SOUTHWESTERN REFINING COMPANY, INC.,

KERR-McGEE CORPORATION,

KOCH REFINING COMPANY, L.P.

AND

KOCH EXPLORATION COMPANY

ASSET PURCHASE AGREEMENT

Dated as of June 6, 1995

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of June 6, 1995, by and among Southwestern Refining Company, Inc., a Delaware corporation ("Seller"), Kerr-McGee Corporation, a Delaware corporation (the "Company"), and Koch Refining Company, L.P., a Delaware limited partnership ("KRC"), and Koch Exploration Company, a Kansas corporation ("KEC", and jointly with KRC, "Purchaser"),

W I T N E S S E T H:

WHEREAS, Purchaser desires to acquire from Seller, and Seller has agreed to sell to Purchaser or its designee, certain assets of Seller constituting the Assets (as such term is hereinafter defined), upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, KEC or its designee desires to purchase the Real Property and KRC desires to purchase the remaining Assets;

WHEREAS, Company has agreed to be jointly and severally liable with Seller in regard to all obligations, duties, and liabilities of Seller hereunder;

NOW, THEREFORE, in consideration of the premises and of the respective representations, warranties, covenants, agreements and conditions contained herein, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Capitalized terms used herein shall have the meanings ascribed to them in this Article:

Accountant: As defined in Section 2.7.

Active Employees: As defined in Section 6.1.

Affiliate: As to the Person specified, any other Person controlling, controlled by or under common control with such Person, with the concept of control in such context meaning the possession, directly or indirectly through one or more intermediaries, of the power to direct or cause the direction of the management and policies of another, whether through the ownership of voting securities, by contract or otherwise.

Agreement: As defined in the Preamble.

Assets: Seller's refinery located at 1700 Nueces Bay Blvd., Corpus Christi, Texas, commonly known as the "Southwestern Refinery," including all land, buildings, improvements, facilities, fixtures, machinery, equipment, appliances, storage tanks and other tangible and intangible personal property constituting such Refinery or located on or used in connection with such Refinery, more specifically defined herein to consist of:

(a) The Real Property;

(b) The Equipment;

(c) The Transferred Vehicles;

(d) The Contracts;

(e) The Oil Inventory;

(f) The Materials Inventory;

(g) The Permits;

(h) The Intellectual Property; and

(i) The Records,

but specifically excluding the Excluded Assets.

Assumed Liabilities: All costs, expenses, obligations, losses, claims and liabilities arising from or in connection with the ownership, operation, condition, or use of the Assets after the Closing Date, the Environmental Liabilities of Purchaser, the Contracts, and those other certain obligations listed on Schedule 1.1.

Bill of Sale: One or more bills of sale, as necessary, transferring the Equipment, Oil Inventory and Materials Inventory, in substantially the form of Exhibit A.

Business Day: Any day, Monday through Friday, on which banks are open for the transaction of business in Houston, Texas.

CBA: As defined in Section 6.5.

Claim Notice: As defined in Section 8.5(a).

Cleanup Threshold: As defined in Section 4.4.6.

Closing: As defined in Section 2.3.

Closing Date: As defined in Section 2.3.

Closing Payment: As defined in Section 2.6.

Closing Time: As defined in Section 2.3.

Code: The Internal Revenue Code of 1986, as amended.

Common Control Entity. The Seller, Company, any Affiliates of Company, or any Person or arrangement which is aggregable with Seller, Company, or any of their Affiliates within the meaning of Section 414 of the Code.

Company: As defined in the preamble.

Contracts: All contracts, instruments, purchase orders, sales contracts, personal property leases and other agreements between Seller (or one or more Affiliates of Seller) and third parties relating to the business, assets or operations of the Refinery listed on Schedule 1.2 to the extent they are valid, subsisting and assignable. In addition, Contracts shall include all contracts relating to the business, assets or operations of the Refinery entered into or renewed in the ordinary course of business between the date hereof and Closing in accordance with Section 4.1.1.

Deed: A special warranty deed transferring the Real Property in substantially the form of Exhibit B.

DTPA: As defined in Section 8.1

Election Period: As defined in Section 8.5(a).

Environmental Cleanup Costs: As defined in Section 4.4.6.

Environmental Laws: Any and all laws, statutes, regulations, rules, rulings, ordinances, codes, policies, directives, standards, orders, judgments, decisions, licenses or permits of any Governmental Authority relating to the environment, specifically including, but not limited to, those relating to the exposure to, use, Release, emission, presence, storage, treatment, generation, transportation, processing or handling of Hazardous Materials, previously, presently, or hereafter in effect.

Environmental Liabilities of Purchaser: That portion of any loss, obligation, damage, liability, or expense:

(a) arising from any actual or alleged violation of any Environmental Law as a result of the ownership or the operation of the Refinery by Purchaser after the Closing Time whether arising under any Environmental Law, equity, or any actual or alleged contractual obligations of the Purchaser or its Affiliates, or based on any actual or alleged injury to or death of any person, including employees of the Purchaser, or damage to property owned by any third party including fines, penalties and sanctions);

(b) arising under any Environmental Law for the remediation of a Release on the Real Property prior to the Closing Time where such remediation is required as a result of the decommissioning of all or any portion of the Refinery where such decommissioning begins at any time after the sixth anniversary of the Closing Date;

(c) arising under any Environmental Law for the remediation of a Release on the Real Property prior to the Closing Time where such remediation is the result of a specific change in, addition to, or application of, the Environmental Laws following the sixth anniversary of the Closing Date;

(d) arising under any Environmental Law for the remediation of a Release on the Real Property prior to the Closing Time where such remediation would have otherwise been an Environmental Liability of Seller because it was required under or as a result of the application of any Environmental Law in effect prior to the sixth anniversary of the Closing Date if, but only if, Purchaser fails to notify Seller or Company of such obligation, liability, loss, damage, or expense prior to the eighth anniversary of the Closing Date; and

(e) (i) the obligation to remove, remediate, manage, or dispose of asbestos or asbestos-containing materials or any other materials incorporated as part of, or contained within, the improvements on the Real Property or the Equipment as a material of construction, unless and except to the extent so required prior to the Closing Time; (ii) any expense of changing the physical condition of the Equipment except (A) as a result of remediation referred to in (b) and (c) in the definition of Environmental Liabilities of Seller, (B) to the extent described in Section 4.4.6, compliance with benzene waste operations NESHAPS as necessary to satisfy the requirements or directives of the applicable Governmental Authority, or (C) Equipment changes as a result of any changes necessary to comply with an order arising under the docketed items listed in Schedule 3.1.14; or (iii) any loss, damage, liability, or expense to the extent arising from or as a result of Purchaser's improper or unlawful handling, storage, or disposal of Hazardous Materials related to Environmental Liabilities of Seller as contemplated in Section 4.4.6 or Purchaser's failure to perform its obligations under subparagraphs (b), (c), and (d) above.

With respect to subparagraphs (b), (c), (d), and (e) (other than (e)(iii)) Purchaser's obligation, liability and expense is limited solely to the remediation of the Real Property as described above. Purchaser has not in any manner whatsoever thereby assumed any obligation for:

(x) the remediation of any other property;

(y) any loss, damage, liability, or expense whether arising under any Environmental Law, equity, or any actual or alleged contractual obligations of Seller, Company, or their Affiliates, or based on any actual or alleged injury to or death of any person, including employees of the Seller or Company, or property owned by any third party; or

(z) any fines, penalties, and sanctions, arising from any actual or alleged violation of any Environmental Law as a result of the operation of the Refinery prior to the Closing Time or as a result of the remediation efforts undertaken by Purchaser on behalf of Seller and Company in compliance with Section 4.4.6.

Environmental Liabilities of Seller: Except for Environmental Cleanup Costs which do not exceed the Cleanup Threshold, that portion of any loss, damage, liability, or expense (whether arising under any Environmental Law, equity, or any actual or alleged contractual obligations of the Seller or its Affiliates, or based on any actual or alleged injury to or death of any person, including employees of the Seller, or damage to property owned by any third party), including fines, penalties, or sanctions, arising from or as a result of:

(a) any actual or alleged violation of any Environmental Law as a result of the ownership or operation of the Refinery prior to the Closing Time, including but not limited to any commenced but pending incomplete, or open actions of any Governmental Authority as of the Closing Time except, and only to the extent of, the obligations of Purchaser as expressly described in subparagraphs (b), (c), (d), and (e) contained in the definitions of Environmental Liabilities of Purchaser;

(b) a Release on the Real Property that occurs prior to the Closing Time that is or becomes a violation of any Environmental Law requiring remediation where such requirement is the result of a specific change in, or addition to, or application of, the Environmental Laws at any time on or prior to the sixth anniversary of the Closing Date (including but not limited to the remediation of any such Release); and

(c) a Release on the Real Property that occurs prior to the Closing Time that is or becomes a violation of any Environmental Law where such remediation is required as a result of the decommissioning of all or a portion of the Refinery where such decommissioning begins at any time prior to the sixth anniversary of the Closing Date.

Further, in no event shall the Environmental Liabilities of Seller include:

(i) the obligation to remove, remediate, manage, or dispose of asbestos or asbestos-containing materials or any other materials incorporated as part of, or contained within, the improvements on the Real Property or the Equipment as a material of construction, unless so required prior to the Closing Time;

(ii) any expense of changing the physical condition of the Equipment except (A) as a result of remediation referred to in (b) and (c) in the definition of Environmental Liabilities of Seller, (B) to the extent described in Section 4.4.6, compliance with benzene waste operations NESHAPS as necessary to satisfy the requirements or directives of the applicable Governmental Authority, or (C) Equipment changes necessary to comply with any order arising under the docketed items listed in Schedule 3.1.14; or

(iii) any loss, damage, liability, or expense to the extent arising from or as a result of Purchaser's improper or unlawful handling, storage, or disposal of Hazardous Materials related to Environmental Liabilities of Seller as contemplated in Section 4.4.6 or Purchaser's failure to perform its obligations under subparagraphs (b), (c), and (d) of Environmental Liabilities of Purchaser.

To aid in the interpretation of the definitions of Environmental Liabilities of Purchaser and the Environmental Liabilities of Seller, the following examples are given to indicate the intention of the parties regarding such definitions:

1. If prior to the eighth anniversary of the Closing Date, Purchaser discovers chromium on the Real Property where such chromium was Released prior to the Closing Time and the existence of such chromium at the levels Released on the Real Property is or became a violation of an Environmental Law, as written or applied, on or prior to the sixth anniversary of the Closing Date and Purchaser notified Seller or Company of same on or prior to the eighth anniversary of the Closing Date, then the remediation of such chromium will be considered as an Environmental Liability of Seller. However, if the level of chromium Released prior to the Closing Time becomes a violation of an Environmental Law as a result of a change in the Environmental Laws, either as written or as applied, after the sixth anniversary of the Closing Date, then the remediation of such chromium shall be considered as an Environmental Liability of Purchaser.

2. If a given Release that occurred prior to the Closing Date would not, under the Environmental Laws in effect on or prior to the sixth anniversary of the Closing Date, require remediation unless a decommissioning of the Refinery occurred, and such a decommissioning were not to occur until after the sixth anniversary of the Closing Date, the required remediation would be an Environmental Liability of Purchaser. If the decommissioning occurred on or prior to the sixth anniversary of the Closing Date, however, the required remediation would be an Environmental

Liability of Seller if Purchaser timely gave Seller or Company notice of a claim with respect thereto prior to the eighth anniversary of the Closing Date.

Equipment: All fixtures, equipment, machinery, furniture, plant and other tangible personal property of every kind and nature owned by Seller or any of its Affiliates and located at or primarily used in connection with the operation of the Refinery, including, but not limited to, Equipment sent off-site for rework, stored off-site (including, but not limited to Equipment located at Terminal 1 to the extent such Equipment is used primarily in connection with Refinery facilities other than Terminal 1) and the Equipment listed on Schedule 1.3, but excluding automobiles, trucks and all other mobile equipment subject to state title registration.

ERISA: Employees Retirement Income Security Act of 1974, as amended.

Excluded Assets: Except as otherwise provided herein, (i) all of Seller's or its Affiliates' rights, claims and causes of action arising out of or in connection with the ownership, operation or condition of the Assets prior to the Closing Date but only to the extent the recoveries from such rights, claims and causes of action by Seller or its Affiliates relate to the ownership, operation, or condition of the Assets prior to the Closing Date, (ii) the CBA, (iii) the Land Farm, (iv) Terminal 1, and (v) all other Assets to the extent specifically excluded herein (or, in regard to Contracts relating to the Assets or the operation of the Refinery, those not specifically assumed as detailed on Schedule 1.2) or listed on Schedule 1.4.

Final Settlement Statement: As defined in Section 2.7.

FTC: As defined in Section 4.1.5.

General Assignment and Assumption Agreement: A general assignment transferring the Contracts, Permits, Intellectual Property, and Records and including an assumption of the Assumed Liabilities, in substantially the form of Exhibit C.

Governmental Authority: The United States of America, any state, commonwealth, territory or possession thereof and any political or judicial subdivision or instrumentality of any of the foregoing, including, but not limited to, branches, courts, departments, commissions, boards (administrative or otherwise), bureaus or agencies.

Hazardous Material: Any "hazardous waste", "hazardous substance", "extremely hazardous substance", "toxic chemical", "hazardous chemical", "toxic pollutants", "contaminants", "chemical", "chemical substance", or "asbestos", as such terms are defined in any of the Environmental Laws, or related substances, in such quantities or concentrations as are prohibited by such Environmental Laws or other applicable law, or which may be declared to constitute a material threat to human health or to the environment.

Improvements Act: As defined in Section 4.1.5.

Indemnified Party: As defined in Section 8.5(a).

Indemnifying Party: As defined in Section 8.5(a).

Indemnity Notice: As defined in Section 8.5(d).

Intellectual Property: Trade names, trademarks, service marks, patents, copyrights, applications for any of the foregoing, trade secrets, software, technical and operating information and techniques, process technology, licensed technology, plans, drawings and blue prints owned or licensed by the Seller or any of its Affiliates and other similar intangible personal property to the extent such property is used in connection with the ownership or operation of the Refinery, including, but not limited to the Intellectual Property listed on Schedule 3.1.9.

January Materials Inventory: As defined in Section 2.7(a)(ii).

Justice Department: As defined in Section 4.1.5.

Knowledge: The actual knowledge after due inquiry of any of the Seller's or the Company's or their Affiliates' officers, directors or division managers, the plant manager of the Refinery, and all Persons who report directly to such individuals.

Koch Employees: As defined in Section 6.2.

Land Farm: That parcel of real property located in Nueces County, Texas and more particularly described on Schedule 1.5.

Law: Any federal, state, or local statutory or common law, and any rule, regulation, judgment, or action issued, entered, or promulgated thereunder or with respect thereto, including Environmental Laws.

Materials Inventory: All of the Seller's supplies of chemicals, additives, catalysts and spare parts whether located at the Refinery or off-site.

Notice of Disagreement: As defined in Section 2.7.

Oil Inventory: Seller's crude oil, petroleum, feedstocks, any fraction thereof and all products refined, produced or delivered therefrom whether located at the Refinery or off-site (unless otherwise provided herein or in a schedule attached hereto), including work in process at the Refinery, heels, and linefill.

Permitted Encumbrances:

(a) Liens for Taxes not yet due and payable, or if due, being contested in good faith by appropriate proceedings;

(b) Required consents to assignment obtained from the appropriate Persons prior to the Closing Date;

(c) The terms and conditions of the Contracts and Permits, and liens arising under the Contracts or Permits for amounts not yet due and payable, or if due and payable, being contested in good faith by appropriate proceedings, including but not limited to those disclosed on Schedule 1.6;

(d) Encumbrances released at or prior to Closing or waived in writing by Purchaser;

(e) Rights reserved to or vested in any Governmental Authority to control or regulate the Assets and the operation of the Refinery;

(f) Encumbrances and exceptions disclosed on the title commitment obtained by Purchaser from San Jacinto Title Company issued April 6, 1995; and

(g) Encumbrances that do not interfere with the present use of the Real Property affected thereby or detract from the value of such property as it is presently used.

Permits: All permits, licenses, franchises, filings, authorizations, registrations, orders, and other similar approvals and consents issued (or pending in regard only to the Hydrobon permit and the federal NPDES permit) by any Governmental Authority applicable to and used in connection with the Refinery, including, but not limited to, those Permits listed on Schedule 1.7, but in the case of assignment only to the extent the same are freely transferable to Purchaser, and excluding those Permits issued solely in regard to the Land Farm or Terminal 1.

Person: Any individual, corporation, partnership, joint venture, association, joint-stock company, trust, business trust, enterprise, unincorporated organization or government or other agency or political or quasi-governmental subdivision thereof, or any other entity.

Property Costs: All capital expenditures in excess of $10,000 in the aggregate made at the Refinery or to the Assets, from the date hereof to the Closing Date, which are approved by Purchaser in writing.

Purchase Price: As defined in Section 2.5.

Purchaser: As defined in the preamble.

Purchaser Indemnified Losses: As defined in Section 8.2.

Real Property:

(a) all the property owned in fee by Seller or its Affiliates situated in Nueces County, Texas, described on Schedule 1.8, Part A, attached hereto, and the fixtures and improvements located thereon, except the Land Farm and Terminal 1;

(b) the real property leases, if any, described on Schedule 1.8, Part B, and the fixtures and improvements located thereon; and

(c) all of Seller's right, title and interest in and to all easements, licenses, rights-of-way, tenements, hereditaments, privileges and appurtenances in any way belonging or appertaining to the properties described in subsections (a) and (b) above, including without limitation those easements, licenses and rights-of-way described on Schedule 1.8, Part C.

Records: All of Seller's and its Affiliates' files, instruments, documents, papers, books, ledgers, data and other accounting, financial, environmental, administrative, planning, maintenance, inspection, and operating records in whatever form (electronic or otherwise) located at the Refinery, and all such files, instruments, documents, papers, books, ledgers, data and other accounting, financial, environmental, administrative, planning, maintenance, inspection, and operating records in whatever form (electronic or otherwise) relating primarily to the Assets located at offices of Seller or its Affiliates located elsewhere to the extent they are reasonably severable from Seller's and such Affiliates' general corporate records, but excluding (a) work product of Seller's and its Affiliates' legal counsel (other than memoranda, letters, and opinions specifically concerning the licensing or permit status of the Refinery and similar matters, copies of which shall be provided to Purchaser), (b) documents prepared by or for Seller's management related to the negotiation strategy for the transactions contemplated by this Agreement or other proposed dispositions of the Assets, (c) any records to the extent disclosure or transfer thereof to Purchaser is prohibited or restricted by third party agreement or applicable law, provided, however, that Seller or Company shall use its best efforts to obtain waiver of this prohibition or restriction or consent to such disclosure, (d) medical records of Active Employees and former employees of Seller or Company, and (e) those records relating solely to the Excluded Assets.

Refinery: Seller's refinery located at 1700 Nueces Bay Blvd., Corpus Christi, Texas refinery commonly known as the "Southwestern Refinery" located on a portion of the Real Property and more particularly shown on that certain survey performed by Michael D. Stridde, dated May 18, 1995.

Release or Released: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing (including, but not limited to, the abandoning or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) of a substance into the environment.

Retained Liabilities: All those liabilities (whether asserted prior to the Closing Date or not) of Seller (including Environmental Liabilities of Seller) or Seller's Affiliates related to the ownership or operation of the Refinery or the Assets prior to Closing that are not Assumed Liabilities (including, but not limited to, any liabilities concerning or associated with any proposed buyout of property owners within the vicinity of the Refinery, including any contracts regarding such, it being Seller's position that no such liabilities or contracts exist), excluding, however, any liabilities to Purchaser with respect to the physical condition of the Equipment after the Closing Time, however, the foregoing shall not affect Purchaser's right to pursue a claim against Seller or Company based on a breach of Section 4.1.1 hereof.

Seller: As defined in the preamble.

Seller Indemnified Losses: As defined in Section 8.3.

Tax: Any federal, state, local, foreign, or any other tax (including, but not limited to, any income tax, franchise tax, capital gains tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, windfall profit tax, property tax, inventory tax, severance tax, occupancy tax, withholding tax, payroll tax, gift tax, estate tax or inheritance tax), levy, assessment, tariff, impost, imposition, toll, duty (including any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty or interest), imposed, assessed or collected by or under the authority of any Governmental Authority or payable pursuant to any tax-sharing agreement or pursuant to any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, impost, imposition, toll, duty, deficiency or fee.

Terminal 1: That certain real property and the improvements located thereon and the surrounding buffer zone property owned by Seller as more particularly described on Schedule 1.9 and all easements and rights-of-way appurtenant thereto as described in Schedule 1.9.

Third Party Claim: As defined in Section 8.5(a).

Threshold Amount: As defined in Section 8.2.

Transferred Vehicles: The automobiles, trucks, and other mobile equipment subject to state title registration owned by Seller or its Affiliates used or owned primarily in connection with the Refinery, whether located at the Refinery or off-site, including, but not limited to those described on Schedule 1.10. Seller acknowledges and agrees that it will coordinate the transfer directly to Purchaser of those leased automobiles, trucks, and other mobile equipment subject to state title registration which have a nominal or book value purchase price option exercisable at the date hereof or which become exercisable before the Closing Date so that such vehicles will become Transferred Vehicles.

Union: As defined in Section 6.5.

WARN Act: As defined in Section 6.6.

ARTICLE II
PURCHASE AND SALE

2.1. Purchase and Sale of the Assets. Subject to the terms of this Agreement, at the Closing Seller shall sell, transfer, assign, and convey or cause to be sold, transferred, assigned, and conveyed to Purchaser, and Purchaser shall purchase and receive from Seller, the Assets. Company shall be jointly and severally liable with Seller in regard to all obligations, duties, and liabilities of Seller hereunder.

2.2. Assumption of Liabilities. Subject to the terms of this Agreement, at the Closing Purchaser shall assume, and pay, perform and discharge when due the Assumed Liabilities.

2.3. Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall be held at the offices of the Company at Kerr-McGee Center, Oklahoma City, Oklahoma 73125, at 10:00 a.m., local time, on August 7, 1995, or on such other date or at such other time or place as may be agreed upon in writing by the parties, but no later than September 1, 1995. The date of the Closing is referred to herein as the "Closing Date". The consummation of the sale of the Assets shall be deemed to have occurred at 12:00 noon on the Closing Date (the "Closing Time"), unless Seller and Purchaser otherwise agree in writing at Closing.

2.4 Deliveries at Closing.

(a) At the Closing, Seller shall deliver to Purchaser:

(i) The Deed, duly executed by Seller;

(ii) The Bill of Sale, duly executed by Seller;

(iii) The General Assignment and Assumption Agreement, duly executed by Seller;

(iv) Certificates of title to the Transferred Vehicles, duly endorsed to Purchaser and Form 130-U for each Transferred Vehicle;

(v) Non-Foreign Affidavit in the form prescribed by Treasury Regulation §1.1445-2;

(vi) The corporate resolutions, certificates of good standing, incumbency certificates, and other evidence of authority with respect to Seller and Company required by this Agreement;

(vii) An opinion letter from Seller's counsel in the form required by Section 5.1.2 hereof; and

(viii) Such other instruments in such form as may be reasonably necessary or appropriate to accomplish the transactions contemplated hereby.

(b) At the Closing, Purchaser shall deliver to Seller:

(i) The Closing Payment;

(ii) The General Assignment and Assumption Agreement, duly executed by each Purchaser;

(iii) The corporate resolutions, certificates of good standing, incumbency certificates, and other evidence of authority with respect to each Purchaser required by this Agreement;

(iv) An opinion letter from Purchaser's counsel in the form required by Section 5.2.2 hereof; and

(v) Such other instruments in a form as may be reasonably necessary or appropriate to accomplish the transactions contemplated hereby.

2.5. Purchase Price. The purchase price to be paid by Purchaser for the Assets shall be One Hundred Twenty-Five Million Dollars ($125,000,000) (the "Unadjusted Purchase Price"), as adjusted hereunder (the "Purchase Price"). On the Closing Date, subject to the terms of this Agreement, Purchaser shall pay the Closing Payment by wire transfer of immediately available funds to the account of Company for the benefit of Seller (Account No. 03419860) at Morgan Guaranty Trust Company of New York, ABA Routing Number 021000238 (or such other account and bank as may be designated by Seller to Purchaser at least two business days prior to the Closing Date).

2.6. Determination of the Closing Payment. On the Closing Date, Seller and Purchaser shall execute a settlement statement estimating the Purchase Price after giving effect to all purchase price adjustments set forth in Section 2.7. Purchaser and its representatives shall have the right to be present at, and participate in, the measurement of the Oil Inventory and Materials Inventory. In addition, Purchaser and its representatives shall have access to the books and records of Seller as provided in Section 4.1.2 hereof. The estimate delivered in accordance with this Section 2.6 shall constitute the amount of cash to be paid by Purchaser to Seller at the Closing (the "Closing Payment").

2.7. Adjustments to the Purchase Price. As soon as practicable, and in any event within 45 days after the Closing, Seller shall prepare and deliver to Purchaser a final settlement statement containing all information reasonably necessary to determine the adjustments to the Purchase Price and such information shall be certified by an authorized officer of Seller to be true, correct, and complete (the "Final Settlement Statement") setting forth in detail the calculation of the Purchase Price by applying the following adjustments to the Unadjusted Purchase Price:

(a) The Unadjusted Purchase Price shall be adjusted upward by the following amounts:

(i) The value of the Oil Inventory at the Closing Time, as determined in accordance with Section 2.9;

(ii) The value of the Materials Inventory, stipulated and agreed to be $4,750,000 as of January 1, 1995. Seller agrees to maintain the items in the Materials Inventory as it actually existed as of December 31, 1994 (the "January Materials Inventory"). At the Closing Date, the Materials Inventory shall be valued at $4,750,000 (a) minus the January Materials Inventory unit book value for items taken from the Materials Inventory from and after January 1, 1995 (b) plus the replacement cost of Materials Inventory for items purchased by Seller from January 1, 1995 in the ordinary course of its business to restore the Materials Inventory to its normal minimum inventory quantities for each item. It is acknowledged by the parties hereto that from the date hereof until the Closing Date Purchaser may instruct Seller in writing not to replace certain items of Materials Inventory used by Seller during such period because Purchaser may not operate certain processing units or Purchaser may already have sufficient quantities of such items in its other Corpus Christi refinery. Where the Seller has allowed the Materials Inventory on these specific items to fall below the January Materials Inventory level at the direction of Purchaser, a purchase price deduction will be made equal to that item's January Materials Inventory book value; and

(iii) The aggregate amount of all Property Costs paid by Seller in compliance with this Agreement.

(b) The Unadjusted Purchase Price shall be adjusted downward by Seller's pro-rated share of real estate and personal property taxes and utility charges that are payable after the Closing and cover periods of time both before and after the Closing Date, as calculated pursuant to Section 2.8.

Purchaser shall have the right for 45 days after receipt of the Final Settlement Statement to audit and take exception to the calculation and determination of the Purchase Price adjustments by Seller. In connection with such audit, Seller shall promptly provide the Purchaser and its accountants with any information any of them shall request in order to verify the Purchase Price adjustments and shall give prompt complete access to all work papers used or generated by Seller or its agents and representatives in connection with the preparation of the Final Settlement Statement. The Final Settlement Statement shall become final and binding on both parties on the 46th day following Purchaser's receipt thereof except as to any matters with respect to which Purchaser has given Seller a written notice of disagreement prior to such date (a "Notice of Disagreement").. If the Purchaser delivers a timely Notice of Disagreement, the Purchaser shall cause its in-house or certified public accountants to meet with Seller's in-house or certified public accountants in an attempt to resolve any differences. If such certified public or in-house accountants are unable to resolve all differences within 30 days after the date of the Notice of Disagreement, then the issues in dispute shall be submitted to one partner, manager or representative, acceptable to both Seller and Purchaser, of a nationally recognized independent accounting firm jointly selected by Purchaser and Seller (the "Accountant") for resolution. The Accountant's determination shall be made within 30 days of the date that the Accountant receives the Final Settlement Statement and shall be final and binding on the parties. The fees and expenses of the Accountant shall be shared equally by the Seller and the Purchaser. Within 10 days after (y) the expiration of the 45-day audit period without delivery of a Notice of Disagreement or (z) the date on which the parties or the Accountant, as applicable, finally determines the disputed matters, (i) Purchaser shall pay to Seller by wire transfer the amount by which the Purchase Price exceeds the Closing Payment or (ii) Seller shall pay to Purchaser by wire transfer the amount by which the Closing Payment exceeds the Purchase Price, as applicable. Any post-Closing payment pursuant to this Section 2.7 shall be increased by simple interest thereon at a rate equal to six percent (6%) per annum (or the maximum lawful rate, whichever is less), calculated from the day immediately following the Closing Date to the date of such payment.

2.8. Prorations.

(a) Seller shall be entitled to receive all the proceeds from all accounts receivable and shall pay all accounts payable and all amounts due under all profit sharing arrangements (including, but not limited to, all invoices for Equipment rework performed or delivered off-site prior to the Closing Date, it being acknowledged that rework of all Equipment pursuant to Section 4.1.1(b)(iv) prior to the Closing Time shall be the sole cost and expense of Seller), and all retainages accrued prior to the Closing Date on contracts begun or performed prior to Closing attributable to the Refinery prior to the Closing Date (it being acknowledged and agreed that Purchaser shall have no obligations regarding the collection of such accounts receivable) and shall pay all Property Costs incurred prior to the Closing Date, subject to the reimbursement of such Property Costs by upward adjustment of the Purchase Price, as provided in Section 2.7(a)(iii) hereof.

(b) All utility charges and similar expenses (including, but not limited to royalties, it being agreed, however, that the UOP royalties and other royalties due under Contracts which must be fully paid prior to consent to assignment or transfer being given shall be fully paid to the Closing Date by Seller or Company) shall be prorated between Seller and Purchaser based on the number of days in the billing period falling before the Closing Date and the number falling on and after the Closing Date, with Seller liable for the portion of such charges allocated to the period before the Closing Time and Purchaser liable for the portion allocated to the period at and after the Closing Time.

(c) Ad valorem, real, and personal property taxes and general and special assessments levied or assessed against the Assets for all years prior to the calendar year which includes the Closing Date shall be paid for by Seller. All such taxes attributable to the calendar year which includes the Closing Date shall be prorated between Seller and Purchaser based upon the number of days each party owned the Assets during such year, provided that any general or special assessments shall be allocated over the period of time to which such assessments relate, and provided further that any increase or decrease in tax rates or valuation shall be taken into account as of the date such increase or decrease becomes effective. An initial proration (the "Initial Proration") of such amount shall be based upon the actual 1994 taxes paid and the Purchase Price shall be adjusted downward by Seller's pro rata share. The 1995 taxes shall be paid by Purchaser in January 1996 and within 30 days of the date of payment, Purchaser shall recompute the proration based upon the 1995 actual taxes (the "Final Proration"). If the Seller's share of the Initial Proration exceeds its share of the Final Proration, Purchaser will reimburse Seller for such difference. If the Seller's share of the Initial Proration is less than its share of the Final Proration, Seller will reimburse Purchaser for such difference.

(d) Except with respect to property taxes, the adjustments in Section 2.7 shall serve to satisfy, up to the amount of the adjustments, Seller's and Purchaser's rights to receive the amounts, and obligations to pay the amounts, described in this Section.

2.9. Measurement of Oil Inventory. For purposes of Section 2.7, the quantities of Oil Inventory actually present as of the Closing Time shall be determined by the Seller and Purchaser in accordance with the procedures detailed on Part A of Schedule 2.9. The valuation and qualities of the Oil Inventory shall be determined as detailed on Part B of Schedule 2.9.

2.10. Allocation of Purchase Price. The Purchase Price for the Assets shall be allocated among those Assets conveyed to Purchaser hereunder in accordance with paragraph 1060 of the Code. Seller and Purchaser agree to cooperate in good faith in the allocation of the Purchase Price prior to December 31, 1995 and the completion and filing of the United States Federal income tax Form 8594 in accordance with the price allocation. The parties further agree that they will report the tax consequences of the purchase and sale hereunder in a manner consistent with the price allocation, if one has been agreed upon, and that they will not take any positions inconsistent therewith in connection with the filing of any tax return.

2.11. Limitation on Assignments. This Agreement shall not constitute nor require an assignment to Purchaser of any claim, easement, Permit, license, contract, or other right if an attempted assignment of the same without the consent of any party would constitute a breach thereof unless and until such consent shall have been obtained, but Seller shall give Purchaser timely notice of any such circumstance within Seller's Knowledge. In the case of any Asset which cannot effectively be transferred to Purchaser without the consent of any Governmental Authority or any other Person, Seller and Purchaser will each use all reasonable efforts to obtain such consents promptly and to enter into reasonable arrangements with respect to any such Assets, pursuant to which Purchaser shall receive from the Closing Date the benefits under or with respect to the matter as to which consent to assignment is not obtained, and Purchaser shall assume and be responsible for any obligations with respect to any such matter from and after the Closing Date (except to the extent Seller may be liable for the same pursuant to Article VIII).

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties of the Seller. Except as disclosed in this Agreement, the Schedules attached to this Agreement, or as otherwise disclosed in writing to the Purchaser before the date of this Agreement, each of the Company and the Seller hereby represents and warrants as of the date hereof as follows to the Purchaser:

3.1.1. Organization and Existence. Each of the Seller and the Company are a corporation duly organized, validly existing and in good standing under the laws of their respective jurisdiction of incorporation and has all requisite corporate power and authority to own and lease the assets it currently owns and leases and to carry on its business as such business is currently conducted. The Seller is duly licensed or qualified to transact business as a foreign corporation and is in good standing in all jurisdictions in which the character of the assets currently owned or leased by it or the nature of the business currently conducted by it requires it to be so licensed or qualified and where the failure so to qualify might reasonably be expected to have a material adverse effect.

3.1.2. Authority. Each of the Seller and the Company has all requisite corporate power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform all terms and conditions hereof to be performed by it. The execution and delivery of this Agreement by each of the Company and Seller and the performance by each of the Company and the Seller of all the terms and conditions hereof to be performed by it and the consummation of the transactions contemplated hereby have been duly authorized and approved by the board of directors of the Seller and the Company, as the case may be. This Agreement constitutes the valid and binding obligation of each of the Company and the Seller, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by (a) bankruptcy, insolvency or other laws relating to or affecting creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). There are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings being contemplated by or, to the knowledge of Seller and Company, threatened against Seller or Company.

3.1.3. Assets.

(a) The Assets to be sold, transferred and conveyed to Purchaser under this Agreement shall constitute all of the assets owned and used by Seller necessary to conduct the operation of the Refinery as conducted on the date hereof, except for the Excluded Assets, working capital retained by Seller and miscellaneous incidental assets not material to the business such as computer programs, personnel, legal, insurance, accounting and similar support systems customarily provided by a parent corporation to all its Affiliates, and Contracts that may be terminated as contemplated in the first sentence of Section 3.1.15.

(b) Title to the Real Property is held by Seller, free of any lien, charge, security interest, adverse claim or other encumbrance arising or created by, through and under Seller, except for Permitted Encumbrances and except as set forth on Schedule 3.1.3(a), it being recognized, however, that Seller will warrant title only to those easements and rights-of-way which are necessary to continue the operations of the Refinery as presently operated (except those easements and rights-of-way within the definition of Terminal 1). Schedule 1.8, Parts A through C, correctly describes all owned, used, leased, or subleased Real Property (other than with respect to easements and rights-of-way) constituting part of the Assets. The Real Property includes only such real property in Nueces County, Texas in which Seller or its Affiliates have an interest that is either used or associated with the operation of the Refinery or consists of tracts and lots adjacent to or in the immediate vicinity of the Refinery currently owned or acquired prior to Closing by Seller, except (i) the Land Farm and (ii) Terminal 1. All leases of real property or personal property of Seller which are Contracts are in good standing and are in full force and effect, and there does not exist under any such lease of real property or personal property any default or any event which with notice or lapse of time or both would constitute a default, except for immaterial defaults, if any, which do not threaten the cancellation thereof or the enjoyment of benefits thereunder. In the case of all items of personal property (other than leased personal property, if any) included in the Assets, Seller has good title, or in the case of licenses, Permits and Contract rights, valid and subsisting rights thereunder, free and clear of any lien, charge, security interest, adverse claim or encumbrance except for Permitted Encumbrances. Schedules 1.3, Part B, and 1.10, respectively, correctly describe (i) all leased or subleased Equipment and (ii) all Transferred Vehicles constituting part of the Assets which will be transferred to Purchaser.

3.1.4. No Violations. Except as set forth on Schedule 3.1.4, the execution and delivery of this Agreement by each of the Company and the Seller, the fulfillment of and compliance by it with the terms and conditions hereof and the consummation by it of the transactions contemplated hereby will not (a) give any Person the right to terminate, cancel, or accelerate any obligation under any Contract, or (b) violate or require any authorization, approval, consent or other action by, or registration, declaration, filing with or notice to, any Governmental Authority pursuant to any provision of any law or administrative regulation or any judgment, order, award, injunction or decree of any Governmental Authority applicable to or binding upon the Seller or the Company (except that no representation is made as to the application of any United States antitrust law or regulation to the transactions contemplated by this Agreement), or result in the creation of any lien, charge or encumbrance upon any of the Assets except for Permitted Encumbrances, which termination, cancellation, acceleration, violation or creation would reasonably be expected to have a material adverse effect on the business or operation of the Refinery or otherwise on the value of the Assets.

3.1.5. Compliance with Laws and Regulations.

(a) Except as set forth on Schedule 3.1.5(a), and except with respect to the matters as to which the provisions of Sections 3.1.5(b) below apply, to Seller's Knowledge, Seller is in compliance in all material respects with all current Laws and administrative regulations, governmental determinations, governmental certification requirements or other public limitations, and any judgments, orders or decrees of any Governmental Authority applicable to or binding upon the Seller or the Assets, noncompliance with which would reasonably be expected to detract in any material respect from the value of the Assets or materially interfere with any present use (now or in the future) of the Assets.

(b) Except as set forth on Schedule 3.1.5(b) or the fourth sentence of this subsection: (i) Seller has all Permits from Governmental Authorities necessary for the operation of the business of the Refinery as presently conducted, the absence of which would result in a material adverse effect; (ii) neither Company nor Seller is in violation of the terms of, or has Knowledge of any fact, error or omission relevant thereto that would permit or threaten the revocation or withdrawal of, any Permit the absence of which would have a material adverse effect upon the continued operation of the Refinery; and (iii) all Permits are in full force and effect. The parties recognize that the Permits are transferable by Seller to Purchaser only with consent of the applicable issuing Governmental Authority. Seller has received no notice from any Governmental Authority and has no reason to believe that any such required consent will be denied. Seller and the Company make no representations or warranties concerning the grandfathered or permitted operating capacities of the individual process units, tanks, auxiliaries or other equipment, except that the calculations of the rates and limits contained in Table 1 to the letter dated May 5, 1995 from Bradley I. Raffle to R.G. Horner, Jr. (which letter is attached hereto as Schedule 3.1.5(c)) were calculated using base factual data that appears in Seller's records which Seller maintained in the ordinary course of business and that were used by Seller in good faith.

3.1.6. Absence of Certain Changes. Except as disclosed in Schedule 3.1.6, or approved by the Purchaser in writing, since January 1, 1995, in connection with the Assets or the operation of the Refinery as presently conducted, the Seller has not:

(a) incurred any material adverse change in the financial condition, assets, liabilities, business or results of operations of the Assets, including any damage or destruction by fire or other casualty, or otherwise experienced any material adverse effect, other than changes or effects directly or indirectly related to industry-wide developments affecting other companies in the refining industry;

(b) made any sale, lease or other disposition of Assets of the Seller employed in connection with the business of the Refinery (other than sales, leases or dispositions of Assets that were effected in the ordinary course of business);

(c) created any lien, charge, or encumbrance on the Assets, other than Permitted Encumbrances; or

(d) except in the ordinary course of business, consistent with past practice (i) entered into any employment, deferred compensation, or other similar agreement with any employee; (ii) increased benefits payable under existing severance or termination pay policies; or (iii) increased compensation, bonus, or other benefits, payable to any employee.

3.1.7. Liabilities. There are no liabilities (and no existing condition, situation, or set of circumstances which could reasonably be expected to result in such a liability) of the Seller or Company related to the Assets (fixed or, to the Knowledge of the Seller or Company, contingent) that could reasonably be expected to have a material adverse effect on the Assets or the operation of the Refinery, except for liabilities and obligations disclosed on Schedule 3.1.7 or otherwise expressly disclosed in this Agreement or on any of the Schedules hereto.

3.1.8. Litigation. Except as set forth on Schedule 3.1.8 and except for Retained Liabilities, (i) there is no legal action, grievance, lawsuit, claim, proceeding, arbitration or investigation pending or, to the Knowledge of Seller or the Company or any of their Affiliates, threatened by, against or affecting Seller or any of its officers, directors, employees, or the stockholders of Seller in their capacity as such, or any of the Assets or the business of Seller, (a) arising out of Seller's ownership or operation of the Assets, or (b) which in any manner challenges or seeks to prevent, enjoin, or alter the use or operation of the Assets or which seeks to prevent, enjoin, or delay the transactions contemplated hereby, and neither the Company, Seller, nor any of their Affiliates has Knowledge of any facts or circumstances likely to give rise to any of the foregoing which are not expressly disclosed herein or in the Schedules hereto; (ii) neither the

Company nor the Seller has received any opinion, memorandum, legal advice, or notice from any legal counsel (including any general counsel thereof) that the Assets or the Refinery are subject to or threatened with legal attack in the conduct of its business or the continued operation of the Assets that would be expected to have a material adverse effect; and (iii) neither the Company nor the Seller is subject to any order, writ, injunction, consent, or decree from any Governmental Authority that could materially affect the future use or operation of the Assets.

3.1.9. Intellectual Property. Except for common software programs purchased from third-party vendors, Schedule 3.1.9 lists all Intellectual Property utilized in connection with the operation of the Refinery since January 1, 1995, the absence of which would materially affect the operation of the Refinery, specifying as to each (i) the nature of such Intellectual Property, (ii) its owner(s), and (iii) if such Intellectual Property is owned by a third party, whether it is assignable to Purchaser and any conditions to such assignment. No claim is pending or, to the Knowledge of the Seller, threatened, to the effect that (i) the past or present operations of the Seller in connection with the Refinery infringe upon or conflict with the asserted rights of any other person in respect of any such Intellectual Property or (ii) any such Intellectual Property is invalid or unenforceable. Seller has not during the three years preceding the date of this Agreement been sued, or charged in writing without having been a defendant, in any claim, suit, action, or proceeding relating to ownership or operation of any of the Assets that involves a claim of infringement of any Intellectual Property material to the operation of the Refinery. All royalties currently due and payable on all licensed technology used in the operation of or relating to the Assets have been paid in full.

3.1.10. Consents. Except for consents to the transfer of Permits and except as listed in Schedule 3.1.10, no actions, consents or approvals are required or necessary in connection with the transfer of the Assets to Purchaser contemplated by this Agreement which if not obtained individually or in the aggregate, by the Closing Date, would have a material adverse effect on the ability of Purchaser to own and operate the Assets after Closing in substantially the same fashion as they have been owned and operated prior to the Closing or materially affect the value of the Assets.

3.1.11. Inventories. All the Oil Inventory and the Materials Inventory are owned free and clear of all liens, charges, and encumbrances, except vendor's liens, if any, for purchase price amounts not yet due which will be extinguished by timely payment of such amounts.

3.1.12. Taxes. With respect to the Assets, Seller or Company, as the case may be, has filed all tax returns and reports required to be filed and all Taxes shown to be due and owing have been paid and all such returns are true and correct. Seller has paid all Taxes due and owing which have been assessed by any taxing authority, except those which Seller is contesting in good faith by appropriate proceedings. Seller's title to the Assets is, and as of the Closing Date the Assets will be, free and clear of all tax liens and encumbrances. Seller shall indemnify and hold Purchaser harmless from any and all liability resulting from Taxes in any matter relating to the Assets and attributable to any taxable period or portion thereof that ends on or before the Closing Date. None of the Assets is property which is required to be treated as being owned by any other person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Code. None of the Assets is "tax-exempt use property" within the meaning of Section 168(h) of the Code. None of the Assets directly or indirectly secures any debt the interest on which is tax exempt under Section 103(a) of the Code. Seller has never been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

3.1.13. No Other Agreement. Except for sales of assets in the ordinary course of business or except as otherwise set forth herein, neither Seller nor any of its Affiliates has any contract or arrangement with respect to the sale or other disposition of any of the Assets.

3.1.14. Environmental and Safety Matters. Except as disclosed on Schedule 3.1.14, during the five year period immediately prior to the date of this Agreement, no written notice of violation, demand or request for information which remains unresolved at the Closing Date, no citation, summons, complaint, or order has been issued, no complaint filed, and no penalty assessed, and to Seller's Knowledge no investigation or review is pending or threatened by any Governmental Authority or other Person, with respect to any alleged violation by Seller or its Affiliates of any Environmental Law or Law pertaining to safety or health, in each case with respect to Seller's ownership or operation of any of the Assets. Seller has made available to Purchaser all of Seller's and its Affiliates' records with respect to environmental, health, and safety activities related to the ownership or operation of the Assets in any way.

3.1.15 Contracts. Each Contract is in full force and effect except those that may be terminated by the third party to the Contract without fault or request by Seller or Company, or that may expire in accordance with their terms, between the date hereof and Closing. The Seller is not, to its Knowledge, in violation of or in default under, and no condition exists that with notice or lapse of time or both would constitute a violation or default by the Seller of or under, any Contract which violation, potential violation, default, or potential default would have a material adverse effect on the business or operations of the Refinery or otherwise on the value of the Assets. The Seller has no Knowledge of any material default on the part of any other party to any Contract. The Seller has made available for review by the Purchaser true and complete copies of each of the Contracts, none of which has, except as disclosed in such copies or in the Schedules to this Agreement, been amended or modified in any respect.

3.1.16. Employee Matters. At the date of this Agreement, there is no labor strike, dispute, slow-down, or work stoppage pending or to Seller's Knowledge threatened against Seller or involving the Refinery which might affect the on-going operation of the Refinery. At the date of this Agreement, except for the employees covered by the CBA, no employee of Seller is covered by any collective bargaining agreement, no collective bargaining agreement is being negotiated by Seller, and, to the Knowledge of Seller, no attempt is currently being made to organize any employees of Seller to form or enter into a labor union or similar organization. Seller has not experienced any work stoppage or other labor difficulty during the five year period immediately preceding the date of this Agreement.

3.1.17. Multiemployer Plans. Seller has not and has never been obligated to contribute to a multiemployer plan within the meaning of Sections 3(37) and 4001(a)(3) of ERISA and neither the Seller, any Affiliate of Seller, or any Common Control Entity has incurred any "withdrawal liability" (as defined in Section 4201 et. seq. of ERISA) which has not been satisfied as of the Closing Date nor are there any delinquent or unpaid multiemployer contributions outstanding as of the Closing Date.

3.1.18. Pension Benefit Guaranty Corporation. Seller has no Knowledge of any facts or circumstances that exist which would result in the imposition of any liability or any lien against Purchaser or the Assets by the Pension Benefit Guaranty Corporation as a result of any act or omission by Seller, any Affiliate of Seller, or any Common Control Entity. No liability to the Pension Benefit Guaranty Corporation has been incurred by Seller, any Affiliate of Seller, or any Common Control Entity on account of any termination of any employee pension benefit plan subject to Title IV of ERISA. Neither Seller, any Affiliate of Seller, nor any Common Control Entity has (i) ceased operations at a facility so as to become subject to

Section 4203 of ERISA, (ii) withdrawn as a Substantial Employer (as defined in ERISA) so as to become subject to the provisions of Section 4063 of ERISA, (iii) ceased making contributions on or before the Closing Date, to any employee pension benefit plan subject to Section 4064 of ERISA and to which Seller, and Affiliate of Seller, or Common Control Entity made contributions during the five (5) year period immediately prior to the Closing Date, (iv) any liability under Section 4062 of ERISA, or (v) any liability or lien under Section 4068 or Section 4069 of ERISA, in each case, that would constitute a liability or lien on the Assets or Purchaser after the Closing.

3.2. Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants as follows to the Seller:

3.2.1. Organization and Existence. Each Purchaser is a corporation or a partnership duly organized, validly existing and in good standing under the laws of Kansas or Delaware and has all requisite power and authority to own and lease the assets it currently owns and leases and to carry on its business as such business is currently conducted. Each Purchaser is duly licensed or qualified to transact business as a foreign entity in the State of Texas and is in good standing in all jurisdictions necessary for the conduct of its business.

3.2.2. Authority. Each Purchaser has all requisite power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform all the terms and conditions hereof to be performed by it. The execution and delivery of this Agreement by each Purchaser and the performance by it of all the terms and conditions hereof to be performed by it and the consummation of the transactions contemplated hereby have been duly authorized and approved by their respective board of directors and partners. This Agreement constitutes the valid and binding obligation of each Purchaser enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by (a) bankruptcy, insolvency or other laws relating to or affecting creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). There are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending, being contemplated by or, to the Knowledge of Purchaser, threatened against Purchaser.

3.2.3. No Violations. The execution and delivery of this Agreement by the Purchaser, the fulfillment of and compliance by it with the terms and conditions hereof and the consummation by it of the transactions contemplated hereby will not:

(a) violate any of the terms of the Purchaser's documents of incorporation or formation; or

(b) violate any provision of any federal or state law or administrative regulation or any judgment, order, injunction or decree of any Governmental Authority applicable to or binding upon the Purchaser or any of its subsidiaries, which violation would reasonably be expected to have a material adverse effect on the Purchaser's business or financial condition or the results of its operations or on its ability to perform the obligations of the Purchaser under this Agreement.

3.2.4. Litigation. There is no litigation and no arbitration proceedings or other proceedings pending, instituted or, to the Knowledge of the Purchaser, threatened against the Purchaser or its Affiliates that, if adversely determined, would delay, prevent or hinder the consummation of the transactions contemplated by this Agreement.

3.2.5. Inspections. The Purchaser acknowledges that it has been afforded the opportunity to view the Assets and review each of the documents, instruments and matters listed on the Schedules hereto.

ARTICLE IV
COVENANTS

4.1. Covenants of the Seller.

4.1.1. Conduct of Business Prior to the Closing.

(a) Except as otherwise permitted under this Agreement, Seller covenants and agrees with the Purchaser that from the date hereof until the Closing Date or, if earlier, the termination of this Agreement, without first obtaining the written consent of the Purchaser (which consent shall not be unreasonably withheld), Seller will not:

(i) make any material change in the conduct of the business of the Refinery;

(ii) amend any of the Contracts listed on Schedule 1.2 or enter into any contracts or agreements which Seller or Company would desire Purchaser to assume without first obtaining the prior written consent of Purchaser to enter into such contract or agreement;

(iii) except as described in Schedule 3.1.7, sell, lease or otherwise dispose of any Assets other than (A) Oil Inventory, (B) Assets not used or useful in the operation of the Refinery with a market value of less than $20,000, (C) in the ordinary course of business consistent with past practice, or (D) pursuant to contracts or commitments existing as of January 1, 1995;

(iv) make any material filings or submissions to any Governmental Authority with respect to any of the Assets or the operation of the Refinery, other than filings required to be made by law or routine filings made in the ordinary course of business;

(v) make any new election with respect to Taxes, or any changes in current elections with respect to Taxes, affecting the Assets; or

(vi) commit itself to do any of the foregoing.

(b) Except as expressly permitted under this Agreement, Seller covenants and agrees that, from the date hereof to the Closing Date or, if earlier, the termination of this Agreement, unless otherwise consented to in writing by the Purchaser (which consent shall not be unreasonably withheld), Seller will:

(i) promptly notify the Purchaser of the receipt of any written notice or written claim of breach or default by the Seller, or of any termination or cancellation, or written threat of termination or cancellation, of any of the Contracts;

(ii) take commercially reasonable steps to preserve supplier, sales, and other business relationships associated with the Refinery;

(iii) use reasonable commercial efforts to perform and comply in all material respects with all covenants and conditions contained in the Contracts; and

(iv) operate the business of the Refinery only in the usual, regular and ordinary manner consistent with past practice (including, but not limited to, maintaining the Materials Inventory as required in Section 2.7(a)(ii), performing routine and scheduled maintenance, maintaining proper chemical and catalyst supply, and catalyst replacement, but excluding (x) turnarounds, (y) discontinuance of certain operations as requested by Purchaser, and (z) any repairs or restorations costing in excess of $1,000,000 per occurrence that may be necessary as a result of a casualty, the parties agreeing such repair or restoration shall not be a condition to Purchaser's obligation to close (unless such casualty falls within the events described in Section 5.1.9 or 5.2.6) but Seller shall repair or restore such damage promptly after Closing), and maintain books and records relating to such operations and business and continue its present accounting practices and procedures in the ordinary course of business consistent with past practice.

4.1.2. Access.

(a) The Seller will afford to the Purchaser and its authorized representatives, at the Purchaser's sole expense, risk and cost, reasonable access from the date hereof until the Closing Date, during normal business hours and upon reasonable prior notice, to the Seller's and its Affiliates' properties, employees, books and records relating to the Assets and the business of the Refinery and to make available for inspection and copying by Purchaser and its authorized representatives originals or true and complete copies of any such books and records reasonably requested by Purchaser. The Purchaser agrees that it will exercise this right of access solely for the purposes of assessing the identity and condition of the Assets, verifying the representations made by the Seller and the Company in this Agreement (which verification or failure to so verify will have no effect on the ability of Purchaser to rely on the representations of Seller and Company contained in this Agreement) or effecting the orderly assumption of its management responsibilities and that the confidentiality of any data or information acquired by the Purchaser in connection with this transaction shall be maintained by the Purchaser and its representatives in accordance with the terms of the Confidentiality Agreement with the Company. The Purchaser hereby agrees to assume the risk of personal injury to its representatives during the course of its investigation, ***except to the extent such injury is the result of negligence on the part of the Seller, its Affiliates or any Person affiliated with any of them***, and agrees to indemnify, defend and hold harmless the Seller, its Affiliates and Persons affiliated with any of them from and against any and all damages, costs, injuries and liabilities to persons or property which may occur by reason of the Purchaser's or its employees', counsel's, accountants' or other representatives' entry or activities upon any of the Seller's or the Company's property by the Purchaser or the other aforementioned parties. Any representative of Purchaser shall be required to comply with all of Seller's safety rules and practices while on Seller's premises. Until Closing, neither the Purchaser nor its agents or representatives shall contact any Governmental Authority regarding the Seller's assets or operations without the Seller's prior Knowledge and consent, which consent will not be unreasonably withheld.

(b) The Seller has made available to the Purchaser a copy of the series of studies performed by Walk, Haydel & Associates, Inc. concerning the No. 2 Crude Unit, entitled (i) Phase II, Part One report: No. 2 Crude Unit, Volumes I and II, (ii) No. 2 Crude Unit Revamp for Maximizing Crude Throughput, Project Scope Definition and Capital Cost Estimate, (iii) No. 2 Crude Unit Revamp for Maximizing Crude

Throughput, Project Scope Definition and Capital Cost Estimate Update for the Use of 100% Alaskan Crude, (iv) Major Equipment Specifications for No. 2 Crude Unit Revamp for Maximizing Crude Throughput and Charge Stock Flexibility, and (v) Cost Estimate for Support Facilities for Increased Crude Throughput. These series of studies were delivered to Purchaser solely for the purpose of Purchaser's information and neither Seller nor the Company makes any representations with respect to the accuracy of or conclusions reached in such study or whether the projects described therein is economically attractive or achievable.

(c) Seller agrees to permit environmental consultants employed or retained by Purchaser to conduct a so called "Phase I" and "Phase II" environmental review of the Real Property and Equipment during normal business hours and upon reasonable prior notice so long as such environmental review does not unreasonably interfere with the operation of the Assets. The Phase II environmental review shall be conducted at the sole cost and expense of Purchaser unless Seller and Purchaser have entered into a written agreement expressly providing for sharing of such costs and expenses, however, Seller and Company shall be responsible for their own respective internal costs and expenses associated with such review.

4.1.3. Public Announcements. Subject to applicable legal and stock exchange requirements, at all times until 60 days following the Closing Date or, if earlier, the termination of this Agreement, the Seller will advise the Purchaser promptly, and obtain the consent of the Purchaser (such consent not to be unreasonably withheld by the Purchaser) before issuing or making, or permitting any of the Seller's Affiliates, directors, officers, employees or agents, to issue or make, any (a) press release or (b) public filings, reports or other statements with any Governmental Authority with respect to this Agreement or the transactions contemplated herein. The foregoing shall not be deemed to restrict the Seller's ability to notify the employees of the Seller of such details of this Agreement or the transactions contemplated hereby as the Seller shall deem appropriate.

4.1.4. Best Efforts. The Seller will use its reasonable commercial best efforts to obtain the satisfaction of the conditions to Closing applicable to the Seller set forth in Section 5.1.

4.1.5. Antitrust Notification. To the extent required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations promulgated thereunder (the "Improvements Act"), the Seller shall file or cause to be filed, as promptly as practicable but in no event later than ten days after the execution of this Agreement, with the Federal Trade Commission (the "FTC") and the United States Department of Justice (the "Justice Department") all reports or other documents required to be filed by the Seller under the Improvements Act concerning the transactions contemplated hereby, and promptly comply with or cause to be complied with any requests by the FTC or Justice Department for additional information concerning such transactions, so that the waiting period specified in the Improvements Act shall expire as soon as practicable after the execution and delivery of this Agreement. The Seller hereby agrees to request early termination of any applicable waiting period under the Improvements Act.

4.1.6. Consent. Seller shall, in cooperation with Purchaser, diligently pursue the consents of all Governmental Authorities and other Persons who are a party to the Contracts and Permits required or necessary for the assignment or reissuance (as applicable) of the Contracts and Permits to Purchaser. During the period between the date hereof and the Closing Date, Seller shall promptly undertake such commercially reasonable actions as may be required to obtain the consents for the Permits and Contracts, provided, however, that Seller shall in no case be required to agree to any material change in the commercial terms thereof.

4.1.7. Notification of Certain Matters; Certain Filings. Between the date hereof and Closing Date, Seller, Company, and Purchaser shall promptly notify each other of (a) any information that indicates that any of their respective representations or warranties contained herein are not true and correct, in all material respects, as of the date hereof or will not be true and correct as of the Closing, if applicable; (b) occurrence of any event which will result, or has a reasonable prospect of resulting, in the failure to consummate the transactions contemplated hereunder on or before the Closing Date or to satisfy a condition to Closing, as the case may be; (c) any notice or other communication from any third party, including Governmental Authorities, alleging that a consent or waiver of such third party is required in connection with execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement; and (d) any notice of or other communication relating to, any default or events which, with notice or lapse of time or both, would become a default under any Contract. After Closing, each party shall forward to the other all notices received after the Closing with respect to rights and obligations which are the responsibility of the other party. In addition, between the date hereof and the Closing Date, Seller shall confer on reasonable request, with one or more designated representatives of Purchaser to report on operational matters, to report the general status of ongoing operations, to notify Purchaser of any material change in the normal course of business, in the operation of the Assets, or in employee relations with respect to the Assets, and of any litigation or other judicial or administrative proceeding involving the Assets.

4.1.8. Transition Services. Prior to Closing, Seller shall provide, at no cost or expense to Purchaser, the reasonable assistance of Seller's personnel in facilitating a prompt and efficient changeover of custody and operation of the Assets from Seller to Purchaser in accordance with Schedule 4.1.8, Part A. Effective as of the Closing Time, Seller shall terminate existing management arrangements among Seller and its Affiliates with respect to the Assets. In addition, Seller shall perform those duties listed on Schedule 4.1.8, Part B and other duties reasonably requested by Purchaser, prior to Closing, and Purchaser shall reimburse Seller for all reasonable costs and expenses incurred by Seller in connection therewith. Seller shall file with the appropriate Governmental Authority the necessary volumetric additive reconciliations report showing the Closing Date as the end of the then current reporting period. Purchaser shall provide Seller with reasonable access to books and records to complete this filing.

4.1.9. Reports. Seller and Company agree that promptly after a written report has been received in preliminary form concerning any environmental review performed or caused to be performed by either of them, a copy of such report will be made available to Purchaser for comment.

4.1.10. Post-Closing Transition Services. Seller and Company agree to provide reasonable assistance to Purchaser from and after the Closing Date as necessary to effect prompt transition of the operation of the Refinery from Seller to Purchaser, including, but not limited to, reasonable assistance with respect to the transfer or conversion of information on Seller's and Company's computer system concerning the Refinery to Purchaser's computer systems. Any additional Post-Closing services provided by Seller, over and above those required to comply with the foregoing sentence and other provisions contained herein, shall be at Purchaser's cost.

4.1.11. Signage. Seller shall before Closing remove or paint over, at its sole cost and expense, all signage within the Refinery that references the Refinery as being owned by Seller or Company (including safety awards). If such signage is not removed or painted over by Closing, Purchaser shall remove and Seller and Company shall reimburse Purchaser for all expenses incurred in so removing.

4.1.12. Cooperation in Litigation and Proceedings. Seller and Company agree to cooperate with Purchaser in connection with any litigation or proceedings brought by third parties against Purchaser in connection with the operation or ownership of the Refinery and the Assets prior to Closing. Such cooperation and assistance shall include but not be limited to (i) making the Seller's and Company's personnel available for interviews, depositions, court or administrative agency appearances and any other tasks required for litigation, (ii) making documents available for inspection and copying, and (iii) permitting on-site investigations. If opposing counsel shall seek disclosure of any confidential documents, notes or other written materials in discovery or at trial, Seller and Company will cooperate with Purchaser in defending against such disclosure and, if such defense shall fail, in seeking appropriate protective orders. Purchaser shall fully reimburse Seller and Company for its reasonable out-of-pocket costs and expenses (including reasonable outside and in-house attorneys' fees at rates approved in advance by Purchaser) incurred by Seller or Company related to its cooperation under this paragraph.

4.2. Covenants of the Purchaser. The Purchaser covenants and agrees with the Seller as follows:

4.2.1. Preservation of Books and Records. The Purchaser shall for a period of at least six (6) years from the Closing Date (or such longer time as shall be required by court order applicable to Purchaser provided Seller shall have notified Purchaser of such requirement), using procedures consistent with the Purchaser's current record retention procedures, (a) preserve and retain, for the period required by such procedures (if longer than the minimum period stated above), the Records included in the Assets relating to time periods up to and including the Closing Date (including, but not limited to, any documents relating to any governmental or nongovernmental actions, suits, proceedings or investigations arising out of the conduct of the business and operations of the Refinery before the Closing Date) and (b) make such Records available to the Seller and its agents upon reasonable notice and at reasonable times, it being understood that the Seller shall be entitled to make copies of any such Records, at Seller's sole cost and expense, as it or any of its representatives shall deem necessary. The Purchaser agrees to permit representatives of the Seller to meet with employees of the Purchaser on a mutually convenient basis in order to enable the Seller to obtain additional information and explanations of any materials provided pursuant to this Section 4.2.1. In the case of tax records, both Seller and Purchaser shall retain all such records for the applicable statute of limitations, including any extension(s).

4.2.2. Public Announcements. Subject to applicable legal or stock exchange requirements, at all times until 60 days following the Closing Date or, if earlier, the termination of this Agreement, the Purchaser will advise promptly the Seller, and obtain the consent of the Seller (such consent not to be unreasonably withheld by the Seller) before issuing or making, or permitting any of the Purchaser's directors, officers, employees or agents to issue or make, any press release or to make any public filings, reports or other statements with any Governmental Authority with respect to this Agreement or the transactions contemplated hereby.

4.2.3. Use of Names. The Purchaser agrees that, from and after the Closing Time, it will cease conducting the operations of the Assets under the name "Kerr-McGee", "Southwestern Refining Company", or any derivative thereof and will not thereafter use any logos, symbols or trademarks relating thereto,, except for any inadvertent use and provided further that until 6 months after the Closing Date, Purchaser, while operating under its own name, may in order to effect an orderly transition refer to the fact that the Refinery was formerly operated by the Kerr-McGee Refining Corporation and Seller. Purchaser shall retain the right to use all telephone, facsimile, and other similar numbers currently used at the Refinery.

4.2.4. Best Efforts. The Purchaser will use its reasonable commercial best efforts to obtain the satisfaction of the conditions to Closing applicable to the Purchaser set forth in Section 5.2.

4.2.5. Cooperation in Litigation and Proceedings. Purchaser agrees to cooperate with Seller and the Company in connection with any litigation or proceedings brought by third parties against Seller or the Company in connection with the operation or ownership of the Refinery and the Assets prior to Closing, or as a result of any liability retained by Seller or the Company under this Agreement. Such cooperation and assistance shall include but not be limited to (i) making the Purchaser's personnel available for interviews, depositions, court or administrative agency appearances and any other tasks required for litigation, (ii) making documents available for inspection and copying and (iii) permitting on-site investigations. If opposing counsel shall seek disclosure of any confidential documents, notes or other written materials in discovery or at trial, Purchaser will cooperate with Seller and the Company in defending against such disclosure and, if such defense shall fail, in seeking appropriate protective orders. Seller and Company shall fully reimburse Purchaser for its reasonable out-of-pocket costs and expenses (including reasonable outside and in-house attorneys' fees at rates approved in advance by Seller) incurred by Purchaser related to its cooperation under this paragraph.

4.2.6. Antitrust Notification. To the extent required by the Improvements Act, the Purchaser shall file or cause to be filed, as promptly as practicable but in no event later than ten days after the execution of this Agreement, with the FTC and the Justice Department all reports or other documents required to be filed by the Purchaser under the Improvements Act concerning the transactions contemplated hereby, and promptly comply with or cause to be complied with any requests by the FTC or Justice Department for additional information concerning such transactions, so that the waiting period specified in the Improvements Act shall expire as soon as practicable after the execution and delivery of this Agreement. The Purchaser hereby agrees to request early termination of any applicable waiting period under the Improvements Act.

4.2.7 Access to Wastewater Treatment Plant. Purchaser agrees to grant Seller without charge the right for a period of 180 days from the Closing Date to use the pipelines in use from Terminal 1 which are conveyed to Purchaser and such pipelines on the Real Property owned by Purchaser as are necessary to pump wastewater from Terminal 1 to the Refinery's wastewater treatment system, if capacity is available in such system after taking into account the operations of the Refinery, solely for the purpose of cleaning out the tanks located at Terminal 1, provided that Seller shall have first obtained all required permits for, and be in compliance with all applicable Laws with respect to, such activity.

4.2.8 PSM Audit Rights. For a period of six months from the Closing Date, Purchaser agrees to grant to Seller and its representatives reasonable access to the Refinery as cessary or appropriate, upon two Business Days prior notice to Purchaser, for the sole purpose of auditing Purchaser's progress toward the completion of the items identified as a result of the Seller's Process Safety Management audit, as listed in Schedule 8.2.

4.3. Joint Covenants Related to Tax Matters. The Seller and the Purchaser agree that Purchaser shall be liable for all Taxes (other than ad valorem real estate and personal property taxes, which are addressed in Section 2.8(c)) imposed on the Assets after the Closing Date.

4.4. Post-Closing Environmental Matters. The Seller, Company, and Purchaser agree as follows:

4.4.1. Copies of Reports and Photographs. For so long as the Seller's indemnifications contained in Section 8.2 shall be in effect, Purchaser shall provide to the Seller a copy of all information or reports that are provided by Purchaser to the National Response Center or other federal, state or local agency, with regard to all spills, discharges and other Releases of Hazardous Materials that could result in an Environmental Liability of the Seller. As soon as practicable following request by the Seller, Purchaser shall provide to the Seller copies of all photographs in Purchaser's possession depicting any such event.

4.4.2. Access.

(a) Purchaser shall afford the Seller, its employees, agents and contractors, and all Governmental Authority employees, agents and contractors having jurisdiction over the property of the Seller, for no additional consideration, reasonable access to the Real Property relating to the Environmental Liabilities of Seller during normal business hours and upon reasonable prior written notice on a confidential basis, including, but not limited to, the right to enter upon the Real Property; take photographs; investigate; and with prior approval and consent from Purchaser (which shall not be unreasonably withheld) to drill, monitor and pump wells, take soil borings, excavate, and conduct similar activities in connection with the Environmental Liabilities of Seller, and to verify the remediation procedures being used by Purchaser to remediate the Environmental Liabilities of Seller, and to undertake such remediation directly where authorized to do so under this Agreement. Seller shall further be afforded access to the Purchaser's employees and all relevant documents and records regarding any matter for which the Seller has, or is alleged to have, responsibility. Seller shall release, defend, protect, and indemnify and hold Purchaser harmless from and against any and all liabilities, duties, obligations, assessments, suits, actions, proceedings, claims, and demands, costs, or expenses, including reasonable attorneys' fees arising from or caused by any activities of Seller in connection with the access granted to Seller pursuant to this Section and Seller shall return the property to the condition it was in prior to Seller's remedial activities on the property. The duty to defend, protect, indemnify and save Purchaser harmless referred to in the preceding sentence shall include, but not be limited to, claims, demands, lawsuits, penalties, fines, administrative law, actions and orders, costs, expenses and causes of action which result from the comparative, concurrent, or contributing negligence of any Person including, but not limited to, Purchaser, its agents, employees or officers, except Seller shall not be liable for loss or damage resulting from the sole (100%) negligence of Purchaser. In addition, any Person retained by Seller or any of its Affiliates to perform such work shall execute Purchaser's standard form of Field Service Agreement before such Person will be granted access to the Real Property.

(b) Purchaser agrees that promptly after it has received a written report in preliminary form as to each of its Phase I and Phase II environmental reviews referred to in Section 4.1.2(c), it will provide a copy of such report to Seller for comment. In the event Seller receives either of such reports after the Closing Date, or is in the process of conducting Seller's own environmental review at the Closing Date, Purchaser agrees to provide Seller access to the Real Property and Equipment for the purpose of having Seller and Seller's environmental consultants conduct such environmental review as Seller shall determine, all during normal business hours and upon reasonable prior notice so long as such environmental review does not unreasonably interfere with the operation of the Assets. Seller shall release, defend, protect, indemnify, and hold Purchaser harmless from and against any and all liabilities, duties, obligations, assessments, suits, actions, proceedings claims, and demands, costs, or expenses, including reasonable attorneys' fees arising from, caused by any activities of Seller in connection with the access granted to Seller pursuant to this Section and Seller shall return the property to substantially its condition prior to Seller's remedial activities on the property. The duty to defend, protect, indemnify and save Purchaser harmless referred to in the preceding sentence shall include, but not be limited to, claims, demands, lawsuits, penalties, fines, administrative law actions and orders, costs, expenses and causes of action which result from the comparative, concurrent, or contributing negligence of any Person including, but not limited to, Purchaser, its agents, employees or officers, except Seller shall not be liable for loss or damage resulting from the sole (100%) negligence of Purchaser. In addition, any Person retained by Seller or any of its Affiliates to perform such work shall execute Purchaser's standard form of Field Service Agreement before such Person will be granted access to the Real Property. For purposes of establishing liability under this Agreement, neither Purchaser, Seller nor the Company shall be deemed to have agreed to the information or conclusions set forth in the environmental reviews conducted by either Purchaser or its agents and Purchaser shall not be deemed to have agreed to the information or conclusions set forth in environmental reviews conducted by either Seller or its agents; provided, however, all such environmental information may be used as evidence in any proceeding to establish liability hereunder.

4.4.3. Use of Facilities. Subject to the availability of capacity and provided that the Seller's activities are legally permitted and do not materially interfere with Purchaser's operations, Purchaser will make available, and allow the Seller reasonable use of facilities and utilities on the Real Property for the purpose of confirming the existence of Environmental Liabilities of Seller on the Real Property or Seller's activities in discharge of any Environmental Liabilities of Seller with respect to the Real Property, all at Seller's sole cost and expense.

4.4.4. Right of Control.

(a) Unless and until the Cleanup Threshold amount provided for in Section 4.4.6 has been completely expended, Purchaser shall have the right to control the remediation of Hazardous Materials to the extent such remediation constitutes an Environmental Liability of Seller, manage all discussions with third parties, and all proceedings and activities regarding the satisfaction and discharge of such matters. However, Seller and Company shall be provided copies of all relevant correspondence and items accompanying same with any Governmental Authority as and when sent or received by Purchaser. Purchaser shall use industry accepted methods and procedures of remediation in connection therewith. Purchaser shall consult with Seller and Company with respect to remediation methods and procedures and shall take into account their reasonable input. Before implementing any plan of remediation concerning Environmental Liabilities of Seller, Purchaser shall submit to Seller and Company a reasonably detailed description of same for review, together with such supporting information as is reasonably necessary to evaluate the appropriateness of such plan. If neither Seller nor Company objects to the proposed remediation plan within 30 days of the receipt of such materials from Purchaser, the plan of remediation shall be implemented by Purchaser as written and the plan of remediation shall be deemed accepted and Seller and Company shall have no basis for a claim against Purchaser based on such. Seller and Company shall have, in addition to whatever other rights and remedies to which they may be entitled in law or in equity, a right to present their own plan of remediation to the applicable Governmental Authorities for proposed use by Purchaser if no plan of remediation is agreed to by Purchaser and Seller.

(b) Once the Cleanup Threshold amount provided for in Section 4.4.6 has been completely expended, then for any remediation which is an Environmental Liability of Seller for which no remediation plan has yet been agreed to or that requires further capital expenditures that are not (i) mandatory in a remediation plan that previously has been agreed to by Seller, or (ii) necessary to the completion of a capital improvement, the noncompletion of which would substantially reduce the value of the work already completed (such as the completion of a monitoring well in progress) when the Cleanup Threshold is exceeded (it being agreed by the parties that, among others, the cleanup of the groundwater contamination under the Refinery qualifies as remediation which has commenced prior to the Cleanup Threshold being exceeded), the procedures detailed in paragraph (a) above will be followed, but if Purchaser and Seller can not agree on the implementation of a mutually acceptable remediation plan for other issues, then Seller may assume the obligations of Purchaser to control and manage that specific remediation. If an order from a Governmental Authority is outstanding and nonappealable (it being agreed that if the order is outstanding and not appealed for over a year, it will be deemed to be nonappealable), neither Seller nor Company shall have the right to object to the procedures or methods to be used to the extent they are specified without the possibility of alternatives in such order. Seller and Company promptly shall pay to Purchaser expenses incurred by it to so remediate upon the incurrence of the cost or expense and submittal to Seller or Company of appropriate paid receipts or invoices reasonably evidencing the amount and nature of the costs incurred and the compliance of the work with the remediation plan involved.

(c) Purchaser shall maintain true, complete, and accurate records of the remediation procedures used and shall provide quarterly remediation progress reports of such (it being understood, however, by the parties that in the future should the scope of the remediation level off or decrease, then the parties may mutually agree that Purchaser could prepare and deliver to Seller annual instead of quarterly reports) to Seller and Company. Seller and Company shall have the right, at Seller's and Company's expense, to review such reports and verify the procedures utilized are consistent with the approved remediation plans utilizing Seller's or Company's internal and/or outside consultants retained for such purpose. If Seller or Company does not object to any item contained in any such quarterly report within 30 days after receipt of such report, the procedures and other information shown on the report shall be deemed binding on Seller, Company, and Purchaser as sent. Seller's and Company's consultants shall be afforded reasonable access to all supporting or relevant data, to the books and records of Purchaser, and (pursuant to Section 4.4.1) to the Refinery as and to the extent necessary to verify, within the time limit discussed in the preceding sentence, the correctness of such reports and the validity and compliance with this Agreement and the remediation plans.

(d) Notwithstanding anything to the contrary contained in this Section 4.4.4, in Section 4.4.6, or elsewhere herein, Seller and Company may contest or appeal any Environmental Liability of Seller and shall not be required to undertake or pay for any remediation or other activity which is subject to contest until a final, nonappealable (it being agreed that if the order is outstanding for over a year, it will be deemed to be nonappealable) decision has been rendered with respect to the matter by the applicable Governmental Authority or Seller or Company have waived their rights, or cease to contest the decision in question.

4.4.5. Copies of Notices. The Seller and Company shall promptly provide Purchaser copies of all pleadings, claims, demands, inquiries or other notices it receives at any time from any third party regarding environmental matters and related in any way to the Real Property, regardless of whether the liabilities or responsibilities in question have been assumed by the Purchaser. Purchaser shall promptly provide Seller copies of all pleadings, claims, demands, inquiries or other notices received from any third party regarding environmental matters and related in any way to the Real Property, if the liabilities or responsibilities in question have been retained by Seller in whole or in part.

4.4.6. Environmental Cleanup Costs. Purchaser agrees, as additional consideration to Seller for its sale of the Assets to Purchaser, that Purchaser shall be responsible to pay, without reimbursement from Seller or Company, all Environmental Cleanup Costs actually and reasonably incurred by Purchaser for remediating, to (but not beyond) the standards required by the

Environmental Laws, only those Environmental Liabilities of Seller relating to Hazardous Materials located on or under the Refinery up to a maximum of Ten Million Dollars ($10,000,000) (the "Cleanup Threshold"), it being acknowledged and agreed that liability (other than Purchaser's contractual liability to Seller and Company to pay on Seller's and Company's behalf, as aforesaid) for the Environmental Liabilities of Seller shall at all times remain with Seller and Company. The payment of all Environmental Cleanup Costs in excess of the Cleanup Threshold shall be the sole and exclusive responsibility of Seller and Company.

Environmental Cleanup Costs means any reasonable direct costs or expenses (specifically excluding overhead) required by any Governmental Authority to be undertaken under or pursuant to any Environmental Law to contain, remove, remedy, respond to, clean up, or abate any Environmental Liabilities of Seller, including, without limitation, (a) any investigation, study, assessment, legal representation, cost recovery by a Governmental Authority, or monitoring or testing in connection therewith, (b) any measures or actions necessary to implement or effectuate any containment, removal, remediation, response, cleanup, or abatement, and (c) the resolution of such liabilities. Costs and expenses for the time of Purchaser's in-house personnel listed in Schedule 4.4.6(a) at the hourly rates indicated on such schedule shall be includable in Environmental Cleanup Costs when and to the extent such personnel are actively engaged in work on matters related to Environmental Cleanup Costs under this Section. The Environmental Liabilities of Seller which are included within the definition of Environmental Cleanup Costs include, without limitation, required remediation of the groundwater contamination which originated beneath the Refinery. In addition, the following matters are included within the definition of Environmental Cleanup Costs, even though such matters may not actually constitute

Environmental Liabilities of Seller: (1) closure of the "solid waste management units" located on the Refinery as described in Schedule 4.4.6(b) (including, without limitation, those liabilities arising under the existing TNRCC order number 30033 or any similar or successor order), (2) the cost (up to $2,000,000) of compliance of Refinery operations with benzene waste operations NESHAPS as necessary to satisfy the requirements or directives of Governmental Authorities made within three (3) years of the Closing Date (it being agreed if Purchaser undertakes work pursuant to this clause (2), it shall promptly complete same and any costs in connection therewith in excess of $2,000,000 shall be for its own account and not included in Environmental Cleanup Costs), and (3) removal and proper disposal of tank and vessel residues produced by Seller, the quantities of which will be determined prior to Closing in accordance with the procedures detailed in Schedule 4.4.6(c), and the residues so determined will be managed by Purchaser in combination with Purchaser's residues upon post-Closing cleaning by Purchaser (at the time of cleaning, the cost of residue management will be apportioned in accordance with the respective residue volumes of Seller and Purchaser). Seller shall use its best commercial efforts to effect the closure of the inactive leaded tank bottoms spread area as described in Schedule 4.4.6(b) prior to Closing and the costs of such closure shall be reimbursed to Seller by Purchaser promptly after Closing and such reimbursed costs shall be applied to the Cleanup Threshold.

The parties acknowledge that remediation of the groundwater contamination plume under the Refinery will most likely result in the incidental remediation of groundwater which is not under the Refinery and Purchaser shall reasonably cooperate with Seller and Company regarding such contamination. Purchaser can credit to the Cleanup Threshold any costs associated with such remediation, but Seller shall be responsible, among other things, for offsite monitoring. Further, Purchaser shall cooperate with Seller, if requested by Seller, to assist in the remediation of such offsite contamination, but Purchaser is under no obligation to assist Seller in remediating any contamination beyond the Refinery.

Purchaser shall maintain a true, complete, and accurate account of such Environmental Cleanup Costs and shall provide quarterly accounting statements of such account (it being understood, however, by the parties that in the future should the scope and expenditures of the Environmental Cleanup Costs level off or decrease, then the parties may mutually agree that Purchaser could prepare and deliver to Seller annual instead of quarterly statements), accurately reflecting current and cumulative charges thereto, to Seller and Company. Seller and Company shall have the right, at Seller's and Company's expense, to audit such account and verify the accuracy of such charges (but not more often than annually), utilizing Seller's or Company's internal and/or outside auditors and consultants retained for such purpose. Seller's and Company's auditors shall be afforded reasonable access to all supporting or relevant data, to the books and records of Purchaser, and (pursuant to Section 4.4.1) to the Refinery as and to the extent necessary to verify, within ninety (90) days from the commencement of such audit, the correctness of such account and the validity and compliance with this Agreement of all charges thereto. No charge may be contested after the end of the calendar year after the year in which it was charged.

4.4.7. Good Faith. The parties agree to act in good faith in undertaking work to remediate environmental matters that may give rise to a claim for indemnification hereunder with a view to avoiding unnecessary or excessive costs.

ARTICLE V
CONDITIONS

5.1. Conditions to the Obligations of the Purchaser. The obligations of the Purchaser to proceed with the Closing contemplated hereby are subject to the satisfaction on or before the Closing Date of all of the following conditions, any one or more of which may be waived, in whole or in part, by the Purchaser:

5.1.1. Compliance.

(a) The Seller shall have performed and complied on or before the Closing Date in all material respects with each of the covenants, obligations, and agreements contained in this Agreement to be performed by it on or before the Closing Date. The representations and warranties made by the Seller in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though made on the Closing Date, except as otherwise contemplated by this Agreement.

(b) The Company shall have performed and complied on or before the Closing Date in all material respects with each of the covenants, obligations, and agreements contained in this Agreement to be performed by it on or before the Closing Date. The representations and warranties made by the Company in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though made on the Closing Date, except as otherwise contemplated by this Agreement.

5.1.2. Legal Opinion. The Purchaser shall have received from Russell G. Horner, Jr., General Counsel for the Seller and Company, an opinion dated as of the Closing Date substantially in the form attached hereto as Exhibit D.

5.1.3. Officers' Certificates. The Purchaser shall have received certificates dated as of the Closing Date from each of the Seller and the Company, in form and substance reasonably satisfactory to the Purchaser,

(a) signed by the President or a Vice President of the certifying party to the effect that (1) all representations and warranties made by it in this Agreement are true and correct in all material respects on and as of the Closing Date as though made on, as of and with respect to the Closing Date, and (2) all covenants, agreements, and conditions required by this Agreement to be performed, satisfied or complied with by it on or before the Closing Date have been performed, satisfied and complied with in all material respects; and

(b) signed by the Secretary or an Assistant Secretary of the certifying party certifying (1) the accuracy and completeness of the copies of, as well as the current effectiveness of, the resolution to be attached thereto of the Board of Directors of such party authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein, (2) the incumbency of the officers executing this Agreement on behalf of such party and any document to be executed and delivered by such party at the Closing, and (3) that attached to such certificate are true and correct copies of the certificate of incorporation and bylaws of such party, as in force and effect on the Closing Date.

5.1.4. Legal Prohibition; Improvements Act. On the Closing Date, there shall exist no litigation, administrative proceeding, investigation, injunction or judgment, law or regulation prohibiting or seeking to prohibit the consummation of the transactions contemplated by this Agreement or seeking damages in connection therewith which makes it unreasonable to proceed with the consummation of the transactions contemplated hereby. All applicable waiting periods under the Improvements Act shall have expired or been terminated and any approvals necessary under the Improvements Act or regulations thereunder shall have been obtained.

5.1.5. Consents. Other than Consents with respect to Permits, Seller shall have received and delivered to Purchaser any authorizations, consents, approvals and waivers or other actions (collectively, "Consents") reasonably necessary to properly and effectively transfer to Purchaser the Assets, failure to obtain which would have a material adverse effect.

5.1.6. Permits. Purchaser shall have received reasonable assurances from Governmental Authorities that all Permits listed on Schedule 1.7 required for operation of the Refinery by Purchaser shall be transferable or reissued at Closing or shall be granted or issued to Purchaser within a reasonable period following Closing with Purchaser having the right to operate the Refinery pending such issuance, so that Purchaser shall be entitled to own and operate the Refinery immediately after Closing in substantially the same fashion as it has been operated by Seller immediately prior to the Closing Date (but the foregoing is not intended and shall not be considered as a warranty by Seller as to the capacity limitations applicable under such Permits).

5.1.7. Delivery of Instruments of Transfer. At Closing, Seller shall deliver to Purchaser the instruments listed in Section 2.4(a). Seller and Purchaser shall execute a Joint Closing Statement acknowledging the payment of the Closing Payment, the transfer of the Assets, and the assumption of Assumed Liabilities as of the Closing Time.

5.1.8. Cleanup of Tanks. Prior to the Closing Date, Seller, shall have cleaned suitable for change of service or dismantling, removed, and properly disposed of off-site the sludge and residues contained in tanks numbered 525 (formerly tank numbered 204), 105, R37, and R38. The costs incurred by Seller for performing such service to tanks numbered 105, R37, and R38 shall be at Seller's sole cost and expense. The costs incurred by Seller for performing such service to tank numbered 525 (formerly tank numbered 204) shall be applied to the Cleanup Threshold and shall be reimbursed by Purchaser to Seller promptly after Closing.

5.1.9 Casualty. On or prior to the Closing Date there shall not have occurred any fire, accident, or other casualty to the Assets the damage from which has not been repaired, which would have a material adverse affect (whether with respect to cost or not) on the conduct of the operations or the use and occupancy of the Refinery.

5.2. Conditions to the Obligations of the Seller. The obligations of the Seller to proceed with the Closing contemplated hereby are subject to the satisfaction on or before the Closing Date of all of the following conditions, any one or more of which may be waived, in whole or in part, by the Seller:

5.2.1. Compliance. The Purchaser shall have performed and complied on or before the Closing Date in all material respects with each of its covenants, obligations and agreements contained in this Agreement to be performed by it on or before the Closing Date. The representations and warranties made by the Purchaser in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though made on the Closing Date, except as otherwise contemplated by this Agreement.

5.2.2. Legal Opinion. The Seller shall have received from Bradley E. Haddock, counsel for the Purchaser, an opinion dated as of the Closing Date substantially in the form attached hereto as Exhibit E.

5.2.3. Officers' Certificates. The Seller shall have received Certificates dated as of the Closing Date, in form and substance reasonably satisfactory to the Seller,

(a) signed by the President or a Vice President of the Purchaser certifying that (1) all representations and warranties made by the Purchaser in this Agreement are true and correct in all material respects on and as of the Closing Date as though made on, as of and with respect to the Closing Date, and (2) all covenants, agreements, and conditions required by this Agreement to be performed, satisfied or complied with by the Purchaser on or before the Closing Date have been performed, satisfied and complied with in all material respects; and

(b) signed by the Purchaser's Secretary or an Assistant Secretary certifying (1) the accuracy and completeness of the copies of, as well as the current effectiveness of, the resolution to be attached thereto of the Board of Directors of the Purchaser authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein, (2) the incumbency of the officers executing this Agreement on behalf of the Purchaser and any document to be executed and delivered by the Purchaser at the Closing, and (3) that attached to such certificate are true and correct copies of the certificate of incorporation and bylaws of the Purchaser, as in force and effect on the Closing Date.

5.2.4. Legal Prohibition; Improvements Act. On the Closing Date, there shall exist no litigation, administrative proceeding, injunction or judgment, law or regulation prohibiting or seeking to prohibit the consummation of the transactions contemplated by this Agreement or seeking damages in connection therewith which makes it unreasonable to proceed with the consummation of the transaction contemplated hereby. All applicable waiting periods under the

Improvements Act shall have expired or been terminated and any approvals necessary under the Improvements Act or regulations thereunder shall have been obtained.

5.2.5. Hydrobon Issuance. On the Closing Date, Seller shall have had reissued to it the Hydrobon air permit with terms and conditions as recommended by the TNRCC Hearings Examiner in a letter dated May 25, 1995 from Tommy Broyles to Patricia Finn (it being acknowledged that if Seller waives this condition, the indemnification in Section 8.2(e) shall apply).

5.2.6. Casualty. On or prior to the Closing Date there shall not have occurred any fire, accident, or other casualty to the Assets the damage from which has not been repaired, which would have a material adverse affect on the conduct of the operations or the use and occupancy of the Refinery.

ARTICLE VI
EMPLOYEES

6.1. Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean employees employed by Seller at the Refinery on the Closing Date who are: (i) bargaining unit employees currently covered by a collective bargaining agreement, (ii) employees employed exclusively in the business of the Refinery as currently conducted, and (iii) any such employees otherwise included in clause (i) or (ii) on temporary leave of absence, including military leave, temporary disability or sick leave. Prior to execution of this Agreement, the Company has provided the Purchaser with a list of the Active Employees, stating job title and salary, as of April 24, 1995. Seller will update such list from time to time to reflect changes in the work force, and the current list of Active Employees shall be attached to this Agreement as Schedule 6.1.

6.2. Employment of Active Employees by Purchaser. Purchaser is under no obligation to hire any Active Employee, but may interview, during working hours, all, some, or none of the Active Employees. Purchaser will, at least ten (10) calendar days before the Closing Date, give to Seller a list of those Active Employees to whom an offer of employment has been or will be made to be effective at the Closing Time. Purchaser will be given reasonable access to the facilities and to personnel, safety, and other relevant records of the Seller (to the extent access to such records does not violate any Law or the legitimate privacy rights of the employees concerned) for the purpose of preparing for and conducting employment interviews with any Active Employees of the Seller. Access will be provided upon reasonable prior notice during normal business hours. At the Closing Time, Seller will terminate the employment of the Active Employees who have received and accepted an offer of employment from Purchaser, hereinafter referred to as "Koch Employees". On or before Closing, Seller will provide other employment for or terminate the employment of all Active Employees who are not Koch Employees.

Subject to the first sentence of Section 6.6, Seller and its Affiliates shall be solely responsible for and shall defend, protect, indemnify, and hold Purchaser and its Affiliates and their respective officers, directors, shareholders, employees, and agents harmless from and against all claims, expenses (including reasonable attorneys' fees), loss and liabilities of whatever kind and nature arising with respect to the Active Employees' employment with Seller or its Affiliates, the application of Seller's employee benefit plans to all Active Employees, and the termination of employment of Active Employees by Seller whether or not any such employee becomes an employee of Purchaser, provided that such indemnification will not apply to claims, expenses, loss, and liabilities arising from Purchaser's decision not to hire any Active Employee.

6.3. Salaries and Benefits.

6.3.1. Seller's Obligations. Seller shall be responsible for (i) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Seller prior to the Closing, (ii) the payment of any termination or severance payments, and (iii) the provision of health plan continuation coverage in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and Section 601 through 608 of ERISA ("COBRA").

6.3.2. Koch Employees under Purchaser's Benefit Programs. Subject to the terms and provisions of each benefit plan or arrangement, effective as of the Closing Date, Purchaser (or an Affiliate thereof) will extend the following benefit plans or arrangements to Koch Employees not subject to a collective bargaining agreement: (1) Koch Industries Employees' Pension Plan and the Koch Industries Employees' Savings Plan ("retirement plans"); (2) Koch Industries Employees' Group Benefit Trust Medical/Dental Plan and the Koch Industries Section 125 Plan ("health plans"); (3) Koch Industries, Inc. Long Term Disability Plan; (4) Koch Industries, Inc. Basic Life Plan, Koch Industries, Inc. Supplemental Life Plan, Koch Industries, Inc. Voluntary Life Plan, and Koch Industries, Inc. Dependent Life Plan (collectively, the "life insurance plans"); and (5) Koch Industries, Inc. Accidental Death and Dismemberment Plan. For purposes of determining eligibility to become a participant in each of the above referenced plans, Purchaser (or an Affiliate thereof) will credit to each Koch Employee service performed prior to the Closing Date for the Seller and its Affiliates. For purposes of determining such employee's vested interest in any benefits accrued under the retirement plans, each Koch Employee will receive credit for service performed prior to the Closing Date for the Seller and its Affiliates, however, no past service credit for service performed prior to the Closing Date will be granted to any Koch Employee for purposes of determining an employee's benefit service used in computing the amount of benefits under the retirement plans. Service with Seller, Seller's Affiliates and Purchaser shall be counted for purposes of eligibility for continuous service, vacation, and safety awards. Within thirty (30) days after execution of this Agreement, the Seller (or any Affiliate thereof) shall provide to Purchaser a true and complete listing of each Koch Employee's years of service, and such other information as Purchaser may reasonably require in order to credit such past service to employees under this Section 6.3.2. Purchaser (or any Affiliate) will not assume any liability whatsoever under any plan or arrangement maintained by or associated with Seller (or any Affiliate thereof) and, except for the granting of past service credit under this Section 6.3.2, it is the intention of the parties hereto that Purchaser (or any Affiliate) shall not be considered a successor employer of the Seller or any Affiliate thereof.

6.3.3. Preexisting Conditions. For each Koch Employee who becomes covered under the Purchaser's disability insurance plan at Closing and was covered by Seller's disability plan at Closing, any preexisting conditions, exclusions, or limitations will be waived. For each Koch Employee (and his or her eligible dependents) who become covered under the Purchaser's health plans at Closing and who were covered by Seller's health plan at Closing, Purchaser's health plans will (i) waive any preexisting conditions, exclusions or limitations, (ii) pay all claims with respect to covered services rendered on or after the Closing Date under the terms of such plan, and (iii) credit amounts expended by the Koch Employee during the then current plan year, prior to the Closing Date toward any plan deductibles under such plan if such amounts would have otherwise been credited under the terms and provisions thereof; provided, however, that, Seller (or an Affiliate thereof) shall provide to Purchaser a true and complete listing of all amounts so expended and such other information as Purchaser may require in order to properly administer the provisions of this paragraph. Seller shall be liable for any benefit program charges incurred by Active Employees through the Closing Date. For purposes of this Section 6.3.3, a charge will be deemed incurred, in the case of hospital, medical, or dental benefits, when the services that are subject to the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed which entitles the employee to the benefit.

6.3.4. Seller's Retirement and Savings Plans.

(a) The Seller's Retirement Plans. Benefits accrued on or before the Closing Date with respect to all Koch Employees who are participants in the Seller's retirement plans, shall be "locked and frozen" as of the Closing Date, and the Seller shall retain sole liability for the payment of such benefits as and when employees become eligible therefor under such plans. For the purposes of this Section, the term "locked and frozen" means that employees who are plan participants shall retain their accrued benefits under the Seller's retirement plans as of the Closing Date.

(b) The Seller's Savings Plans. The Seller will cause the Kerr-McGee Corporation Savings Investment and Employee Stock Ownership Plans to be amended in order to provide that the Koch Employees shall be fully vested in their accounts under such plans. As of the Closing Date all employee contributions by Koch Employees and all obligations of Seller to make employer contributions in respect of such employees under such plans shall cease. Seller shall retain sole liability for the payment of such benefits as and when employees become eligible therefor under such plans.

6.3.5. Transfer of Assets. Neither Seller nor its Affiliates will make any transfer of pension or other employee benefit plan assets to the Purchaser.

6.4. Purchaser's Obligation for Severance Compensation. Purchaser shall be solely responsible for any and all termination or severance payments, benefits or settlements due to any Koch Employee and shall indemnify and defend Seller from any claim or litigation relating to any Koch Employees who become employees of Purchaser and whose employment is terminated thereafter by Purchaser.

6.5. Collective Bargaining Matters. Purchaser is not bound hereunder to assume the Collective Bargaining Agreement between Seller and the Southwestern Refining Company Employees Independent Union ("Union") dated March 1, 1993 ("CBA"). Purchaser recognizes that a wage increase was implemented for bargaining unit employees under the CBA effective March 1, 1995. Purchaser will set its own initial terms and conditions of employment for those Koch Employees and others it may hire including work rules, benefits and salary and wage structure, all as permitted by law. Seller shall defend, indemnify and hold Purchaser harmless from and against all claims, suits, judgments, and causes of action, related to any payments or obligations of Seller due under the CBA.

6.6. WARN Act. The Purchaser will indemnify, defend, protect, and hold the Seller harmless from any liabilities arising under, or relating to the Worker Adjustment and Retraining Notification Act ("WARN Act") that Seller may incur due to terminations of Koch Employees by Purchaser after the Closing Date. The Seller will defend, protect, indemnify and hold the Purchaser harmless from any liabilities the Purchaser may incur under the WARN Act with respect to all Active Employees. To enable the parties to comply with the WARN Act, Purchaser agrees to advise Seller as soon as practicable, and in any event within ten (10) days after execution of this Agreement, of the approximate number of Active Employees Purchaser expects to hire.

6.7. Post-Retirement and Welfare Benefits. Seller or its Affiliates shall be responsible for all post-retirement medical, mental health, substance abuse, dental, and life insurance coverage obligations, if any, for the Active Employees who are not employed by Purchaser.

ARTICLE VII
TERMINATION

7.1. Termination Events. Subject to the provisions of Section 7.2, this Agreement may, by written notice given at or prior to the Closing in the manner hereinafter provided, be terminated:

(a) by either Purchaser or Seller if the other party fails to timely perform in any material respect any of its covenants and agreements contained herein, or fails to comply with any of its representations, warranties or covenants, and such failure shall not have been cured within thirty (30) days after written notice thereof from the non-breaching party and has not been waived;

(b) by Purchaser if all of the conditions set forth in Section 5.1 shall not have been satisfied at the time the Closing would otherwise occur or if satisfaction of such a condition is or becomes impossible, other than through failure of Purchaser to fully comply with its obligations hereunder, and shall not have been waived by Purchaser on or before such date;

(c) by Seller, if all of the conditions set forth in Section 5.2 shall not have been satisfied at the time the Closing would otherwise occur or if satisfaction of such a condition is or becomes impossible, other than through failure of Seller to fully comply with its obligations hereunder, and shall not have been waived by Seller on or before such date;

(d) by mutual written agreement of Purchaser and Seller; or

(e) by either Purchaser or Seller (if the party exercising such right is not in breach hereunder) if the Closing shall not have occurred on or before September 1, 1995 or such later date as may be agreed upon by the parties.

Each party's right of termination hereunder is in addition to any other rights it may have hereunder or otherwise and the exercise of a right of termination shall not be an election of remedies.

7.2. Effect of Termination. No termination of this Agreement shall relieve any party hereto of any liability for any breach hereof occurring prior to such termination. In the event this Agreement is terminated pursuant to Section 7.1, all further obligations of the parties hereunder shall terminate, except that the obligations set forth in Sections 4.1.3 and 4.2.2 and Article X shall survive; provided that, if this Agreement is so terminated by a party because one or more of the conditions to such party's obligations hereunder is not satisfied as a result of the other party's willful failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies for breach of contract or otherwise, including, without limitation, damages, costs and expenses (including reasonable counsel fees) relating thereto, shall also survive such termination unimpaired.

ARTICLE VIII
EXTENT OF REPRESENTATIONS, WARRANTIES, CONVENANTS AND AGREEMENTS; INDEMNIFICATION; TAX BENEFITS

8.1. Scope of Representations of the Seller. Except as and to the extent set forth in this Agreement and the exhibits and schedules attached thereto, the Seller and the Company make no other representations or warranties, and disclaim all liability and responsibility for any representation or warranty otherwise made or communicated (orally or in writing) to the Purchaser (including, but not limited to, any opinion, information or advice that may have been provided to the Purchaser by any officer, director, employee, agent, consultant or representative of the Seller, any Affiliate of the Seller or by Morgan Stanley & Co. Incorporated, any environmental consulting firm, the Seller's counsel or any other agent, consultant or representative). Without limiting the generality of the foregoing, except as and to the extent set forth in this Agreement, and the exhibits and schedules attached hereto (including, without limitation, the Deed and the Bill of Sale), the Seller and the Company make no representation or warranty, either express or implied, as to (a) the title to any of the Seller's properties, (b) the contents of the Confidential Information Packages dated July 23, 1992 and July 1994 relating to Kerr-McGee Refining Corporation and its Subsidiaries, as subsequently amended, (c) the maintenance, repair, condition, design or marketability of the Assets or (d) any other materials or information that may have been made available or communicated to the Purchaser or its agents, consultants or representatives in connection with the transactions contemplated by this Agreement or any discussion or presentation relating thereto, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, it being the express agreement of the Purchaser and the Seller that except as expressly set forth in this Agreement, the Purchaser will obtain rights in the Assets in their present condition and state of repair, "as is" and "where is". The Purchaser acknowledges and affirms that, as of the Closing Date, it will have completed its own independent investigation, analysis and evaluation of the Assets that it has been afforded the opportunity to inspect the Assets, that in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby Purchaser has relied exclusively on its own independent investigation, analysis and evaluation of the Assets and upon the express representations and warranties by the Seller made in this Agreement and the exhibits and schedules attached thereto, the Deed, and Bill of Sale as a basis for entering into this Agreement, and that it has made all such reviews and inspections as it has deemed necessary or appropriate. The Purchaser represents and warrants to the Seller that the Purchaser seeks to purchase the Assets for commercial use and that the Purchaser will at the time of Closing have assets of $25 million or more or is owned or controlled by a Person with assets of $25 million or more. Each of the Purchaser and Seller acknowledges, represents and warrants that it is a "business consumer" as that term is defined by the Texas Deceptive Trade Practices -- Consumer Protection Act (hereinafter referred to as the "DTPA"), Subchapter E of Chapter 17 of the Texas Business and Commerce Code, and, as such, the DTPA is not in any way applicable to the transactions contemplated by this Agreement; and each of Seller and Purchaser waives the rights provided under the DTPA to the full extent permitted by law in the event the foregoing representation is incorrect.

8.2. Indemnification of the Purchaser. The Seller and the Company jointly and severally agree to unconditionally release and indemnify and defend each party constituting the Purchaser and such party's agents, representatives, successors, assigns, officers, directors, employees, and Affiliates (each a "Purchaser Indemnitee") against, and hold the Purchaser Indemnitees harmless from, any and all liabilities, losses, damages, costs, penalties (civil or criminal), expenses, fines, settlements, interest, suits, causes of action, legal or administrative proceedings, arbitrations, demands or claims (excluding special, indirect and consequential damages, but including reasonable attorneys' fees) incurred or suffered by any Purchaser Indemnitee (**"Purchaser Indemnified Losses"**):

(a) arising out of or resulting from any inaccuracy in or breach of any of the representations, warranties, covenants, or agreements made by the Seller or the Company herein;

(b) arising out of or resulting from legal actions, lawsuits, claims, grievances, proceedings, arbitration or investigations to the extent based on claims or demands arising from or in connection with or related to the ownership, use, or operation of the Assets prior to the Closing Date (other than those related to Environmental Liabilities of Seller, which are covered by (c) below);

(c) arising out of or resulting from any Environmental Liabilities of Seller;

(d) arising out of or resulting from fines or administrative penalties levied by Governmental Authorities as a result of any non-compliance with OSHA's Process Safety Management Standard (29 CFR Part 1910.119) relating to the Assets or the operation of the Refinery which non-compliance occurs at any time during the six (6) month period immediately following the Closing Date, but only to the extent that such non-compliance (i) arises out of or results from Seller's failure to meet the requirements of the Process Safety

Management Standard prior to the Closing Date and (ii) is not due to the failure of Purchaser to diligently and continuously prosecute the compliance activities currently in progress at the Refinery at the Closing Date as set forth in Schedule 8.2; and

(e) arising out of or resulting from (including, but not limited to, any costs incurred by Purchaser as a result of higher operating expenses) (i) the failure of the Hydrobon air permit to be reissued after the date hereof, (ii) the failure of the Hydrobon air permit to be reissued after the date hereof with the terms and conditions as recommended by the TNRCC Hearings Examiner in a letter dated May 25, 1995 from Tommy Broyles to Patricia Finn, (iii) Purchaser's actions or attempts to satisfy the new terms and conditions contained in such permit if reissued with different terms and conditions, and (iv) Purchaser's appeal of any new terms and conditions relating to such permit, and Seller and Company agree to assist Purchaser in any appeal by Purchaser of the new permit.

Purchaser shall not be entitled to assert rights of indemnification under this Section 8.2 unless and until the aggregate of all Purchaser Indemnified Losses exceeds $500,000 (the "Threshold Amount"), it being understood that all such Purchaser Indemnified Losses shall accumulate until such time or times as the aggregate of all Purchaser Indemnified Losses exceeds such Threshold Amount, whereupon the Purchaser shall be entitled to indemnification hereunder for any Purchaser Indemnified Losses in excess of, but excluding, such Threshold Amount and it being further understood that the Threshold Amount does not apply to Retained Liabilities, the Cleanup Threshold, or the rights of indemnification under Sections 8.2(d) and 8.2(e) above. And provided further, that the Purchaser shall not be entitled to assert rights of indemnification under Paragraph 8.2(c), above, with respect to any Environmental Cleanup Costs until the aggregate of all Environmental Cleanup Costs has exceeded the Cleanup Threshold, and then only as to the excess of the aggregate of all Environmental Cleanup Costs over the Cleanup Threshold (it being understood and agreed that the Threshold Amount will not apply to any claims relating to Environmental Cleanup Costs in excess of the Cleanup Threshold).

8.3. Indemnification of the Seller. The Purchaser agrees to unconditionally release and indemnify and defend the Seller and the Company against, and hold the Seller and the Company and their respective agents, representatives, officers, directors, employees and Affiliates (each a "Seller Indemnitee") harmless from, any and all liabilities, losses, damages, costs, penalties (civil or criminal), expenses, fines, settlements, interest, suits, causes of action, legal or administrative proceedings, arbitrations, demands or claims (excluding special, indirect and consequential damages, but including reasonable attorneys' fees) incurred or suffered by any Seller Indemnitee (such losses, damages or expenses being referred to herein as "Seller Indemnified Losses"):

(a) arising out of or resulting from any inaccuracy in or breach of any of the representations, warranties or covenants or agreements made by the Purchaser herein;

(b) arising out of or resulting from legal actions, lawsuits, claims, grievances, proceedings, arbitration or investigations to the extent based on claims or demands arising from or in connection with or related to the ownership, use, or operation of the Assets on or after the Closing Date(other than those related to Environmental Liabilities of Purchaser which are covered by (c) below); and

(c) arising out of or resulting from any Environmental Liabilities of Purchaser.

Neither Seller nor the Company shall be entitled to assert rights of indemnification under this Section 8.3 unless and until the aggregate of all Seller Indemnified Losses exceeds the Threshold Amount (it being understood that all such Seller Indemnified Losses shall accumulate until such time or times as the aggregate of all Seller Indemnified Losses exceeds the Threshold Amount, whereupon the Seller and the Company shall be entitled to indemnification hereunder for any Seller Indemnified Losses in excess of, but excluding, the Threshold Amount).

8.4. Survival.

(a) The representations and warranties set forth in this Agreement and the indemnification obligations contained in Sections 8.2(a) and 8.3(a) shall expire on the second anniversary of the Closing Date (except to the extent that same relate to default by Seller under the Contracts, in which case they shall expire on the expiration of the statute of limitations applicable to claims for breaches of the Contract in issue) provided, however, that (i) any claim based on any such matters pending or asserted on or before the applicable expiration date or (ii) claims against Purchaser by third parties based on the Retained Liabilities, may continue to be asserted.

(b) Notwithstanding the foregoing paragraph, (i) the title warranties of the Seller contained in the Deed and the Bill of Sale shall survive the Closing and the termination of this Agreement, (ii) the obligations of the Seller and the Company to the Purchaser pursuant to the provisions of Section 8.2(c) and the obligations of the Purchaser to the Seller pursuant to the provisions of Section 8.3(c) shall survive the Closing and shall expire on the eighth anniversary of the Closing Date, and (iii) the provisions of Sections 4.2.1 and 4.2.5 shall expire on the sixth anniversary of the Closing Date; provided that any claim based on any such matters contained in this Article pending or asserted on or before the applicable expiration date may continue to be asserted. Unless otherwise addressed herein, all other representations, warranties, covenants, and indemnifications contained herein shall survive the Closing and the termination of this Agreement. The exception for Permitted Encumbrances in Section 3.1.3(b) shall survive the Closing and not merge in the Deed.

8.5. Indemnification Procedures. All claims for indemnification under this Agreement shall be asserted and resolved as follows:

(a) A party claiming indemnification under this Agreement (an "Indemnified Party") shall promptly (i) notify the party from whom indemnification is sought (the "Indemnifying Party") of any third party claim or claims ("Third Party Claim") asserted against the Indemnified Party which could give rise to a right of indemnification under this Agreement and (ii) transmit to the Indemnifying Party a written notice ("Claim Notice") describing in reasonable detail the nature of the Third Party Claim, a copy of all papers served with respect to such claim (if any), an estimate of the amount of damages attributable to the Third Party Claim, if reasonably possible, and the basis of the Indemnified Party's request for indemnification under this Agreement. The delay or failure of the Indemnified Party to give any such notice described herein shall not relieve the Indemnifying Party of any liability it may have hereunder to the Indemnified Party except to the extent the Indemnifying Party is actually prejudiced thereby.

Within twenty days after receipt of any Claim Notice (the "Election Period"), the Indemnifying Party shall notify the Indemnified Party (i) whether the Indemnifying Party disputes its potential liability to the Indemnified Party under this Article VIII with respect to such Third Party Claim and (ii) whether the Indemnifying Party desires, at the sole cost and expense of the Indemnifying Party, to defend the Indemnified Party against such Third Party Claim.

(b) If the Indemnifying Party notifies the Indemnified Party within the Election Period that the Indemnifying Party does not dispute its potential liability to the Indemnified Party under this Article VIII and that the Indemnifying Party elects to assume the defense of the Third Party Claim, then the Indemnifying Party shall have the right to defend, at its sole cost and expense, with counsel of its choice (it being understood and agreed that such counsel shall not presently or in the past represent William Koch or any Affiliate of William Koch and that the Indemnifying Party in any event shall not utilize counsel to which the Indemnified Party has reasonable objection) such Third Party Claim by all appropriate proceedings, which proceedings shall be prosecuted diligently by the Indemnifying Party to a final conclusion or settled at the discretion of the Indemnifying Party in accordance with this Section 8.5(b), provided, however, that the Indemnifying Party shall not settle any Claim against an Indemnified Party without the prior written consent of such Indemnified Party, which shall not be unreasonably withheld. The Indemnifying Party shall have full control of such defense and proceedings. The Indemnified Party is hereby authorized, at its sole cost and expense, to file, during the Election Period, any motion, answer or other pleadings which the Indemnified Party shall deem necessary or appropriate to protect its interests or those of the Indemnifying Party and which are not unnecessarily prejudicial to the Indemnifying Party. If the Indemnifying Party does not commence the diligent defense of such Third Party Claim within a reasonable period of time after having been afforded the opportunity to do so in accordance with this Section, the Indemnified Party shall have the right to undertake the defense of the Claim as it may deem appropriate at the cost and expense of the Indemnifying Party. Notwithstanding the Indemnifying Party's defense of any Third Party Claim as provided herein, the Indemnified Party may participate in such defense of such Claim and employ counsel at its own expense. If requested by the Indemnifying Party, the Indemnified Party shall, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnifying Party and its counsel as reasonably necessary in contesting any Third Party Claim which the Indemnifying Party elects to contest, including, without limitation, the making of any related counterclaims and cross claims reasonably necessary to protect the interests of the Indemnifying and Indemnified Parties. The Indemnified Party may participate in, but not control, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party pursuant to this Section 8.5(b) and, except as permitted above or pursuant to Section 8.5(c), shall bear its own costs and expenses with respect to such participation. The Indemnified Party shall not waive any legal privilege where doing so might prejudice the interests of the Indemnifying Party, without the Indemnifying Party's consent.

(c) If the Indemnifying Party fails to notify the Indemnified Party within the Election Period that the Indemnifying Party elects to defend the Indemnified Party pursuant to Section 3.5(b), or if the Indemnifying Party elects to defend the Indemnified Party pursuant to Section 8.5(b) but fails to diligently and promptly prosecute such defense or otherwise resolve the Third Party Claim, then the Indemnified Party shall have the right to defend, at the sole cost and expense of the Indemnifying Party (which cost and expense shall include, but not be limited to, in-house attorney fees of the Indemnified Party, subject to reasonable audit rights of the Indemnifying Party), the Third Party Claim by all appropriate proceedings, which proceedings shall be promptly and vigorously prosecuted by the Indemnified Party to a final conclusion or settled. Any failure of the Indemnifying Party to defend any Claim, shall not relieve the Indemnifying Party of its obligations hereunder; provided that the Indemnified Party shall have given the Indemnifying Party notice pursuant to Section 8.5(a) above of its intention to afford the Indemnifying Party the opportunity to assume the defense within such period as may be reasonable. In the event the Indemnified Party is conducting the defense of the Third Party Claim under this Section 8.5(c), it shall have full control of such defense and proceedings; provided, however, that the Indemnified Party may not enter into, without the Indemnifying Party's consent, which consent shall not be unreasonably withheld, any compromise or settlement of such Third Party Claim.

Notwithstanding the foregoing, if the Indemnifying Party has delivered a written notice to the Indemnified Party disputing its potential liability to the Indemnified Party under this Article VIII and if such dispute is resolved in favor of the Indemnifying Party by a final, nonappealable order of a court of competent jurisdiction, the Indemnifying Party shall not be required to bear the costs and expenses of the Indemnified Party's defense pursuant to this Section 8.5(c) or of the Indemnifying Party's participation therein at the Indemnified Party's request and the Indemnified Party shall reimburse the Indemnifying Party in full for all reasonable costs and expenses so incurred. The Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 8.5(c), and the Indemnifying Party shall bear its own costs and expenses with respect to such participation.

(d) In the event an Indemnified Party should have a claim against an Indemnifying Party hereunder which does not involve a Third Party Claim, the Indemnified Party shall transmit to the Indemnifying Party a written notice (the "Indemnity Notice") describing in reasonable detail the nature of the claim, an estimate of the amount of damages attributable to such claim and the basis of the Indemnified Party's request for indemnification under this Agreement. If the Indemnifying Party does not notify the Indemnified Party in writing within thirty days from its receipt of the Indemnity Notice that the Indemnifying Party disputes such claim, the claim specified by the Indemnified Party in the Indemnity Notice shall be deemed a liability of the Indemnifying Party hereunder. If the Indemnifying Party has timely disputed such claim, as provided above, such dispute shall be resolved by litigation in an appropriate court of competent jurisdiction.

(e) Payments of all amounts owing by the Indemnifying Party pursuant to Sections 8.5(b) and (c) shall be made within ten days after the latest of (i) the settlement of the Third Party Claim, (ii) the expiration of the period for appeal of a final adjudication of such Third Party Claim or (iii) the expiration of the period for appeal of a final adjudication of the Indemnifying Party's liability to the Indemnified Party under this Agreement. Payments of all amounts owing by the Indemnifying Party pursuant to Section 8.5(d) shall be made within ten days after the later of (i) the expiration of the thirty-day Indemnity Notice period or (ii) the expiration of the period for appeal of a final adjudication of the Indemnifying Party's liability to the Indemnified Party under this Agreement.

(f) The Indemnified Party shall comply and shall cause its Affiliates to comply with any obligations thereof under any judgment, order, injunction, decree, stipulation or settlement arrangement issued or entered into in connection with any proceeding to which this Section 8.5 relates to which they are subject, for so long as such judgment, order, injunction, decree, stipulation or settlement arrangement remains in effect with respect to such entities.

8.6. Exclusive Remedies. Notwithstanding anything to the contrary contained in this Agreement, and except for claims arising solely by reason of claims against an Indemnified Party by a third party, the rights and remedies provided in Article VIII shall be the exclusive rights and remedies between the parties hereto arising under or as a result of this Agreement, each party waiving and releasing all other rights and remedies it might have at law or in equity against the other party, whether before or after expiration of the indemnification obligations of the parties contained in Article VIII hereof; provided, however, that nothing herein shall preclude any party hereto from asserting a claim against the other for equitable nonmonetary relief.

ARTICLE IX
BROKERS

The Seller, Company, and the Purchaser represent to one another that, except for Morgan Stanley & Co. Incorporated, which the Seller and the Company represent has been retained by its Affiliates to assist and advise it in connection with the transactions contemplated by this Agreement, neither the Seller, Company, nor the Purchaser, directly or indirectly, has employed any broker, finder or intermediary in connection with such transactions who might be entitled to a fee or commission upon the execution of this Agreement or consummation of the transactions contemplated hereby.

ARTICLE X
EXPENSES

Except as otherwise expressly provided in this Agreement, each of the parties hereto shall assume and bear all expenses, costs and fees incurred or assumed by such party in the preparation and execution of this Agreement and in compliance with and performance of the agreements and covenants contained in this Agreement, regardless of whether the transactions contemplated hereby shall be consummated.

ARTICLE XI
INSURANCE

11.1. Current Insurance. Company has provided Purchaser certain details of insurance policies held by or on behalf of Seller concerning the Assets and represents that such policies of insurance are in full force and effect.

11.2. Insurance Covenants. Seller and Company shall, until the Closing Time, continue to maintain insurance on the Assets as presently insured, covering property damage and loss of income by fire or other casualty. Seller and Company will maintain liability insurance covering liabilities, claims, and risks that (i) may be brought by third parties within seven (7) years after the Closing Date and (ii) emanate from or are the result of an occurrence prior to the Closing Time. Seller's and Company's said insurance shall be primary to, and not in excess of or contributory with respect to any other valid and collectible insurance available to Purchaser, as to such liabilities, claims and risks. Nothing in this Agreement shall prohibit Seller or Company from changing insurance carriers as it deems appropriate in the exercise of reasonable business judgment.

Nothing contained in this Section 11.2 alters Seller's or Company's obligations or liabilities under this Agreement, nor specifically limits Seller's or Company's indemnity obligations in the event insurance coverage is unavailable or exhausted or discontinued. Seller's and Company's obligations under this Section 11.2 shall terminate on the seventh anniversary of the Closing Date.

ARTICLE XII
MISCELLANEOUS

12.1. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if hand-delivered, sent by telecopier (with receipt confirmed), or mailed by registered or certified mail, return receipt requested, to the parties at the following addresses and numbers:

(A) If to any Purchaser, to:

Koch Refining Company
4111 E. 37th Street North
Wichita, Kansas 67220
Attention: President
Telecopy No.: 316-832-6099

With a copy to:

Koch Industries, Inc.
4111 E. 37th Street North
Wichita, Kansas 67220
Attention: General Counsel
Telecopy No.: 316-832-4796

(B) If to the Seller or the Company, to:

Southwestern Refining Company, Inc.
Kerr-McGee Corporation
123 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
Attention: General Counsel
Telecopy No.: 405-270-3977

With a copy to:

Kerr-McGee Corporation
Kerr-McGee Center
123 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
Attention: Chief Financial Officer
Telecopy No.: 405-270-4211

Any party may at any time give to the others notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address or addresses therein specified will be deemed to be the address of such party for the purposes of giving notice hereunder. With respect to any Tax, notice of any claim must be received by the party against whom such claim is made not later than the expiration of the applicable tax statute of limitations, if any, with respect to the Tax matter underlying such claim.

12.2. Exclusive Agreement. This Agreement, together with the other agreements and instruments delivered on the date hereof and the exhibits and schedules attached hereto, supersedes all prior agreements, commitments, or understandings among the parties (written or oral) with respect to its subject matter, other than the Confidentiality Agreement between the Company and the Purchaser which remains in effect until the Closing Date, and, except as aforesaid, is intended as a complete and exclusive statement of the terms of the agreement among the parties.

12.3. Choice of Law; Amendments; Headings. This agreement shall be construed in accordance with and governed by the internal laws of the State of Texas without giving effect to the principles of conflicts of laws thereof. This Agreement may not be changed or amended orally. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

12.4. Preparation of Agreement. The provisions of this Agreement were negotiated by the parties hereto and this Agreement shall be deemed to have been drafted by all the parties hereto.

12.5. Assignments and Third Parties. No party hereto shall assign this Agreement or any part hereof without the prior written consent of the other parties; provided, however, Purchaser may assign its rights and obligations under this Agreement to an Affiliate without obtaining the consent of the other parties hereto. Any assignment by Purchaser to an Affiliate shall not relieve Purchaser of any of its obligations hereunder. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. Other than the rights created in Article VI, after the Closing Date nothing in this Agreement shall entitle any Person other than the Seller or the Purchaser, or their respective heirs, successors and assigns permitted hereby, to any claim, cause of action, remedy or right of any kind.

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

12.7. Specific Performance. The parties hereto hereby represent and acknowledge that the remedies provided at law for a violation by any party of its obligations set forth in Sections 4.2.3, 4.2.5 and 4.4 hereof would be inadequate and that, as a result, any party hereto shall be entitled to, and the other parties shall not in any way object to (in addition to its right to damages and other relief) the remedy of specific performance (it being agreed by the parties hereto that this Section does not prohibit any party from seeking specific performance for violation of any other section herein) for any violation of its obligations set forth in such Sections 4.2.3, 4.2.5 and 4.4.

12.8. Further Assurances. At any time or from time to time at and after the Closing, each of the parties shall, at the request of the other, execute and deliver or cause to be executed and delivered all such assignments, consents, documents and instruments, and take or cause to be taken all such other reasonable actions as may be necessary or desirable in order to more fully and effectively carry out the intents and purposes of this Agreement. Additionally, Seller, Company, and Purchaser shall (i) each provide the other with such assistance as may reasonably be requested by any of them in connection with the preparation of any tax return, audit, or other examination by any taxing authority or judicial or administrative proceeding relating to liability for Taxes, (ii) each retain and provide the other with any records or other information which may be relevant to such return, audit, or examination, proceeding or determination, and (iii) each provide the other with any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any return of the other for any period.

12.9. Attachments Incorporated. All Schedules, Exhibits and Attachments hereto are deemed a part of this Agreement and are incorporated herein and made a part hereof.

12.10. Severability. If any provisions of this Agreement shall be held to be invalid or unenforceable under present or future law in whole or in part by any court of any competent jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or unenforceability of such provisions in any other jurisdiction. Such invalid or unenforceable provision shall be replaced, if possible, as to such jurisdiction by a provision that comes closest to the business objective intended by such invalid or unenforceable provision without being invalid or unenforceable itself.

12.11. Exclusivity. During the period in which this Agreement is in effect, neither the Seller, Company, or any of their respective Affiliates, officers, employees, representatives, or agents shall initiate, solicit, or encourage any proposal regarding the Assets or engage in negotiations regarding any such proposal.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

SOUTHWESTERN REFINING COMPANY, INC.

By: ____________________
Title: Vice President

KERR-MCGEE CORPORATION

By: ____________________
Title: V-P and Controller

KOCH REFINING COMPANY, L.P.

By: KRC/GP, Inc., its General Partner

By: ____________________
Title: EXEC VP.

KOCH EXPLORATION COMPANY

By: ____________________
Title: PRESIDENT

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