200.000)] from the ROW Escrow Funds.

The Buyer and the Seller shall promptly (but in no event less than two Business Days) deliver a Joint Instruction Letter to the Escrow Agent to disburse to Seller such amount from the ROW Escrow Funds. Following (A) the renewal, restoration, or replacement of all Expired ROWs or (B) the acquisition of alternate Easements or relocation of such existing pipeline, such that such existing pipeline runs continuously through land with Easements that are in full force and effect, the Buyer and the Seller shall promptly (but in no event less than two Business Days) deliver a Joint Instruction Letter to the Escrow Agent to release the remaining portion of the ROW Escrow Funds, if any, to the Seller. On the twenty-four-month anniversary of the Closing Date, the Parties shall meet in good faith to determine an equitable resolution of any remaining ROW Escrow Funds taking into consideration reasonably anticipated ROW Expenses to be incurred after such anniversary.

(c) The Parties agree that the sole and exclusive remedy of the Buyer for Claims or related Losses against the Seller in connection with the renewal, restoration or replacement of any Expired ROWs as set forth in this Section 8.17 shall be the ROW Escrow Funds except to the extent such Claims or related Losses relate to the actual fraud or willful misconduct of the Seller or otherwise constitute a breach of the Sellers' representations and warranties herein.

8.18 No Control of the S&M Contracts or the Acquired Companies' Businesses. Nothing contained in this Agreement shall give the Buyer, directly or indirectly, the right to control or direct the S&M Contracts or the Acquired Companies' operations prior to the Closing. Prior to the Closing, the Seller shall exercise, consistent with the terms and conditions of this Agreement, including Section 8.1, complete control and supervision over the S&M Contracts and the Acquired Companies' respective operations.

8.19 Post-Closing Conveyances.

(a) If, following the Closing Date, any Party reasonably determines that the right, title or interest in any Acquired Company or S&M Contract was not conveyed to the Buyer at the Closing, or that the right, title or interest in an Excluded Asset was conveyed to the Buyer at the Closing, then such Party shall notify the other Parties in writing as promptly as practicable, but a failure to notify the other Parties shall not limit the Parties' obligations hereunder. If an Acquired Company or S&M Contract was not conveyed to the Buyer at the Closing, then the Buyer shall have the right, but not the obligation, by the delivery of written notice to the Seller, to cause the applicable Seller to cause such Acquired Company or S&M Contract, as applicable, to be conveyed to the Buyer as promptly as practicable (and the Buyer shall not have any obligation to deliver any consideration to any Seller or their respective Affiliates for such conveyance). If an Excluded Asset was conveyed to the Buyer as of the Closing, then the applicable Seller and the Buyer shall, as promptly as practicable, cause such asset to be conveyed by the Buyer or the applicable Acquired Company (or their respective Affiliates) to the applicable Seller as promptly as practicable following receipt of such notice (and no Seller or any of their respective Affiliates shall have any obligation to deliver any consideration to the Buyer, the applicable Acquired Company or their respective Affiliates for such conveyance). The Parties shall use best efforts to take, or to cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the conveyances described in this Section 8.19.

(b) All costs and expenses arising out of compliance with this Section 8.19 shall be allocated to the Parties as though such transfers had been completed, and the expenses incurred in connection with such transfers had been allocated, as of the Closing Date in accordance with this Section 8.19.

(c) The obligations set forth in this Section 8.19 are in addition to, and shall not be construed to limit in any way, the rights or remedies otherwise available to the Parties set forth in this Agreement.

Article IX
CONDITIONS TO CLOSING

9.1 Conditions to Obligations of Each Party. The respective obligation of each Party to consummate the Closing is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived in writing, in whole or in part, as to a Party by such Party (in such Party's sole discretion):

(a) No Order of any Governmental Authority shall be in effect, and no Law shall have been enacted or adopted that directly enjoins, prohibits or makes illegal the consummation of the Contemplated Transactions; and

(b) There shall not be pending or threatened in writing any Legal Proceeding instituted by any Governmental Authority to materially restrain, prohibit or otherwise materially interfere with or obtain substantial monetary damages in connection with the consummation of the Contemplated Transactions.

9.2 Conditions to Obligations of the Buyer. The obligation of the Buyer to consummate the Closing is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived in writing, in whole or in part, by the Buyer (in the Buyer's sole discretion):

(a) The representations and warranties of the Seller in Sections 5.1, 5.3, 6.1, or 6.3 (collectively, the "***Fundamental Representations***") shall be true and correct in all respects when made and on and as of the Closing Date, as though made on and as of the Closing Date (except for representations and warranties that speak only as of a specific date or time, which need be so true and correct only as of such date or time). The representations and warranties of the Seller in Article V and in Article VI other than the Fundamental Representations (without giving effect to any qualification by or reference to materiality, material respects or Material Adverse Effect set forth therein) shall be true and correct in all respects as of the Closing Date as if remade on the Closing Date (except for representations and warranties made as of a specific date, which shall be true and correct as of such specific date), with only such failures to be so true and correct as have not had, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) The Seller (and its Affiliates, to the extent applicable) shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Seller on or prior to the Closing Date.

(c) All consents and authorizations specified in Section 9.2(c) of the Seller Disclosure Schedules shall have been obtained.

(d) The Seller Guaranty shall remain in full force and effect and no default shall have occurred thereunder and be continuing.

(e) During the Interim Period, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Material Adverse Effect.

(f) The Seller shall have delivered the items listed in Section 10.2.

9.3 Conditions to Obligations of the Seller. The obligation of the Seller to consummate the Closing is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived in writing, in whole or in part, by the Seller (in the Seller's sole discretion):

(a) The representations and warranties of the Buyer in Article VII shall be true and correct in all respects as of the Closing Date as if remade on the Closing Date (except, in each case, for representations and warranties made as of a specific date, which shall be true and correct in all respects as of such specific date), with only such failures to be so true and correct as have not had, and would not reasonably be expected to have, a Buyer Material Adverse Effect.

(b) The Buyer shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Buyer on or prior to the Closing Date.

(c) The Buyer shall have delivered the items listed in Section 10.3.

Article X
CLOSING; CLOSING DELIVERIES

10.1 Closing.

(a) The closing of the Contemplated Transactions (the "***Closing***") shall take place at the offices of Gibson, Dunn & Crutcher LLP, 2001 Ross Avenue, Suite 2100, Dallas, Texas 75201, at 10:00 a.m., Dallas, Texas, on the third Business Day following the date on which all of the conditions set forth in Article IX (other than those conditions which by their terms are only capable of being satisfied at the Closing, but subject to the satisfaction or due waiver of those conditions on the Closing Date) have been satisfied or waived by the Party or Parties entitled to waive such conditions, unless another time, date and place are agreed to in writing by the Parties. The date of the Closing is referred to in this Agreement as the "***Closing Date***."

(b) The Buyer shall assume operational control of the Acquired Companies and the Business on the Closing Date upon actual consummation of the Closing on that day. Prior to and until the consummation of the Closing on the Closing Date, the Seller shall conduct the operations in accordance with Section 8.1 and all covenants, obligations and standards set forth in this Agreement with respect to operations during the Interim Period until the Buyer assumes operational control of the Acquired Companies and the Business as provided in the preceding sentence.

10.2 Seller Deliveries. Subject to the other terms and conditions of this Agreement, at the Closing, the Seller will execute and deliver, or cause to be executed and delivered, each of the following documents, where the execution or delivery of documents is contemplated, and will take or cause to be taken the following actions, where the taking of actions is contemplated:

(a) Assignment of Acquired Interests. A counterpart of an assignment of the Acquired Interests, in the form attached as Exhibit E, evidencing the conveyance, assignment and transfer to the Buyer of all of the Seller's right, title and interest in the Acquired Interests and the admission of the Buyer as the sole member of each Acquired Company;

(b) Assignment and Assumption of S&M Contracts. A counterpart of an assignment and assumption agreement for the S&M Contracts (the "***Assignment and Assumption Agreement***"), in the form attached as Exhibit F, executed by the Seller;

(c) Secretary Certificate. A certificate, dated the Closing Date, signed by the secretary or any other Responsible Officer of the Seller and attaching and certifying as being complete and correct and then in full force and effect: (i) copies of the Organizational Documents of each Acquired Company and (ii) resolutions of the Seller authorizing the execution of this Agreement and the other Transaction Documents to which the Seller is a party and the consummation of the Contemplated Transactions;

(d) Seller's Certificate. A certificate, dated the Closing Date, signed by a Responsible Officer of the Seller, certifying that the conditions set forth in Sections 9.2(a) and 9.2(b) have been satisfied, to the Buyer;

(e) Consents. Copies of all Seller Approvals obtained by the Seller;

(f) Lien Releases. Evidence of the release of the Liens set forth on Section 10.2(f) of the Seller Disclosure Schedules, to be effective on or prior to the Closing.

(g) FIRPTA Certificate. A certification of non-foreign status executed by the Seller (or, if Seller is a disregarded entity within the meaning of Treasury Regulations Section 1.1445-2(b)(2)(iii), then the owner of such disregarded entity) in the form prescribed by Treasury Regulation Section 1.1445-2(b) that is reasonably satisfactory to the Buyer;

(h) ROW Escrow Agreement. The ROW Escrow Agreement, signed by the Seller, to the Buyer and the Escrow Agent;

(i) Transition Services Agreement. A counterpart of a Transition Services Agreement (the "***Transition Services Agreement***"), in the form attached as Exhibit G, executed by the Seller;

(j) Storage Agreement. A counterpart of a Storage Agreement (the "***Storage Agreement***"), in the form attached as Exhibit H, executed by the Seller;

(k) Interconnection Agreement. A counterpart of an Interconnection Agreement (the "***Interconnection Agreement***"), in the form attached as Exhibit I, executed by the Seller;

(l) Short Form Certificates. Short form certificates dated within 10 days of the Closing Date as to the good standing of each Acquired Company issued by the Secretary of State of the State of Delaware;

(m) Corporate and Business Records. The minute books and any membership records and company seals of the Acquired Companies (such books and records may be delivered no later than ten Business Days after the Closing Date) and any and all documents and records relating to the assets of the Acquired Companies and the S&M Contracts including technical data, contracts, easements, tank strapping tables and shipper files;

(n) Resignations. Executed resignation letters of (or resolutions removing) all of the managers/directors and officers from their respective positions with the Acquired Companies;

(o) Third Party Consents. Copies of all consents, approvals, orders, qualifications and waivers in connection with the Contemplated Transactions and the other Transaction Documents listed on Section 10.2(o) of the Seller Disclosure Schedules that is reasonably satisfactory to the Buyer, executed by the Seller and each consenting Person;

(p) Other Documents. All other documents reasonably requested by the Buyer to be delivered by the Seller in connection with the consummation of the Contemplated Transactions.

10.3 Buyer Deliveries. Subject to the other terms and conditions of this Agreement, at the Closing, the Buyer will execute and deliver, or cause to be executed and delivered, each of the following documents, where the execution or delivery of documents is contemplated, and will take or cause to be taken the following actions, where the taking of actions is contemplated:

(a) Closing Date Payment. The Closing Date Payment to the Seller by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 2.3(c) of the Seller Disclosure Schedules.

(b) ROW Escrow Payment. The ROW Escrow Payment to the Escrow Agent;

(c) Assignment and Assumption of S&M Contracts. A counterpart of the Assignment and Assumption Agreement, executed by the Seller;

(d) Secretary Certificate. A certificate, dated the Closing Date, signed by the secretary of the Buyer and attaching certified copies of the resolutions of the Buyer authorizing the execution of this Agreement and the other Transaction Documents to which the Buyer is a party, and the consummation of the Contemplated Transactions;

(e) Buyer's Certificate. A certificate, dated the Closing Date, signed by a Responsible Officer of the Buyer, certifying that the conditions set forth in Sections 9.3(a) and 9.3(b) have been satisfied, to the Seller;

(f) ROW Escrow Agreement. The ROW Escrow Agreement, signed by a Responsible Officer of the Buyer, to the Seller and the Escrow Agent;

(g) Transition Services Agreement. A counterpart of the Transition Services Agreement executed by Buyer;

(h) Storage Agreement. A counterpart of the Storage Agreement executed by Buyer;

(i) Interconnection Agreement. A counterpart of the Interconnection Agreement executed by Buyer; and

(j) Other Documents. All other documents reasonably requested by the Seller to be delivered by the Buyer in connection with the consummation of the Contemplated Transactions.

10.4 Other Deliveries. The Parties acknowledge that the ROW Escrow Agreement, executed by the Escrow Agent, shall also be delivered by the Escrow Agent at the Closing.

Article XI
CASUALTY OR CONDEMNATION

11.1 **Notice**. In the event that, prior to the Closing Date, all or any portion of the tangible assets of any Acquired Company (the "***Assets***") are damaged or destroyed by fire, theft, vandalism, flood, wind, hurricane, earthquake, explosion or other casualty for which the associated repair or replacement costs (excluding insurance or other potential third party reimbursements) would reasonably be expected to exceed $1,800,000 (a "***Casualty***") or taken by condemnation or eminent domain or by agreement *in lieu* thereof with any Person or Governmental Authority authorized to exercise such rights with an impact on the Business as would reasonably be expected to exceed $1,800,000 (a "***Taking***"), the Seller shall promptly notify the Buyer thereof.

11.2 **Repair or Replacement**.

(a) In the event of a Casualty or Taking during the Interim Period affecting the Assets, the Seller shall elect (i) to repair or replace or make adequate provision for the repair or replacement of the affected Asset at the Seller's cost prior to the Closing, in which case the Buyer's obligation to effect the Closing shall not be affected, but the Closing Date shall be deferred until five Business Days after repairs or replacement have been completed and the affected Asset has been restored to performance substantially comparable in all material respects to that prior to the Casualty or Taking or (ii) to negotiate with the Buyer to reduce the Purchase Price by an amount agreed to by the Seller and the Buyer to reflect the cost to repair or replace the affected Assets, as may be mutually agreed to by the Buyer and the Seller (the "***Repair Costs***"), in which case, in the event of a Repair Cost Dispute, the Closing Date and the Outside Date shall be deferred as provided in Section 11.5. Notwithstanding the foregoing, the Seller's election in clause (i) of this Section 11.2(a) shall be unavailable and clause (ii) of this Section 11.2(a) shall apply if the required repairs or replacements would reasonably be expected to result in an extension of the Closing Date for more than 45 days.

(b) If the Seller and the Buyer agree on the Repair Costs within 15 days of the Buyer's receipt of the Seller's notice of the Casualty or Taking (the "***Repair Negotiation Period***"), the Buyer's obligation to effect the Closing shall not be affected, but the Purchase Price shall be reduced by the amount of the Repair Costs so agreed.

(c) If the Seller and the Buyer do not agree on the Repair Costs within the Repair Negotiation Period (a "***Repair Cost Dispute***"), either Party may request an engineering company that shall be mutually agreed to by the Buyer and the Seller to evaluate the affected Assets and deliver to the Buyer and the Seller its written estimate of the Repair Costs (the "***Third-Party Estimate***") within 15 days after the end of the Repair Negotiation Period.

(i) If the Third-Party Estimate is less than $3,000,000, the Buyer's obligation to effect the Closing shall not be affected and the Parties shall submit the Repair Cost Dispute to binding arbitration for resolution after the Closing, with a post-Closing adjustment to the Purchase Price equal to the amount of the finally-determined Repair Costs.

(ii) If the Third-Party Estimate is equal to or greater than $3,000,000, either the Seller or the Buyer may elect, by giving the other Party written notice of election within 15 days of receipt of the Third-Party Estimate, to terminate this Agreement pursuant to Section 12.1(c); *provided*, *however*, that if within such time period, the Buyer is ready and able to proceed to Closing and agrees in writing to hold the Closing within five Business Days of such agreement, then the Seller shall not elect to terminate this Agreement pursuant to this Section 11.2(c)(ii) or Section 12.1(c).

11.3 Condemnation Awards. In the event of any reduction in the Purchase Price in connection with a Taking, as provided in Section 11.2(a), the Buyer shall be entitled to collect from any condemnor the entire award(s) that may be made in any such Legal Proceeding, without deduction, to be paid out as follows: subject to actual receipt of such award(s) by the Buyer, (a) the Buyer shall pay to the Seller all such amounts, up to the amount of such Purchase Price reduction, and (b) the Buyer shall be entitled to retain the balance (if any) of such award(s).

11.4 Purchase Price Adjustment. Any adjustment of the Purchase Price pursuant to Section 11.2(c) which is necessary to reflect a final determination of Repair Costs after the Closing shall be made as follows: (a) an adjustment in favor of the Buyer shall be paid in cash by the Seller; and (b) an adjustment in favor of the Seller shall be paid in cash to the extent the Purchase Price had been reduced pursuant to this Article XI. Any such reduction, refund or payment shall be made within 10 Business Days after such final determination.

11.5 Deferral of Closing Date and Outside Date. In the event of a Repair Cost Dispute, the Closing Date and the Outside Date shall be deferred until (a) three Business Days after receipt of the Third-Party Estimate, or (b) if the Seller elects the option in Section 11.2(c)(i), as provided therein.

Article XII
TERMINATION RIGHTS

12.1 Termination Rights. This Agreement may be terminated at any time prior to the Closing as follows:

(a) by mutual written consent of the Seller and the Buyer;

(b) by the Seller or the Buyer if any Governmental Authority of competent jurisdiction shall have issued a final and non-appealable Order preventing the consummation of the Contemplated Transactions;

(c) by the Seller or the Buyer upon notice to the other Party, pursuant to Section 11.2(c)(ii);

(d) by the Seller or the Buyer in the event that the Closing has not occurred as of March 18, 2021 (the "***Outside Date***"); *provided*, *however*, that (i) the Seller shall not be entitled to terminate this Agreement under this Section 12.1(d) if such failure of the Closing to occur is due, *inter alia*, to the failure of the Seller to perform and comply in all material respects with the covenants and agreements to be performed or complied with by the Seller prior to the Closing and (ii) the Buyer shall not be entitled to terminate this Agreement under this Section 12.1(d) if such failure of the Closing to occur is due, *inter alia*, to the failure of the Buyer to perform and comply in all material respects with the covenants and agreements to be performed or complied with by the Buyer prior to the Closing;

(e) by the Buyer if there shall have been a breach or inaccuracy of the Seller's representations and warranties in this Agreement or a failure by the Seller to perform its covenants and agreements required in this Agreement, in any such case in a manner that would result in, if occurring and continuing on the Closing Date, the failure of the conditions to the Closing set forth in Sections 9.2(a) or 9.2(b), unless such failure is reasonably capable of being cured, and the Seller is using commercially reasonable efforts to cure such failure by the Outside Date; *provided*, *however*, that the Buyer shall provide notice to the Seller as soon as practicable after becoming aware of any such breach, inaccuracy or failure described; *provided further*, that the Buyer may not terminate this Agreement pursuant to this Section 12.1(e) (i) if any of the Buyer's representations and warranties shall have become and continue to be untrue in a manner that would cause the condition set forth in Section 9.3(a) not to be satisfied, or (ii) if there has been, and continues to be, a failure by the Buyer to perform its covenants and agreements required in this Agreement in such a manner as would cause the condition set forth in Section 9.3(b) not to be satisfied;

(f) by the Seller if there shall have been a breach or inaccuracy of the Buyer's representations and warranties in this Agreement or a failure by the Buyer to perform its covenants and agreements required in this Agreement, in any such case in a manner that would result in, if occurring and continuing on the Closing Date, the failure of the conditions to the Closing set forth in Section 9.3(a) or 9.3(b), unless such failure is reasonably capable of being cured, and the Buyer is using commercially reasonable efforts to cure such failure by the Outside Date; *provided*, *however*, that the Seller shall provide notice to the Buyer as soon as practicable after becoming aware of any such breach, inaccuracy or failure described; *provided, further*, that the Seller may not terminate this Agreement pursuant to this Section 12.1(f) if (i) any of the Seller's representations and warranties shall have become and continue to be untrue in a manner that would cause the conditions set forth in Section 9.2(a) not to be satisfied, or (ii) there has been, and continues to be, a failure by the Seller to perform its covenants and agreements required in this Agreement in such a manner as would cause the condition set forth in Section 9.2(b) not to be satisfied; or

(g) by the Seller if, prior to the Outside Date, all of the conditions set forth in Sections 9.1 and 9.2 have been and continue to be satisfied or waived by the Buyer (other than those conditions that by their nature are to be satisfied at the Closing, each of which is capable of being satisfied assuming a Closing would occur) and the Buyer fails to consummate the Contemplated Transactions due to no fault of the Seller on the date on which the Closing should have occurred pursuant to Section 10.1; *provided*, *however*, that the Seller may not terminate this Agreement pursuant to this Section 12.1(g) without providing 10 days' prior written notice to the Buyer of the Seller's intention to terminate this Agreement pursuant to this Section 12.1(g).

12.2 Effect of Termination.

(a) Subject to Section 12.2(b), in the event of the termination of this Agreement pursuant to Section 12.1, written notice thereof shall be given to the other Parties by the Party so terminating the Agreement, specifying the provision of Section 12.1 pursuant to which such termination is made, and all rights and obligations of the Parties under this Agreement shall terminate, except for the provisions of this Section 12.2, Sections 8.3(c), 8.5 and 13.4, and Article XIV which shall survive termination of this Agreement; *provided,* that in the event this Agreement is terminated pursuant to Section 12.1(e) or Section 12.1(f), nothing in this Agreement except as provided pursuant to Section 12.2(c)) shall relieve any Party from any liability for Willful Breach by such Party and all rights and remedies of non-breaching Parties under this Agreement in the case of any such Willful Breach, at law or in equity, shall be preserved.

(b) Except as otherwise provided in this Section 12.2, the Parties agree that, if this Agreement is terminated, the Parties shall have no liability to each other under or relating to this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement (including notwithstanding Section ☒12.2(a) and Section 14.10 to the contrary), if this Agreement is validly terminated by the Seller pursuant to (i) Section 12.1(f) or Section 12.1(g) or (ii) Section 12.1(d) (and, with respect to the foregoing clause (ii) only, (A) at the time of such termination by the Seller, the Buyer is in breach of any representation, warranty, covenant, or agreement made by the Buyer in this Agreement, (B) such breach by the Buyer has resulted (or would result) in any one or more of the conditions set forth in Section 9.3 not being satisfied, (C) all of the conditions in Sections 9.1 and 9.2 have been satisfied or waived by the Buyer (other than those conditions that would have been satisfied except for such breach of the Buyer or that by their nature are to be satisfied at Closing, but subject to the fulfillment or waiver of those conditions), and (D) the Seller is ready, willing, and able to consummate the Closing in accordance with the terms of this Agreement), then, in either such case, the Seller shall be entitled by delivery of an irrevocable written notice to the Buyer, as limited damages and as the Seller's sole and exclusive remedy under this Agreement and the other Transaction Documents and in lieu of any other rights whatsoever at law or in equity to which the Seller may otherwise be entitled (other than any such rights in equity solely to the extent required to enforce this Section 12.2(c)), to receive the Signing Deposit (together with any interest earned thereon) (whether or not such amount is funded into escrow) and, in such event, no later than one Business Day after such termination, the Parties shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to immediately release the Signing Deposit (together with any interest earned thereon) to the Seller (or, in the event such amount is not funded into escrow, the Buyer shall immediately pay to the Seller an amount equal to the Signing Deposit, without any interest computed thereon). The Seller's right to receive the Signing Deposit pursuant to the preceding sentence is a reasonable estimate of the Seller's Losses in such event (and not a penalty) in full satisfaction of all Losses related to or arising out of this Agreement, the other Transaction Documents or the Contemplated Transactions (including any circumstances giving rise to any termination of this Agreement and including any breach by Buyer of this Agreement or any other Transaction Document prior to termination). Notwithstanding anything to the contrary in this Agreement, the Parties agree that the right of the Seller to receive the Signing Deposit in accordance with this Section 12.2(c) shall be the sole and exclusive remedy whatsoever of the Seller, its Affiliates and their respective former, current or future direct or indirect general or limited partners, equity holders, financing sources, shareholders, managers, members, directors, officers, employees, agents, representatives and any and all Affiliates, successors or assignees of any of the foregoing whether at law, in equity, in contract, in tort or otherwise) against the Buyer, its Affiliates and their respective former, current or future direct or indirect general or limited partners, equity holders, financing sources, shareholders, managers, members, directors, officers, employees, agents, representatives and any and all Affiliates, successors or assignees of any of the foregoing (the "***Buyer Related Parties***") for any such Losses, and none of the Buyer Related Parties shall have any Obligation relating to or arising out of or in connection with this Agreement, the other Transaction Documents or the Contemplated Transactions. Each Party acknowledges that the agreements contained in this Section 12.2(c) are an integral part of the Contemplated Transactions, that the receipt of the Signing Deposit by the Seller pursuant to this Section 12.2(c) is not a penalty, but rather constitutes liquidated damages, in a reasonable amount that will compensate the Seller Indemnified Parties in the circumstances in which such fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and on the expectation of the consummation of the Contemplated Transactions, and that, without these agreements, none of the Parties would enter into this Agreement. For the avoidance of doubt, the Seller may pursue either a grant of specific performance in accordance with Section 14.10 or terminate this Agreement in accordance with this Section 12.2(c) (and, to the extent incorporated herein, Section 12.1) and receive the payment of the Signing Deposit pursuant to this Section 12.2(c). In the event the Seller pursues a grant of specific performance in accordance with Section 14.10, the Signing Deposit shall remain in escrow until the resolution of such proceeding.

(d) If this Agreement is terminated for any reason other than as set forth in Section 12.2(c), then no later than one Business Day after such termination, the Parties shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to immediately release the Signing Deposit (together with any interest earned thereon) to the Buyer.

Article XIII
INDEMNIFICATION

13.1 Indemnification by the Seller. Subject to the other provisions of this Article XIII, from and after the Closing, each Seller, severally and not jointly, shall indemnify, defend and hold harmless the Buyer, the Buyer's Affiliates (including the Acquired Companies after the Closing), and their respective directors, officers, partners, members, equity holders and successors (collectively, the "***Buyer Indemnified Parties***") from, against and in respect of any Claims, Liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and expenses) (collectively, "***Losses***") that arise out of, relate to or result from any of the following described matters:

(a) any Breach of the representations or warranties of such Seller contained in Article V or Article VI or in the Transaction Certificates delivered by or on behalf of such Seller;

(b) any Breach by such Seller of any covenant or obligation of such Seller in this Agreement;

(c) all Transaction Costs incurred by the Acquired Companies prior to the Closing or incurred by such Seller and its Affiliates (excluding the Acquired Companies);

(d) all Retained Liabilities, including all Third-Party Claims relating to Retained Liabilities;

(e) any Pre-Closing Employee Liabilities;

(f) Seller Taxes;

(g) any Legal Proceedings pending against such Seller or the Acquired Companies as of the Closing Date including Legal Proceedings set forth in Sections 6.17 or 6.18 of the Seller Disclosure Schedules (the "***Litigation Indemnity***"); and

(h) all Liabilities related to or arising from the Excluded Assets (regardless of whether the indemnifiable loss giving rise to any such indemnification obligation is the result of the active or passive, sole, concurrent or comparative negligence or gross negligence, strict liability, breach of duty (statutory or otherwise), violation of Laws, or other fault of any Buyer Indemnified Party, or from any pre-existing defect).

13.2 Indemnification by the Buyer. Subject to the other provisions of this Article XIII, from and after the Closing, the Buyer shall indemnify, defend and hold harmless the Seller, their respective Affiliates (excluding the Acquired Companies after the Closing), and their respective directors, officers, partners, members, equity holders and successors (collectively, the "***Seller Indemnified Parties***" and, together with the Buyer Indemnified Parties, "***Indemnified Parties***") from, against and in respect of any Losses that arise out of, relate to or result from any of the following described matters:

(a) any Breach of the representations or warranties of the Buyer contained in Article VII or in the Transaction Certificates delivered by or on behalf of the Buyer;

(b) any Breach by the Buyer of any covenant or obligation of the Buyer in this Agreement;

(c) all Transaction Costs incurred by the Buyer; and

(d) any Liabilities relating to the Acquired Companies or the Buyer relating to the operation and ownership by the Buyer or its Affiliates of the Acquired Companies or the Business after the Measurement Time, in each case, where the facts, circumstances or conditions underlying, contributing to or related to such Liabilities first occur after the Measurement Time.

With respect to the indemnification obligations pursuant to Sections 13.2(a) and 13.2(b), the breaching Buyer shall be responsible for 100% of the indemnification obligations resulting from, relating to or attributable to its Breach of such representations, warranties, covenants or obligations. The indemnification obligations of the Buyer pursuant to Section 13.2(c) shall be joint and several. With respect to the indemnification obligations of the Buyer pursuant to Section 13.2(d), CRCT shall be responsible for 100% of the indemnification obligations resulting from, relating to or attributable to the Acquired Companies or the Business.

13.3 Qualifications and Other Indemnity Claim Matters. Notwithstanding anything to the contrary in this Article XIII or elsewhere in this Agreement, the following terms shall apply to any Claim for monetary damages (including Losses) arising out of this Agreement or related to the Contemplated Transactions:

(a) Thresholds; Deductible. The Seller will not have any liability under Section 13.1(a) until the Buyer Indemnified Parties have suffered Losses in excess of an aggregate amount equal to $250,000 (the "**Aggregate Deductible**") arising from Claims under Section 13.1(a), and then the recoverable Losses under this Article XIII for such Claims shall be equal to the amount of any such Losses only to the extent such Losses exceed the Aggregate Deductible; provided, that the limitations set forth in this Section 13.3(a) shall not apply to Losses arising from any Breach or inaccuracy of the Fundamental Representations or of Section 6.17; and provided, further, that Losses less than $50,000 shall not be counted toward the Aggregate Deductible.

(b) Liability Caps. The aggregate liability of the Seller under Section 13.1(a) shall not exceed $2,000,000; *provided*, that the limitations set forth in this Section 13.3(b) shall not apply to Losses arising from any Breach or inaccuracy of the Fundamental Representations, in which case the aggregate liability of the Seller shall not exceed the Base Consideration.

(c) Survival; Claims Period. All representations and warranties of the Parties contained in this Agreement shall survive the Closing until the 18-month anniversary of the Closing Date; *provided*, *however*, that (i) the Fundamental Representations shall survive Closing indefinitely, (ii) the representations and warranties in Section 6.17 shall survive the Closing Date until 60 days after the expiration of the applicable statute of limitations, and (iii) the representations and warranties in Sections 5.6, 6.25, and 7.5 shall survive the Closing until the 4th year anniversary of the Closing Date (in each case the date, if any, on which a representation or warranty contained in this Agreement so expires, the "***Expiration Date***"). All covenants and obligations contained in this Agreement that by their terms are to be performed at or prior to the Closing shall terminate upon the 1st year anniversary of the Closing Date, and all covenants and obligations contained in this Agreement that by their terms are to be performed after the Closing shall survive the Closing until performed in accordance with their terms. Notwithstanding anything to the contrary in this Agreement, (i) any Claim arising under Sections 13.1(b) or 13.2(b) shall survive the Closing until the date of the survival of the applicable covenant or obligation in accordance with the immediately preceding sentence. No indemnifying party under this Article XIII ("***Indemnifying Party***") shall have any liability for indemnification Claims made under this Article XIII with respect to (i) any Breach of any representation or warranty in this Agreement unless a Claim Notice of such Claim is timely given in accordance with this Agreement prior to the applicable Expiration Date, and (ii) any Breach of any covenant or obligation in this Agreement unless a Claim Notice of such Claim is given prior to the date of the survival of the applicable covenant or obligation. If a Claim Notice has been timely given in accordance with this Agreement prior to the applicable Expiration Date or survival date, as applicable, then the applicable representation or warranty, covenant or obligation shall survive as to such Claim until such Claim has been finally resolved.

(d) Calculation of Damages. The amount of any Losses for which indemnification is provided under this Article XIII shall be calculated net of any insurance policies, indemnity, reimbursement arrangement, Contract or other recovery recovered by the applicable Indemnified Party or its Affiliates in connection with the facts giving rise to the right of indemnification (each, an "***Alternative Recovery***") (which recovery shall be net of any retention amount or deductibles paid by such Indemnified Party to obtain such insurance coverage, in each case, net of any reasonable and documented out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses)); *provided,* that such Indemnified Party pursuing such recovery shall not delay or impair such Indemnified Party from validly making, or seeking recovery and obtaining payment for any Claim for indemnification under this Article XIII. While the Indemnified Party shall use commercially reasonable efforts to file and pursue recovery under all such Alternative Recoveries with respect to any Loss to the same extent as such Indemnified Party would if such Loss were not subject to indemnification hereunder, failure of the Indemnified Party to recover under any such Alternative Recovery shall not impair its indemnification claim hereunder. All Losses shall be determined without duplication of recovery under other provisions of this Agreement or any of the other Transaction Documents.

(e) Final Net Working Capital. It is the Parties' intent that the procedures set forth in Article III and the dispute resolution procedures set forth therein shall provide the exclusive remedies for Claims relating to the amounts included in the calculation of Final Net Working Capital. The Seller's indemnification obligations pursuant to this Agreement shall be reduced in the event and to the extent amounts for such indemnified obligations are taken into account as a liability for purposes of the Final Net Working Capital.

(f) Purchase Price Adjustment. Any indemnity payments made under this Agreement shall be treated for all Tax purposes as an adjustment to the Purchase Price unless otherwise required by applicable Law following a "determination" (as defined in Section 1313 of the Code).

13.4 Exclusive Remedy; Waiver.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IF THE CLOSING OCCURS AND EXCEPT (I) AS PROVIDED IN THIS Article XIII OR (II) IN THE CASE OF ACTUAL FRAUD, NO PARTY SHALL HAVE ANY LIABILITY, AND NO PARTY SHALL MAKE ANY CLAIM, FOR ANY LOSS OR OTHER MATTER (AND THE PARTIES HEREBY WAIVE ANY RIGHT OF CONTRIBUTION AGAINST EACH OTHER AND THEIR RESPECTIVE AFFILIATES), UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, ANY CERTIFICATE DELIVERED PURSUANT TO THIS AGREEMENT, OR THE CONTEMPLATED TRANSACTIONS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, ENVIRONMENTAL OR OTHER LAWS OR OTHERWISE.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NO PARTY SHALL BE LIABLE FOR PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE; *PROVIDED, HOWEVER,* THAT THIS SECTION 13.4(b) SHALL NOT LIMIT A PARTY'S RIGHT TO RECOVERY UNDER THIS Article XIII FOR ANY SUCH DAMAGES TO THE EXTENT SUCH PARTY IS REQUIRED TO PAY SUCH DAMAGES TO A THIRD PARTY IN CONNECTION WITH A MATTER FOR WHICH SUCH PARTY IS OTHERWISE ENTITLED TO INDEMNIFICATION UNDER THIS Article XIII.

13.5 Claim Procedures. Each Indemnified Party that desires to make a Claim for indemnification pursuant to this Article XIII shall provide notice (a "***Claim Notice***") thereof in writing to the Buyer (if the Indemnified Party is a Seller Indemnified Party) or to the Seller (if the Indemnified Party is a Buyer Indemnified Party), specifying the nature and basis for such Claim in reasonable detail and a copy of all papers served with respect to such Claim (if any) and will indicate a good faith estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Party. A speculative, prospective or possible future Breach shall not be adequate to support a timely indemnification claim. For purposes of this Section 13.5, receipt by a Party of written notice of any Third-Party Claim which gives rise to a Claim on behalf of such Party shall require prompt delivery of a Claim Notice to the Indemnifying Party of the receipt of such Third-Party Claim; *provided*, *however*, that an Indemnified Party's failure to send or delay in sending a Claim Notice shall not relieve an Indemnifying Party from liability hereunder with respect to such Claim except to the extent and only to the extent the Indemnifying Party is materially prejudiced by such failure or delay; *provided*, *however*, that a Claim Notice must be provided to the applicable Indemnifying Party within the time limitation set forth in Section 13.3(c).

13.6 Control of Third-Party Claims.

(a) In the event of the assertion of any Third-Party Claim (other than a Third-Party Claim relating to, or in connection with, the Litigation Indemnity), the Indemnifying Party, at its option, may assume (with legal counsel reasonably acceptable to the Indemnified Party) at its sole cost and expense the control of the defense of such Third-Party Claim and any Legal Proceeding resulting therefrom (election of such option to be without prejudice to the right of the Indemnifying Party to dispute whether such Claim is an indemnifiable Loss under this Article XIII); *provided,* that the Indemnified Party shall have the right, at its own expense, to participate jointly with the Indemnifying Party in such defense of any such Third-Party Claim or Legal Proceeding. Counsel representing both the Indemnifying Party and the Indemnified Party must acknowledge in writing its obligation to act as counsel for all parties being represented and must acknowledge and respect separate attorney-client privileges with respect to each party represented. If the Indemnifying Party elects to control the defense of any Third-Party Claim or Legal Proceeding resulting therefrom, the Indemnified Party shall cooperate with the Indemnifying Party in the defense or settlement of the Third-Party Claim or Legal Proceeding, including providing access to information, making documents available for inspection and copying, and making employees available for interviews, depositions and trial. The Indemnifying Party shall not be entitled to settle or compromise any Third-Party Claim or Legal Proceeding resulting therefrom without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; *provided,* that such consent shall not be required if (i) the settlement agreement contains a complete and unconditional general release by the third party asserting the Claim of all Indemnified Parties affected by the Claim and a release of all related Liens, if any, (ii) the settlement agreement does not contain any sanction or restriction upon the conduct of any business by any Indemnified Party and does not impose an injunction or other equitable relief upon the Indemnified Party or would not reasonably be expected to have a material adverse effect on the Indemnified Party or require the Indemnified Party or its Affiliates to take any further action and (iii) the settlement agreement does not involve any admission of wrongdoing by the Indemnified Party or any of its Affiliates.

(b) If the Indemnifying Party, by the 30th day after receipt of notice of any Third-Party Claim (or, if earlier, by the tenth day preceding the day on which an answer or other pleading must be served in order to prevent judgment by default in favor of the Person asserting such Third-Party Claim) does not assume actively and in good faith the control of the defense of any such Third-Party Claim or Legal Proceeding resulting therefrom, the Indemnified Party may defend against such Claim or Legal Proceeding, after giving notice of the same to the Indemnifying Party; *provided,* that the Indemnifying Party shall not be liable for the costs and expenses of more than one counsel for all Indemnified Parties in each jurisdiction to which such Third-Party Claim or Legal Proceeding relates. The Indemnifying Party shall be entitled to participate in (but not control) such defense or Legal Proceeding, with its counsel and at its own expense. The Indemnified Party shall not be entitled to settle or compromise any Third-Party Claim or Legal Proceeding resulting therefrom for which it is entitled to indemnification under this Agreement without the prior written consent of the Indemnifying Party (which shall not be unreasonably withheld, conditioned or delayed).

(c) Notwithstanding the initial sentence of Section 13.6(a) to the contrary, in the event of the assertion of any Third-Party Claim relating to, or in connection with, the Litigation Indemnity, the Seller shall assume at its sole cost and expense, the control of the defense of such Third-Party Claim and any Legal Proceeding resulting therefrom; *provided,* that the Buyer shall have the reasonable opportunity to stay reasonably informed as to the status of any Third-Party Claim or Legal Proceeding; *provided*, *however*, that in no event shall the Buyer be entitled to settle or compromise any such Third-Party Claim or Legal Proceeding without the prior written consent of the Seller, which consent shall not be unreasonably withheld or delayed. The Buyer shall reasonably cooperate with the Seller in (i) the defense or settlement of the Third-Party Claim or Legal Proceeding, including providing access to information, making documents available for inspection and copying, and making employees available for interviews, depositions and trial, and (ii) seeking and enforcing claims against any Third-Party Persons (other than the Seller) with respect to any indemnification, contribution or other claims in which the Acquired Companies may be entitled relating to, or in connection with, the Litigation Indemnity.

13.7 Mitigation. Each Indemnified Party will act in good faith to take commercially reasonable efforts to mitigate all Losses subject to indemnification under this Article XIII after receiving actual knowledge of any event or circumstance that would be reasonably expected to give rise to indemnification under this Article XIII, which such commercially reasonable efforts shall include availing itself of any reasonably and commercially practicable defenses, limitations, rights of contribution, and Claims against third Persons and other rights at law or equity.

Article XIV
MISCELLANEOUS

14.1 Assignment. This Agreement and the rights under this Agreement may not be assigned by the Buyer without the prior written consent of the Seller. This Agreement and the rights hereunder may not be assigned by the Seller without the prior written consent of the Buyer. Notwithstanding the preceding, the Buyer shall have the right to assign this Agreement and any or all rights or obligations hereunder to any of its Affiliates without the prior written consent of the Seller; *provided,* that prior written notice of any such assignment shall be given by the Buyer to the Seller. In the event of any such permitted assignment by the Buyer, (a) the Buyer will, notwithstanding such assignment, remain liable for all of its obligations hereunder and (b) the references in this Agreement to the Buyer will also apply to its permitted assignee unless the context otherwise requires. Upon any such permitted assignment, the references in this Agreement to the Buyer will also apply to any such assignee unless the context otherwise requires. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

14.2 **Notices**. Unless otherwise provided in this Agreement, any notice, request, consent, instruction or other document to be given under this Agreement by any Party to another Party shall be in writing and delivered personally, by reputable overnight delivery service or other courier or by certified mail, postage prepaid, return receipt requested, or by electronic mail transmission with receipt verified by electronic confirmation and will be deemed given (a) when received if delivered personally or by overnight delivery service or other courier, (b) on the date receipt is acknowledged if delivered by certified mail, postage prepaid, return receipt requested, or (c) upon transmission, if sent by electronic mail transmission (in each case with receipt verified by electronic confirmation), as follows:

If to the Seller or prior to the Closing, any Acquired Company, addressed to:

BKEP Crude, L.L.C.
6060 American Plaza, Suite 600
Tulsa, OK 74135
Attention: Joel W. Kanvik, Chief Legal Officer
E-Mail: jkanvik@bkep.com

and

BKEP Supply and Marketing, LLC
6060 American Plaza, Suite 600
Tulsa, OK 74135
Attention: Joel W. Kanvik, Chief Legal Officer
E-Mail: jkanvik@bkep.com

With a copy, which shall not constitute notice, addressed to:

Gibson, Dunn & Crutcher LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
Attention: Doug Rayburn
E-mail: DRayburn@gibsondunn.com

If to the Buyer or following the Closing, any Acquired Company, addressed to:

Coffeyville Resources Crude Transportation, LLC
2277 Plaza Drive, Suite 500
Sugar Land, Texas 77479
Attn: Mark Pytosh, Executive Vice President – Services
E-Mail: mpytosh@CVREnergy.com

Coffeyville Resources Refining & Marketing, LLC
2277 Plaza Drive, Suite 500
Sugar Land, Texas 77479
Attn: David Landreth
E-Mail: dllandreth@CVREnergy.com

With a copy, which shall not constitute notice, addressed to:

Coffeyville Resources Crude Transportation, LLC
Coffeyville Resources Refining & Marketing, LLC
2277 Plaza Drive, Suite 500
Sugar Land, Texas 77479
Attn: Executive Vice President and General Counsel
E- Mail: legalservices@cvrenergy.com

or to such other place and with such other copies as any Party may designate as to itself by written notice to the others in accordance with this Section 14.2.

14.3 **Choice of Law**. THIS AGREEMENT SHALL BE CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY THE INTERNAL LAWS OF, THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICT OF LAW OR CHOICE OF LAW PRINCIPLES THAT WOULD APPLY THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION.

14.4 **WAIVER OF JURY TRIAL**. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HEREBY IRREVOCABLY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING IN WHOLE OR IN PART UNDER, RELATED TO, BASED ON, OR IN CONNECTION WITH, THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 14.4 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

14.5 **Submission to Jurisdiction**. Each of the Parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any Party against any other Party shall be brought and determined in the Court of Chancery of the State of Delaware, provided that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal action or proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each of the Parties irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the Parties further agrees that notice provided by certified mail, postage prepaid, return receipt requested pursuant to Section 14.2 shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. Each of the Parties irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

14.6 <u>Expenses</u>. Except as otherwise provided in this Agreement, the Seller and the Buyer will bear all of their own costs, fees and expenses, if any, incurred by or on its behalf in connection with the Contemplated Transactions.

14.7 <u>Disclosure Schedules</u>.

(a) The inclusion of any information (including dollar amounts) in any of the schedules to this Agreement shall not be deemed to be an admission or acknowledgment by any Party that such information is required to be listed on such section of the relevant schedule or is material to or outside the Ordinary Course of Business of any Person. The information contained in this Agreement, the Exhibits hereto and the schedules is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any Party to any third party of any matter whatsoever (including any violation of any Law or Breach of contract). Unless the context otherwise requires, all capitalized terms used in the schedules shall have the respective meanings assigned in this Agreement.

(b) Prior to the Closing, the Seller shall notify the Buyer of any changes, additions, or events which cause any material change in or addition to the Seller Disclosure Schedules promptly after the Seller becomes aware of the same by delivery of appropriate updates to the Seller Disclosure Schedules to the Buyer. To the extent such supplemental disclosures to the Seller Disclosure Schedules arise from circumstances first occurring or being discovered after the Execution Date and are necessary to correct any matter that would constitute a breach of any representation or warranty of the Seller in <u>Article V</u> or <u>Article VI</u> on the Execution Date (but excluding any supplemental disclosures related to the Fundamental Representations) such new or additional information is referred to herein as being "***New Seller Information***." For purposes herein "New Seller Information" shall not include information that is updated in the Ordinary Course of Business during the Interim Period (*e.g*., updated lists of Employees) and is provided to the Buyer prior to the Closing.

(c) For purposes of determining whether the Buyer's conditions set forth in <u>Section 9.2(a)</u> have been fulfilled, the Seller Disclosure Schedules shall be deemed to include only that information contained therein on the Execution Date and shall be deemed to exclude the New Seller Information.

(d) If the Closing occurs (including where the Buyer has a right to terminate this Agreement pursuant to Section 12.1(e) as a result of the conditions set forth in Section 9.2(a) not being satisfied but the Buyer elects to proceed with the Closing), then the New Seller Information shall be deemed to be accepted by the Buyer, and the Buyer shall be deemed to have waived and not be entitled to make a Claim thereon under this Agreement (including pursuant to Article XIII) or otherwise.

14.8 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

14.9 Third Party Beneficiaries. This Agreement is solely for the benefit of (a) the Parties and their successors and assigns permitted under this Agreement, (b) the Persons referred to in Section 8.3(c), (c) the Persons referred to in Section 8.9, (d) the Buyer Indemnified Parties and the Seller Indemnified Parties (solely with respect to such Persons' rights to indemnification pursuant to Article XIII) and (e) the Persons referred to in Section 13.4 (solely with respect to such Person's right to enforce the waivers set forth in such section) (all of whom shall be deemed to be third party beneficiaries hereof for such purposes), and no provisions of this Agreement shall be deemed to confer upon any other Persons any remedy, Claim, liability, reimbursement, cause of action or other right or remedy by reason of this Agreement.

14.10 Specific Performance. Subject to the provisions of Section 12.2(c), each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are Breached. Accordingly, each of the Parties agrees that the other Parties shall be entitled, subject to compliance with Section 14.5, and in addition to any other remedies that may be available under this Agreement, to specific performance of the terms hereof, including an injunction or injunctions to prevent Breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any Legal Proceeding instituted in the Court of Chancery of the State of Delaware; *provided*, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then in any state or federal court located in the State of Delaware, in addition to any other remedy to which such Party is entitled at law or in equity. Each of the Parties hereby further waives (i) any defense in any action for specific performance that a remedy at law would be adequate and (ii) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

14.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile or scanned and emailed transmission of any signed original document or retransmission of any signed facsimile or scanned and emailed transmission will be deemed the same as delivery of an original. At the request of any Party, the Parties will confirm facsimile or scanned and emailed transmission by signing a duplicate original document.

14.12 Entire Agreement; Amendments.

(a) This Agreement, together with all Exhibits, Annexes and Schedules hereto, the Seller Guaranty, the other Transaction Documents and the Confidentiality Agreement constitute the entire agreement among the Parties pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.

(b) This Agreement may be amended, modified, supplemented or restated, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Buyer and the Seller or, in the case of a waiver, by or on behalf of the Buyer or the Seller. The failure of any Party at any time or times to require performance of any provisions hereof will in no manner affect the right at a later time to enforce the same. No waiver by any Party of any condition, or of any Breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, will be deemed to be or construed as a further or continuing waiver of any such condition or Breach or a waiver of any other condition or of any Breach of any other term, covenant, representation or warranty. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Person under or by reason of this Agreement.

14.13 Legal Representation.

(a) The Buyer, on behalf of itself and its Affiliates (including, after the Closing, the Acquired Companies) acknowledges and agrees that Gibson, Dunn & Crutcher LLP ("***Gibson Dunn***") has acted as counsel for the Seller and the Acquired Companies in connection with this Agreement and the Contemplated Transactions (the "***Acquisition Engagement***"), and in connection with this Agreement and the Contemplated Transactions, Gibson Dunn has not acted as counsel for any other Person, including the Buyer.

(b) Only the Seller, the Acquired Companies and their respective Affiliates shall be considered clients of Gibson Dunn in the Acquisition Engagement. The Buyer, on behalf of itself and its Affiliates (including after the Closing, the Acquired Companies) acknowledges and agrees that all confidential communications between the Seller, the Acquired Companies and their respective Affiliates, on the one hand, and Gibson Dunn, on the other hand, in the course of the Acquisition Engagement, and any attendant attorney-client privilege, attorney work product protection, and expectation of client confidentiality applicable thereto, shall be deemed to belong solely to the Seller and its Affiliates (other than the Acquired Companies), and not any Acquired Company, and shall not pass to or be claimed, held, or used by the Buyer or any Acquired Company upon or after the Closing. Accordingly, the Buyer shall not have access to any such communications, or to the files of Gibson Dunn relating to the Acquisition Engagement, whether or not the Closing occurs. Without limiting the generality of the foregoing, upon and after the Closing, (i) to the extent that files of Gibson Dunn in respect of the Acquisition Engagement constitute property of the client, only the Seller and their respective Affiliates shall hold such property rights and (ii) Gibson Dunn shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to the Acquired Companies or the Buyer by reason of any attorney-client relationship between Gibson Dunn and the Acquired Companies or otherwise; *provided*, *however*, that notwithstanding the foregoing, Gibson Dunn shall not disclose any such attorney-client communications or files to any third parties (other than representatives, accountants and advisors of the Seller and its Affiliates; *provided,* that such representatives, accounts and advisors are instructed to maintain the confidence of such attorney-client communications). The Buyer, on behalf of itself and its Affiliates (including after the Closing, the Acquired Companies) irrevocably waives any right it may have to discover or obtain information or documentation relating to the Acquisition Engagement, to the extent that such information or documentation was subject to an attorney-client privilege, work product protection or other expectation of confidentiality owed to the Seller and/or their respective Affiliates. If and to the extent that, at any time subsequent to Closing, the Buyer or any of its Affiliates (including after the Closing, the Acquired Companies) shall have the right to assert or waive any attorney-client privilege with respect to any communication between the Acquired Companies or their respective Affiliates and any Person representing them that occurred at any time prior to the Closing, the Buyer, on behalf of itself and its Affiliates (including after the Closing, the Acquired Companies) shall be entitled to waive such privilege only with the prior written consent of the Seller (such consent not to be unreasonably withheld).

(c) The Buyer, on behalf of itself and its Affiliates (including after the Closing, the Acquired Companies) acknowledges and agrees that Gibson Dunn has acted as counsel for the Seller, the Acquired Companies and their respective Affiliates for several years and that the Seller reasonably anticipates that Gibson Dunn will continue to represent it and/or its Affiliates in future matters. Accordingly, the Buyer, on behalf of itself and its Affiliates (including after the Closing, the Acquired Companies) expressly (i) consents to Gibson Dunn's representation of the Seller and/or its Affiliates and/or any of their respective agents (if any of the foregoing Persons so desire) in any matter, including, without limitation, any post-Closing matter in which the interests of the Buyer and any Acquired Company, on the one hand, and the Seller or any of its Affiliates, on the other hand, are adverse, including any matter relating to the Contemplated Transactions, and whether or not such matter is one in which Gibson Dunn may have previously advised the Seller, the Acquired Companies or their respective Affiliates and (ii) consents to the disclosure by Gibson Dunn to the Seller or its Affiliates of any information learned by Gibson Dunn in the course of its representation of the Seller, the Acquired Companies or their respective Affiliates, whether or not such information is subject to attorney-client privilege, attorney work product protection, or Gibson Dunn's duty of confidentiality.

(d) From and after the Closing, the Acquired Companies shall cease to have any attorney-client relationship with Gibson Dunn, unless and to the extent Gibson Dunn is expressly engaged in writing by the applicable Acquired Company to represent such Acquired Company after the Closing and either (i) such engagement involves no conflict of interest with respect to the Seller and/or any of their respective Affiliates or (ii) the Seller and/or any such Affiliate, as applicable, consent in writing to such engagement. Any such representation of the Acquired Companies by Gibson Dunn after the Closing shall not affect the foregoing provisions hereof. Furthermore, Gibson Dunn, in its sole discretion, shall be permitted to withdraw from representing the Acquired Companies in order to represent or continue so representing the Seller.

(e) The Seller, the Acquired Companies and the Buyer consent to the arrangements in this Section 14.13 and waive any actual or potential conflict of interest that may be involved in connection with any representation by Gibson Dunn permitted hereunder.

[*Signature Pages Follow*]

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

SELLER:

BKEP CRUDE, L.L.C.

By: /s/ D. Andrew Woodward
Name: D. Andrew Woodward
Title: Chief Executive Officer

BKEP SUPPLY AND MARKETING LLC

By: /s/ D. Andrew Woodward
Name: D. Andrew Woodward
Title: Chief Executive Officer

BUYER:

COFFEYVILLE RESOURCES CRUDE TRANSPORTATION, LLC

By: /s/ Tracy D. Jackson
Name: Tracy D. Jackson
Title: Executive Vice President and Chief Financial Officer

COFFEYVILLE RESOURCES REFINING & MARKETING, LLC

By: /s/ Tracy D. Jackson
Name: Tracy D. Jackson
Title: Executive Vice President and Chief Financial Officer

Exhibit 10.31

MEMBERSHIP INTEREST PURCHASE AGREEMENT

between

BKEP CRUDE, L.L.C.,

as the Seller,

and

ENBRIDGE STORAGE (CUSHING) L.L.C.,

as the Buyer

Dated as of December 18, 2020

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

MEMBERSHIP INTEREST PURCHASE AGREEMENT, dated as of December 18, 2020 (this "Agreement"), between BKEP Crude, L.L.C., a Delaware limited liability company (the "Seller"), and Enbridge Storage (Cushing) L.L.C., a Delaware limited liability company (the "Buyer").

RECITALS

WHEREAS, the Seller owns 100% of the issued and outstanding membership interests (the "Purchased Interests") of BKEP Crude Storage, L.L.C., a Delaware limited liability company (the "Company"); and

WHEREAS, the Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Interests.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

"Action" means any civil, criminal or administrative claim, action, case, grievance, investigation, audit, suit, arbitration, mediation, cause of action or other proceeding by or before any Governmental Authority or any arbitrator.

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

"Applicable Entities" means BKEP Parent and all of its direct and indirect subsidiaries, that hold or have held any BKEP Assets, or are or have been parties to any contract, Permit or other right or obligation as to the Terminals Business, including, for the avoidance of doubt, the Seller and the Company.

"BKEP Assets" means all assets primarily used in the conduct of the Terminals Business as of and since July 15, 2020 (including those interests and assets set forth on Schedule 1.1 of the Disclosure Schedules), but excluding assets disposed to Persons that are not an Affiliate of Seller that are obsolete or were unnecessary to the conduct of the business in the ordinary course prior to such date.

"BKEP Parent" means Blueknight Energy Partners, L.P., a Delaware limited partnership.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the State of Oklahoma.

"Buyer Material Adverse Effect" means any event, change, occurrence or effect that would prevent, materially delay or materially impede the performance by the Buyer of its obligations under the Transaction Documents or the consummation of the transactions contemplated hereby and thereby.

"Calculation Time" means 11:59 p.m. Tulsa, Oklahoma time on the day immediately preceding the Closing Date.

"Cash" means, as at a specified date, the aggregate amount of all cash, cash equivalents and marketable securities held by the Company, including all outstanding security, customer or other deposits, including cash collateral posted as credit support by or on behalf of the Company (it being understood and agreed that Cash shall be reduced by the amount of any checks written and mailed (but not yet cashed) by the Company).

"Code" means the Internal Revenue Code of 1986, as amended.

"control," including the terms "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise.

"COVID-19" means the coronavirus disease (COVID-19), and any evolutions thereof, caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which was declared a Public Health Emergency of International Concern by the World Health Organization on January 30, 2020.

"COVID-19 Measures" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester or any other Laws, orders, directives, guidelines or recommendations promulgated by any Governmental Authority in connection with or in response to COVID-19, including the Coronavirus Aid, Relief, and Economic Security Act (CARES).

"Deposit Amount" means an amount equal to $6,600,000.

"Easement" means any easement, right-of-way, license, road crossing agreement, rail crossing agreement, or other similar land use agreements, licenses, permits and similar rights in real property, including real property used for purposes of pipeline rights-of-way and access (ingress and egress) easement and right-of-way purposes, but excluding Leased Real Property.

"Encumbrance" means, with respect to any property or other asset of any Person (or any revenues, income or profits of that Person therefrom), any (i) charge, claim, mortgage, lien, pledge, security interest, deed of trust, assessment, levy or similar encumbrance (i) lease, tenancy, license, or other possessory interest, (iii) purchase right, transfer or other restriction, right of first refusal, right of first offer, conditional sales obligation, or similar encumbrance or (iv) Easement, restrictive covenant, condition or other similar land use encumbrance of any kind (but excluding under (i) through (iv) those created under applicable securities laws, and not including any license of Intellectual Property).

"Enterprise Value" means $132,000,000.

"Equity Interests" means capital stock, partnership or membership interests, units, profits interests or any other equity interest that confers on a Person the right to receive a share of the profits and losses of, or distribution of, or a voting or control right as to, the issuing entity, and all securities convertible into or exchangeable for any of the foregoing (including debt securities), and any and all warrants, rights or options to purchase, or obligations of a Person to sell, any of the foregoing.

"Escrow Agent" means JPMorgan Chase Bank, N.A.

"Escrow Agreement" means the Escrow Agreement entered into as of the date hereof by the Buyer, the Seller, and Escrow Agent.

"Estimated Purchase Price" means (i) the Enterprise Value, plus (ii) the Estimated Cash, plus (iii) the Working Capital Overage, if any, minus (iv) the Estimated Indebtedness, minus (v) the Working Capital Underage, if any, minus (vi) the Estimated Transaction Expenses, minus, (vii) the Deposit Amount (together with any interest earned thereon).

"FERC" means the U.S. Federal Energy Regulatory Commission.

"Fundamental Representations" means the representations and warranties in Sections 3.1, 3.2, 3.3(a)(i), 3.4, 3.5, 3.6, 4.1, 4.2(a)(i), 4.3, 4.4, 4.17, 4.22, 4.26, 5.1, 5.2, and 5.5.

"GAAP" means United States generally accepted accounting principles as in effect on the date hereof, applied on a consistent basis.

"Governmental Authority" means any United States, federal, state or local governmental, regulatory or administrative authority, agency or commission or any judicial or arbitral body.

"Indebtedness" means, with respect to any Person, as of a specified date, without duplication, the principal amount, plus any related accrued and unpaid interest, fees and prepayment premiums or penalties with respect thereto, of (i) obligations for borrowed money of such person, whether secured or unsecured, (ii) obligations of such Person evidenced by any note, bond, debenture or other debt security, (iii) obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or bankers' acceptances or similar instruments, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all guarantees, whether direct or indirect, by such Person of indebtedness of others or indebtedness of any other Person secured by any assets of such Person, and (vi) without limiting the foregoing, all other obligations of a Person which would be required to be shown as indebtedness on a balance sheet of such Person prepared in accordance with GAAP. Notwithstanding the foregoing, "Indebtedness" does not include (A) any lease obligations under operating lease, (B) obligations under any interest rate, currency or other hedging agreement (other than breakage costs payable upon termination thereof on the Closing Date) set forth on Schedule 4.16 of the Disclosure Schedules or (C) trade payables and accrued expenses arising in the ordinary course of business. For purposes of Section 2.4, "Indebtedness" shall not include obligations of the Company to be released on or before the Closing Date under that certain Second Amended and Restated Credit Agreement, dated as of May 11, 2017, as amended from to time, by and among BKEP Parent and the other signatory parties thereto.

"Indemnifying Party" means the party obligated to indemnify any Indemnified Party under Article IX.

"Intellectual Property" means (i) trade names, trademarks and service marks, domain names, trade dress and similar rights, and applications to register any of the foregoing; (ii) patents and patent applications; (iii) copyrights (whether registered or unregistered) and applications for registration; and (iv) confidential and proprietary information, including trade secrets and know-how.

"Intentional Fraud" means a common law claim for fraud based on an intentional misrepresentation (as opposed to any claim based on constructive knowledge, or negligent or reckless misrepresentation) with respect to the representations and warranties in this Agreement.

"Knowledge" with respect to the Company or the Seller (as applicable) means the actual (but not constructive or imputed) knowledge, after due inquiry, of the persons listed in Schedule 1.2 of the Disclosure Schedules as of the date of this Agreement (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate) and with respect to the Buyer means the actual (but not constructive or imputed) knowledge, after due inquiry, of Graham Young and Cayde Coates.

"Law" means any statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order of any Governmental Authority, including common law.

"Leased Real Property" means the real property leased in connection with the Terminals Business by one or more of the Applicable Entities, as tenant, including all buildings and other structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances relating to the foregoing.

"Lender Release" means a release of all liens and liability of the Company and the BKEP Assets under the loan and security documents related to the Second Amended and Restated Credit Agreement among Blueknight Energy Partners, L.P., Capital One, National Association, Natixis, Compass Bank, U.S. Bank, National Association, Cadence Bank, N.A., Regions Bank, et al., and Wells Fargo Bank, National Association (as Administrative Agent), dated as of May 11, 2017 (as amended June 28, 2018).

"Liability" means any liability, obligation, or commitment of any nature whatsoever, whether asserted, known, absolute, accrued, matured, contingent or otherwise and whether or not required to be recorded or reflected on a balance sheet under GAAP.

"Losses" means losses, liabilities, obligations, damages, diminutions of value, demands, actions, causes of action, fines, costs and expenses of defense thereof (including reasonable investigatory fees and expenses and fees and disbursements of counsel, as well as the cost of enforcing any right to indemnification under Article IX).

"Material Adverse Effect" means any event, change, occurrence or effect that (i) would have, or would reasonably be expected to have, a material adverse effect on the business, financial condition or results of operations of the Company in the aggregate or on the Terminals Business or on the BKEP Assets, taken as a whole, or (ii) would, or would reasonably be expected to, prevent, materially delay or materially impede the performance by the Seller of its obligations under the Transaction Documents or the consummation of the transactions contemplated hereby or thereby, other than any event, change, occurrence or effect arising out of, attributable to or resulting from (1) changes in general economic or business conditions or in the financial markets, or in interest or exchange rates, in each case, in the United States or elsewhere in the world, (2) general changes or developments affecting any of the industries in which the Company operates, (3) actions required under this Agreement to obtain any approval or authorization under applicable antitrust or competition Laws for the consummation of the transactions contemplated hereby, (4) changes in any applicable Laws (including any COVID-19 Measures) or applicable accounting regulations or principles or interpretations thereof, (5) any failure by the Company to meet internal or published projections, forecasts or revenue or earnings predictions, in and of itself (provided, that the facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of "Material Adverse Effect" may be taken into account in determining whether there has been a Material Adverse Effect), (6) geopolitical conditions or any outbreak, continuation or escalation of any military conflict, declared or undeclared war, armed hostilities, or acts of foreign or domestic terrorism (including cyber-terrorism), (7) any epidemic, pandemic or disease outbreak (including COVID-19), or any Law issued by a Governmental Authority, the Centers for Disease Control and Prevention, the World Health Organization or industry group providing for COVID-19 Measures, business closures, "sheltering-in-place," curfews or other restrictions that relate to, or arise out of, an epidemic, pandemic or disease outbreak (including COVID-19) or any change in such Law or interpretation thereof following the date of this Agreement or any worsening of such conditions threatened or existing as of the date of this Agreement, (8) any political or social conditions, civil unrest, protests, public demonstrations and the response of any Governmental Authority thereto or any escalation or worsening thereof, (9) natural disasters or weather conditions or other acts of God, (10) any other national or international calamity, crisis or emergency, whether or not caused by any Person, (11) the pendency of this Agreement and the transactions contemplated hereby, (12) any action taken by the Company which is expressly required or expressly permitted by this Agreement, (13) any matter set forth in the Disclosure Schedules, or (14) any actions taken (or omitted to be taken) with the express written consent of the Buyer; provided, however, that such events, changes, occurrences or effects referenced in the cases of any of clauses (1), (2), (4), (6), (7), (8), (9) and (10) will be taken into account only to the extent that such events, changes, occurrences or effects are disproportionately adverse to the Company, taken as a whole, relative to other companies operating in the industries in which the Company operates.

"Net Working Capital" means, as at a specified date and without duplication, an amount (which may be positive or negative) equal to (i) the current assets of the Company that are included in the line item categories of current assets specifically identified on Exhibit A hereto (but for the purposes of calculating the Net Working Capital adjustment, the spare parts inventory shall have a value of $30,000 regardless of book valuation) and the crude oil inventory shall have a value that reflects the final crude oil inventory price based on the front-month calendar settlement price for NYMEX WTI Cushing on the Closing Date, minus (ii) the current Liabilities of the Company that are included in the line item categories of current Liabilities specifically identified on Exhibit A hereto, in each case, calculated in accordance with the Applicable Accounting Principles. Notwithstanding anything to the contrary herein, in no event shall "Net Working Capital" include any amounts with respect to Cash, Indebtedness, or Transaction Expenses.

"Organizational Document" means (a) with respect to a corporation, the articles or certificate of incorporation and bylaws thereof together with any other governing agreements or instruments of such corporation or the shareholders thereof, (b) with respect to a limited liability company, the certificate of formation and the operating or limited liability company agreement or regulations thereof, or any comparable governing instruments, (c) with respect to a partnership, the certificate of formation and the partnership agreement and, if applicable, the Organizational Documents of such partnership's general partner, or any comparable governing instruments and (d) with respect to any other Person the organizational, constituent and/or governing documents and/or instruments of such Person, and with respect to any of the foregoing, any document or instrument providing for the terms of, or otherwise governing, any Equity Interest therein.

"Owned Real Property" means the real property owned by one or more of the Applicable Entities used as a part of the Terminals Business, together with all buildings and other structures, facilities or improvements located thereon and all Easements, licenses, rights and appurtenances relating to the foregoing.

"Permitted Encumbrance" means (i) statutory liens for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings, (ii) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of the Company for a period greater than 60 days, or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), (iii) zoning, entitlement, or conservation restrictions promulgated by Governmental Authorities, (iv) liens granted to any lender at the Closing in connection with any financing by the Buyer of the transactions contemplated hereby, (v) any right, interest, lien, title or other Encumbrance of a lessor or sublessor under any lease or other similar agreement or in the property being leased, and (vi) all exceptions, restrictions, Easements, imperfections of title, charges, rights-of-way and other Encumbrances of the type described in clause (iv) of the definition of Encumbrance that do not materially interfere with the present use of the assets of the Company, together with any other assets used in the Terminals Business, taken as a whole.

"Person" means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

"Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date and that portion of any Straddle Period ending on (and including) the Closing Date.

"Purchase Price" means the Estimated Purchase Price, as it may be adjusted in accordance with Section 2.4.

"Reorganization" means the transfer of all of the BKEP Assets to the Company, and any and all actions taken in connection therewith.

"Reorganization Documents" means, collectively, (i) that certain Contribution Agreement, by and between the Company and the Seller, to be executed and delivered following the date of this Agreement and prior to the Closing in the form attached to this Agreement in Exhibit D, (ii) that certain Distribution Agreement, by and between the Seller and BKEP Pipeline, L.L.C., to be executed and delivered following the date of this Agreement and prior to the Closing in the form attached to this Agreement in Exhibit D, and (iii) that certain Interconnection Agreement, by and between the Company and the other signatory party thereto, to be executed and delivered following the date of this Agreement and prior to the Closing in the form attached to this Agreement in Exhibit D.

"Representatives" means, with respect to any Person, the officers, managers, directors, principals, employees, agents, auditors, advisors, bankers and other representatives of such Person.

"Retention Amount" means, for the first year after Closing, $1,188,000.00, and after that $660,000.

"Return" means any return, declaration, report, statement, information statement and other document required to be filed with respect to Taxes.

"R&W Insurance Policy" means the insurance policy to be issued by the R&W Insurer.

"R&W Insurer" means Columbia Casualty Company.

"Seller Group Party" means the Seller and each of its former, current or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, advisors, successors or permitted assigns.

"Seller Tax Matter" means (i) making or revoking an election on any Tax Return filed after the Closing that adversely affects the Taxes or Tax Returns of the Company or any of its subsidiaries for a taxable period ending on or prior to the Closing Date (or for a Straddle Period) or that adversely affects the Taxes of the Seller or any of its Affiliates (or their respective direct or indirect equity owners); (ii) extending or waiving the applicable statute of limitations with respect to a Tax Return of the Company or any of its subsidiaries for a taxable period ending on or prior to the Closing Date (or for a Straddle Period); (iii) filing any ruling request with any Governmental Authority that relates to Taxes or Tax Returns of the Company or any of its subsidiaries for a taxable period ending on or prior to the Closing Date (or for a Straddle Period); or (iv) entering or pursuing a voluntary disclosure agreement with a Governmental Authority with respect to filing Tax Returns or paying Taxes for a taxable period ending on or prior to the Closing Date (or for a Straddle Period).

"Storage Agreement" means the form of storage agreement as contemplated and finally determined by the Storage Side Letter.

"Storage Side Letter" means at certain letter agreement, dated as of the date hereof, by and between the Buyer and the Seller, regarding the Storage Agreement.

"Straddle Period" means any taxable period that includes but does not end on the Closing Date.

"Target Net Working Capital" means $0.

"Tax" or "Taxes" means (i) any and all taxes, assessments, duties, fees, imposts, levies and similar charges of any kind assessed, imposed or collected by any Governmental Authority, including those imposed on, or measured by, gross income, net income, gross receipts, capital, goods and services, sales, use, consumption, excise, value-added, ad valorem, real property, personal property, transfer, land transfer, property transfer, severance, stamp capital gains, license, profits, windfall profits, environmental, employment, occupation, franchise, withholding, payroll, and import, (ii) any interest, penalties, fines and additions to the amounts in clause (i), above, and (iii) any Liability for any of the foregoing items in clauses (i) and (ii) under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign law, as a transferee, successor or guarantor, pursuant to any Tax sharing or indemnity agreement or other contract, or by operation of Law.

"Tax Return" means any return, declaration, report, statement, schedule, form, information statement and other document required to be filed with respect to Taxes or any amendment to any of the foregoing.

"Terminals Business" means the crude oil storage business in or near Cushing, Oklahoma of BKEP Parent and all of its direct and indirect subsidiaries.

"Transaction Documents" means, collectively, this Agreement, the Transition Services Agreement, the Parent Guarantee, and any and all other agreements or instruments provided for in this Agreement to be executed and delivered in connection with the transactions contemplated hereby, including the Reorganization Documents, and when used in reference to a Person means such documents to which such Person is a party.

"Transaction Expenses" means, to the extent not paid by the Seller, the Company or otherwise prior to the Closing Date, the fees, costs and expenses incurred by the Company on or prior to the Closing Date in connection with the transactions contemplated by this Agreement to (i) Simmons Energy, a Division of Piper Jaffray, for investment banking services for the Seller and the Company, and (ii) Gibson, Dunn & Crutcher LLP for legal services to the Seller, the Company.

"Transition Services Agreement" means the Transition Services Agreement in the form of Exhibit B hereto.

"Treasury Regulations" means the income tax regulations, including temporary regulations, promulgated under the Code, as those regulations may be amended from time to time. Any reference herein to a specific section of the Treasury Regulations shall include any corresponding provisions of succeeding, similar, substitute, temporary or final Treasury Regulation.

"Vehicle Leases" means the leases set forth on Schedule 1.1 under the heading "Vehicles."

"Working Capital Overage" shall exist when (and shall be equal to the amount by which) the Estimated Net Working Capital exceeds the Target Net Working Capital.

"Working Capital Underage" shall exist when (and shall be equal to the amount by which) the Target Net Working Capital exceeds the Estimated Net Working Capital.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections referenced below:

Definition	Location
Acquisition Engagement	Section 11.19(a)
Agreement	Preamble
Allocation	Section 7.2(a)
Alternative Recovery	Section 9.7(a)
Ancillary Business Employees	Section 6.15(a)
Applicable Accounting Principles	Section 2.4(a)
Balance Sheet Date	Section 4.5
Basket	Section 9.2(c)
Books and Records	Section 4.23
Business Employees	Section 6.15(a)
Buyer	Preamble
Buyer Indemnified Parties	Section 9.2(a)
Buyer Plan	Section 6.15(d)
Claim	Section 9.3
Claim Notice	Section 9.3
Closing	Section 2.3(a)
Closing Cash	Section 2.4(b)
Closing Date	Section 2.3(a)
Closing Indebtedness	Section 2.4(b)
Closing Net Working Capital	Section 2.4(b)
Closing Transaction Expenses	Section 2.4(b)

Definition	Location
COBRA	Section 4.9(g)
Company	Recitals
Confidentiality Agreement	Section 6.7
Direct Claim	Section 9.5
Disclosure Schedules	Article III
EESI	Section 6.15(a)
Employee Plan	Section 4.9(a)
Environmental Laws	Section 4.15(j)(i)
Environmental Permits	Section 4.15(j)(ii)
ERISA	Section 4.9(a)
ERISA Affiliate	Section 4.9(a)
Estimated Cash	Section 2.4(a)
Estimated Indebtedness	Section 2.4(a)
Estimated Net Working Capital	Section 2.4(a)
Estimated Transaction Expenses	Section 2.4(a)
Final Closing Statement	Section 2.4(b)
Financial Statements	Section 4.5
General Survival Date	Section 9.1
Gibson Dunn	Section 11.19(a)
Hazardous Materials	Section 4.15(j)(iii)
HSR Act	Section 3.3(b)
Indemnified Parties	Section 9.2(b)
Independent Accounting Firm	Section 2.4(d)
IRS	Section 4.9(a)
Joint Instruction	Section 2.2(a)
Key Customers	Section 4.18
Key Employee Offers	Section 6.15(b)
Key Employees	Section 6.15
Material Contracts	Section 4.16(a)
Material Insurance Policies	Section 4.11
Net Adjustment Amount	Section 2.4(g)(i)
Notice of Disagreement	Section 2.4(c)
Parent Guarantee	Section 2.3(b)(vi)
Permits	Section 4.8(b)
Pipeline Sale Agreement	Section 2.3(b)(vii)
Preliminary Closing Statement	Section 2.4(a)
Purchased Interests	Recitals
Qualified Beneficiaries	Section 6.15(e)
Real Property	Section 4.12(a)
Release	Section 4.15(j)(iv)
Required Easements	Section 4.12(c)
Sample Statement	Section 2.4(a)
Securities Act	Section 5.6
Seller	Preamble
Seller Indemnified Parties	Section 9.2(b)
Seller Management Co	Section 6.15(a)
Seller Taxes	Section 9.2(a)(iii)

Definition	Location
SemGroup	Section 4.12(g)
Simmons Energy	Section 3.5
Surviving Pre-Closing Covenants	Section 9.1
Tax Representations	Section 9.1
Termination Date	Section 10.1(d)
Third-Person Claim	Section 9.3
Transferred Employee	Section 6.15(a)
Warranty Breach	Section 9.2(a)(i)

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Purchased Interests. Upon the terms and subject to the conditions of this Agreement, at the Closing, the Seller shall sell, assign, transfer, convey and deliver the Purchased Interests to the Buyer and the Buyer shall purchase the Purchased Interests from the Seller, in each case free and clear of all Encumbrances except as set forth on Schedule 3.4 of the Disclosure Schedules, for the consideration specified below in this Article II.

Section 2.2 Deposit; Escrow.

(a) Contemporaneously with the execution of this Agreement, the Buyer will deposit with Escrow Agent by wire transfer of immediately available funds in United States dollars an amount equal to the Deposit Amount, to be held in an escrow account pursuant to the Escrow Agreement. If the Closing occurs, the Buyer and the Seller will deliver joint written instructions to Escrow Agent instructing Escrow Agent to pay the Deposit Amount (together with any interest earned thereon) to the Seller at the Closing (the "Joint Instruction"), and the Deposit Amount shall be applied as a credit toward the Estimated Purchase Price. If this Agreement is terminated prior to the Closing in accordance with Article X, then the provisions of Section 10.2 shall apply and the Buyer and the Seller shall instruct Escrow Agent to pay the Deposit Amount (together with any interest earned thereon) in accordance with the applicable terms and provisions of Article X.

(b) Simultaneously with the execution of this Agreement, the Buyer and the Seller have executed, and have obtained execution by Escrow Agent of, the Escrow Agreement.

Section 2.3 Closing.

(a) The sale and purchase of the Purchased Interests shall take place at a closing (the "Closing") to be held at the offices of Gibson, Dunn & Crutcher LLP, 2001 Ross Avenue, Suite 2100, Dallas, Texas 75201, or at such other place as the parties agree in writing, at 10:00 a.m., Dallas, Texas time on the third Business Day following the satisfaction or, to the extent permitted by applicable Law, waiver of all conditions to the obligations of the parties set forth in Article VIII (other than such conditions as may, by their terms, only be satisfied at the Closing or on the Closing Date); provided, however, that if such third Business Day does not occur on the final day of the calendar month, then, unless the parties otherwise agree in writing, the Closing Date shall instead occur on the first date following such third Business Day that is the final day of a calendar month. The day on which the Closing takes place is referred to as the "Closing Date."

(b) At the Closing:

(i) the Buyer shall deliver or cause to be delivered to the Seller an amount equal to the Estimated Purchase Price;

(ii) the Seller shall deliver or cause to be delivered to the Buyer an assignment evidencing the conveyance of the Purchased Interests in the form attached to this Agreement as Exhibit E, duly executed by the Seller in favor of the Buyer;

(iii) the Seller will provide the Buyer with a certificate certifying that the Seller (or its regarded owner for U.S. federal income tax purposes) is not a foreign person, which certificate complies with the requirements of Section 1445 of the Code and with Section 1.1445-2(b) of the Treasury Regulations promulgated under the Code;

(iv) the Seller and the Buyer shall each deliver to Escrow Agent a duly executed counterpart of the Joint Instruction;

(v) the Seller and the Buyer shall each deliver a duly executed counterpart of the Transition Services Agreement;

(vi) the Seller shall deliver to the Buyer a copy of the Parent Guarantee in form attached to this Agreement as Exhibit F, duly executed by Blueknight Energy Partners, L.P. (the "Parent Guarantee"); and

(vii) as applicable, (A) if the Seller shall have entered into a definitive agreement with respect to the sale of the crude oil pipeline business owned by the Seller (the "Pipeline Sale Agreement") with the purchaser counterparty currently contemplated as set forth in the Storage Side Letter, then each of the Seller and the Buyer shall deliver a duly executed counterpart of the Storage Agreement attached to the Storage Side Letter as "Exhibit A", or (B) if both (x) the Seller shall not have entered into the Pipeline Sale Agreement as of 14 days prior to the Closing and (y) the Seller and the Buyer have agreed upon a form of storage agreement, then each of the Seller and the Buyer shall deliver a duly executed counterpart of such agreed form of storage agreement (if any); provided, however, that this sub-clause (vii) shall not apply if the Storage Agreement is executed and delivered prior to Closing as contemplated on Schedule 6.1 of the Disclosure Schedules;

(c) All payments hereunder shall be made by wire transfer of immediately available funds in United States dollars to such account as may be designated to the payor by or on behalf of the payee at least two Business Days prior to the applicable payment date.

Section 2.4 Purchase Price Adjustments.

(a) At least three Business Days prior to the Closing Date, the Seller shall prepare, or cause to be prepared, and deliver to the Buyer a statement (the "Preliminary Closing Statement") setting forth a good-faith estimate of the Company's (i) Net Working Capital (the "Estimated Net Working Capital"), (ii) Indebtedness (the "Estimated Indebtedness"), (iii) Cash (the "Estimated Cash") and (iv) Transaction Expenses (the "Estimated Transaction Expenses") (with each of Estimated Net Working Capital, Estimated Indebtedness, and Estimated Cash determined as of the Calculation Time and, except for Estimated Transaction Expenses, without giving effect to the transactions contemplated hereby), based on the Seller's books and records and other information available at the Closing, and calculated on a basis (x) consistent with the accounting principles, practices, assumptions, conventions and policies used in the preparation of the Sample Statement, and (y) to the extent not inconsistent with the foregoing, GAAP (the "Applicable Accounting Principles"). An illustrative example of a Preliminary Closing Statement and calculation of Net Working Capital, Indebtedness, Cash and Transaction Expenses is set forth as Exhibit C hereto (the "Sample Statement"). Prior to the Closing, the Seller and the Buyer in good faith shall seek to resolve any differences that they may have with respect to the computation of any of the items in the Preliminary Closing Statement; provided, that if the parties are unable to resolve all such differences prior to the Closing, the amounts of the Estimated Net Working Capital, Estimated Indebtedness, Estimated Cash and Estimated Transaction Expenses as reflected in the Preliminary Closing Statement shall be used for purposes of calculating the Estimated Purchase Price on the Closing Date.

(b) Within 60 days after the Closing Date, the Buyer shall cause to be prepared and delivered to the Seller a written statement (the "Final Closing Statement") that shall include and set forth a calculation in reasonable detail of the actual (i) Net Working Capital ("Closing Net Working Capital"), (ii) Indebtedness ("Closing Indebtedness"), (iii) Cash ("Closing Cash") and (iv) Transaction Expenses ("Closing Transaction Expenses") (with each of Closing Net Working Capital, Closing Indebtedness and Closing Cash determined as of the Calculation Time and, except for Closing Transaction Expenses, without giving effect to the transactions contemplated hereby). The Final Closing Statement (i) shall be prepared on a basis consistent with the Applicable Accounting Principles and the Sample Statement and (ii) shall be based exclusively on the facts and circumstances as they exist prior to the Closing and shall exclude the effects of any event, act, change in circumstances or similar development arising or occurring on (except with respect to Transaction Expenses) or after the Closing Date, but shall not exclude knowledge learned after Closing as to facts and circumstances existing prior to Closing.

(c) The Final Closing Statement shall become final and binding on the 60th day following delivery thereof, unless prior to the end of such period, the Seller delivers to the Buyer written notice of its disagreement (a "Notice of Disagreement") specifying the nature and amount of any dispute as to the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses, as set forth in the Final Closing Statement. The Seller shall be deemed to have agreed with all items and amounts of Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses not specifically referenced in the Notice of Disagreement, and such items and amounts shall not be subject to review in accordance with Section 2.4(d).

(d) During the 30-day period following delivery of a Notice of Disagreement by the Seller to the Buyer, the parties in good faith shall seek to resolve in writing any differences that they may have with respect to the calculation of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses as specified therein. Any disputed items resolved in writing between the Buyer and the Seller within such 30-day period shall be final and binding with respect to such items, and if the Seller and the Buyer agree in writing on the resolution of each disputed item specified by the Seller in the Notice of Disagreement and the amount of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and Closing Transaction Expenses, the amounts so determined shall be final and binding on the parties for all purposes hereunder. If the Buyer and the Seller have not resolved all such differences by the end of such 30-day period, the Buyer and the Seller shall submit, in writing, to an independent public accounting firm (the "Independent Accounting Firm"), their briefs detailing their views as to the correct nature and amount of each item remaining in dispute and the amounts of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses, and the Independent Accounting Firm shall make a written determination as to each such disputed item and the amount of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses. The Independent Accounting Firm shall be Grant Thornton LLP or, if such firm is unable or unwilling to act or ceases at any time to be neutral, such other neutral, nationally-recognized independent public accounting firm as shall be agreed in writing by the Seller and the Buyer. The Buyer and the Seller shall enter into a customary engagement letter with the Independent Accounting Firm. The Buyer and the Seller shall use their reasonable best efforts to cause the Independent Accounting Firm to render a written decision resolving the matters submitted to it within 30 days following the submission thereof. The Independent Accounting Firm shall consider only those items and amounts in the Buyer's and the Seller's respective calculations of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses that are identified as being items and amounts to which the Buyer and the Seller have been unable to agree. The scope of the disputes to be resolved by the Independent Accounting Firm shall be limited to correcting mathematical errors and determining whether the items and amounts in dispute were determined in accordance with the Applicable Accounting Principles and the Sample Statement and the Independent Accounting Firm is not to make any other determination, including any determination as to whether the Target Net Working Capital or any estimates on the Preliminary Closing Statement are correct, adequate or sufficient. In resolving any disputed item, the Independent Accounting Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Independent Accounting Firm's determination of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and Closing Transaction Expenses shall be based solely on written materials submitted by the Buyer and the Seller (*i.e.*, not on independent review). The determination of the Independent Accounting Firm shall be conclusive and binding upon the parties hereto and shall not be subject to appeal or further review. Judgment may be entered upon the written determination of the Independent Accounting Firm in accordance with Section 11.9. In acting under this Agreement, the Independent Accounting Firm shall function solely as an expert and not as an arbitrator; provided that the Independent Accounting Firm shall have the power to conclusively resolve differences in disputed items as specified in this Agreement.

(e) The costs of any dispute resolution pursuant to this Section 2.4, including the fees and expenses of the Independent Accounting Firm and of any enforcement of the determination thereof, shall be borne by the Seller and the Buyer in inverse proportion as they may prevail on the matters resolved by the Independent Accounting Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Independent Accounting Firm at the time the determination of such firm is rendered on the merits of the matters submitted. The fees and disbursements of the Representatives of each party incurred in connection with the preparation or review of the Final Closing Statement and preparation or review of any Notice of Disagreement, as applicable, shall be borne by such party.

(f) The Buyer and the Seller will, and will cause the Company (in the case of the Seller, prior to the Closing and, in the case of the Buyer, during the period from and after the date of delivery of the Final Closing Statement through the resolution of any adjustment to the Purchase Price contemplated by this Section 2.4) to afford the other party and its Representatives reasonable access, during normal business hours and upon reasonable prior notice, so long as such access would not contravene any applicable Laws (including any applicable COVID-19 Measures), to the applicable personnel and books and records of the Company, and shall use commercially reasonable efforts to provide any other information reasonably requested for purposes of preparing and reviewing the calculations contemplated by this Section 2.4. Each party shall authorize its accountants to disclose work papers generated by such accountants in connection with preparing and reviewing the calculations specified in this Section 2.4; provided, that such accountants shall not be obligated to make any work papers available except in accordance with such accountants' disclosure procedures and then only after the non-client party has signed an agreement relating to access to such work papers in form and substance acceptable to such accountants.

(g) The Purchase Price shall be adjusted, upwards or downwards, as follows:

(i) For the purposes of this Agreement, the "Net Adjustment Amount" means an amount, which may be positive or negative, equal to (A) the Closing Net Working Capital as finally determined pursuant to this Section 2.4 minus the Estimated Net Working Capital, minus (B) the Closing Indebtedness as finally determined pursuant to this Section 2.4 minus the Estimated Indebtedness, plus (C) the Closing Cash as finally determined pursuant to this Section 2.4 minus the Estimated Cash, minus (D) the Closing Transaction Expenses as finally determined pursuant to this Section 2.4 minus the Estimated Transaction Expenses;

(ii) If the Net Adjustment Amount is positive, the Purchase Price shall be adjusted upwards in an amount equal to the Net Adjustment Amount, and the Buyer shall pay the Net Adjustment Amount to the Seller; and

(iii) If the Net Adjustment Amount is negative (in which case the "Net Adjustment Amount" for purposes of this clause (iii) shall be deemed to be equal to the absolute value of such amount), the Purchase Price shall be adjusted downwards in an amount equal to the Net Adjustment Amount, and the Seller shall pay the Net Adjustment Amount to the Buyer.

(h) Amounts to be paid pursuant to Section 2.4(g) shall bear interest from the Closing Date to the date of such payment at a rate equal to the rate of interest from time to time announced publicly by The Wall Street Journal as its prime rate, calculated on the basis of a year of 365 days and the number of days elapsed. Payments in respect of Section 2.4(g) shall be made within three Business Days of final determination of the Net Adjustment Amount pursuant to the provisions of this Section 2.4 by wire transfer of immediately available funds to such account or accounts as may be designated in writing by the party entitled to such payment at least two Business Days prior to such payment date.

(i) For the avoidance of doubt, this Section 2.4 is not intended to be used to permit the introduction of different judgments, accounting methodologies (including with respect to accruals and reserves), policies, principals, practices, procedures or classifications for purposes of calculating amounts referred to in this Section 2.4, or to adjust for any inconsistencies between the Applicable Accounting Principles, on the one hand, and GAAP, on the other.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the Disclosure Schedules attached hereto (collectively, the "Disclosure Schedules"), the Seller hereby represents and warrants to the Buyer as of the date hereof and as of the Closing Date as follows:

Section 3.1 Organization. The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

Section 3.2 Authority; Enforceability. The Seller has the limited liability company power and authority to execute and deliver the Transaction Documents to which it is or will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Seller of the Transaction Documents to which it is or will be a party and the consummation by the Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action, and no other authorization on the part of the Seller is necessary to authorize such execution, delivery and performance. Each of the Transaction Documents to which the Seller is or will be a party has been (in the case of this Agreement and the Transaction Documents executed on the date hereof), or will be at the Closing (in the case of any other Transaction Documents), duly executed and delivered by the Seller and, assuming due execution and delivery of such Transaction Document by each of the other parties thereto, constitutes, or will constitute at the Closing, as applicable, the legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 3.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by the Seller of each Transaction Document to which it is or will be a party and the consummation of the transactions contemplated hereby and thereby do not and will not:

(i) conflict with or violate any provision of the Organizational Documents of the Seller;

(ii) conflict with or violate any Law applicable to the Seller or by which any property or asset of the Seller is bound or affected;

(iii) result (with or without notice or lapse of time or both) in the creation of any Encumbrance on the Purchased Interests; or

(iv) except as set forth on Schedule 3.3(a)(iv) of the Disclosure Schedules, conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, give rise to any right of termination, cancellation or acceleration under, or require any consent or approval of any Person pursuant to, any material contract to which the Seller is a party;

except, in the case of clause (ii) or (iv), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or that arise primarily as a result of any facts or circumstances relating to the Buyer or any of its Affiliates.

(b) The Seller is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Seller of this Agreement, or the consummation of the transactions contemplated hereby, except (i) for any filings required to be made under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), or (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.4 Purchased Interests. The Seller is the sole, direct, record and beneficial owner of all of the Purchased Interests, and has good, marketable and valid title to all of the Purchased Interests, free and clear of any Encumbrance, except as set forth on Schedule 3.4 of the Disclosure Schedules. The Purchased Interests are duly authorized, validly issued, fully paid (to the extent required by the Organizational Documents of the Company) and non-assessable, and were not issued in violation of, and are not subject to, any purchase option or right, call option, preemptive right, profits or similar interest, voting or similar agreement or other similar Encumbrance. The Company has no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights. As of the Closing the Seller will have the right, authority and power to sell, assign and transfer to the Buyer all of the Purchased Interests free and clear of any Encumbrance except as set forth on Schedule 3.4 of the Disclosure Schedules. The Seller will convey to the Buyer good, marketable and valid title to all of the Purchased Interests free and clear of any Encumbrances.

Section 3.5 Brokers. Except for Simmons Energy, a Division of Piper Jaffray ("Simmons Energy"), the fees, commissions and expenses of which will be paid by the Seller, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Seller.

Section 3.6 No Bankruptcy. There are no bankruptcy proceedings pending against, being contemplated by or, to the Seller's Knowledge, threatened against any of the Applicable Entities. Following the consummation of the transactions contemplated by this Agreement, and as of the consummation of each transaction contemplated by the Reorganization, none of the Applicable Entities will be, or was or will have been, (a) insolvent or left with unreasonably small capital, (b) with incurred debts beyond their inability to pay such debts as they mature, or (c) with liabilities in excess of the reasonable market value of its assets.

Section 3.7 Non-Foreign Status. The Seller is not a foreign person as such term is used in Section 1445(b)(2) of the Code (and the associated Treasury Regulations).

Section 3.8 Exclusivity of Representations and Warranties. Neither the Seller nor any of its Affiliates or Representatives is making any representation or warranty on behalf of the Seller of any kind or nature whatsoever, oral or written, express or implied, except as expressly set forth in this Article III or any certificate delivered by Seller pursuant to this Agreement, and the Seller hereby disclaims any such other representations or warranties.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY AND THE BKEP ASSETS

Except as set forth in the Disclosure Schedules, the Seller hereby represents and warrants to the Buyer with respect to the BKEP Assets and the Company as of the date hereof and as of the Closing Date as follows:

Section 4.1 Organization and Qualification. The Company is (a) a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization as set forth in Schedule 4.1 of the Disclosure Schedules, and has all necessary limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted and (b) duly qualified as a limited liability company to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification necessary except for any such failures that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Seller has made available to the Buyer true and complete copies of the Organizational Documents of the Company and all amendments thereto. Such Organizational Documents are in full force and effect and no other Organizational Documents are applicable to or binding upon the Company. The Company is not currently in breach or violation of, nor has any event occurred that, with notice, lapse of time or both, would breach or violate, any provision of the Organizational Documents of the Company. No Action to dissolve the Company is pending, or to the Seller's Knowledge, threatened. The execution, delivery and performance by the Company of the Transaction Documents to which it is or will be a party and the consummation by such Persons of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action, and no other authorization on the part of any such Person is necessary to authorize such execution, delivery and performance.

Section 4.2 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by each Applicable Entity of each Transaction Document to which it is or will be a party and the consummation of the transactions contemplated hereby and thereby do not and will not:

(i) conflict with or violate its Organizational Documents;

(ii) conflict with or violate any Law applicable to any Applicable Entity or otherwise applicable to the Terminals Business, or by which any property or asset used in the Terminals Business is bound or affected;

(iii) result in the creation of or result (with or without notice or lapse of time or both) in the creation of any Encumbrance on the material assets or properties of the Applicable Entities or any other material asset or property used in the Terminals Business; or

(iv) except as set forth on Schedule 4.2(a)(iv) of the Disclosure Schedules, conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, or require any consent of any Person pursuant to, any contract relating to the Terminals Business or to which the assets, properties, or business of any Applicable Entity is bound;

except, in the case of clauses (ii), (iii), and (iv), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impede the performance by the Company of its obligations under this Agreement or the consummation of the transactions contemplated hereby or that arise primarily as a result of any facts or circumstances solely relating to the Buyer or any of its Affiliates.

(b) Except as set forth in Schedule 4.2(b) of the Disclosure Schedules, no Applicable Entity is required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance of the Transaction Documents to which it is a party, or the consummation of the transactions contemplated hereby or thereby, except (i) for such filings required to be made under the HSR Act, or (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impede the performance by the Company of its obligations under the Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

Section 4.3 Capitalization; Applicable Entities.

(a) The Purchased Interests have been legally and validly issued, represent 100% of the Equity Interests of the Company.

(b) There are no outstanding Equity Interests of the Company other than the Purchased Interests. There are no outstanding securities convertible into, exchangeable for, or carrying the right to acquire securities or any other Equity Interests, including the Purchased Interests, of the Company. As of the date of this Agreement, the only Applicable Entities are, and as of immediately prior to the Closing Date the only Applicable Entities will be, BKEP Pipeline, L.L.C., the Seller, and the Company.

Section 4.4 Equity Interests. The Company does not and, following the Reorganization set forth in Section 6.14, will not, directly or indirectly own any equity, partnership, membership or similar interest in, or any interest convertible into, exercisable for the purchase of or exchangeable for any such equity, partnership, membership or similar interest in any Person. The membership interests of the Company have been legally and validly issued, are fully paid and non-assessable, and are not subject to any Encumbrances other than Encumbrances that will be released in full prior to the Closing. The membership interests of the Company were issued in compliance with Law and were not issued in violation of the Organizational Documents of the Company.

Section 4.5 Financial Statements. True and complete copies of (i) the unaudited balance sheet of the Terminals Business as of December 31, 2019 and the related unaudited statement of operations of the Terminals Business for the year ended December 31, 2019, and (ii) the unaudited balance sheet of the Terminals Business as of September 30, 2020 (the "Balance Sheet Date"), and the related unaudited statement of operations of the Terminals Business for the nine-month period ended on the Balance Sheet Date (the financial statements referred to in clauses (i) and (ii), collectively, the "Financial Statements"), are attached hereto as Schedule 4.5 of the Disclosure Schedules. Each of the Financial Statements fairly presents, in all material respects, the financial position and results of operations of the Terminals Business as at the respective dates thereof and for the respective periods indicated therein in accordance with GAAP, except for the absence of notes and as otherwise noted therein, and subject to normal and recurring year-end adjustments.

Section 4.6 Absence of Certain Changes or Events; No Undisclosed Liabilities. Since the Balance Sheet Date, neither the Company nor, as to the Terminals Business, any other Applicable Entity has incurred any obligation or Liability that would be required under GAAP to be reflected on a balance sheet of such entity prepared in accordance with GAAP applied on a basis consistent with the balance sheet included in the Financial Statements, other than (i) trade payables and other Liabilities incurred in the ordinary course of business (it being understood that incurrences of Indebtedness shall in no event be deemed to be in the ordinary course of business), or (ii) any Liabilities incurred under or in accordance with this Agreement or in connection with the transactions contemplated hereby. Except as set forth on Schedule 4.6 of the Disclosure Schedules, since the Balance Sheet Date, neither the Company nor, as to the Terminals Business, any other Applicable Entity, has taken any action that that, if taken following the date of this Agreement, would require a consent from the Buyer under Section 6.1.

Section 4.7 Compliance with Law; Permits.

(a) Except as set forth on Schedule 4.7(a) of the Disclosure Schedules, the Company is, and has been at all times during the last five years, in compliance with all Laws applicable to it, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.7(a) of the Disclosure Schedules, as to the Terminals Business, each Applicable Entity other than the Company is, and has been at all times during the last five years, in compliance with all Laws applicable to it, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. None of Seller, the Company or any of their Affiliates has received any written communication since the Balance Sheet Date from a Governmental Authority that alleges that any such Person is not in compliance with or is in default or violation of any applicable Law.

(b) The Applicable Entities, taken as a whole, are in possession of all permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations of any Governmental Authority necessary for such Person to own, lease and operate its properties and to carry on the Terminals Business as currently conducted (the "Permits"), except where the failure to have, or the suspension or cancellation of, any of the Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the Closing, the Company will be in possession of all Permits, except where the failure to have, or the suspension or cancellation of, any of the Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All material Permits are in full force and effect and no suspension or cancellation of any such Permit is pending or, to the Seller's Knowledge, threatened.

(c) The Company has not and, to the Seller's Knowledge, the Applicable Entities and their respective Representatives have not, directly or indirectly, in the last two years: (i) made, authorized, promised or offered or is making, authorizing, promising or offering any contributions, gifts, entertainment or payments of money or anything of value or other expenses related to political activity in violation of any applicable Laws, (ii) made, authorized, promised or offered or is making, authorizing, promising or offering any payments, including gifts or anything else of value, to any public official or employee, any political party or official thereof, any candidate for political office, or any Person acting in any capacity for or on behalf of any of the foregoing, in violation of any applicable Laws, (iii) established or maintained, or is maintaining, any fund of corporate monies or other properties or assets in violation of any applicable Laws, (iv) made, authorized, promised or offered or is making, authorizing, promising or offering any payments, including gifts or anything else of value, to any Person, while knowing or believing that all or some portion of the money or value will be offered, given or promised to a public official or other Person for the purposes of obtaining or retaining business or securing any improper advantage or in other circumstances when such offer, payment or promise would be in violation of applicable Laws, (v) made any gift, bribe, rebate, payoff, influence, payment, kickback or any other payment of any nature in violation of any applicable Laws, (vi) received written notice regarding any investigation by any Governmental Authority with regard to any actual or alleged breach of any relevant anti-corruption Law on the part of such Person, or (vii) violated the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq., the U.S. Bank Secrecy Act, the USA PATRIOT Act of 2001, or any other applicable anti-bribery or anti money laundering Laws applicable to the Company.

(d) No representation or warranty is made under Section 4.7(a) or 4.7(b) with respect to ERISA, Taxes or Environmental Laws, which are covered exclusively by Sections 4.9, 4.14 and 4.15, respectively.

Section 4.8 Litigation. Except as set forth on Schedule 4.8 of the Disclosure Schedules, there is no Action pending, or to the Knowledge of the Company, threatened (a) to which the Company is or may become a party or to which, as to the Terminals Business, any other Applicable Entity is or may become a party, or (b) to the Seller's Knowledge, against any other Person, that, in each case, if determined adversely to an Applicable Entity, would reasonably be expected to have a Material Adverse Effect or would seek to make illegal, prevent, enjoin, alter or materially delay any transaction contemplated by the Transaction Documents. There are no bankruptcy, insolvency, reorganization or arrangement Actions pending, being contemplated by or, to the Seller's Knowledge, threatened, against the Company.

Section 4.9 Employee Benefit Matters.

(a) Schedule 4.9(a) of the Disclosure Schedules contains a true and complete list of the material employee benefit plans, programs, or other arrangements including: (i) all retirement, savings and pension plans; (ii) all health, medical, dental, severance, insurance, disability and other employee welfare benefit plans; and (iii) all employment, incentive, change-in-control, bonus, deferred compensation, vacation, sick pay, paid time off, and any other similar plans, programs or arrangements, whether or not subject to the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations issued thereunder ("ERISA") and whether covering one individual or more than one individual, (1) which are sponsored or maintained by the Seller, Seller Management Co., or the Company, or by any other person or entity under common control with the Seller, Seller Management Co., or the Company within the meaning of Section 414(b), (c), (m), or (o) of the Code and the rules and regulations issued thereunder (each an "ERISA Affiliate") and in which any Business Employee or Ancillary Business Employee is a participant, or (2) with respect to which the Company or any other Applicable Entity contributes to or has any Liability thereunder (each, an "Employee Plan"). All Employee Plans comply and have complied, in all material respects, with all applicable Laws. There are no Actions pending or, to the Seller's Knowledge, threatened, by (i) the United Stated Internal Revenue Service (the "IRS"), the United States Department of Labor, or any other Governmental Authority with respect to any Employee Plan or (ii) any Person against, to the Seller's Knowledge, any fiduciary of any Employee Plan or the assets of any Employee Plan (other than routine claims for benefits in the normal course).

(b) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has filed for, received or is entitled to rely upon a favorable determination letter or opinion letter with respect to such qualified status from the IRS. The determination letter or opinion letter for each such Employee Plan remains in full force and effect, and any amendment or event relating to such an Employee Plan subsequent to the date of the letter could not reasonably be expected to adversely affect the qualified status of the Employee Plan.

(c) Any Employee Plan that is a "non-qualified deferred compensation plan" within the meaning of Section 409A(d)(1) of the Code complies in all respects with the requirements of Section 409A of the Code.

(d) No amount paid or payable (whether in cash, property or in the form of benefits) by the Seller or its ERISA Affiliates, in connection with the transaction subject to this Agreement will constitute an "excess parachute payment" within the meaning of Section 280G of the Code.

(e) Each Employee Plan can be amended, terminated or otherwise discontinued as of the Closing Date in accordance with its terms, and without any resulting Liability being attributed to the Company.

(f) The Seller, Seller Management Co., the Company and their ERISA Affiliates, as applicable, have timely made all contributions and other payments required under the terms of each Employee Plan and applicable Laws, and all proper accruals have been made on their books with respect thereto.

(g) None of the Seller, Seller Management Co., the Company, or any of their ERISA Affiliates has at any time in the past six years maintained, established, sponsored, participated in, or contributed to, or had any obligation or Liability to, any (i) Employee Plan which is an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA, that is subject to Title IV of ERISA, Section 302 of ERISA or Section 412 of the Code, (ii) "funded welfare plan" within the meaning of Section 419 of the Code, (iii) a "multiple employer welfare benefit arrangement" as described in Section 3(40)(A) of ERISA, or (iv) a "multiemployer plan," as defined in Section 3(37) of ERISA. None of the Seller, Seller Management Co., the Company, or any of their ERISA Affiliates, has in the past six years at any time incurred or expects to incur any Liability under Title IV of ERISA or Section 412 of the Code. There does not exist any circumstance that would reasonably be expected, upon consummation of any transaction contemplated by the Transaction Documents, to result in a Liability to Buyer or any of its Affiliates relating to any Employee Plan or any "controlled group liability." As used in the preceding sentence, the term "controlled group liability" means any and all Liabilities (i) under Title IV of ERISA, (ii) under Section 302 of ERISA, and (iii) under Sections 412 and 4971 of the Code.

(h) No Employee Plan provides, or has any obligation or Liability to provide, retiree medical or any other insurance or benefits coverage to any Business Employee or Ancillary Business Employee, or any former employee or director of the Seller, Seller Management Co., the Company, or any of their ERISA Affiliates, except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and as codified in Section 4980B of the Code and Section 601 et. seq. of ERISA, and the rules and regulations issued thereunder ("COBRA") or a comparable Law.

(i) The execution of this Agreement and the consummation of the transactions hereunder, or any termination of employment or other service of any Business Employee or Ancillary Business Employee in connection therewith, will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Employee Plan that will or may result in any Liability thereunder being attributed to, or otherwise the responsibility of, the Company, the Buyer or any of its Affiliates.

Section 4.10 Labor and Employment Matters. The Company does not employ any employees, and there is no basis for any contractor or contingent worker to have a claim of employment against the Company, including on the basis of joint employer liability. The Company will not employ any employees as of the Closing. Neither the Company nor any of its Affiliates is a party to any labor or collective bargaining contract that pertains to employees providing services to the Company. There are no pending or, to the Knowledge of the Company, threatened material Actions concerning labor, employment or pay matters with respect to the Company, or any of the Business Employees, Ancillary Business Employees, contingent workers or contractors, except for such Actions that are disclosed on Schedule 4.10 of the Disclosure Schedules.

Section 4.11 Insurance. Schedule 4.11 of the Disclosure Schedules sets forth a true and complete list of all insurance policies in force that are material to the Terminals Business (collectively, the "Material Insurance Policies"). All material assets of the Company or otherwise relating to the Terminals Business are covered by valid insurance policies and no event has occurred with respect to the Terminals Business that would be reasonably expected to lead to a claim under the Material Insurance Policies that has not been filed under such policies if such policies were to remain in effect following the Closing. The Material Insurance Policies are in full force and effect and all premiums due and payable on such policies have been paid in accordance with the payment terms thereof. Since the Balance Sheet Date, none of the Seller, the Company or any of their Affiliates has received any refusal of coverage or any written notice of cancellation of a Material Insurance Policy or any other indication that a Material Insurance Policy is no longer in full force or effect or will not be renewable upon its expiration.

Section 4.12 Real Property.

(a) Schedule 4.12(a)(i) of the Disclosure Schedules lists the street address of each parcel of Owned Real Property and the current owner of each parcel of Owned Real Property. The Applicable Entities have, and the Company will have as of the Closing, good, indefeasible and marketable fee simple title to all Owned Real Property, free and clear of all Encumbrances, other than Permitted Encumbrances, as described in clause (iv) of the definition thereof, or as set forth on Schedule 4.12(a)(ii) of the Disclosure Schedules and any such exceptions that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Schedule 4.12(b) of the Disclosure Schedules lists the street address of each parcel of Leased Real Property and the identity of the lessor, lessee and current occupant (if different from lessee) of each such parcel of Leased Real Property. The Applicable Entities have, and the Company will have as of the Closing, a valid leasehold estate in all Leased Real Property, free and clear of all Encumbrances, other than the terms of the applicable lease and the Permitted Encumbrances as described in clause (iv) of the definition thereof and any such exceptions that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) All Easements and similar rights necessary for the conduct of the Terminals Business as currently conducted and the ownership and operation of all of the facilities located on the Real Property (the "Required Easements") are owned by the Applicable Entities and, as of the Closing, will be owned by the Company.

(d) True and complete copies of all title commitments, title policies, title reports and surveys (together with true and complete copies of all Encumbrances listed on any of the foregoing) in the possession of the Applicable Entities pertaining to any of the Owned Real Property, the Leased Real Property or the Required Easements (collectively, the "Real Property") have been made available to the Buyer.

(e) With respect to each of the Leased Real Property and the Required Easements, (i) each applicable lease and easement is in full force and effect and constitutes a legal and binding obligation of one or more of the Applicable Entities and each other party thereunder, enforceable against such other party in accordance with its terms, as limited by any applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally, (ii) no event has occurred, and no condition or circumstance exists, that constitutes, or, to the Seller's Knowledge, that with the giving of notice or the passage of time or both would constitute, a material default under any lease or Easement by an Applicable Entity or, to the Seller's Knowledge, by any other party to any lease or Easement, (iii) to the Seller's Knowledge, there are no material disputes with respect to any lease or Easement, (iv) to the Seller's Knowledge, no party under any leases or Easements has made a claim with respect to any breach or default thereunder and (v) no Applicable Entity has subleased, licensed or sublicensed or otherwise granted any Person the right to use or occupy any real property subject to any lease or Easement (or any portion thereof). With respect to each of the Leased Real Property and the Required Easements, true and complete copies of all leases and Easements (as recorded, where applicable) have been made available to the Buyer.

(f) With respect to the Real Property, there is no pending or, to the Seller's Knowledge, threatened condemnation, eminent domain or similar action, or any sale or other disposition of any Real Property or any part thereof in lieu of condemnation or similar action, that would reasonably be expected to materially interfere with the operations at the affected Real Property.

(g) Since the date on which SemGroup L.P. (together with its Affiliates, "SemGroup") ceased to own and control all of the assets used in the conduct of the Terminals Business, the Required Easements, or a memorandum of Easement (or similar document) with respect to such Required Easements, have been filed for record in the real property records of the applicable county or counties in which the real property subject to such Easements is situated except to the extent such failure to file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Required Easements, collectively, form a continuous right-of-way, free of any material "gaps" in coverage, except as would not constitute a Material Adverse Effect.

(h) Other than as would not reasonably be expected to have a Material Adverse Effect, (i) all tangible personal property, buildings, improvements, equipment, facilities, appurtenances and other tangible assets of the Applicable Entities or otherwise relating to the Terminals Business are located within the boundaries of the Real Property, and (ii) none of the foregoing overlap or encroach upon the real property of any third parties.

(i) The Real Property constitutes all of the real property interests owned, used or held for use in the conduct of the Terminals Business in the ordinary course and is sufficient in all material respects for the continued conduct and operation of the Terminals Business in the ordinary course.

(j) The Seller has delivered to the Buyer true and complete copies of all material engineering consultants' reports, property condition reports and similar reports with respect to the Owned Real Property and the Leased Real Property, to the extent within the possession or control of the Seller or its Affiliates. Except as would not reasonably be expected to have a Material Adverse Effect, to the Seller's Knowledge, there are no structural defects or physical damages with respect to any existing Real Property.

Section 4.13 Intellectual Property. The Company does not own any Intellectual Property. The Applicable Entities have, and the Company will have at the Closing, the license or right to use all Intellectual Property material to the operation of the Terminals Business in the ordinary course of business. To the Seller's Knowledge, none of the Seller, the Company or any of their respective Affiliates has received any written claims from a third party since the Balance Sheet Date that any Applicable Entity has infringed or misappropriated the Intellectual Property used in connection with the Terminals Business. To the Seller's Knowledge, no Applicable Entity is infringing upon or misappropriating the Intellectual Property of any other Person where such infringement or misappropriation would result in a Material Adverse Effect. To the Seller's Knowledge, neither any Applicable Entity nor any other Person has received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any material Intellectual Property license that materially relates to the operation of the Terminals Business as currently conducted.

Section 4.14 Taxes.

(a) All income and other material Tax Returns required to be filed by, on behalf of or with respect to the Company or the assets or the business of the Company (including the Terminals Business and the BKEP Assets) have been duly and timely filed (taking into account any extension of time to file granted or obtained), and such Tax Returns have been duly and accurately prepared and are complete in all material respects. All Taxes required to be paid by the Company or with respect to the assets of the Company or otherwise relating to the Terminals Business or the BKEP Assets, whether or not shown to be payable on any such Tax Returns, have been duly and timely paid.

(b) No deficiency, claim or adjustment for any material amount of Tax has been asserted or assessed by a Governmental Authority in writing against the Company that has not been satisfied by payment, settled or withdrawn.

(c) There are no Tax liens on the assets of the Company, the BKEP Assets, or otherwise relating to the Terminals Business (other than Permitted Encumbrances).

(d) No jurisdiction (whether within or without the United States) in which the Company has not filed a particular type of Tax Return or paid a particular type of Tax has asserted (which assertion remains outstanding) that the Company is required to file such Tax Return or pay such type of Tax in such jurisdiction.

(e) The Company has no Liability for the Taxes of any Person other than the Company (whether under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign law, as a transferee or successor, or pursuant to any Tax sharing or indemnity agreement or other contracts).

(f) To the Knowledge of the Company, all of the assets of the Company and the BKEP Assets have been properly listed and described on the property tax rolls for all periods prior to and including the Closing Date, and no portion of such assets constitutes omitted property for property tax purposes.

(g) There is not in force any extension (i) of the statute of limitations in respect of the collection or assessment of any Taxes or (ii) of time within which to file any material Tax Return, in each case of, or with respect to, the Company other than an ordinary course extension set forth on Schedule 4.14(g).

(h) All material Taxes with respect to the assets or the business of the Company (including the Terminals Business and the BKEP Assets) which are required by Law to be withheld or collected for payment have been duly withheld and collected and have been paid to the appropriate Governmental Authority.

(i) The Company (i) was formed solely to effectuate the transactions contemplated by this Agreement, (ii) from the date of its formation until the effective time of the Reorganization, (A) will not conduct any business activities or other operations of any kind, except in connection with the transaction contemplated this Agreement, and (B) will not have any assets or liabilities other than assets with nominal value contributed upon its formation, and (iii) is, and has been since its formation, an entity disregarded as separate from its owner for U.S. federal income tax purposes.

(j) The representations and warranties contained in this Section 4.14 (and in Section 4.9, inasmuch as it relates to Taxes) are the only representations and warranties being made with respect to Taxes. Notwithstanding anything to the contrary in this Agreement, the representations and warranties in respect of Taxes shall be limited to Taxes attributable to Tax periods (or portions thereof) ending on or before the Closing Date and shall in no event include the existence, amount or usability of the Tax attributes of the Company for Tax periods (or portions thereof) beginning on or after the Closing Date.

Section 4.15 Environmental Matters.

(a) Except as set forth on Schedule 4.15(a) of the Disclosure Schedules, the Company is and has been since the date of its formation, and, solely to the extent relating to the Terminals Business, the other Applicable Entities are and have been at all times in the prior three (3) years, in compliance in all material respects with all applicable Environmental Laws and all Environmental Permits.

(b) The Applicable Entities have, and the Company will have as of the Closing, obtained all Environmental Permits necessary to conduct their respective businesses (including the Terminals Business), and all such Environmental Permits are in full force and effect, and there are no Actions pending or, to the Seller's Knowledge, threatened, that seek the revocation, cancellation, suspension or adverse modification of any such Environmental Permit.

(c) Neither Company nor any Applicable Entity has received any written notice, citation, demand, request for information or claim (except to the extent the subject matter of each of the foregoing has been resolved), and there are no Actions pending or threatened against the Company or any Applicable Entity or otherwise in connection with the Terminals Business, alleging material violation of or material Liability pursuant to any Environmental Law.

(d) The Company is not, and, solely in connection with the Terminals Business, the Applicable Entities are not, currently subject to any compliance or consent order, decree, or agreement issued or entered into pursuant to Environmental Law, and no such orders, decrees, or agreements are currently being negotiated by the Company or, solely in connection with the Terminals Business, any of the Applicable Entities.

(e) There has been no Release of any Hazardous Material on, at, under, to, or from the Owned Real Property, or to the Seller's Knowledge, the Leased Real Property or any other location in a manner that could reasonably be expected to result in material Liability to any Applicable Entity or the Terminals Business under Environmental Laws.

(f) Other than pursuant to ordinary course commercial arrangements, no Applicable Entity has expressly, or to the Seller's Knowledge, by operation of law, assumed any known Liability, including any obligation for corrective or remedial action, of any other Person imposed pursuant to Environmental Laws.

(g) The Seller has made available to the Buyer copies of all material environmental site assessments, compliance audits, notices of violation issued by a Governmental Authority, consent orders, and other material environmental documents in the possession of any of the Applicable Entities relating in any way to the Terminals Business, the Owned Real Property or the Leased Real Property.

(h) The representations and warranties contained in this Section 4.15 are the only representations and warranties being made with respect to Environmental Laws, Environmental Permits or any other environmental, health or safety matter related to the Company.

(i) There is no leak or discharge resulting from the failure to purge any idle pipeline forming part of the BKEP Assets. Other than as set forth on Schedule 4.15(i), the BKEP Assets include no idle pipeline that has not been purged of crude oil.

(j) For purposes of this Agreement:

(i) "Environmental Laws" means any Laws in effect on or prior to the Closing Date relating to protection of the environment, natural resources, or occupational health and safety, including Laws relating to the Release, cleanup, remediation, treatment, storage, disposal, transport, or handling of or human exposure to Hazardous Materials.

(ii) "Environmental Permits" means all permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations of any Governmental Authority required by or issued under any Environmental Law.

(iii) "Hazardous Materials" means (a) any material, substance or waste that is regulated or controlled as a hazardous substance, hazardous material, toxic substance, hazardous waste, contaminant or pollutant (or words of similar meaning or intent) under any Environmental Law or for which Liability may be imposed pursuant to any Environmental Law, (b) any petroleum, petroleum distillate or petroleum-derived products, including crude oil and any fractions thereof and (c) any asbestos or asbestos-containing materials, lead or lead-containing materials, radioactive materials or wastes, per- and polyfluoroalkyl substances, and polychlorinated biphenyls.

(iv) "Release" means any release, spill, emission, leaking, pumping, injection, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment, including the movement of Hazardous Materials through or in the air, soil, surface water or groundwater.

Section 4.16 Material Contracts.

(a) Schedule 4.16 of the Disclosure Schedules lists each of the following written contracts to which the Company or, as to the Terminals Business, any other Applicable Entity, is a party, or to which the assets of the Company or, as to the Terminals Business, the assets of any other Applicable Entity, is otherwise bound, or to which any of the BKEP Assets is bound, or which otherwise relates to the Terminals Business (such contracts as described in this Section 4.16(a) being "Material Contracts"):

(i) each contract that provides for payment or receipt of more than $500,000 per year, or $1,500,000 in the aggregate, including any such contracts with customers or clients;

(ii) each contract relating to Indebtedness, including futures, swap or hedging arrangements in excess of $100,000 during any calendar year in the aggregate;

(iii) each outstanding futures, swap, option, hedging, forward sale or other derivative contract;

(iv) each contract for operations and maintenance agreements pursuant to which any third party operates any material assets of any Applicable Entity or otherwise relating to the Terminals Business;

(v) each contract pursuant to which any Applicable Entity is obligated to construct operate or maintain facilities of others or which are not located on the Real Property;

(vi) each contract involving a remaining commitment, as of the date of this Agreement, to pay capital expenditures in excess of $1,000,000 in the aggregate;

(vii) each contract that materially limits or purports to materially limit the ability of any Applicable Entity to compete in any line of business or with any Person or in any geographic area or during any period of time after the Closing;

(viii) each storage contract, transportation contract, facilities contract, terminalling contract, throughput contract, construction contract, agency contract, purchase and supply contract, connection contract, reimbursement contract, access contract, and other similar contracts currently in effect that during the twelve months ending December 31, 2019 individually involved, or is reasonably expected to involve annual revenues received by or payments in excess of $500,000 in the aggregate;

(ix) each contract for an equipment lease obligating any Applicable Entity to pay an amount in excess of $500,000 during any calendar year in the aggregate;

(x) each joint venture, partnership or similar contract or arrangement and each joint development contract or acreage dedication contract;

(xi) each contract under which any Applicable Entity is lessee of or holds or operates any real or tangible property owned by any other Person, except for any contract or agreement under which the aggregate annual rental payments do not exceed $500,000;

(xii) each contract under which any Applicable Entity is lessor of or permits any third party to hold or operate any real or tangible property (including any tank leases with customers that create any possessory or operational right in the customer);

(xiii) each interconnection contract with a remaining term of longer than 90 days and which may not be terminated by an Applicable Entity upon less than 90 days' notice without penalty or payment;

(xiv) each contract with the Seller or any Affiliate (other than the Company) relating to the future provision of goods or services providing future annual payment obligations that will be binding on any Applicable Entity after the Closing and is not terminable by such Applicable Entity upon ninety (90) days or less notice;

(xv) each contract that (A) includes "most favored nation," "most favored customer," noncompetition or similar clauses restricting the right of the Company with respect to pricing or performance of services or (B) requires an Applicable Entity to purchase its total requirements of any product or service from a third party or contains any take-or-pay arrangement, providing for any minimum volume commitments or including acreage dedications, areas of mutual interest or similar dedications or commitments;

(xvi) any contract or agreement that includes a change-of-control or similar provision (including rights of first refusal, first or last look, rights of first offer, preemption rights, assignment rights, notice rights, or any similar right) that may be triggered in connection with the Transaction Documents or upon the consummation of the transactions contemplated thereby requiring a consent or payment thereunder for which the Company will have any Liability, obligation or responsibility, triggered upon the consummation of the transactions evidenced by this Agreement;

(xvii) each contract evidencing any outstanding agreements of guaranty, surety or indemnification, whether direct or indirect, by an Applicable Entity;

(xviii) each contract the breach or termination of which would, individually or in the aggregate, result in a Material Adverse Effect; and

(xix) each contract relating to the future disposition or acquisition of material assets or properties by any Applicable Entity, or any merger or business combination with respect to any Applicable Entity (other than this Agreement); and

(xx) any commitment to enter into any contract of the type described in subsections (i) through (xx) above.

(b) Except as set forth on Section 4.16(b) of the Disclosure Schedules, each Material Contract is valid and binding on the relevant Applicable Entity, and will be valid and binding on the Company as of the Closing and, to the Knowledge of the Company, the counterparties thereto, and is in full force and effect. There is not, under any Material Contract, any default or event which, with notice or lapse of time or both, would constitute a default on the part of any Applicable Entity or, to the Seller's Knowledge, any other party thereto. True and complete copies of all Material Contracts have been made available to the Buyer.

Section 4.17 Brokers. Except for Simmons Energy, the fees, commissions and expenses of which will be paid by the Seller, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Company.

Section 4.18 Key Customers. Neither the Seller nor any other Applicable Entity has any pending material disputes concerning products or services with any of the customers of the Terminals Business. Except as set forth on Schedule 4.18 of the Disclosure Schedules, to the Seller's Knowledge, none of the ten largest customers (the "Key Customers") of the Terminals Business based on the aggregate amount of sales to customers for the fiscal year ended December 31, 2019, has notified the Company or any Applicable Entity of such Key Customer's intent to cease, terminate or materially diminish the use of either (x) the Company's or any Applicable Entity's facilities or services or (y) any material contract relating to the Terminals Business.

Section 4.19 Transactions with Affiliates. Schedule 4.19 of the Disclosure Schedules sets forth a true and complete list of any contracts between (a) any Applicable Entity, on the one hand, and (b)(i) the Seller or any of its Affiliates (other than such Applicable Entity), (ii) any officer, director, manager or employee of such Applicable Entity or any of its Affiliates or (iii) to the extent a Person in (i) or (ii) is a natural person, any Person who has any direct or indirect relation by blood, marriage or adoption to them, on the other hand, except, in each case, contracts with respect to compensation received as employees or consultants in the ordinary course of business. Neither the Seller nor any of its Affiliates (other than the Company) (x) owns any material properties, assets or rights that are used by the Company, or that are otherwise used in connection with the Terminals Business, except as disclosed on Schedule 4.19 to the Disclosure Schedules; (y) owes any money to, or is owed any money by, the Company (except with respect to compensation or expense reimbursement received as officers, directors or consultants in the ordinary course of business); or (z) has asserted any claim or cause of action against the Company.

Section 4.20 Credit Support. Schedule 4.20 of the Disclosure Schedules sets forth a true and complete list of all bonds, letters of credit, guarantees, or other credit support posted or entered into by the any of the Applicable Entities or any of their Affiliates in connection with the ownership, operation or maintenance of the business of the Applicable Entities (including the Terminals Business), as conducted immediately prior to Closing, or which are required by their terms to be replaced (or for which the Seller intends to terminate) as a result of the consummation of any transaction contemplated by the Transaction Documents.

Section 4.21 No FERC Regulation. Apart from the operation of certain facilities listed on Schedule 4.21 of the Disclosure Schedules that subjects the Seller to FERC regulation under Section 311 of the Natural Gas Policy Act, 15 U.S.C. § 3371, the Seller (a) has not operated, or provided services, using the Company or, as to the Terminals Business, any other Applicable Entity, in a manner that subjects it, any third party operator of any Applicable Entity or any future owner of the Company to the jurisdiction of, or regulation by, FERC (i) as a natural gas company under the Natural Gas Act of 1938 (other than pursuant to a certificate of limited jurisdiction as described below), or (ii) as a common carrier pipeline under the Interstate Commerce Act; and (b) does not hold any general or limited jurisdiction certificate of public convenience and necessity issued by the FERC other than a blanket sale for resale certificate issued by operation of Law or a blanket certificate issued to permit participation in capacity release transactions.

Section 4.22 Company Operations. Except as set forth on Schedule 4.22 of the Disclosure Schedules, the Company was formed by the Seller solely for the purpose of accomplishing the Reorganization and thereafter conducting the Terminals Business and, since formation, has not engaged in any other business activities or entered into any agreements other than (a) the Reorganization Documents, (b) as provided in the Contribution Agreement forming part of the Reorganization Documents, or (c) as approved in writing by Buyer.

Section 4.23 Books and Records. All books and records of the Company or otherwise relating to the Terminals Business (the "Books and Records") have been, at all times since the date on which SemGroup ceased to own and control all of the assets used in the conduct of the Terminals Business, maintained in accordance with Law and in the ordinary course of business with past practices of the Seller and its Affiliates, except for any such failures that would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect. All Books and Records in the possession of Seller or its Affiliates have been furnished to the Buyer. To the Knowledge of Seller, the Books and Records relating to the Terminals Business are true and complete, except for any such failures that would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

Section 4.24 Bank Accounts and Powers of Attorney. Set forth on Schedule 4.24 of the Disclosure Schedules is a true and complete list showing (a) the name and address of each bank or brokerage in which the Company has an account or safe deposit box, the number of any such account or any such box and the names of all Persons authorized to draw thereon or to have access thereto and (b) the names of all Persons, if any, holding powers of attorney from the Company and a summary statement of the terms thereof.

Section 4.25 Sufficiency of Assets; Condition of Assets. The BKEP Assets set forth on Schedule 1.1 of the Disclosure Schedules are sufficient for the continued conduct of the Terminals Business at and after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the assets necessary to conduct the Terminals Business as currently conducted, except for any such failures that would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect. Immediately after the Closing, the Company will continue to own, lease or have valid rights to use all of the properties and assets described in the previous sentence. All of the physical assets set forth on Schedule 1.1 of the Disclosure Schedules are in good operating condition and repair (subject to normal wear and tear taking into account use and age), used and usable in the ordinary course of business consistent with past practice, and conform in all respects to all applicable Laws, except for any such failures that would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

Section 4.26 Reorganization. Except as otherwise provided in Section 6.19, as of the Closing and as of the consummation of the Reorganization, all of the Applicable Entities' right, title and interest in and to the BKEP Assets will have been fully transferred to the Company. Other than the Reorganization Documents, and the deeds and other conveyance instruments and documents expressly contemplated thereunder, there are no agreements, arrangements, contracts, documents, instruments, or understandings, in each case whether oral or written, that provide for effecting the Reorganization or the consummation of the transactions contemplated thereby binding on the Company or the BKEP Assets.

Section 4.27 Capital Expenditures. A true and complete list is set forth on Schedule 4.27 of the Disclosure Schedules of the aggregate unpaid contractual commitments (i) of the Company for new capital expenditures and (ii) of the Applicable Entities for new capital expenditures in connection with the Terminals Business.

Section 4.28 Exclusivity of Representations and Warranties. None of the Seller, the Company or any of their respective Affiliates or Representatives is making any representation or warranty on behalf of the Seller or the Company of any kind or nature whatsoever, oral or written, express or implied (including, but not limited to, any representation or warranty relating to financial condition, results of operations, assets or Liabilities of the Company), except as expressly set forth in Article III and this Article IV or any certificate delivered by the Seller pursuant to this Agreement, and the Seller hereby disclaims any such other representations or warranties.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer hereby represents and warrants to the Seller and the Company as follows:

Section 5.1 Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

Section 5.2 Authority; Enforceability. The Buyer has the limited liability company power and authority to execute and deliver the Transaction Documents to which it is or will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Buyer of Transaction Documents to which it is or will be a party and the consummation by the Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action, and no other authorization on the part of the Buyer is necessary to authorize such execution, delivery and performance. Each of the Transaction Documents to which the Buyer is or will be a party has been (in the case of this Agreement and the Transaction Documents executed on the date hereof), or will be at the Closing (in the case of any other Transaction Documents), duly executed and delivered by the Buyer and, assuming due execution and delivery of such Transaction Document by each of the other parties thereto, constitutes, or will constitute at the Closing, as applicable, the legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 5.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by the Buyer of each Transaction Document to which it is or will be a party and the consummation of the transactions contemplated hereby and thereby do not and will not:

(i) conflict with or violate the Organizational Documents of the Buyer;

(ii) conflict with or violate any Law applicable to the Buyer or by which any property or asset of the Buyer is bound or affected; or

(iii) conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, give rise to any right of termination, cancellation or acceleration under, or require any consent or approval of any Person pursuant to, any material contract to which the Buyer is a party;

except, in the case of clause (ii) or (iii), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect or that arise primarily as a result of any facts or circumstances solely relating to the Seller or any of its Affiliates.

(b) The Buyer is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Buyer of the Transaction Documents to which it is a party, or the consummation of the transactions contemplated hereby or thereby, except (i) for any filings required to be made under the HSR Act, or (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

Section 5.4 Litigation. There is no Action pending or, to the Buyer's Knowledge, threatened, to which the Buyer is or may become a party, before or by any Governmental Authority, which seeks to make illegal, prevent, enjoin, alter or materially delay any transaction contemplated by the Transaction Documents, or would reasonably be expected to result in, individually or in the aggregate, a Buyer Material Adverse Effect.

Section 5.5 Brokers. Except for fees, commissions and expenses to be paid by the Buyer, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Buyer.

Section 5.6 Investment Intent. The Buyer is acquiring the Purchased Interests for its own account for investment purposes only and not with a view to any public distribution thereof or with any intention of selling, distributing or otherwise disposing of the Purchased Interests in a manner that would violate the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). The Buyer agrees that the Purchased Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act and any applicable state securities laws, except pursuant to an exemption from such registration under the Securities Act and such laws. The Buyer is able to bear the economic risk of holding the Purchased Interests for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

Section 5.7 Buyer's Investigation and Reliance. The Buyer is a sophisticated purchaser and has made its own independent investigation, review and analysis regarding the Company and the transactions contemplated hereby, which investigation, review and analysis were conducted by the Buyer together with expert advisors, including legal counsel, that it has engaged for such purpose. The Buyer and its Representatives have been provided with access to the Representatives, properties, offices, plants and other facilities, books and records of the Company and other information that they have requested in connection with their investigation of the Company and the transactions contemplated hereby. None of the Seller, the Company or any of their respective Affiliates or Representatives has made any representation or warranty, express or implied, as to the accuracy or completeness of any information concerning the Company contained herein or made available in connection with the Buyer's investigation of the Company, except as expressly set forth in this Agreement or in any certificate delivered by the Seller pursuant to this Agreement, and the Seller, the Company and their respective Affiliates and Representatives expressly disclaim any and all liability that may be based on such information or errors therein or omissions therefrom. The Buyer has not relied and is not relying on any statement, representation or warranty, oral or written, express or implied, made by the Seller, the Company, or any their respective Affiliates or Representatives, except as expressly set forth in this Agreement or in any certificate delivered by the Seller pursuant to this Agreement. Except in the case of Intentional Fraud, and without limiting any of the express representations and warranties delivered by the Seller pursuant to this Agreement or in any certificate delivered by the Seller pursuant to this Agreement, none of the Seller, the Company or any of their respective Affiliates or Representatives shall have or be subject to any Liability to the Buyer or any other Person resulting solely from the distribution to the Buyer, or the Buyer's use of, any information, documents or materials made available to the Buyer, whether orally or in writing, in any confidential information memoranda, "data rooms," management presentations, due diligence discussions or in any other form in expectation of, or in connection with, the transactions contemplated by this Agreement. Except in the case of Intentional Fraud, and without limiting any of the express representations and warranties delivered by the Seller pursuant to this Agreement or in any certificate delivered by the Seller pursuant to this Agreement, none of the Seller, the Company or any of their respective Affiliates or Representatives is making, directly or indirectly, any representation or warranty with respect to any estimates, projections or forecasts involving the Company. The Buyer acknowledges that there are inherent uncertainties in attempting to make such estimates, projections and forecasts and, except in the case of Intentional Fraud or with respect to the Buyer's rights and remedies with respect to the express representations and warranties made by the Seller pursuant to this Agreement, that it takes full responsibility for making its own evaluation of the adequacy and accuracy of any such estimates, projections or forecasts (including the reasonableness of the assumptions underlying any such estimates, projections and forecasts). The Buyer acknowledges that, should the Closing occur, the Buyer shall acquire the Company on an "as is" and "where is" basis, except as otherwise expressly set forth in Article III or Article IV or in any certificate delivered by the Seller pursuant to this Agreement. The Buyer acknowledges and agrees that the representations and warranties in Article III and Article IV are the result of arms' length negotiations between sophisticated parties.

Section 5.8 R&W Insurance Policy. Substantially concurrently with the execution and delivery of this Agreement, the Buyer has entered into the conditional binder attached to this Agreement as Exhibit G. The parties hereto acknowledge that obtaining the R&W Insurance Policy is a material inducement to each of the parties' entering into the transactions contemplated by this Agreement, and that the Seller is relying on the Buyer's representations and warranties set forth in this Section 5.8. Notwithstanding the foregoing, for the avoidance of doubt, the Buyer acknowledges and agrees that the obtaining of the R&W Insurance Policy is not a condition to the Closing and the Buyer shall remain obligated, subject only to the satisfaction or waiver of the conditions set forth in Article VIII of this Agreement, to consummate the transactions contemplated by this Agreement.

ARTICLE VI
COVENANTS

Section 6.1 Conduct of Business Prior to the Closing.

(a) Except for actions taken in good faith to consummate the Reorganization or as otherwise expressly permitted or expressly required by this Agreement or as set forth on Schedule 6.1 of the Disclosure Schedules, between the date of this Agreement and the Closing Date, unless the Buyer shall otherwise provide its prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), the Seller shall use its commercially reasonable efforts to cause the Company and any other applicable Affiliates (including Applicable Entities) to conduct the Terminals Business in the ordinary course of business consistent with past practice in all material respects, and Seller shall, and shall cause the Company and the other Applicable Entities to, use commercially reasonable efforts to preserve intact in all material respects their business organization and to preserve in all material respects the present commercial operations (including insurance policies applicable to the Terminals Business) and the present commercial relationships with Persons with whom they conduct the Terminals Business. Except for actions taken in good faith to execute and effectuate the Reorganization Documents or as otherwise expressly permitted or expressly required by this Agreement or as set forth in Schedule 6.1 of the Disclosure Schedules, between the date of this Agreement and the Closing Date, without the prior consent of the Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), the Seller shall cause the Company and the other Applicable Entities not to:

(i) amend any of its Organizational Documents;

(ii) issue or sell any Equity Interests of the Company, or any options, warrants, convertible securities or other rights of any kind to acquire any Equity Interests;

(iii) acquire any corporation, partnership, limited liability company, other business organization or division thereof, or a substantial Equity Interest in any other Person, or acquire any material assets, in each case other than in the ordinary course of business;

(iv) sell any asset material to the Terminals Business;

(v) except for any contract entered into, terminated or amended in the ordinary course of business, (A) grant any waiver of any material term under, or give any material consent with respect to, any Material Contract or (B) enter into, modify, amend or terminate any Material Contract;

(vi) create, assume or incur any Indebtedness by the Company, or pledge or encumber any asset of the Company;

(vii) (A) hire any individual as an employee or (B) hire or engage any individual who would be a Business Employee, except to fill any vacancy created by any Business Employee who terminates employment between the date of this Agreement and the Closing Date;

(viii) make any capital expenditures in excess of $500,000 individually or $1,000,000 in the aggregate;

(ix) settle, release or compromise any pending or threatened adverse litigation for an amount that would reasonably be expected to be greater than $500,000;

(x) adopt, become a party to, enter into, provide discretionary benefits under, or terminate any Employee Plan, in each case other than in the ordinary case of business;

(xi) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation or recapitalization of the Company;

(xii) except as otherwise required by Law, make or change any material Tax election or method of accounting, amend any Tax Return, initiate or enter into a Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement (excluding, in each case, contracts that do not directly address Taxes), voluntary disclosure or closing agreement with respect to a material amount of Taxes, settle, compromise or otherwise resolve any audit, examination or litigation relating to a material amount of Taxes, consent to an extension or waiver of the statutory limitation period applicable to a claim or assessment in respect of a material amount of Taxes;

(xiii) make any change in any method of accounting or accounting practice or policy, except as required by GAAP;

(xiv) permit the Company to enter into any contract with, or otherwise to become bound under any obligation to, any Seller Group Party, other than the Contribution Agreement forming one of the Reorganization Documents, and the deeds and other conveyance instruments and documents expressly contemplated thereunder;

(xv) permit the Company to enter into any contract with, or otherwise to become bound under any obligation to, any purchaser of any portion of the crude oil pipeline business of BKEP Parent (or any of its direct or indirect subsidiaries); or

(xvi) announce an intention, enter into any formal or informal agreement, or otherwise make a commitment to do any of the foregoing.

provided, however, that the Buyer's prior consent shall not be required pursuant to this Section 6.1(a) and the Company may authorize, engage in or consent to any action set forth in Section 6.1(a)(i)-(v) if the Company determines that such action is commercially reasonable and is necessary or desirable to protect from imminent harm the property of the Company or any person (after which the Seller shall provide the Buyer with prompt written notice of such action).

(b) Notwithstanding the provisions of Section 6.1(a), the Company may use all available Cash to pay any Transaction Expenses or Indebtedness prior to Closing, for distributions or dividends or for any other purpose.

(c) Notwithstanding anything to the contrary herein, (i) nothing shall prevent the Company from taking any action (including the establishment of any policy, procedure or protocol) reasonably necessary to preserve the safety or the health of individuals involved in the Terminals Business, in each case as determined by the Company in its good faith and commercially reasonable discretion, and in each case in direct response to COVID-19 or any COVID-19 Measure, *provided* that the Seller shall use commercially reasonable efforts to keep the Buyer informed in advance of the taking of any such actions and the extent to which such actions would, but for this Section 6.1(c), contravene with the term and conditions of this Agreement, and (ii) no consent of the Buyer shall be required with respect to any matter to the extent that (A) the requirement of such consent would violate applicable Law, (B) such action is required to be taken, or omitted to be taken, by the Company pursuant to any Law or COVID-19 Measure, or (C) such action is otherwise taken, or omitted to be taken, by the Company solely to protect the business of the Company in response to COVID-19, as determined by the Company in its good faith and commercially reasonable discretion.

Section 6.2 Covenants Regarding Information.

(a) From the date hereof until the Closing Date, upon reasonable notice, the Seller shall, and shall cause the Company and the other Applicable Entities to, afford the Buyer and its Representatives reasonable access to the properties, offices, plants and other facilities, books and records of the Applicable Entities or otherwise relating to the Terminals Business for any reasonable purpose related to this Agreement and the transactions contemplated hereby; provided, however, that any such access shall be conducted at the Buyer's expense, during normal business hours, in compliance with the policies and health and safety requirements and any other reasonable conditions of the Company notified by the Seller to the Buyer in writing, under the supervision of the Company's personnel and in such a manner as not unreasonably to interfere with the normal operations of the Company. Notwithstanding anything to the contrary in this Agreement (but subject to the proviso in this sentence), the Company shall not be required to provide access to any information to the Buyer or its Representatives if the Company determines, in its reasonable discretion after consultation with counsel, that (i) such access would jeopardize any attorney-client or other legal privilege, (ii) such access would contravene any applicable Laws (including any applicable COVID-19 Measures), fiduciary duty or binding agreement entered into prior to the date hereof, (iii) the information to be accessed is pertinent to any litigation in which the Company or any of its Affiliates, on the one hand, and the Buyer or any of its Affiliates, on the other hand, are adverse parties, (iv) the information to be accessed cannot be disclosed without breaching an applicable confidentiality obligation, (v) the information to be accessed relates to any consolidated, combined or unitary Return filed by the Seller, the Company or any of their Affiliates or any of their respective predecessor entities or (vi) such access would jeopardize the health and safety of any employee providing services to the Company; provided, however, that the Seller shall be obligated to use commercially reasonable efforts to, and shall cause the Company and the Applicable Entities to use commercially reasonable efforts to, request and obtain consents and waivers necessary for the Buyer and its Representatives to gain access to records or information to the extent reasonably necessary for the Buyer to conduct its due diligence review of the Company, the BKEP Assets and the Terminals Business. Further, notwithstanding anything to the contrary in this Agreement, neither the Buyer nor its Representatives shall conduct any invasive environmental sampling or tests of any nature at the properties, offices, plants and other facilities of the Company without the prior written consent of the Company.

(b) In order to facilitate the resolution of any claims made against or incurred by the Seller (as it relates to the Company), for a period of seven years after the Closing or, if shorter, the applicable period specified in the Buyer's document retention policy, the Buyer shall (i) retain the books and records relating to the Company relating to periods prior to the Closing and (ii) afford the Representatives of the Seller reasonable access (including the right to make, at the Seller's expense, photocopies), during normal business hours, to such books and records; provided, however, that the Buyer shall use commercially reasonable efforts to notify the Seller in writing at least 30 days in advance of destroying any such books and records prior to the seventh anniversary of the Closing Date in order to provide the Seller the opportunity to copy such books and records in accordance with this Section 6.2(b). Notwithstanding anything to the contrary in the foregoing, (A) in the event of a dispute, the furnishing of, or access to, records and information as contemplated by this Section 6.2(b) shall be subject to all applicable Laws relating to discovery and (B) the Company shall not be required to disclose any information if such disclosure would be reasonably likely to (x) jeopardize any attorney-client work product or other legal privilege or (y) contravene any applicable Laws, fiduciary duty or contract entered into prior to the date hereof (provided that in each case the Seller shall, and shall cause the Company and other Applicable Entities to, use its commercially reasonable efforts to provide such information if requested by the Buyer).

(c) As promptly as reasonably practicable following the Closing, but in no event later than 90 days following the Closing Date, the Seller shall cause all books and records, including original books and records, relating to the Terminals Business to be delivered to the Buyer; provided that, (i) with respect to the transfer of physical books and records to the Buyer, such books and records shall be transferred to a location designated reasonably in advance by the Buyer and shall be transferred at the sole cost and expense of the Seller, and (ii) with respect to the transfer of electronic books and records to the Buyer, the Seller shall cause such records to be delivered in a readable format and in a format that reasonably allows the Buyer to use such records in a manner that complies with applicable Laws. To the extent that the Seller retains copies of any such books and records, the Seller shall provide the Buyer with an itemized list of any and all retained copies.

Section 6.3 No Control of the Company's Business. Without limiting any rights or obligations in this Agreement, nothing contained in this Agreement is intended to give the Buyer, directly or indirectly, the right to control or direct the Company's operations prior to the Closing. Prior to the Closing, the Seller shall, and shall cause the Company shall and the other Applicable Entities to, exercise, subject to the terms and conditions of this Agreement, complete control and supervision over its and their respective operations.

Section 6.4 Intentionally omitted.

Section 6.5 Intercompany Arrangements. Except as set forth on Schedule 6.5 of the Disclosure Schedules and except with respect to the Transition Services Agreement, effective as of the Closing Date, all intercompany and intracompany obligations, accounts or contracts between the Company, on the one hand, and the Seller and its Affiliates (other than the Company), on the other hand, shall be deemed cancelled, in each case without any consideration to be delivered by, or continuing Liability of, any of the Buyer, the Company, or any of their respective Representatives or Affiliates (for the avoidance of doubt, other than the Seller), and the Seller shall, and shall cause its Affiliates to, take all necessary steps to cause such cancellation.

Section 6.6 No Hire; No Solicitation. If this Agreement is terminated prior to Closing, the Buyer will not, for a period of one year after such termination, without the prior written consent of the Seller, which consent shall not be unreasonably withheld, conditioned or delayed, either alone or in conjunction with any other Person, directly or indirectly, or through its present or future Affiliates, knowingly solicit any person who is known by the Buyer to be or to have been an employee providing services to the Company, at any time during the period from the date of this Agreement until the date of such termination, to terminate his or her employment with any Affiliate of the Company; provided, however, that the foregoing restrictions in this Section 6.6 shall expressly exclude any public solicitations or other communications in the ordinary course of business and consistent with past practice regarding job openings that are not targeted to any of the foregoing individuals, whether or not such individuals would otherwise fall within the restrictions set forth above. The Buyer agrees that any remedy at law for any breach by the Buyer of this Section 6.6 would be inadequate, and that the Seller and the Company would be entitled to injunctive relief in such a case. If it is ever held that this restriction on the Buyer is too onerous and is not necessary for the protection of the Company, the Buyer agrees that any court of competent jurisdiction may impose such lesser restrictions which such court may consider to be necessary or appropriate properly to protect the Company.

Section 6.7 Confidentiality. Each of the parties shall hold, and shall cause its Representatives to hold, in confidence all documents and information furnished to it by or on behalf of the other parties in connection with the transactions contemplated hereby pursuant to the terms of the confidentiality agreement dated July 20, 2020 between the Buyer and BKEP Parent (the "Confidentiality Agreement"), which shall continue in full force and effect until its expiration pursuant to its terms.

Section 6.8 Consents and Filings.

(a) Each of the parties shall use reasonable best efforts to do, or cause to be done, all things necessary or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, including to (i) obtain from Governmental Authorities all consents, approvals, authorizations, qualifications and orders as are necessary for the consummation of the transactions contemplated by this Agreement and (ii) promptly (and in no event later than 10 Business Days after the date hereof) make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement required under the HSR Act. The Buyer shall pay all filing fees and other charges for the filing under the HSR Act by all parties.

(b) Without limiting the generality of the parties' undertaking pursuant to Section 6.8(a), the Buyer agrees to use its reasonable best efforts and to take any and all steps necessary to avoid or eliminate each and every impediment under any antitrust, competition or trade regulation Law that may be asserted by any Governmental Authority or any other party so as to enable the parties hereto to close the transactions contemplated by this Agreement as promptly as practicable and in no event later than the Termination Date. Notwithstanding the foregoing, nothing in this Section 6.8(b) or otherwise in this Agreement shall require the Buyer to (i) propose, negotiate, endeavor or agree to sell, license, dispose of, hold separate, or otherwise take, or refrain from, any action so as to limit its freedom of action with respect to, or its ability to retain, any entity, product line, asset or facility, (ii) commence litigation or any other Action or (iii) agree to any other condition or consent decree or enter into any contract.

(c) Each of the parties shall promptly notify the other parties of any communication it or any of its Affiliates receives from any Governmental Authority relating to the matters set forth in this Section 6.8 and permit the other parties to review in advance any proposed communication by such party to any Governmental Authority in connection therewith. No party to this Agreement shall agree to participate in any meeting with any Governmental Authority in respect of any such matter unless it consults with the other parties in advance and, to the extent permitted by such Governmental Authority, gives the other parties the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, the parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other parties may reasonably request in connection with the matters set forth in this Section 6.8 and in seeking early termination of any applicable waiting periods including under the HSR Act. Subject to the Confidentiality Agreement, the parties will provide each other with true and complete copies of all correspondence, filings or communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to the foregoing; provided that either party may either redact or designate for disclosure only to the other party's outside counsel any confidential material not previously disclosed to the other party relating to the disclosing party's valuation of any transaction contemplated by this Agreement.

(d) Certain consents and waivers with respect to the consummation of the transactions contemplated by this Agreement may be required from parties to contracts to which the Company is a party that have not been and may not be obtained. Prior to the Closing, neither the Seller, the Company nor any of their respective Affiliates shall have any Liability to the Buyer caused solely by the failure to obtain any consents or waivers that may be required in order to consummate the transactions contemplated by this Agreement or because of the termination of any contract as a result thereof; provided, however, that, notwithstanding anything to the contrary in the foregoing, nothing in this sentence shall limit any rights or remedies of the Buyer or the Buyer Indemnified Parties under this Agreement.

Section 6.9 Public Announcements. On and after the date hereof and through the Closing Date, and without limiting Section 6.7, the parties shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and none of the parties shall issue any press release or make any public statement prior to obtaining the other parties' written approval, which approval shall not be unreasonably withheld, except that no such approval shall be necessary to the extent disclosure may be required by applicable Law or any listing agreement of the Seller or its Affiliates; provided, however, that, prior to the disclosure of any information relating to this Agreement to a third party or a Governmental Authority or the making of any public statement or the issuance of any press release (even if such disclosure is permitted by the provisions set forth above), to the extent permitted by applicable Law, each party shall provide reasonable advance notice to the other party, and shall consider in good faith reasonable limitations on disclosure proposed by such other party (including redactions or the omission of commercially sensitive materials or the omission of schedules or exhibits).

Section 6.10 Managers' and Officers' Indemnification.

(a) The Buyer covenants, for itself and its Affiliates, successors and assigns, that it and they shall not institute any Action in any court or before any administrative agency or before any other tribunal against any of the current managers or officers of the Company or its Affiliates, in their capacity as such, with respect to any liabilities, actions or causes of action, judgments, claims or demands of any nature or description (consequential, compensatory, punitive or otherwise), in each such case to the extent resulting from their service with the Company or its Affiliates prior to the Closing Date or their approval of this Agreement or the transactions contemplated hereby.

(b) The provisions of this Section 6.10 shall survive the consummation of the Closing and continue for the periods specified herein. This Section 6.10 is intended to benefit the managers and officers of the Company and its Affiliates and any other Person or entity (and their respective heirs, successors and assigns) referenced in this Section 6.10 or indemnified hereunder, each of whom may enforce the provisions of this Section 6.10 (whether or not parties to this Agreement). Each of the Persons referenced in the immediately preceding sentence are intended to be third party beneficiaries of this Section 6.10.

(c) Notwithstanding anything to the contrary in this Agreement, nothing in this Section 6.10 shall limit any rights or remedies of the Buyer or any of the Buyer Indemnified Parties against the Seller under Article IX or in the event of Intentional Fraud.

Section 6.11 Use of Names. The Seller is not conveying ownership rights or granting the Buyer, any Affiliate of the Buyer, or the Company a license to use any of the trade names, trademarks, service marks, logos or domain names of the Seller or any Affiliate of the Seller (including the name "Blueknight" or "BKEP" or any trade name, trademark, service mark, logo or domain name incorporating the name "Blueknight" or "BKEP") and, after the Closing, the Buyer shall not permit the Company or any Affiliate of the Company to use in any manner the names or marks of the Seller or any Affiliate of the Seller or any word that is similar in sound or appearance to such names or marks. As promptly as reasonably practicable, and in any event no later than three months after the Closing, the Buyer shall take all necessary limited liability company action to cause the corporate name of the Company to be changed to a name that does not include the word "BKEP" and shall remove all identifying markings from the Company's assets which contain the name "Blueknight" or "BKEP" or any other form thereof. For the avoidance of doubt, the Parties acknowledge and agree that the remedies available to the Parties as set forth in Section 11.12 shall be available to the Seller in the event of the Buyer's breach of this Section 6.11.

Section 6.12 Pipeline Leak Remediation. Prior to the Closing, Seller shall take all action necessary to remediate the small leak occurring on or about 11/30/2020 from the 8" line between the BKEP South Terminal and the Buyer facilities consistent with industry practice.

Section 6.13 Virtual Data Room. From time to time after the date of this Agreement, as and when reasonably requested by the Buyer in connection with the Buyer's procurement of the R&W Insurance Policy, the Seller shall deliver a true and complete electronic copy of the entire virtual data room (including all contents therein as of the date of the delivery from time to time) maintained by Intralinks with respect to "Project Solera" and related to the Terminals Business and the transactions contemplated by this Agreement; provided that the Seller shall in all events provide such copy to the Buyer as of the Closing Date to the Buyer no later than ten (10) Business Days following the Closing Date.

Section 6.14 Pre-Closing Reorganization. Prior to the Closing, the Seller shall, and shall cause the Applicable Entities to, transfer, distribute, assign and convey all of the Applicable Entities' right, title and interest in and to the BKEP Assets to the Company except as otherwise provided in Section 6.19, in each case pursuant to and in accordance with the Reorganization Documents. Any modification or supplement to the forms of the Reorganization Documents attached hereto shall require the written consent of both the Seller and the Buyer.

Section 6.15 Employee Matters.

(a) Schedule 6.15(a) of the Disclosure Schedules lists employees of BKEP Management Inc. ("Seller Management Co.") who provide services primarily to the Company as of the date hereof (the "Business Employees") and Schedule 6.15(b)(i) of the Disclosure Schedules lists employees of Seller Management Co. who provide other services to the Company as of the date hereof ("Ancillary Business Employees"), and with respect to each Business Employee and Ancillary Business Employee, sets forth his or her name, title or position, date of hire (or service crediting date if different), base annual salary or hourly wage rate, and commission, bonus and cash incentive entitlements. No later than 14 days prior to the Closing, the Buyer shall cause Enbridge Employee Service Inc. ("EESI"), to extend offers to hire at least thirteen (13) of the Business Employees and may extend offers to hire any of the Ancillary Business Employees that the Buyer determines in its sole discretion, subject to compliance with applicable Law (each such Business Employee and Ancillary Business Employee who accepts such offer shall when they actually commence employment with the Buyer or its Affiliates, during or at the end of the Transition Services Agreement, be a "Transferred Employee"). Buyer and its Affiliates may interview one or more of the Business Employees and conduct any such standard employee screening and eligibility procedures with regard to such Business Employees as the Buyer conducts with respect to candidates for employment in the Buyer's ordinary course of business, and the Seller shall, and shall cause its Affiliates to, provide the Buyer with reasonable access to the Business Employees to facilitate any such interviews conducted by or on behalf of the Buyer.

(b) Buyer will, or will cause its Affiliates to, provide base salaries, target cash incentive compensation opportunities and employee benefits to each Transferred Employees that remains employed by the Buyer or its Affiliates, that are at least as favorable as the base salaries, target cash incentive compensation opportunities and employee benefits that the Buyer and its Affiliates provide to similarly situated employees of the Buyer and its Affiliates; provided that (i) the Transferred Employees will be hired at will, (ii) the Buyer or its Affiliates may terminate the Transferred Employees for any reason, including for cause, or for no reason at all, and (iii) the Transferred Employees will be eligible to participate in the EESI Severance Pay Plan. Notwithstanding the foregoing, Buyer will cause EESI's offers of employment to each of the individuals listed on Schedule 6.15(b)(ii) of the Disclosure Schedules (such individuals, the "Key Employees and such offers, the "Key Employee Offers") to reflect: (1) an initial primary work location that is no further than 5 miles from such Key Employee's current primary work location as of immediately prior to the Closing Date; and (2) the compensation commensurate with similar employees of EESI under any applicable collective bargaining agreement. The Buyer shall take commercially reasonable efforts to cause each of the Key Employees to accept the Key Employee Offers to the fullest extent permitted under the requirements of any applicable collective bargaining agreement.

(c) The Seller shall (i) ensure that the Company is not at any time an adopting employer with respect to the Employee Plans, (ii) terminate the Business Employee's and Ancillary Business Employee's active participation in the Employee Plans upon them becoming Transferred Employees, and (iii) cause each Employee Plan to comply with all applicable Laws as it relates to the Transferred Employees.

(d) With respect to each Transferred Employee, provided that accurate prior service crediting information is timely provided by the Seller on Schedule 6.15(a) or Schedule 6.15(b)(i) of the Disclosure Schedules for the Transferred Employee to the Buyer or its designated ERISA Affiliate, the Buyer will, or will cause its ERISA Affiliates to, credit such Transferred Employee with his or her prior credited service with Seller Management Co. (and any predecessor employer to the extent such service was recognized by Seller Management Co. prior to becoming a Transferred Employee), for purposes of determining (i) eligibility to participate, (ii) vesting, and (iii) accrual of severance and paid time off benefits under any employee benefit plan or program maintained by the Buyer or its Affiliates in which such Transferred Employee will become eligible to participate on or after becoming a Transferred Employee (each, a "Buyer Plan"), provided that, for the avoidance of doubt, the foregoing shall not apply for purposes of benefit accrual under any defined benefit pension plan, post-employment medical or welfare plans, or to the extent that its application would result in duplication of benefits.

(e) With respect to any current or former employee of Seller Management Co. or an ERISA Affiliate (including any eligible spouse and dependent thereof) who incurs a qualifying event, as described by COBRA, as a result of any transaction contemplated by this Agreement, or who otherwise incurs a qualifying event (all such employees together with their spouses and eligible dependents being referred to herein as "Qualified Beneficiaries"), the Seller or its ERISA Affiliates (and not the Buyer or its Affiliates) shall (i) retain the entire obligation and Liability for providing notices and continuation coverage under COBRA or comparable state statute and (ii) offer the Qualified Beneficiaries continuation coverage under a group health plan of the Seller or its Affiliates, as applicable, to the full extent required by COBRA. Without limiting the foregoing, under this Agreement all responsibilities to make COBRA continuation coverage available to any M&A qualified beneficiaries (as defined in the COBRA regulations) are allocated entirely to the Seller and its Affiliates, and not to the Buyer and its Affiliates. Buyer or its ERISA Affiliates (and not the Seller or its Affiliates) shall (i) assume the entire obligation and Liability for providing notices and continuation coverage under COBRA or comparable state statute and (ii) offer the Transferred Employees continuation coverage under a group health plan of the Buyer or its Affiliates, as applicable, to the full extent required by COBRA, for any Transferred Employee who incurs a qualifying event following the date such individual became a Transferred Employee.

(f) The Buyer or its ERISA Affiliates shall use commercially reasonable efforts to cause each Buyer Plan that is an “employee welfare benefit plan” (as defined in Section 3(1) of ERISA) to: (i) waive all limitations as to preexisting conditions, exclusions and waiting periods for the Transferred Employees (and their eligible dependents), other than preexisting condition limitations, exclusions or waiting periods that are already in effect with respect to such individuals under the analogous Employee Plan immediately prior to such person becoming a Transferred Employee, and (ii) recognize for each Transferred Employee and his or her covered dependents, for purposes of applying annual deductible, co-payment and out-of-pocket maximums under the Buyer Plan, any deductible, co-payment and out-of-pocket expenses paid by the Transferred Employee and his or her covered dependents during the portion of the calendar year on or prior to the date such individual became a Transferred Employee under an analogous Employee Plan, to the same extent as if such amounts had been paid in accordance with the analogous Buyer Plan for the same plan year.

(g) No provision in this Section 6.15 or otherwise in this Agreement, whether express or implied, will (i) create any third-party beneficiary or other rights in any employee or former employee of the Seller, Seller Management Co., the Company or any of their respective ERISA Affiliates (including any beneficiary or dependent thereof) or any other Person; (ii) create any rights to continued employment with Seller Management Co., the Buyer or either of their respective ERISA Affiliates, or in any way limit the ability of the Seller, Seller Management Co., the Buyer or any of their respective ERISA Affiliates to terminate the employment of any individual at any time and for any reason; or (iii) constitute or be deemed to constitute an amendment to any employee benefit plan, program, policy, agreement or arrangement sponsored or maintained by the Seller, Seller Management Co., the Company or any of their ERISA Affiliates or (iv) result in the assumption or transfer, in whole or in part, of any Employee Plan, or any Liability or obligation whatsoever thereunder, or with respect thereto, by or to the Buyer or any of its ERISA Affiliates. The Seller or Seller Management Co. will continue to sponsor the Employee Plans for the Employees who are not Transferred Employees.

Section 6.16 No Solicitation; Alternative Transactions From the date of this Agreement until the earlier of the Closing or the termination of this Agreement in accordance with Article X, Seller shall not, and shall cause its Affiliates and Representatives not to, directly or indirectly, encourage, solicit, participate in or initiate, or continue, discussions or negotiations with, or provide any information to, any Person or group (other than any party or any Affiliate, associate or designee of any party) concerning any proposal for the sale, merger, combination, joint venture or other transaction involving all or any part of the Terminals Business or properties of the Applicable Entities used in connection with the Terminals Business or of the BKEP Assets, other than providing information in connection the transactions contemplated hereby in accordance with the terms hereof.

Section 6.17 Post-Closing Conveyances.

(a) If, following the Closing Date, any party reasonably determines that right, title or interest in any BKEP Asset was not conveyed to the Company as of the Closing, or that right, title or interest in an asset other than the BKEP Assets was conveyed to the Company as of the Closing, then such party shall notify the other parties in writing as promptly as practicable, but a failure to notify the other parties shall not limit the parties’ obligations hereunder. If a BKEP Asset was not conveyed to the Company as of the Closing, then the Buyer shall have the right, but not the obligation, exercisable in its sole and absolute discretion by the delivery of written notice to the Seller, to cause the Seller to cause such BKEP Asset to be conveyed (whether directly by the Seller, by an Applicable Entity, or any Affiliate of any such Person) to the Company as promptly as practicable (and the Buyer shall not have any obligation to deliver any consideration to the Seller or its Affiliates for such conveyance). If an asset other than a BKEP Asset was conveyed to the Company as of the Closing, then the Seller and the Buyer shall, as promptly as practicable, cause such asset to be conveyed by the Company (or its Affiliate) to the Seller as promptly as practicable following receipt of such notice (and the Seller and its Affiliates shall not have any obligation to deliver any consideration to the Buyer, the Company or their respective Affiliates for such conveyance). The parties shall use reasonable best efforts to take, or to cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the conveyances described in this Section 6.17. Notwithstanding the foregoing, the parties acknowledge and agree that the transfer of Vehicle Leases shall be accomplished as provided in Section 6.19.

(b) All costs and expenses arising out of compliance with this Section 6.17 shall be allocated to the parties as though such transfers had been completed, and the expenses incurred in connection with such transfers had been allocated, as of the Closing Date in accordance with this Section 6.17.

(c) The obligations set forth in this Section 6.17 are in addition to, and shall be not be construed to limit in any way, the rights or remedies otherwise available to the parties as set forth in this Agreement.

Section 6.18 R&W Insurance Policy. From the date hereof and following the Closing, the Buyer will not agree to any amendment, variation or waiver of the subrogation or claim for contribution provisions set forth in the R&W Insurance Policy without the Seller's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

Section 6.19 Vehicle Transfer. The parties acknowledge and agree that the Vehicle Leases and the vehicles relating thereto shall not be transferred to the Company prior to or as of the Closing. With respect to each Vehicle Lease, the Seller shall, and shall cause its Affiliates to, cause such lease to be transferred to the Company at the earlier to occur of (x) the expiration or earlier termination of the Transition Services Agreement and (y) if applicable, the date on which the Transferred Employee to which to the vehicle under such lease is assigned commences employment with EESI, the Company or any of their respective Affiliates.

Section 6.20 Pipeline Purchaser Claims. The Seller shall, and shall cause its Affiliates, to cause each purchaser of any portion of the pipeline business of BKEP Parent or its Affiliates or the assets or entities relating thereto to waive any and all claims against the Company or its Affiliates relating to the use of or access to any of the BKEP Assets in connection with the performance of any of the services under the Transition Services Agreement, other than to the extent arising from the gross negligence or willful misconduct of the Company.

ARTICLE VII
TAX MATTERS

Section 7.1 Tax Cooperation; Tax Restrictions.

(a) The Seller shall timely and properly prepare and file (or cause to be timely prepared and filed) all Tax Returns of or with respect to the Company and the assets and the business of the Company that are required to be filed on or before the Closing Date, and shall pay all Taxes shown as due on such Tax Returns. All such Tax Returns shall be prepared and filed in a manner consistent with past practice.

(b) The Buyer and the Seller will, and will cause its representatives to, (i) provide the other party with such assistance as may be reasonably requested in connection with the review, preparation or filing of any Tax Return, or any audit or other examination by any taxing authority or judicial or administrative proceeding relating to Taxes with respect to the Company and (ii) retain and provide the other party with reasonable access to all records or information (including, without limitation, earnings and profits of the Company) that may be relevant to such Tax Return, audit, examination or proceeding. The Buyer and the Seller shall retain all books and records with respect to Taxes pertaining to the Company or the assets or the business of the Company until at least sixty (60) days following the expiration of the applicable statute of limitations (taking into account any extensions thereof).

(c) To the extent doing so would reasonably be expected to result in a material increase in Taxes to the Seller or its Affiliates (or any of their respective direct or indirect owners), the Buyer shall not, and shall not allow the Company to, amend any Tax Return of the Company for a taxable period ending on or prior to the Closing Date or for a Straddle Period or otherwise initiate (or agree to) any other Seller Tax Matter without the prior written consent of the Seller.

Section 7.2 Tax Allocation.

(a) Prior to the Closing Date, the Buyer and the Seller shall use commercially reasonable efforts to agree to an allocation of the Estimated Purchase Price, the Liabilities of the Company, and any other amounts treated as consideration for U.S. federal income Tax purposes among the assets of the Company for Tax purposes in a manner consistent with the principles of Section 1060 of the Code and the U.S. Treasury Regulations thereunder, based upon the fair market values of such assets (the "Allocation"). Accordingly, the Buyer and the Seller agree that the consideration described above shall be allocated to Class I assets, Class II assets, Class III assets, Class IV assets, Class VI assets and Class VII assets (all as defined below) based on fair market values.

(b) The terms "Class I assets," "Class II assets," "Class III assets," "Class IV assets," "Class VI assets" and "Class VII assets" shall have the meaning ascribed to them in Treasury Regulation Section 1.338-6. Reasonably in advance of the due date (including extensions) of the U.S. federal income Tax Return of the Buyer for the taxable year in which the Closing Date occurs, the Buyer shall prepare and deliver to the Seller the Allocation setting forth its proposed calculation of the aggregate amount of the consideration as determined for U.S. federal income Tax purposes, which shall consist of the Purchase Price, the Liabilities of the Company, and any other amounts treated as consideration for U.S. federal income tax purposes, and the allocation of such aggregate amount among the assets of the Company. If the Buyer and the Seller are unable to reach an agreement within a reasonable amount of time after the Seller's receipt of the Allocation, each of the Buyer and the Seller shall use its own allocation for all applicable U.S. federal income Tax purposes.

Section 7.3 Tax Treatment. The parties agree that because the Company is classified as an entity that is disregarded as separate from its owner for U.S. federal income tax purposes, the Buyer's purchase of the Purchased Interests is intended to be treated as a purchase of all of the assets of the Company for U.S. federal income tax purposes, and that none of the parties nor any of their respective Affiliates will take any position inconsistent with such treatment in notices to or filings with any taxing authority, in audit or other proceedings with respect to Taxes, or in other documents or notices relating to the transactions contemplated by this Agreement unless required to do so by a "determination" as defined in Section 1313 of the Code.

Section 7.4 Transfer Taxes. The Buyer shall be liable for all sales, use, real property transfer, real property gains, transfer, stamp, registration, documentary, recording or similar Taxes arising from the purchase and sale of the Purchased Interests pursuant to Section 2.1. The Seller shall be liable for all sales, use, real property transfer, real property gains, transfer, stamp, registration, documentary, recording or similar Taxes arising from the transfer of the BKEP Assets pursuant to Section 6.14.

Section 7.5 Tax Refunds The Seller will be entitled to (a) any Tax refunds that are received by the Buyer, the Company or any of their respective Affiliates for a Pre-Closing Tax Period and (b) amounts credited against Tax to which the Buyer, the Company or any of their respective Affiliates for a Pre-Closing Tax Period become entitled in a period other than a Pre-Closing Tax Period, to the extent the amounts credited reduce the amount of Tax otherwise payable by the Buyer, as a result of an overpayment of any Tax in a Pre-Closing Tax Period. The Buyer will use commercially reasonably efforts to take steps necessary to obtain any available refunds, and will pay over to the Seller any such refund or the amount of any such credit within five days after actual receipt of such refund or credit against Taxes.

Section 7.6 Straddle Period For purposes of allocating Taxes that are payable with respect to the portion of a Straddle Period ending on and including the Closing Date, (a) Taxes imposed on a periodic basis and without regard to income earned or transactions occurring on a specific date shall be allocated based upon the number of days in the Tax period up to and including the Closing Date, as compared to the number of days after the Closing Date in such Tax period, and (b) with respect to any other Taxes, the amount of Taxes due for the portion of such period ending on the Closing Date shall be determined based upon an interim closing of the books at the end of the Closing Date; provided, however, that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the portion of the Straddle Period ending on the Closing Date and the remainder of such Straddle Period in proportion to the number of days in each period.

ARTICLE VIII
CONDITIONS TO CLOSING

Section 8.1 General Conditions. The respective obligations of the Buyer and the Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any of which may, to the extent permitted by applicable Law, be waived in writing by any party in its sole discretion (provided, that such waiver shall only be effective as to the obligations of such waiving party):

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law (in each case whether temporary, preliminary or permanent), that is then in effect and that enjoins, restrains, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement or the other Transaction Documents.

(b) All waiting periods (and any extensions thereof) under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired or shall have been terminated. All other material consents of, or registrations, declarations or filings with, any Governmental Authority legally required for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents shall have been obtained or filed.

Section 8.2 Conditions to Obligations of the Seller and the Company. The obligations of the Seller to consummate the transactions contemplated by this Agreement and the other Transaction Documents shall be subject to the fulfillment, at or prior to the Closing, of the following conditions, which may be waived in writing by the Seller in its sole discretion: (a)(i) other than the Fundamental Representations of the Buyer, the representations and warranties of the Buyer contained in Article V shall be true and correct as of the date hereof and as of the Closing Date (as if such representations and warranties had been delivered as of the Closing Date), or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date, except where the failure to be so true and correct (without giving effect to any limitation or qualification as to "materiality" (including the word "material") or "Material Adverse Effect" set forth therein) would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect, (ii) the Fundamental Representations of the Buyer shall be true and correct in all respects as of the date hereof and as of the Closing Date (as if such representations and warranties had been delivered as of the Closing Date), or in the case of Fundamental Representations of the Buyer that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date, (b) the Buyer shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and (c) the Seller shall have received from the Buyer a certificate, dated as of the Closing Date, signed by a duly authorized officer of the Buyer, stating that the conditions specified in Sections 8.2(a) and 8.2(b) have been satisfied.

Section 8.3 Conditions to Obligations of the Buyer. The obligations of the Buyer to consummate the transactions contemplated by this Agreement and the other Transaction Documents shall be subject to the fulfillment, at or prior to the Closing, of the following conditions, which may be waived in writing by the Buyer in its sole discretion: (a)(i) other than the Fundamental Representations of the Seller, the representations and warranties of the Seller contained in Article III and Article IV, respectively, shall be true and correct as of the date hereof and as of the Closing Date (as if such representations and warranties had been delivered as of the Closing Date), or in the case of representations and warranties that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date, except where the failure to be so true and correct (without giving effect to any limitation or qualification as to "materiality" (including the word "material") or "Material Adverse Effect" set forth therein) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (ii) the Fundamental Representations of the Seller shall be true and correct in all respects as of the date hereof and as of the Closing Date (as if such representations and warranties had been delivered as of the Closing Date), or in the case of Fundamental Representations of the Seller that are made as of a specified date, such representations and warranties shall be true and correct as of such specified date, (b) (i) other than with respect to Section 6.12, the Seller and the Company shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing, and (ii) with respect to Section 6.12 and Section 6.14, Seller and the Company shall have performed and complied in all respects with all obligations and agreements set forth therein, (c) the Buyer shall have received from the Seller a certificate, dated as of the Closing Date, signed by a duly authorized officer of the Seller, stating that the conditions specified in Sections 8.3(a) and 8.3(b) have been satisfied, (d) the Buyer shall have received from the Seller the Lender Release and such other duly executed releases and UCC termination statements (including release of mortgages and other liens as necessary in recordable form), to release the Company from all liability, and the BKEP Assets from any mortgage or other liens, related thereto, and (e) at least four of the Key Employees shall have accepted the Key Employee Offers from the Buyer (or one of its Affiliates, including EESI).

Section 8.4 Frustration of Closing Conditions. No party may rely on the failure of any condition set forth in this Article VIII to be satisfied if such failure was caused by such party's failure to use reasonable best efforts to cause the Closing to occur as required by Section 6.8.

ARTICLE IX
REMEDIES FOR BREACH OF THIS AGREEMENT

Section 9.1 Survival of Representations, Warranties and Covenants. The representations and warranties contained in this Agreement (other than (x) the Fundamental Representations, (y) the representations and warranties set forth in Section 4.14 (the "Tax Representations")) shall survive the Closing for a period of 15 months after the Closing Date (the "General Survival Date"). The Fundamental Representations shall survive the Closing indefinitely. The Tax Representations shall survive the Closing until 60 days following the lapse of the applicable statute of limitations. The covenants and agreements of the parties contained in this Agreement shall survive in accordance with their terms; provided that (i) Liability for any breach of or failure to perform any covenant or agreement set forth in any of Sections 6.1, 6.5, 6.7, 6.14 and 6.15 (the "Surviving Pre-Closing Covenants") shall survive the Closing until the General Survival Date, (ii) other than with respect to the Surviving Pre-Closing Covenants, Liability for any breach of or failure to perform any covenant or agreement that by its terms is to be performed (in whole or in part) prior to the Closing shall terminate as of the Closing, and (iii) Liability for any Seller Taxes shall survive the Closing until 60 days following the lapse of the applicable statute of limitations. A claim for breach of any representation, warranty or covenant may be brought at any time within the applicable survival period set forth herein. Notwithstanding the foregoing, any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the date on which it would otherwise terminate pursuant to the foregoing, if notice of the breach thereof giving rise to such right of indemnity shall have been given to the Person against whom such indemnity may be sought prior to such date.

Section 9.2 Indemnification.

(a) Indemnification of the Buyer Indemnified Parties. Pursuant to and subject to the limitations set forth in this Article IX, from and after the Closing, the Buyer and its Affiliates and their respective Representatives, successors and assigns (collectively, the "Buyer Indemnified Parties") shall be indemnified by the Seller against, and be held harmless from, any and all Losses, to the extent arising out of, relating to or resulting from:

(i) any breach or inaccuracy of any representation or warranty of the Seller contained in this Agreement or in any certificate delivered by or on behalf of the Seller pursuant to this Agreement (each such breach or inaccuracy, a "Warranty Breach");

(ii) any breach, or failure to perform, by Seller of either (x) a Surviving Pre-Closing Covenant or (y) any covenant or agreement required to be performed by Seller following the Closing; and

(iii) (a) Taxes of the Company or the Applicable Entities, or with respect to the assets or the business of the Company or the Applicable Entities, the BKEP Assets and the Terminals Business, attributable to any Pre-Closing Tax Period (determined in accordance with Section 7.6); (b) Taxes of the Seller (including any capital gains Taxes or other Taxes arising as a result of the transactions contemplated by this Agreement) or any of its Affiliates (other than the Company and the Applicable Entities) for any Tax period; (c) Taxes imposed on, allocated or attributable to or incurred or payable by the Company or the Applicable Entities due to transferee or successor Liability or an obligation to indemnify any third party, in each case pursuant to a transaction consummated on or prior to or contract entered into on or prior to the Closing; or (d) any taxes for which the Seller is liable pursuant to Section 7.4 (collectively the "Seller Taxes"); provided, Taxes described in clause (a) shall be taken into account only to the extent the amount of such Taxes exceeds the amount treated as a current Liability in the calculation of Net Working Capital set forth in the Final Closing Statement (as adjusted pursuant to Section 2.4(d)). For purposes of this Section 9.2(a)(iii), Taxes shall include the amount of Taxes that would have been paid but for the application of any credit or net operating loss or capital loss deduction attributable to tax periods (or portions thereof) beginning after the Closing Date.

(b) Indemnification of Seller Indemnified Parties. Pursuant to and subject to the limitations set forth in this Article IX, from and after the Closing, the Seller and its Affiliates and their respective Representatives, successors and assigns (collectively, the "Seller Indemnified Parties", and, collectively with the Buyer Indemnified Parties, the "Indemnified Parties") shall be indemnified by the Buyer against, and be held harmless from, any and all Losses, to the extent arising out of, relating to or resulting from:

(i) any breach or inaccuracy of any representation or warranty of the Buyer contained in this Agreement or in any certificate delivered by or on behalf of the Buyer pursuant to this Agreement; and

(ii) any breach of, or failure to perform, any covenant or agreement required to be performed by the Buyer contained in this Agreement.

(c) Limitations for Warranty Breaches.

(i) Except in the case of Intentional Fraud, the Buyer Indemnified Parties shall have no right to seek indemnification pursuant to Warranty Breaches, other than with respect to the Fundamental Representations and the Tax Representations of the Seller, until the aggregate amount of all indemnifiable Losses sustained or incurred by the Buyer Indemnified Parties in the aggregate for Warranty Breaches exceed an amount equal to 50% of the Retention Amount at the time such claim is made (the "Basket"), in which case the Seller shall be liable for the full amount of such Losses from the first dollar thereof up to the amount of the Basket.

(ii) Except in the case of Intentional Fraud, and without limiting the Seller's liability for Losses equal to the Basket as described in Section 9.2(c)(i) above, the Buyer Indemnified Parties' sole and exclusive recourse for Warranty Breaches as to Losses in an amount greater than the Basket shall be from, and limited to, (A) as to Warranty Breaches (other than with respect to the Fundamental Representations and the Tax Representations of the Seller) the R&W Insurance Policy, and (B) as to Warranty Breaches with respect to the Fundamental Representations and the Tax Representations, *first,* directly from the Seller until the first point in time at which the aggregate indemnification recovered by the Buyer Indemnified Parties under this sub-section (B) is equal to the Retention Amount, *second*, from the R&W Insurance Policy, and *thereafter*, as to Losses in an amount above the policy limits of the R&W Insurance Policy, directly from the Seller.

(iii) Without limiting the foregoing in this Section 9.2(c), in no event shall the Seller's aggregate indemnification obligations under this Agreement exceed the Enterprise Value.

(d) With respect to any indemnification claim pursuant to this Article IX in respect of Warranty Breaches where the applicable Loss is covered under the R&W Insurance Policy (excluding, for the avoidance of doubt, indemnification from the Seller to which the Buyer Indemnified Parties are entitled pursuant to sub-section (B) of Section 9.2(c)(ii)), the Buyer Indemnified Parties shall use commercially reasonable efforts to recover the covered portion of such Loss under the R&W Insurance Policy prior to seeking recovery from the Seller and no Buyer Indemnified Party shall be entitled to recover any such Loss under both the R&W Insurance Policy and from the Seller; *provided* that, for the avoidance of doubt, to the extent that only a portion of a Loss subject to indemnification under this Article IX is covered under the R&W Insurance Policy, the Buyer Indemnified Parties shall be entitled to recover the uncovered portion of such Loss from the Seller, subject to the limitations in this Article IX.

(e) Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall in any way limit the Buyer Indemnified Parties' recourse against any Person in respect of Intentional Fraud.

(f) For the avoidance of doubt, subject to and in accordance with this Article IX, following the Closing, the Seller (and not the Company) shall be liable for (and deemed to have caused) any breach of this Agreement occurring at or prior to the Closing by the Company or any of its Representatives, including any inaccuracy or breach of any representation or warranty under Article IV (whether based upon, attributable to or arising out of Intentional Fraud on the part of the Company or otherwise), and shall not claim (directly or indirectly) any rights to contribution by the Company (or make any other similar claim) in respect of any such breaches, inaccuracies or other acts or omissions by the Company.

Section 9.3 Notice of Claims No later than 5:00 P.M. local time in Tulsa, Oklahoma on the final day of the applicable survival period set forth in Section 9.1, the Indemnified Party seeking indemnification hereunder shall give to the Indemnifying Party a written notice (a "Claim Notice") describing in reasonable detail the facts giving rise to any claim for indemnification hereunder (a "Claim") and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such Claim, and a reference to the provision(s) of this Agreement upon which such claim is based; provided, however, that a Claim Notice in respect of any pending or threatened action at law or suit in equity by or against a third Person as to which indemnification will be sought (each such action or suit being a "Third-Person Claim") shall be given reasonably promptly after the action or suit is commenced; and provided, further that failure to give such notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent it shall have been materially prejudiced by such failure.

Section 9.4 Third-Person Claim Procedures.

(a) Subject to Section 9.4(b), the Indemnified Party shall have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of any Third-Person Claim against such Indemnified Party as to which indemnification will be sought by any Indemnified Party from any Indemnifying Party hereunder, and in any such case the Indemnifying Party shall cooperate, and shall cause its Affiliates and Representatives to cooperate, in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnified Party or the Indemnified Party's Affiliates or representatives in connection therewith; provided, however, that (x) the Indemnifying Party may participate, through no more than one counsel chosen by it and at its own expense, in the defense of any such Third-Person Claim as to which the Indemnified Party has so elected to conduct and control the defense thereof; and (y) the Indemnified Party shall have the right to pay, settle or compromise any Third-Person Claim without the consent of the Indemnifying Party.

(b) If both (I)(v) any Third-Person Claim against any Indemnified Party will have no continuing effect in any material respect on the assets, properties or business of the Indemnified Party, (w) there is no reasonable likelihood that the Losses in respect of the Third-Person Claim would be covered under the R&W Insurance Policy, (x) such Third-Person Claim (including any compromise or settlement thereof) does not primarily seek any order, injunction or other equitable relief against the Indemnified Party, (y) such Third-Person Claim does not arise in connection with a criminal action against the Indemnified Party and (z) there is no reasonable likelihood of a conflict of interest between the Indemnifying Party and the Indemnified Party and (II) the Indemnifying Party has acknowledged and agreed in writing that the Indemnifying Party will have an obligation to provide indemnification to the Indemnified Party if the Proceeding is adversely determined against the Indemnifying Party in respect thereof (provided, that such acknowledgement in and of itself shall not constitute an admission of guilt or wrongdoing), then the Indemnifying Party shall have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of any such Third-Person Claim against such Indemnified Party as to which indemnification will be sought by any Indemnified Party from any Indemnifying Party hereunder, and in any such case the Indemnified Party shall, at the expense of the Indemnifying Party, cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party in connection therewith; provided, however, that the Indemnified Party may participate, through counsel chosen by it and at its own expense, in the defense of any such Third-Person Claim as to which the Indemnifying Party has so elected to conduct and control the defense thereof; and provided further that the Indemnifying Party shall not, without the written consent of the Indemnified Party (which written consent shall not be unreasonably withheld), pay, compromise or settle any such Third-Person Claim, unless all of the following three conditions apply: (A) such settlement or compromise involves only the payment of monetary damages for which the Indemnifying Party is solely responsible, (B) the terms of such settlement or compromise provide for the unconditional release of the Indemnified Party from all liabilities and obligations in connection with such Third-Person Claim and (C) such settlement or compromise does not subject the Indemnified Party to any criminal Liability, does not require an admission of guilt or wrongdoing on the part of the Indemnified Party and does not impose any continuing obligation on the Indemnified Party.

Section 9.5 Direct Claim Procedures In the event a Buyer Indemnified Party has a claim for indemnity under Section 9.2 that does not involve a Third-Person Claim (a "Direct Claim"), such Buyer Indemnified Party agrees to give reasonably prompt notice thereof in writing to the Seller. Such notice shall set forth in reasonable detail the known facts and circumstances of such Direct Claim and the basis for indemnification in respect thereof (taking into account the information then available to such Buyer Indemnified Party).

Section 9.6 Materiality. For purposes of determining any breach, inaccuracy or untruth of any representation or warranty set forth in this Agreement or any certificate delivered pursuant to this Agreement, or the amount of Losses attributable thereto, the terms "Material Adverse Effect," "material adverse effect," "material," "materially" or other terms of a similar nature, to the extent contained in such representations or warranties, shall be given no effect and shall be disregarded in their entirety.

Section 9.7 Calculation of Damages. The amount of any Losses for which indemnification is provided under this Article IX shall be calculated net of any amounts under insurance policies, indemnity, reimbursement arrangement, contract or other recovery actually recovered by the Indemnified Party or its Affiliates with respect to the same Losses giving rise to such right of indemnification (each, an "Alternative Recovery") (which recoveries shall be net of any retention amount or deductibles paid by such Indemnified Party to obtain such insurance coverage, and in each case, net of any reasonable and documented out-of-pocket costs and expenses (including reasonable attorneys' fees and expenses)); provided that such Indemnified Party pursuing such recovery shall not delay such Indemnified Party from validly making, or seeking recovery and obtaining payment for any claim for indemnification under this Article IX. The Indemnified Party shall use commercially reasonable efforts to seek full recovery under all such Alternative Recoveries with respect to any Loss to the same extent as such Indemnified Party would if such Loss were not subject to indemnification hereunder. All Losses shall be determined without duplication of recovery under other provisions of this Agreement or any of the other Transaction Documents, including to the extent the amount of such Loss or alleged Loss is included in the calculation of the Net Adjustment Amount (or the calculation of the underlying amounts, including Indebtedness and Net Working Capital) as finally determined pursuant to Section 2.4.

Section 9.8 Reliance on Representations and Warranties. Notwithstanding anything to the contrary in this Agreement, the representations, warranties, covenants and agreements of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation or audit made or conducted by or on behalf of, or by reason of any information furnished to, the Indemnified Party or its Representatives or Affiliates, whether before or after the date of this Agreement or the Closing Date, or by reason of the fact that the Indemnified Party or any of its Representatives or Affiliates knew, was capable of knowing or should have known, at any time (whether before or after the date of this Agreement or the Closing Date), that any such representation or warranty was or might be inaccurate, or that any such covenant or agreement has not been or might not have been complied with, or by reason of the Indemnified Party's waiver of any condition to such Person's obligation to consummate the Closing set forth in Article VIII.

Section 9.9 Exclusive Remedy. With respect to Claims made from and after the Closing, except for (a) Intentional Fraud or (b) equitable remedies to specifically enforce any covenant that expressly contemplates performance (as opposed to payment) after the Closing, the Buyer acknowledges and agrees that its sole and exclusive remedies for any matter or claim arising out of this Agreement, the subject matter hereof or the transactions contemplated hereby shall be as provided by this Article IX. In furtherance of the foregoing, other than claims for (a) Intentional Fraud or (b) equitable remedies to specifically enforce any covenant that expressly contemplates performance (as opposed to payment) after the Closing, the Buyer and its Affiliates hereby waive, from and after the Closing, any and all rights, claims and causes of action, in each case, it may have against the Seller arising under or based upon this Agreement, any document or certificate delivered in connection herewith, any applicable Law or otherwise, in each case except pursuant to the indemnification provisions set forth in this Article IX.

Section 9.10 Tax Treatment. All payments made pursuant to this Article IX shall be treated as a purchase price adjustment for relevant Tax purposes, except as otherwise required by applicable Law.

Section 9.11 R&W Insurance Policy. Notwithstanding anything to the contrary in this Agreement, (i) the Buyer will purchase the R&W Insurance Policy on its own behalf at its own expense, (ii) neither the Seller nor any of its Affiliates shall be entitled to any proceeds from the R&W Insurance Policy and (iii) any limits on indemnification in this Article IX shall not limit the Buyer's rights under the R&W Insurance Policy.

Section 9.12 Limitation on Damages. OTHER THAN ANY SUCH DAMAGES ACTUALLY SUFFERED BY ANY THIRD PARTY FOR WHICH RESPONSIBILITY IS ALLOCATED AMONG THE PARTIES UNDER THE TERMS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE IN CONNECTION WITH THIS AGREEMENT FOR PUNITIVE DAMAGES.

Section 9.13 Mitigation. Each Indemnified Party will act in good faith to take commercially reasonable steps to mitigate all Losses subject to indemnification under this Article IX after receiving actual knowledge of any event or circumstance that would be reasonably expected to give rise to indemnification under this Article IX, which steps shall include availing itself of any reasonably and commercially practicable defenses, limitations, rights of contribution, and claims against third Persons and other rights at law or equity.

ARTICLE X
TERMINATION

Section 10.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of the Buyer and the Seller;

(b) by the Seller, if the Buyer breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform satisfies all of the following three conditions: (A) it would give rise to the failure of a condition set forth in Section 8.2, (B) it cannot be or has not been cured within 30 days following delivery of written notice of such breach or failure to perform and (C) it has not been waived by the Seller (provided, that neither a material breach by the Buyer of Section 6.18 nor the failure to deliver the full consideration payable pursuant to Article II at the Closing as required hereunder shall be subject to cure hereunder unless otherwise agreed to in writing by the Seller);

(c) by the Buyer, if the Seller or the Company breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform satisfies all of the following three conditions: (A) it would give rise to the failure of a condition set forth in Section 8.3, (B) it cannot be or has not been cured within 30 days following delivery of written notice of such breach or failure to perform and (C) it has not been waived by the Buyer;

(d) by either the Seller or the Buyer if the Closing shall not have occurred by March 15, 2021 (the "Termination Date"); provided, that the right to terminate this Agreement under this Section 10.1(d) shall not be available if the failure of the party so requesting termination to fulfill any obligation under this Agreement shall have been the primary cause of the failure of the Closing to occur on or prior to such date; provided, further, that if all conditions to Closing have been satisfied other than the condition set forth in Section 8.1(b) due in whole or part to delays associated with disruptions due to COVID-19, then the Termination Date shall be extended on a one time basis to a date that is five Business Days after such Governmental Authority returns to ordinary service and the period described in Section 8.1(b) shall have expired;

(e) by either the Seller or the Buyer in the event that any Governmental Authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; provided, that the party so requesting termination shall have complied with Section 6.8; or

(f) by the Seller at a time when the Seller is both (x) ready, willing and able to consummate all of the transactions contemplated by this Agreement and the other Transaction Documents to occur at the Closing and (y) the Seller is not in material breach of its obligations under this Agreement, if all of the conditions set forth in Sections 8.1 and 8.3 have been and continue to be satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, each of which is capable of being satisfied assuming a Closing would occur) and the Buyer fails to consummate the transactions contemplated by this Agreement on the date on which the Closing should have occurred pursuant to Section 2.3.

The party seeking to terminate this Agreement pursuant to this Section 10.1 (other than Section 10.1(a)) shall give prompt written notice of such termination to the other parties.

Section 10.2 Effect of Termination.

(a) In the event of termination of this Agreement as provided in Section 10.1, this Agreement shall forthwith become void and there shall be no Liability on the part of any party except (a) for the provisions of Article I relating to definitions, Sections 3.5, 4.17 and 5.5 relating to broker's fees and finder's fees, Section 6.7 relating to confidentiality, Section 6.9 relating to public announcements, this Section 10.2 and Article XI, together with any provisions required to give the foregoing provisions meaning, and (b) that nothing herein shall relieve any party from Liability for any breach of this Agreement or any agreement made as of the date hereof or subsequent thereto pursuant to this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated by the Seller pursuant to (i) Sections 10.1(b) or 10.1(f) or (ii) Section 10.1(d) (and, with respect to the foregoing clause (ii) only, (A) at the time of such termination, the Buyer is in material breach of any representation, warranty, covenant, or agreement made by the Buyer in this Agreement, (B) such material breach by the Buyer has resulted (or would result) in any one or more of the conditions set forth in Section 8.2 not being satisfied, (C) all of the conditions in Section 8.1 and Section 8.3 have been satisfied or waived by the Buyer (other than those conditions that would have been satisfied except for such breach of the Buyer or that by their nature are to be satisfied at Closing, but subject to the fulfillment or waiver of those conditions), and (D) the Seller is ready, willing, and able to consummate the Closing), then, in either such case, the Seller shall be entitled, by delivery of an irrevocable written notice to the Buyer, as liquidated damages and as the Seller's sole and exclusive remedy under this Agreement and in lieu of any other rights at law or in equity to which the Seller may otherwise be entitled (other than any such rights in equity solely to the extent required to enforce this Section 10.2(b)), to receive the Deposit Amount (together with any interest earned thereon) and, in such event, no later than two Business Days after such termination, the parties shall deliver joint written instructions to Escrow Agent instructing Escrow Agent to immediately release the Deposit Amount (together with any interest earned thereon) to the Seller. The provisions for payment of liquidated damages in this Section 10.2(b) have been included because, in the event of termination of this Agreement pursuant to Section 10.1(b), the actual damages to be incurred by the Seller are reasonably expected to approximate the amount of liquidated damages set forth in this Section 10.2(b) and because the actual amount of such damages would be difficult if not impossible to measure precisely. For the avoidance of doubt, the Seller may pursue both a grant of specific performance in accordance with Section 11.12 and the payment of the Deposit Amount and the fees and expenses pursuant to this Section 10.2(b); provided, however, that under no circumstances shall the Seller be permitted or entitled to receive both a grant of specific performance resulting in the consummation of the Closing and of payment of the Deposit Amount.

(c) If this Agreement is terminated for any reason other than as set forth in Section 10.2(b), then no later than two Business Days after such termination, the parties shall deliver joint written instructions to Escrow Agent instructing Escrow Agent to immediately release the Deposit Amount (together with any interest earned thereon) to the Buyer.

ARTICLE XI
GENERAL PROVISIONS

Section 11.1 Fees and Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees or expenses, whether or not such transactions are consummated. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by the other. For the avoidance of doubt, the cost of the R&W Insurance Policy will be the sole cost and expense of the Buyer, and neither the Seller nor the Company will have any Liability with respect thereto.

Section 11.2 Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party.

Section 11.3 Waiver; Extension. At any time prior to the Closing, the Seller, on the one hand and behalf of itself and the Company, and the Buyer, on the other hand, may (a) extend the time for performance of any of the obligations or other acts of the other party contained herein, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document, certificate or writing delivered by such party pursuant hereto, or (c) waive compliance by the other party with any of the agreements or conditions contained herein. No failure or delay of any party in exercising any right or remedy hereunder 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 such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Any agreement on the part of any party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.

Section 11.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by e-mail, upon written confirmation of receipt by e-mail, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(i) if to the Seller or prior to the Closing, the Company, to:

6060 American Plaza, Suite 600
Tulsa, OK 74135
Attention: Joel W. Kanvik, Chief Legal Officer
E-mail: jkanvik@bkep.com

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
Attention: Doug Rayburn
E-mail: DRayburn@gibsondunn.com

(ii) if to the Buyer or after the Closing, the Company, to:

Enbridge Storage (Cushing) L.L.C.
5400 Westheimer Court
Houston, Texas 77056
Attention: Vincent Paradis
E-mail: vincent.paradis@enbridge.com

with a copy (which shall not constitute notice) to:

Sidley Austin LLP
1000 Louisiana Street, Suite 5900
Houston, Texas 77002
Attention: Glenn L. Pinkerton
Facsimile: (713) 495-7799
E-mail: gpinkerton@sidley.com

Section 11.5 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in 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 herein. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term "or" is not exclusive. The word "will" shall be construed to have the same meaning and effect as the word "shall." References to days mean calendar days unless otherwise specified. The word "order" shall be construed to include any judgment, order, consent order, injunction, decree or writ of any Governmental Authority. The word "contract" shall construed to include any agreement, indenture, instrument, note, bond, loan, lease, deed, sublease, deed of trust, assignment, mortgage, license agreement, purchase order, binding bid or offer, binding term sheet or letter of intent or memorandum, commitment, letter of credit, in each case including any amendments or modifications thereof (and all exhibits, annexes, and schedules thereto) and whether written or oral. The inclusion of documents in the "Project Solera" Intralinks virtual data base hosted by or on behalf of the Seller at least two Business Days prior to the Closing Date, and which remain readily accessible by the Buyer, its Affiliates and its and their representatives and advisors through the Closing Date shall be deemed to constitute delivery or the making available (or have made available) of such documents for purposes of any representation or warranty contained herein which states that a document has been delivered or made available to the Buyer.

Section 11.6 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto), the Confidentiality Agreement and the letter agreements entered into between the parties hereto constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral or electronic agreements, arrangements, communications and understandings among the parties with respect to the subject matter hereof and thereof. This Agreement shall not be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any party with respect to the transactions contemplated hereby other than those expressly set forth herein or therein or in any document required to be delivered hereunder or thereunder, and none shall be deemed to exist or be inferred with respect to the subject matter hereof. Notwithstanding any oral or electronic agreement or course of conduct of the parties or their Representatives to the contrary, no party to this Agreement shall be under any legal obligation to enter into or complete the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each of the parties.

Section 11.7 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except with respect to the provisions of Section 6.10, Section 6.11, Article IX and Section 11.21, which shall inure to the benefit of the Persons benefiting therefrom who are intended to be third-party beneficiaries thereof as provided therein.

Section 11.8 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware.

Section 11.9 Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal Action or proceeding arising out of or relating to this Agreement brought by any party or its successors or assigns against any other party shall be brought and determined in the Court of Chancery of the State of Delaware, provided that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal Action or proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any Action, suit or proceeding relating thereto except in the courts described above in Delaware, other than Actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, Action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, Action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 11.10 Disclosure Generally. Notwithstanding anything to the contrary contained in the Disclosure Schedules or in this Agreement, the information and disclosures contained in any Disclosure Schedule shall be deemed to be disclosed and incorporated by reference in any other Disclosure Schedule as though fully set forth in such Disclosure Schedule for which applicability of such information and disclosure is reasonably apparent on its face. The fact that any item of information is disclosed in any Disclosure Schedule shall not be construed to mean that such information is required to be disclosed by this Agreement. Such information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the terms “material” or “Material Adverse Effect” or other similar terms in this Agreement.

Section 11.11 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any party without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void; provided, however, that the Buyer shall be entitled, in its sole discretion, to assign the rights and obligations of this Agreement, in whole or in part, to any of its Affiliates (which for the purposes of this Section 11.11, shall be deemed to include Persons in which the Buyer’s direct or indirect Equity Interests do not constitute a controlling interest or majority equity interest), without any requirement to obtain the consent of the Seller; provided further, that, except as otherwise agreed in writing by the parties to this Agreement, an assignment of the rights or obligations set forth in this Agreement shall not relieve the assigning party of any Liability under this Agreement.

Section 11.12 Enforcement.

(a) The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then in any state or federal court located in the State of Delaware, this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any Action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

(b) Except as expressly provided otherwise in this Agreement, the sole and exclusive remedy for any breach of the terms and provisions of this Agreement (including any representations and warranties set forth herein, made in connection herewith or as an inducement to enter into this Agreement) or any claim or cause of action otherwise arising out of or related to the transactions contemplated by this Agreement will be those remedies available at law or in equity for breach of contract only (and only as such contractual remedies have been further limited or excluded pursuant to the express terms of this Agreement); and the parties hereby agree that no party will have any remedies or cause of action (whether in contract or in tort) for any statements, communications, disclosures, failures to disclose, representations or warranties not set forth in this Agreement.

Section 11.13 Currency. All references to “dollars” or “$” or “US$” in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement.

Section 11.14 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 11.15 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.16 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 11.17 .pdf Signature. This Agreement may be executed by .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 11.18 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

Section 11.19 Legal Representation.

(a) The Buyer, on behalf of itself and its Affiliates (including, after the Closing, the Company) acknowledges and agrees that Gibson, Dunn & Crutcher LLP ("Gibson Dunn") has acted as counsel for the Seller, the Company in connection with this Agreement and the transactions contemplated hereby (the "Acquisition Engagement"), and in connection with this Agreement and the transactions contemplated hereby, Gibson Dunn has not acted as counsel for any other Person, including the Buyer.

(b) Only the Seller, the Company and their respective Affiliates shall be considered clients of Gibson Dunn in the Acquisition Engagement. The Buyer, on behalf of itself and its Affiliates (including after the Closing, the Company) acknowledges and agrees that all confidential communications between the Seller, the Company and their respective Affiliates, on the one hand, and Gibson Dunn, on the other hand, in the course of the Acquisition Engagement, and any attendant attorney-client privilege, attorney work product protection, and expectation of client confidentiality applicable thereto, shall be deemed to belong solely to the Seller and its Affiliates (other than the Company), and not to the Company, and shall not pass to or be claimed, held, or used by the Buyer or the Company upon or after the Closing. Accordingly, the Buyer shall not have access to any such communications, or to the files of Gibson Dunn relating to the Acquisition Engagement, whether or not the Closing occurs. Without limiting the generality of the foregoing, upon and after the Closing, (i) to the extent that files of Gibson Dunn in respect of the Acquisition Engagement constitute property of the client, only the Seller and its Affiliates shall hold such property rights and (ii) Gibson Dunn shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to the Company or the Buyer by reason of any attorney-client relationship between Gibson Dunn and the Company or otherwise; provided, however, that notwithstanding the foregoing, Gibson Dunn shall not disclose any such attorney-client communications or files to any third parties (other than representatives, accountants and advisors of the Seller and its Affiliates; provided that such representatives, accounts and advisors are instructed to maintain the confidence of such attorney-client communications). The Buyer, on behalf of itself and its Affiliates (including after the Closing, the Company) irrevocably waives any right it may have to discover or obtain information or documentation relating to the Acquisition Engagement, to the extent that such information or documentation was subject to an attorney-client privilege, work product protection or other expectation of confidentiality owed to the Seller and/or its Affiliates. If and to the extent that, at any time subsequent to Closing, the Buyer or any of its Affiliates (including after the Closing, the Company) shall have the right to assert or waive any attorney-client privilege with respect to any communication between the Company or its Affiliates and any Person representing them that occurred at any time prior to the Closing, the Buyer, on behalf of itself and its Affiliates (including after the Closing, the Company) shall be entitled to waive such privilege only with the prior written consent of the Seller (such consent not to be unreasonably withheld).

(c) The Buyer, on behalf of itself and its Affiliates (including after the Closing, the Company) acknowledges and agrees that Gibson Dunn has acted as counsel for the Seller, the Company and their respective Affiliates for several years and that the Seller reasonably anticipates that Gibson Dunn will continue to represent it and/or its Affiliates in future matters. Accordingly, the Buyer, on behalf of itself and its Affiliates (including after the Closing, the Company) expressly (i) consents to Gibson Dunn's representation of the Seller and/or its Affiliates and/or any of their respective agents (if any of the foregoing Persons so desire) in any matter, including, without limitation, any post-Closing matter in which the interests of the Buyer and the Company, on the one hand, and the Seller or any of its Affiliates, on the other hand, are adverse, including any matter relating to the transactions contemplated by this Agreement, and whether or not such matter is one in which Gibson Dunn may have previously advised the Seller, the Company or their respective Affiliates and (ii) consents to the disclosure by Gibson Dunn to the Seller or its Affiliates of any information learned by Gibson Dunn in the course of its representation of the Seller, the Company or their respective Affiliates, whether or not such information is subject to attorney-client privilege, attorney work product protection, or Gibson Dunn's duty of confidentiality.

(d) The Buyer, on behalf of itself and its Affiliates (including after the Closing, the Company) further covenants and agrees that each shall not assert any claim against Gibson Dunn in respect of legal services provided to the Company or its Affiliates by Gibson Dunn in connection with this Agreement or the transactions contemplated hereby.

(e) From and after the Closing, the Company shall cease to have any attorney-client relationship with Gibson Dunn, unless and to the extent Gibson Dunn is expressly engaged in writing by the Company to represent the Company after the Closing and either (i) such engagement involves no conflict of interest with respect to the Seller and/or any of its Affiliates or (ii) the Seller and/or any such Affiliate, as applicable, consent in writing to such engagement. Any such representation of the Company by Gibson Dunn after the Closing shall not affect the foregoing provisions hereof. Furthermore, Gibson Dunn, in its sole discretion, shall be permitted to withdraw from representing the Company in order to represent or continue so representing the Seller.

(f) The Seller, the Company and the Buyer consent to the arrangements in this Section 11.19 and waive any actual or potential conflict of interest that may be involved in connection with any representation by Gibson Dunn permitted hereunder.

Section 11.20 No Presumption Against Drafting Party. Each of the Buyer, the Seller and the Company acknowledges that each party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 11.21 Prevailing Party. If there shall occur any dispute or proceeding among the parties relating to this Agreement or the transactions contemplated hereby, the non-prevailing party shall pay all reasonable costs and expenses (including reasonable attorneys' fees and expenses) of the prevailing party related to such dispute or proceeding.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Seller and the Buyer have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

BKEP CRUDE, L.L.C.

By: /s/ D. Andrew Woodward
Name: D. Andrew Woodward
Title: Chief Executive Officer

BUYER:

ENBRIDGE STORAGE (CUSHING) L.L.C.

By: /s/ Vincent Paradis
Name: Vincent Paradis
Title: Vice President, Business Development

Exhibit 21.1

List of Subsidiaries
of
Blueknight Energy Partners, L.P.

Name of Subsidiary	State of Organization
BKEP Finance Corporation	Delaware
BKEP Operating, L.L.C.	Delaware
BKEP Management, Inc.	Delaware
BKEP Crude, L.L.C.	Delaware
BKEP Sub, L.L.C.	Delaware
Ergon Oklahoma Pipeline, LLC	Delaware
Blueknight Motor Carrier LLC	Delaware
BKEP Trucking, L.L.C.	Delaware
BKEP Supply and Marketing LLC	Delaware
BKEP Services LLC	Texas
BKEP Materials, L.L.C.	Texas
BKEP Asphalt, L.L.C.	Texas
Knight Warrior LLC	Texas
BKEP Terminal Holding, L.L.C.	Texas
BKEP Terminalling, L.L.C.	Texas

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

1. Form S-8 No. 333-253890 pertaining to the Blueknight Energy Partners G.P., L.L.C. Long-Term Incentive Plan
2. Form S-8 No. 333-202538 pertaining to the Blueknight Energy Partners, L.P. Employee Unit Purchase Plan
3. Form S-8 No. 333-202537 pertaining to the Blueknight Energy Partners G.P., L.L.C. Long-Term Incentive Plan
4. Form S-8 No. 333-177005 pertaining to the Blueknight Energy Partners G.P., L.L.C. Long-Term Incentive Plan
5. Form S-8 No. 333-144737 pertaining to the SemGroup Energy Partners G.P., L.L.C. Long-Term Incentive Plan

of our report dated March 10, 2021, with respect to the consolidated financial statements of Blueknight Energy Partners, L.P. included in this Annual Report (Form 10-K) for the year ended December 31, 2020.

/s/ Ernst & Young LLP

Tulsa, Oklahoma
March 10, 2021

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (Nos. 333-253890, 333-202538, 333-202537, 333-144737 and 333-177005) of Blueknight Energy Partners, L.P. of our report dated March 26, 2020, except for the effects of discontinued operations discussed in Note 5 to the consolidated financial statements, as to which the date is March 10, 2021, relating to the financial statements, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Tulsa, Oklahoma

March 10, 2021

Exhibit 31.1

CERTIFICATION
PURSUANT TO AND IN CONNECTION WITH THE REPORTS
TO BE FILED UNDER SECTION 13 AND 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, D. Andrew Woodward, certify that:

1. I have reviewed this annual report on Form 10-K of Blueknight Energy Partners, L.P.;

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: March 10, 2021

/s/ D. Andrew Woodward
D. Andrew Woodward
Chief Executive Officer
Blueknight Energy Partners, G.P., L.L.C.,
general partner of Blueknight Energy Partners, L.P.

Exhibit 31.2

CERTIFICATION
PURSUANT TO AND IN CONNECTION WITH THE REPORTS
TO BE FILED UNDER SECTION 13 AND 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Matthew R. Lewis, certify that:

1. I have reviewed this annual report on Form 10-K of Blueknight Energy Partners, L.P.;

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: March 10, 2021

/s/ Matthew R. Lewis
Matthew R. Lewis
Chief Financial Officer
Blueknight Energy Partners, G.P., L.L.C.,
general partner of Blueknight Energy Partners, L.P.

Exhibit 32.1

CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 (18 U.S.C. SECTION 1350)*

In connection with the Annual Report of Blueknight Energy Partners, L.P., a Delaware limited partnership (the “Partnership”), on Form 10-K for the year ended December 31, 2020 as filed with the Securities and Exchange Commission (the “Report”), each of the undersigned, D. Andrew Woodward, Chief Executive Officer of Blueknight Energy Partners G.P., L.L.C., and Matthew R. Lewis, Chief Financial Officer of Blueknight Energy Partners G.P., L.L.C., certifies, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350), that to his knowledge:

(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 result of operations of the Partnership.

/s/ D. Andrew Woodward
D. Andrew Woodward
Chief Executive Officer
Blueknight Energy Partners G.P., L.L.C.,
general partner of Blueknight Energy Partners, L.P.

March 10, 2021

/s/ Matthew R. Lewis
Matthew R. Lewis
Chief Financial Officer
Blueknight Energy Partners G.P., L.L.C.,
general partner of Blueknight Energy Partners, L.P.

March 10, 2021

* A signed original of this written statement required by Section 906 has been provided to the Partnership and will be retained by the Partnership and furnished to the Securities and Exchange Commission or its staff upon request. The foregoing certification is being furnished to the Securities and Exchange Commission as an exhibit to the Report.