SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Vertex Energy Inc.

Form: 8-K

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): January 17, 2020

VERTEX ENERGY, INC.

(Exact name of registrant as specified in its charter)

Nevada	001-11476	94-3439569
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**

1331 Gemini Street
Suite 250
Houston, Texas 77058
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (866) 660-8156

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $01 Par Value Per Share	VTNR	The NASDAQ Stock Market LLC (Nasdaq Capital Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Letter Agreement and Heartland Option

On January 17, 2020 (the "Closing Date"), Tensile-Heartland Acquisition Corporation ("Tensile-Heartland"), an affiliate of Tensile Capital Partners Master Fund LP, an investment fund based in San Francisco, California ("Tensile"), exercised the option previously provided to Tensile-Heartland by Vertex Energy, Inc. (the "Company", "we" and "us") and Vertex Energy Operating LLC (" Vertex Operating", the Company's wholly-owned subsidiary), pursuant to that certain letter agreement dated July 26, 2019. The letter agreement provided Tensile-Heartland an option (the "Heartland Option"), exercisable at any time prior to June 30, 2020, to the extent certain pilot studies to be conducted by Vertex Refining Myrtle Grove LLC, a Delaware limited liability company ("MG SPV"), which entity was formed as a special purpose vehicle in connection with certain transactions, described in greater detail in the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 31, 2019 (the "Prior Form 8-K"), were successful. As previously announced, the results of the pilot studies were successfully validated.

In connection with the exercise of the Heartland Option, the parties entered into and completed the transactions described below:

Heartland Share Purchase and Subscription Agreement

On the Closing Date, the parties entered into a Share Purchase and Subscription Agreement (the " Heartland Share Purchase") by and among HPRM LLC, a Delaware limited liability company, which entity was formed as a special purpose vehicle in connection with the transactions, described in greater detail below ("Heartland SPV"), Vertex Operating, Tensile-Heartland, and solely for the purposes of the Heartland Guaranty (defined below), the Company.

Prior to entering into the Heartland Share Purchase, the Company transferred 100% of the ownership of Vertex Refining OH, LLC, its indirect wholly-owned subsidiary ("Vertex OH") to Heartland SPV in consideration for 13,500 Class A Units, 13,500 Class A-1 Preferred Units and 11,300 Class B Units of Heartland SPV and immediately thereafter contributed 248 Class B Units to the Company's wholly-owned subsidiary, Vertex Splitter, Inc., a Delaware corporation ("Vertex Splitter"), as a contribution to capital.

Vertex OH owns the Company's Columbus, Ohio, Heartland facility, which produces a base oil product that is sold to lubricant packagers and distributors.

Pursuant to the Heartland Share Purchase, Vertex Operating sold Tensile-Heartland the 13,500 Class A Units and 13,500 Class A-1 Preferred Units of Heartland SPV in consideration for $13.5 million. Also, on the Closing Date, Tensile-Heartland purchased 7,500 Class A Units and 7,500 Class A-1 Units in consideration for $7.5 million (less the expenses of Tensile-Heartland in connection with the transaction) directly from Heartland SPV.

We agreed to use $7 million of the amount received in connection with the sale of the Class A-1 Preferred Units to paydown amounts owed under that certain Credit Agreement with Encina Business Credit, LLC as agent and Encina Business Credit SPV, LLC and CrowdOut Capital LLC as lenders, and to maintain at least $350,000 of cash on our balance sheet for working capital (less amounts required to be applied to Tensile-Heartland's expenses associated with the transaction).

The approximate $7.5 million purchase amount and future free cash flows from the operation of Heartland SPV are planned to be available for investments at the Heartland facility to increase self-collections, maximize the throughput of the refinery, enhance the quality of the output and complete other projects.

Concurrently with the closing of the transactions described above, and pursuant to the terms of the Heartland Share Purchase, the Company, through Vertex Operating, purchased 1,000 newly issued Class A Units from MG SPV at a cost of $1,000 per unit ($1 million in aggregate).

The Heartland Share Purchase provides Tensile-Heartland an option, exercisable at its election, any time after the Closing Date, subject to the terms of the Heartland Share Purchase, to purchase up to an additional 7,000 Class A-2 Preferred Units at a cost of $1,000 per Class A-2 Preferred Unit from Heartland SPV.

The Heartland Share Purchase includes customary representations and warranties and requires Tensile-Heartland to indemnify Vertex Operating (and its related parties) and Vertex Operating to indemnify Tensile-Heartland (and its related parties) against various matters (subject to minimum losses being incurred by Tensile-Heartland (and its related parties, as applicable) of $320,000 and maximum losses of $4,840,000, subject to certain exceptions).

The Heartland Share Purchase also provided for a guarantee by the Company to Tensile-Heartland of the payment obligations of Vertex Operating as set forth in the Heartland Share Purchase (the "Heartland Guaranty").

In connection with the closing of the Heartland Share Purchase, Heartland SPV and Tensile entered into an advisory agreement (discussed below); Heartland SPV, Vertex Operating and the Company entered into an Administrative Services Agreement (discussed below); and Tensile-Heartland, Vertex Operating, Heartland SPV and the Company entered into an Environmental Remediation and Indemnification Agreement, whereby we agreed to indemnify and hold Tensile-Heartland harmless against certain environmental liabilities.

The Heartland Share Purchase had an effective date of January 1, 2020.

Administrative Services Agreement

Pursuant to an Administrative Services Agreement, entered into on the Closing Date, Heartland SPV engaged Vertex Operating and the Company to provide administrative/management services and day-to-day operational management services of Heartland SPV in connection with the collection, storage, transportation, transfer, refining, re-refining, distilling, aggregating, processing, blending, sale of used motor oil, used lubricants, wholesale lubricants, recycled fuel oil, or related products and services such as vacuum gas oil, base oil, and asphalt flux, in consideration for a monthly fee. The Administrative Services Agreement has a term continuing until the earlier of (a) the date terminated with the mutual consent of the parties; (b) a liquidation of Heartland SPV; (c) a Heartland Redemption (defined below); (d) the determination of Heartland SPV to terminate following a change of control (as described in the Administrative Services Agreement) of Heartland SPV or the Company; or (e) written notice from the non-breaching party upon the occurrence of a breach which is not cured within the cure period set forth in the Administrative Services Agreement.

The Administrative Services Agreement also provides that in the event that Heartland SPV is unable to procure used motor-oil (" UMO") through its ordinary course operations, subject to certain conditions, Vertex Operating and the Company are required to use their best efforts to sell (or cause an affiliate to sell) UMO to Heartland SPV, at the lesser of the (i) then-current market price for UMO sold in the same geography area and (ii) price paid by such entity for such UMO. Finally, the Administrative Services Agreement provides that in the event that the Heartland SPV is unable to procure vacuum gas oil ("VGO") feedstock through its ordinary course operations, subject to certain conditions, Vertex Operating and the Company are required to use their best efforts to sell (or cause an affiliate to sell) VGO to Heartland SPV, at the lesser of the (i) then-current market price for VGO sold in the same geographic area and (ii) price paid for such VGO.

Advisory Agreement

On the Closing Date, Heartland SPV entered into an Advisory Agreement with Tensile, pursuant to which Tensile agreed to provide advisory and consulting services to Heartland SPV and Heartland SPV agreed to reimburse and indemnify Tensile and its representatives, in connection therewith.

Heartland Limited Liability Company Agreement

The Heartland SPV is currently owned 35% by Vertex Operating and 65% by Tensile-Heartland. Heartland SPV is managed by a five-member Board of Managers, of which three members are appointed by Tensile-Heartland and two are appointed by the Company. The Class A Units held by Tensile-Heartland are convertible into Class B Units as provided in the Limited Liability Company Agreement of Heartland SPV (the "Heartland Company Agreement"), based on a conversion price (initially one-for-one) which may be reduced from time to time if new Units of Heartland SPV are issued and will automatically convert into Series A Units upon certain events described in the Heartland Company Agreement.

The Class A-1 and A-2 Preferred Units (" Class A Preferred Units "), which are 100% owned by Tensile-Heartland, accrue a 22.5% per annum preferred return subject to terms of the Heartland Company Agreement (the "Class A Yield").

Additionally, the Class A Unit holders (common and preferred) may force Heartland SPV to redeem the outstanding Class A Units at any time on or after the earlier of (a) the fifth anniversary of the Closing Date and (ii) the occurrence of a Heartland Triggering Event (defined below)(a "Heartland Redemption"). The cash purchase price for such redeemed Class A Unit will be the greater of (y) the fair market value of such units (without discount for illiquidity, minority status or otherwise) as determined by a qualified third party agreed to in writing by a majority of the holders seeking Heartland Redemption and Vertex Operating (provided that Vertex Operating still owns Class B Units on such date) and (z) the original per-unit price for such Class A Units plus fifty percent (50%) of the aggregate capital invested by the Class A Unit holders through such Heartland Redemption date. "Heartland Triggering Events" include (a) any termination of the Administrative Services Agreement pursuant to its terms and/or any material breach by us of the environmental remediation and indemnity agreement, (b) any dissolution, winding up or liquidation of the Company, Vertex Operating or any significant subsidiary of Vertex Operating, (c) any sale, lease, license or disposition of any material assets of the Company, Vertex Operating or any significant subsidiary of Vertex Operating, or (d) any transaction or series of related transactions (whether by merger, exchange, contribution, recapitalization, consolidation, reorganization, combination or otherwise) involving the Company, Vertex Operating or any significant subsidiary of Vertex Operating, the result of which is that the holders of the voting securities of the relevant entity as of the Closing Date are no longer the beneficial owners, in the aggregate, after giving effect to such transaction or series of transactions, directly or indirectly, of more than fifty percent (50%) of the voting power of the outstanding voting securities of the entity, subject to certain other requirements set forth in the Heartland Company Agreement.

In the event that Heartland SPV fails to redeem such Class A Units within 180 days after a redemption is triggered, the Class A Yield is increased to 25% until such time as such redemption is completed (with such increase being effective back to the original date of a notice of redemption). In addition, in such event, the Class A Unit holders may cause Heartland SPV to initiate a process intended to result in a sale of Heartland SPV.

Distributions of available cash of Heartland SPV pursuant to the Heartland Company Agreement (including pursuant to liquidations of Heartland SPV), subject to certain exemptions and exemptions set forth therein, are to be made (a) first, to the holders of the Class A Preferred Units, in amount equal to the greater of (A) the aggregate unpaid Class A Yield and (B) an amount equal to fifty percent (50%) of the aggregate capital invested by the Class A Preferred Unit holders (initially Tensile-Heartland)(such aggregate capital invested by the Class A Preferred Unit holders, the "Heartland Invested Capital", which totaled approximately $21 million as of the Closing Date, subject to adjustment as provided in the Heartland Share Purchase), less prior distributions (such greater amount of (A) and (B), the "Class A Preferred Priority Distributions "); (b) second, the Class A Preferred Unitholders, together as a separate and distinct class, are entitled to receive an amount equal to the aggregate Heartland Invested Capital; (c) third, the Class B Unitholders (other than Class B Unitholders which received Class B Units upon conversion of Class A Preferred Units), together as a separate and distinct class, are entitled to receive all or a portion of any distribution equal to the sum of all distributions made under sections (a) and (b) above; and (d) fourth, to the holders of Units who are eligible to receive such distributions in proportion to the number of Units held by such holders.

On or after the third anniversary of the Closing Date, the Company (through Vertex Operating) may elect to purchase all of the outstanding units of Heartland SPV held by Tensile-Heartland at the greatest of (i) the amount of the Class A Priority Distributions and the amount of the Heartland Invested Capital, had the Class A Yield accrued at 30% per annum (instead of the original stated 22.5% per annum), (ii) two hundred and seventy-five percent (275%) of the total Heartland Invested Capital, and (iii) a calculation based on the greater of six (6) times the trailing twelve (12) months' adjusted EBITDA and (B) six (6) times the next twelve (12) months' projected adjusted EBITDA, each as described in further detail in the Heartland Company Agreement.

Upon the occurrence of a Heartland Triggering Event (described above), the Class A Unitholders (initially Tensile-Heartland) may elect, by a majority vote, to (a) terminate the Administrative Services Agreement and appoint new management of Heartland SPV, (b) trigger a Heartland Redemption, and/or (c) purchase the Class B Units from the Class B Unitholders (initially Vertex Operating) at the fair market value of such units as determined by a qualified third party agreed to in writing by the parties.

The Heartland Company Agreement includes protective provisions requiring the consent of a majority of each class of unit holder before Heartland SPV undertakes certain material transactions; indemnification rights; non-competition obligations; rights of first refusal which are required to be complied with before any units are sold; transfer restrictions; and tag-along rights of the unit holders, subject to certain exceptions; and certain preemptive rights for the holders of units.

* * * * * * * * *

The foregoing descriptions of the Heartland Share Purchase and Heartland Company Agreement, do not purport to be complete and are qualified in their entirety by reference to the Heartland Share Purchase and Heartland Company Agreement, copies of which are attached as Exhibits 2.1 and 10.1, respectively, to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosures regarding the Heartland Share Purchase and Heartland Company Agreement as set forth above in Item 1.01 are incorporated by reference in this Item 2.03.

Item 7.01. Regulation FD Disclosure.

On January 22, 2020, the Company issued a press release announcing the completion of the transactions described above. The press release is furnished herewith as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits.

(b) Pro forma .

To the extent required by this Item, pro forma financial information required by Item 9.01(b) of Form 8-K will be filed by an amendment to this Form 8-K no later than four (4) business days after the Closing Date.

(d) Exhibits.

Exhibit No.	Description
2.1*+	Share Purchase and Subscription Agreement dated January 17, 2020, by and among HPRM LLC, Vertex Energy Operating LLC, Tensile-Heartland Acquisition Corporation, and solely for the purposes of Section 9.1, Vertex Energy, Inc.
10.2*	Limited Liability Company Agreement of HPRM LLC dated January 17, 2020
99.1**	Press Release of Vertex Energy, Inc., dated January 22, 2020

* Filed herewith.

** Furnished herewith.

+ Certain schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule or exhibit will be furnished supplementally to the Securities and Exchange Commission upon request; provided, however that Vertex Energy, Inc. may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule or exhibit so furnished.

SIGNATURES

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

VERTEX ENERGY, INC.

Date: January 22, 2020

By: */s/ Chris Carlson*
Chris Carlson
Chief Financial Officer

EXHIBIT INDEX

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Exhibit 2.1

SHARE PURCHASE AND SUBSCRIPTION AGREEMENT

BY AND AMONG

HPRM LLC,

VERTEX ENERGY OPERATING, LLC,

TENSILE-HEARTLAND ACQUISITION CORPORATION,

Solely for the purposes of Section 2.5,

VERTEX REFINING MYRTLE GROVE LLC

And, solely for the purposes of Section 2.5 and Section 9.1,

VERTEX ENERGY, INC.

DATED AS OF JANUARY 17, 2020

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Exhibits and Schedules

SHARE PURCHASE AND SUBSCRIPTION AGREEMENT

THIS SHARE PURCHASE AND SUBSCRIPTION AGREEMENT (this "Agreement") is entered into as of January 17, 2020, by and among HPRM LLC, a Delaware limited liability company (the "Company"), Vertex Energy Operating, LLC, a Texas limited liability company (the " Seller"), Tensile-Heartland Acquisition Corporation, a Delaware corporation ("Buyer"), solely for the purposes of Section 2.5, Vertex Refining Myrtle Grove LLC, a Delaware limited liability company ("Myrtle Grove LLC"), and, solely for the purposes of Section 2.5 and Section 9.1, Vertex Energy, Inc., a Nevada corporation (" Vertex Parent"). Capitalized terms used in this Agreement have the meanings assigned to such terms in Article 1 and elsewhere throughout this Agreement.

RECITALS

WHEREAS, Seller previously held of record and beneficially all of the issued and outstanding units of the Operating Company (the " Operating Company Units");

WHEREAS, in preparation for the transactions contemplated by this Agreement, Seller formed the Company and contributed the Operating Company Units to the Company in exchange for 13,500 Class A-1 Preferred Units, 13,500 Class A Common Units and 11,300 Class B Common Units (the "Contribution and Exchange");

WHEREAS, immediately following the Contribution and Exchange, Seller distributed 248 Class B Common Units to Vertex Parent; immediately following such distribution, Vertex Parent contributed such 248 Class B Common Units to Splitter as a contribution to capital (together with the Contribution and Exchange, the "Reorganization");

WHEREAS, Seller desires to sell, and Buyer desires to purchase from Seller, upon the terms and conditions set forth herein, the Purchased Units;

WHEREAS, concurrently with the sale of the Purchased Units, the Company desires to issue to Buyer, and Buyer desires to purchase from the Company, the Issued Units;

WHEREAS, concurrently with the Closing, Buyer, Seller, Splitter and the Company will enter into an amended and restated limited liability company agreement of the Company setting forth the rights and obligations of the members of the Company in the form attached hereto as Exhibit A (the "Amended and Restated Limited Liability Company Agreement");

WHEREAS, at the Closing, Buyer, Seller and the Company will enter into an administrative services agreement pursuant to which Seller will provide administrative services to the Company in the form attached hereto as Exhibit B (the "Administrative Services Agreement");

WHEREAS, at the Closing, the Company and Tensile Capital Management will enter into an advisory agreement in the form attached hereto as Exhibit C (the "Advisory Agreement");

WHEREAS, at the Closing, Buyer, Seller, Vertex Parent and the Company will enter into an Environmental Remediation and Indemnity Agreement pursuant to which Seller will indemnify Buyer and the Company with respect to certain environmental liabilities in the form attached hereto as Exhibit D (the "Environmental Matters Indemnification Agreement"); and

WHEREAS, the Company, Splitter, Seller and Buyer each expect to benefit from the consummation of the transactions contemplated hereby and, to induce each other to enter into this Agreement, agree to be bound by the terms and provisions in this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties to this Agreement agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions

For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Accounts Receivable" means all accounts and notes receivable of the Company Group (whether or not evidenced by a note) net of any doubtful accounts at the time of such calculation, with any balance that is greater than 90 days past due to be reserved as a doubtful account.

"Affiliate" of any particular Person shall mean any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by or under common control with such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law).

"Agreed Value" means $24,800,000.

"Aggregate Consideration" means the Purchase Price plus the Subscription Price.

"Business" means the collection, storage, transportation, transfer, refining, re-refining, distilling, aggregating, processing, blending, sale of used motor oil, used lubricants, wholesale finished lubricants, recycled fuel oil, or related products and services such as vacuum gas oil, base oil, and asphalt flux, provided, however, the business shall not include Swap Transactions where both sides of the transaction are outside the Territory, or sales of imported Group III base oil.

"Business Data" means all business information and all personally-identifying information and data (whether of employees, contractors, consultants, customers, consumers, or other Persons and whether in electronic or any other form or medium) that is in the possession or control of Company Group and is accessed, collected, used, processed, stored, shared, distributed, transferred, disclosed, destroyed, or disposed of by any of the Company's Business Systems.

"business days" means any day other than a Saturday or Sunday or a day on which banks in San Francisco, California are obligated by applicable Law or executive order to close.

"Buyer Fundamental Representations" means the representations and warranties of Buyer set forth in Sections 6.1 (Organization and Power), 6.2 (Authorization), and 6.5 (Brokerage).

"Buyer Transaction Expenses" means all of Buyer's fees and expenses incurred in connection with the transactions contemplated by this Agreement not otherwise reimbursed by Seller or its Affiliates in connection with that certain agreement, dated as of July 25, 2019, by and among Myrtle Grove LLC, Tensile-Myrtle Grove Acquisition Corporation, Seller and Vertex Parent, which fees and expenses shall not exceed $950,000.

"Class A Common Units" means the Class A Common Units of the Company.

"Class A-1 Preferred Units" means the Class A-1 Preferred Units of the Company.

"Class A-2 Preferred Units" means the Class A-2 Preferred Units of the Company.

"Class B Common Units" means the Class B Common Units of the Company.

"Closing Payment" means the Purchase Price minus the Seller Transaction Expenses.

"Code" means the Internal Revenue Code of 1986.

"Company Group" means, collectively, the Company and each of its Subsidiaries.

"Company Proprietary Rights" means all Intellectual Property and Intellectual Property Rights, including all Intellectual Property Rights in Company Software, owned, purported to be owned, used or held for use by any entity in the Company Group.

"Data Security Requirements" means, collectively, all of the following to the extent relating to Data Treatment or otherwise relating to privacy, security, or security breach notification requirements and applicable to the Company Group, to the conduct of its Business, or to any of the Business Systems or any Business Data: (i) the Company Group's own rules, policies, and procedures; (ii) all laws, rules and regulations applicable to the Company; (iii) industry standards applicable to the industry in which the Business operates to the extent applicable to the conduct of the Business (including, if applicable, the Payment Card Industry Data Security Standard (PCI DSS)); and (iv) contracts into which each member of the Company Group has entered or by which it is otherwise bound.

"Data Treatment" means the access, collection, use, processing, storage, sharing, distribution, transfer, disclosure, security, destruction, or disposal of any personal, sensitive, or confidential information or data (whether in electronic or any other form or medium).

"Dispute Procedure" means the engagement of an independent accounting firm reasonably acceptable to Buyer and Seller for the purpose of calculating the amount of Actual Indebtedness. For the avoidance of doubt, the independent accounting firm shall (i) only calculate Actual Indebtedness and (ii) not assign a value to Actual Indebtedness greater than the amount of Actual Indebtedness claimed by Buyer or lower than the value of Actual Indebtedness claimed by Seller. Any item not specifically submitted to the independent accounting firm shall be deemed final and binding on the parties. Buyer and Seller shall specify that the independent accounting firm will act as a neutral expert and not as a mediator or as a fiduciary to or advocate of either Buyer or Seller and shall instruct the independent accounting firm to reach a decision as promptly as practicable, and in any event within thirty (30) days of the date on which such dispute was referred to the independent accounting firm. The determination of the independent accounting firm shall be set forth in a written statement delivered to Buyer and Seller and, absent manifest error, the calculation of the independent accounting firm shall be binding. The fees for such independent accounting firm shall be equitably apportioned by the independent accounting firm based on the percentage of any disputed amount decided in favor of Buyer or Seller.

"Encina Loan" means the senior secured loan described in Section 2.1(b).

"Environmental Law" means any Law relating to pollution, public or worker health or safety, or the protection of the environment or natural resources, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), and the regulations promulgated pursuant thereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Excess Indebtedness" means the amount, if any, by which the Final Indebtedness exceeds $5,000,000.

"GAAP" means generally accepted accounting principles, consistently applied, in the United States as promulgated by all relevant accounting authorities.

"Government Licenses" means all permits, licenses (other than licenses to Intellectual Property), franchises, orders, registrations, certificates, variances, approvals and other authorizations obtained from Governmental Authorities or other similar rights, and all data and records pertaining thereto, including those listed on the attached Schedule 4.12 (as defined below).

"Governmental Authority" means any (i) federal, state, local, municipal, foreign or other government, (ii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, commission, board, bureau, department or other entity and any court or other tribunal), (iii) multinational organization or (iv) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature, including any arbitrator (whether public or private).

"Guarantee" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon the debt, obligation or other liability of any other Person (other than by endorsements of instruments in the ordinary course of collection), or guarantees of the payment of dividends or other distributions upon the shares of any other Person.

"Hazardous Materials" means any material, substance, chemical, contaminant, pollutant or waste that is regulated, defined or listed as hazardous or toxic, or for which liability or standards of conduct may be imposed, under any Environmental Law, including any petroleum or petroleum byproducts, asbestos, polychlorinated biphenyls, noise, odors and radiation.

"Insider" means (i) any officer, manager or director of any entity in the Company Group or Seller; (ii) any relative by blood or marriage of any individual listed in clause (i) hereof; (iii) any Person in which any individual listed in clauses (i) or (ii) hereof has a beneficial interest equal to 10% or greater of the voting power thereof; or (iv) any Affiliate of any of the foregoing.

"Intellectual Property" means all (i) computer software and software systems (including Source Code, object code, data, data bases and related documentation); (ii) confidential information, and proprietary data and information (including compilations of data (whether or not copyrighted or copyrightable), ideas, formulae, compositions, blends, processes, know-how, manufacturing and production processes and techniques, inventions (whether or not patentable and whether or not reduced to practice), research and development information, drawings, specifications, designs, plans, improvements, proposals, technical data, financial and accounting data, business and marketing plans, and customer and supplier lists and related information); and (iii) all copies and tangible embodiments of the foregoing (in whatever form or medium).

"Intellectual Property Rights" means all registered and unregistered intellectual property rights throughout the world, including all of the following items and any and all corresponding rights that, now or hereafter, may be secured throughout the world: (i) patents, patent applications, and any reissues, continuations, continuations-in-part, divisions, continued prosecution applications, extensions, as well as all reissues or reexaminations thereof; (ii) trademarks, service marks, trade dress, logos, slogans, trade names, Internet domain names, corporate names and other indicia of source and all registrations and applications for registration thereof, together with all goodwill associated therewith; (iii) copyrights, copyrightable works and works of authorship, and all registrations and applications for registration thereof; (iv) mask works and all registrations and applications for registration thereof; and (v) rights in trade secrets.

"Indebtedness" means, without duplication, as of immediately prior to the Closing, all obligations of the Company Group (i) for borrowed money, (ii) owed under a credit facility or evidenced by any note, debenture, performance bond or other debt security or similar instrument or similar obligations which are secured by a Lien, (iii) pursuant to any lease that is, or is required to be in accordance with GAAP, classified as a capital lease, (iv) for the deferred purchase price of property or services (other than trade liabilities incurred in the ordinary course of business) (v) under or pursuant to which a Person assures a creditor against loss including, without limitation, reimbursement obligations of such Person under letters of credit, whether or not such letters of credit have been drawn, (vi) for accrued but unpaid interest, unpaid prepayment or redemption penalties, premiums or payments and unpaid fees and expenses that are payable in connection with retirement or prepayment of any of the foregoing, (vii) required to be treated as debt under GAAP, and (viii) in respect of any guarantees of any of the foregoing for the benefit of another Person.

"Issued Units" means 7,500 Class A Common Units and 7,500 Class A-1 Preferred Units.

"Knowledge" means (i) with respect to any member of the Company Group and Seller, the knowledge after due inquiry of Lance Butler, Ben Cowart, Chris Carlson, Dave Peel, Alvaro Ruiz, Erica Snedegar, Jeff Snedegar, Kyle Snider, Mike Stieneker, and John Strickland, Sr.; (ii) with respect to Buyer, the knowledge after due inquiry of its directors, managers, and executive officers.

"Leased Real Property" means all leasehold or subleasehold estates and other rights to use or occupy, any land, buildings, improvements, fixtures or other interest in real property held by the Company Group.

"Leases" means all leases, subleases, licenses, concessions and other agreements (written or oral), pursuant to which any entity in the Company Group holds any Leased Real Property, including the right to all security deposits and other amounts deposited by or on behalf of any entity in the Company Group.

"Liens" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude or agreement, transfer restriction (other than under state or federal securities laws) under any shareholder, stockholder or similar agreement, encumbrance or any other restriction or limitation whatsoever.

"Loss" means any (i) loss, liability, Tax, deficiency, diminution in value, damage (whether direct, indirect, incidental, consequential, lost profits, special or multiple-based damages and all other similar damages, but excluding punitive damages, except to the extent such damages are paid to a third party), claim or injury or (ii) expense (including reasonable legal expenses and costs, consultants' fees and expenses).

"Material Adverse Effect" means any event, circumstance, change, occurrence or effect that, individually or in the aggregate with all other events, circumstances, changes, occurrences or effects, (i) has or would reasonably be expected to have a material adverse effect upon the assets, liabilities, business, condition (financial or otherwise), results of operations, employee, customer or supplier relations of any member of the Company Group or the Company Group taken as a whole; or (ii) that has or would reasonably be expected to prevent or materially delay or impair the ability of Seller to consummate the transactions contemplated by this Agreement; provided that none of the following shall be deemed to constitute a Material Adverse Effect: any event (i) resulting from general economic, political, financial, banking, credit or securities market conditions, including any disruption thereof and any interest or exchange rate fluctuations, (ii) affecting companies in the industries, markets or geographical areas in which the Company conducts its business, (iii) resulting from natural disasters, acts of terrorism or war (whether or not declared), or epidemics or pandemics, provided, that the foregoing exclusions shall not apply to the extent the Company is disproportionately adversely affected by any event relative to other participants in the industries in which the Company operates.

"Operating Company" means Vertex Refining OH, LLC, an Ohio limited liability company.

"Organizational Documents" means, with respect to any entity, (i) the certificate or articles of incorporation and the bylaws, or the certificate of formation and partnership agreement or operating agreement, as applicable, and (ii) any documents comparable to those described above as may be applicable to such entity pursuant to any applicable Law or by contract.

"Owned Real Property" means all land, together with all buildings, structures, improvements and fixtures located thereon, and all easements and other rights and interests appurtenant thereto, including, without limitation, air, oil, gas, mineral and water rights, owned by the Company Group.

"Party" means each of Buyer, the Company, Seller, solely for the purposes of Section 2.5, Myrtle Grove LLC, and solely for the purposes of Section 2.5 and Section 9.1, Vertex Parent, and collectively, the "Parties."

"Permitted Liens" means (i) Liens for Taxes not yet due and payable as of the Closing Date or the validity of which is being contested in good faith by appropriate proceedings and as to which reserves have been established in accordance with GAAP on the face of the Latest Balance Sheet reflecting the full amount of such contested Taxes; (ii) statutory landlord's, mechanic's, carrier's, workmen's, repairmen's or other similar Liens arising or incurred in the ordinary course of business and for amounts which are not yet due and payable or which are being contested in good faith and for which adequate reserves have been established in accordance with GAAP; (iii) encumbrances and restrictions on real property (including easements, covenants, rights of way and similar matters affecting title), zoning, building and other land use Laws imposed by any Governmental Authority having jurisdiction over such parcel that do not materially interfere with the current use, occupancy, value or marketability of title of the property subject thereto; and (iv) Liens listed in Schedule 4.3(d).

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governmental Authority.

"Proceeding" means all litigation, suits, actions, claims, charges, prosecutions, complaints, material grievances, arbitrations, audits, examinations, investigations, hearings, inquiries and other proceedings (in each case, whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private).

"Purchase Price" means $13,500,000 minus the Excess Indebtedness.

"Purchased Units" means 13,500 Class A-1 Preferred Units and 13,500 Class A Common Units.

"Release" means any release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, migration or dumping into or through the environment.

"Securities Act" means the Securities Act of 1933.

"Seller Fundamental Representations" means the representations and warranties of Seller or the Company set forth in Sections 4.1 (Organization and Power), 4.2 (Authorization), 4.3 (Capitalization; No Breach), 4.8(a) (Absence of Certain Developments) 4.5(d) (Financial Statements; Indebtedness), 4.20 (Brokerage), 4.21 (Affiliate Transactions), 4.24 (Sufficiency of Assets), 5.1 (Organization and Power), 5.2 (Authorization), 5.5 (Brokerage) and 5.6 (Securities).

"Seller Transaction Expenses" means the aggregate amount of all fees and expenses, incurred by or on behalf of any member of the Company Group for which any member of the Company Group is liable in connection with the negotiation, preparation or execution of this Agreement or any documents or agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby, which amounts have not been paid by Seller or adequate provision for payment made by Seller and that, post-Closing, remain an obligation of any member of the Company Group, including (i) any fees and expenses associated with obtaining necessary or appropriate waivers, consents or approvals of any Governmental Authorities or third parties on behalf of any member of the Company Group, (ii) any fees or expenses associated with obtaining the release and termination of any Liens (other than Permitted Liens), (iii) all brokers' or finders' fees, (iv) fees, costs and expenses of counsel, advisors, consultants, investment bankers, accountants, auditors and experts and (v) all sale, change-of-control, "stay-around," retention, or similar bonuses, or payments to current or former directors, employees and other service providers of any member of the Company Group payable as a result of or in connection with the transactions contemplated hereby and any Taxes payable by any member of the Company Group in connection therewith, in each case that are unpaid as of immediately prior to the Closing.

"Source Code" means computer software and code, in form other than object code form, including related programmer comments and annotations, help text, data and data structures, instructions and procedural, object-oriented and other code that is not object code or executable code, which may be printed out or displayed in human readable form.

"Splitter" means Vertex Splitter Corporation, a Delaware corporation.

"Subsidiary" means, with respect to any Person, any corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (ii) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof.

"Subscription Payment" means the Subscription Price minus the Buyer Transaction Expenses.

"Subscription Price" means $7,500,000.

"Swap Transaction" means the exchange of used motor or industrial oil at one location with another used motor or industrial oil collection business or re-refiner at another location, provided, however, it shall not include any such transaction that would require the Company to provide products or services that the Company is not then able to perform or provide.

"Tax" means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, real property gains, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, membership interests, social security, escheat or abandoned property, unemployment, disability, payroll, license, employee or other withholding, or other tax, of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing; the foregoing, whether disputed or not shall include any transferee or secondary liability for a Tax and any liability assumed by agreement or arising as a result of being (or ceasing to be) a member of any Affiliated Group or being included (or required to be included) in any Tax Return relating thereto.

"Tax Return" means any return, declaration, report, claim for refund, information return or other document (including any amendment thereto or any related or supporting schedule, statement or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax of any party or the administration of any Laws, regulations or administrative requirements in any jurisdiction relating to any Tax.

ARTICLE 2

PURCHASE AND SALE; SUBSCRIPTION

2.1 Purchase and Sale.

(a) On and subject to the terms and conditions of this Agreement, at the Closing, Buyer agrees to purchase from Seller, and Seller agrees to sell assign, convey and transfer to Buyer, all of the Purchased Units free and clear of all Liens (other than any restrictions under the Securities Act and state securities Laws), in exchange for the Purchase Price. At the Closing, Buyer agrees to pay, or cause to be paid, to Seller the Closing Payment in exchange for the Purchased Units calculating the Excess Indebtedness, if any, using Estimated Indebtedness in lieu of Final Indebtedness.

(b) Seller shall, at the Closing, use $7,000,000 of the proceeds received from the sale of the Purchased Units to pay down the amount of Indebtedness then owing under the Credit Agreement, effective as of February 1, 2017, with Encina Business Credit, LLC as agent and Encina Business Credit SPV, LLC and CrowdOut Capital LLC as lenders thereunder (the "Encina Loan"), which payment shall secure a release of all Liens secured by any of the Company Group's assets (other than the Permitted Liens).

(c) At the Closing, Seller agrees to pay, or cause to be paid, such certain amount (as notified to Buyer in writing immediately prior to Closing) to the Company's balance sheet ("Additional Contribution"), as is necessary to ensure that the total amount of the Company's balance sheet immediately after Closing is $350,000, $250,000 of which shall be reserved for the Company's working capital purposes, and $100,000 of which shall be applied by the Company towards the payment of Buyer Transaction Expenses at or after Closing.

2.2 Indebtedness; Valuation Adjustment.

(a) At least five days prior to the Closing Date, Seller shall deliver to Buyer its good faith estimate of the aggregate Indebtedness of the Company Group as of the Closing (the "Estimated Indebtedness"). As promptly as practicable, but in any event within 30 days after the Closing Date, Buyer shall deliver to Seller its calculation of the aggregate Indebtedness of the Company Group as of the Closing (the "Actual Indebtedness") as well as its good faith estimate of the amount by which the equity value of the Company at Closing exceeded or was less than the Agreed Value (the "Proposed Valuation Adjustment" and together with the calculation of Actual Indebtedness, the "Closing Statement"). The Proposed Valuation Adjustment shall equal zero minus (i) the amount of Actual Indebtedness (disregarding, for the avoidance of doubt, any Excess Indebtedness that reduced the Purchase Price on a dollar-for-dollar basis at the Closing plus any Additional Excess Indebtedness determined post-Closing) less (ii) the accretive value, if any, of investments or acquisitions made with the proceeds of loans or other transactions comprising Actual Indebtedness (taking into account the impact on the Company's EBITDA resulting from such acquisitions and/or investments). If Seller has any objections to the matters set forth on the Closing Statement, Seller shall deliver to Buyer a statement setting forth its objections thereto (an "Objections Statement") and the basis for such objection and attach reasonably detailed supporting documentation. If an Objections Statement is not delivered to Buyer within 30 days after delivery of the Closing Statement, the Proposed Valuation Adjustment delivered by Buyer shall be deemed the "Final Valuation Adjustment" and Actual Indebtedness shall be deemed the " Final Indebtedness" and each shall be final, binding and non-appealable. If Seller does deliver an Objections Statement within such 30-day period Seller and Buyer shall negotiate in good faith to resolve the dispute set forth in the Objections Statement and to agree on the calculation of Actual Indebtedness and the Final Valuation Adjustment. If resolution with respect to the amount of Actual Indebtedness is not reached within 30 days after delivery of the Objections Statement, the dispute shall be resolved pursuant to the Dispute Procedure and the resulting calculation of Indebtedness shall be the "Final Indebtedness" and shall be final, binding and non-appealable. If the Final Indebtedness results in additional Excess Indebtedness, then, within three business days (any such amount, the "Additional Excess Indebtedness"), Seller shall wire to the Company immediately available funds in the amount of the Additional Excess Indebtedness. If resolution with respect to the Proposed Valuation Adjustment is not reached by the later of (x) the date that is 30 days after the delivery of the Objections Statement and (y) five days after the determination of Final Indebtedness, the "Final Valuation Adjustment" shall equal zero minus Actual Indebtedness (as agreed between the parties hereto or determined pursuant to the Dispute Procedure, as the case may be and disregarding, for the avoidance of doubt, any Excess Indebtedness that reduced the Purchase Price on a dollar-for-dollar basis at the Closing plus any Additional Excess Indebtedness determined post-Closing); provided that the Final Valuation Adjustment shall not be greater than $5,000,000 nor be less than -$5,000,000.

(b) As soon as reasonably practicable after the Final Valuation Adjustment is determined pursuant to Section 2.2(a), Buyer and Seller shall cause the Company to issue to Seller or cancel Class B Common Units then held by Seller, as the case may be, as follows:

(i) if the Final Valuation Adjustment is a negative number, the Company shall cancel the number of Class B Common Units equal to the absolute value of the Final Valuation Adjustment divided by 1,000.

(ii) if the Final Valuation Adjustment is a positive number, the Company shall issue the number of Class B Common Units equal to the Final Valuation Adjustment divided by 1,000.

(c) On or before April 15, 2020, Seller shall deliver to Buyer its good faith estimate of the amount equal to the operating cash flow generated by the Company from the period commencing with and including January 1, 2020 and ending on the Closing Date, before any amounts paid or applied, in the ordinary course of business and consistent with past practice, towards repayment of the Encina Loan during such period (the "Cash Adjustment Estimate"), and any reasonably detailed supporting documentation. The Cash Adjustment Estimate must be a positive number. If Buyer has any objections to the calculation of the Cash Adjustment Estimate, Buyer shall notify Seller of its objection in writing and the basis for such objection ("Cash Adjustment Objection"). If a Cash Adjustment Objection is not delivered to Seller within 30 days after Buyer's receipt of the Cash Adjustment Estimate, the Cash Adjustment Estimate delivered by Seller shall be deemed the "Final Cash Adjustment" and shall be final, binding and non- appealable. If Buyer does deliver a Cash Adjustment Objection within such 30-day period, Seller and Buyer shall negotiate in good faith to resolve the dispute and to agree on the calculation of Final Cash Adjustment. If resolution with respect to the amount of Final Cash Adjustment is not reached within 30 days after Buyer's delivery of the Cash Adjustment Objection, the dispute shall be resolved pursuant to the Dispute Procedure and the resulting calculation shall be deemed the Final Cash Adjustment and shall be final, binding and non-appealable. Seller shall, within three business days of the determination of the Final Cash Adjustment, wire to the Company immediately available funds in the amount of the Final Cash Adjustment.

2.3 Subscription. Buyer hereby subscribes and agrees to pay for, and the Company hereby accepts such subscription and agrees to issue to Buyer the Issued Units for the Subscription Price simultaneously with the consummation of the closing of the purchase and sale at the Closing. Buyer hereby agrees that it will pay, or cause to be paid, to the Company the Subscription Payment in exchange for the Issued Units.

2.4 Closing and Effective Date. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "Closing") will occur on the date hereof, simultaneously with the execution of this Agreement and will take place via the electronic exchange of signature pages. The date upon which the Closing occurs shall be referred to herein as the "Closing Date." The sale of the Purchased Units and the issuance of the Issued Units contemplated by this Agreement shall be deemed to take place and be effective at 12:01 a.m. Pacific Time on January 1, 2020 ("Effective Date").

2.5 Myrtle Grove Purchase. At the Closing, Seller and Myrtle Grove LLC will enter into a subscription agreement for the purchase by Seller of 1,000 newly issued Class A Units of Myrtle Grove LLC from Myrtle Grove LLC at a cost of $1,000 per Class A Unit ("Myrtle Grove Subscription Agreement").

2.6 Second Closing. At Buyer's sole election, at any time after the Closing, Buyer may, subject to the terms and conditions of this Agreement, purchase from the Company up to 7,000 Class A-2 Preferred Units at a cost of $1,000 per Class A-2 Preferred Unit.

2.7 Withholding. Notwithstanding any other provision in this Agreement, Buyer and the Company shall have the right to deduct and withhold any Taxes required to be withheld under the Code or similar state or local tax Law from any payments to be made hereunder. To the extent that amounts are so withheld and paid to the appropriate Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the applicable Seller or any other recipient of payment in respect of which such deduction and withholding was made.

ARTICLE 3

CLOSING DELIVERABLES

3.1 Closing Deliverables of Buyer. At or prior to the Closing (unless waived in writing by the Company in its sole discretion), Buyer shall have:

(a) delivered, or caused to be delivered, to the Company and Seller:

(i) certified copies of the resolutions duly adopted by Buyer's board of directors authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby, and the consummation of all transactions contemplated hereby and thereby;

(ii) a duly executed counterpart signature page to the Amended and Restated Limited Liability Company Agreement;

(iii) a duly executed counterpart signature page to the Administrative Services Agreement;

(iv) a duly executed counterparty signature page to the Advisory Agreement;

(v) a duly executed counterpart signature page to the Environmental Matters Indemnification Agreement; and

(b) paid or cause to be paid:

(i) to Seller, the Closing Payment in accordance with Section 2.1;

(ii) to the Company, the Subscription Payment in accordance with Section 2.2; and

(iii) at Buyer's sole discretion, to (A) the Company's creditors in respect of the Company's Indebtedness or (B) the Company's balance sheet, the aggregate amount of the Excess Indebtedness.

3.2 Closing Deliverables of the Company and Seller. At or prior to the Closing (unless waived in writing by Buyer in its sole discretion), the Company and Seller shall have delivered, or caused to have delivered, to Buyer all of the following:

(a) certified copies of the resolutions duly adopted by the (i) board of managers of the Company, and (ii) board of managers of Seller, in each case authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby, and the consummation of all transactions contemplated hereby and thereby;

(b) certificates of the appropriate officials of the jurisdictions in which each member of the Company Group is formed and each jurisdiction where such Person is qualified to do business stating that such Person is in good standing, qualified to do business or the equivalent certified on a date not greater than five business days prior to the Closing Date;

(c) all consents and approvals by Governmental Authorities or other Persons that (i) are required in respect of any Company Material Contract and (ii) the consents and approvals set forth on Schedule 3.2(c) hereof, all on terms and conditions reasonably satisfactory to Buyer;

(d) a duly executed counterpart signature page to the Amended and Restated Limited Liability Company Agreement;

(e) a duly executed counterpart signature page to the Administrative Services Agreement;

(f) a duly executed counterparty signature page to the Advisory Agreement;

(g) a duly executed counterpart signature page to the Environmental Matters Indemnification Agreement;

(h) a non-foreign affidavit delivered by Seller and dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Code Section 1445 stating that such Person is not a "Foreign Person" as defined in Code Section 1445 in the form attached as Exhibit E hereto;

(i) the Myrtle Grove Subscription Agreement, duly executed by Seller and Myrtle Grove LLC and dated as of the Closing Date;

(j) Real Estate Matters:

(i) Title Insurance. ALTA Owner's Title Insurance Policy (or other form of policy acceptable to Buyer) for each Owned Real Property (other than Owned Real Property located outside the United States), issued by a title insurance company satisfactory to Buyer (the "Title Company"), together with a copy of all documents referenced therein (which may be in the form of a mark-up of a pro forma of the commitments for title insurance ("Title Commitments")) in accordance with the Title Commitments, insuring the Company's or Subsidiary's fee simple title to each Owned Real Property as of the Closing Date (including all recorded appurtenant easements insured as separate legal parcels) with gap coverage from the Company through the date of recording, subject only to Permitted Liens, in such amount, not to exceed in the aggregate the Purchase Price, as Buyer reasonably determines to be the value of the Owned Real Property insured thereunder and allocated in the manner determined by Buyer (the "Title Policies"). Each of the Title Policies shall include an extended coverage endorsement (insuring over the general or standard exceptions), ALTA Form 3.1 zoning (with parking and loading docks) and all other endorsements reasonably requested by Buyer, in form and substance reasonable satisfactory to Buyer. Seller shall pay all fees, costs and expenses with respect to the Title Commitments and Title Policies.

(ii) Survey. Buyer shall have obtained no later than ten (10) days prior to the Closing, a survey for each Owned Real Property, dated no earlier than the date of this Agreement, prepared by a licensed surveyor satisfactory to Buyer, and conforming to 2016 ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, including Table A Items Nos. 1, 2, 3, 4, 6, 7(a), 7(b)(1), 7(c), 8, 9, 10, 11(b), 13, 14, 15 and 16, and such other standards as the Title Company and Buyer require as a condition to the removal of any survey exceptions from the Title Policies, and certified to Buyer, Buyer's lender and the Title Company, in a form satisfactory to each of such parties (the "Surveys"). The Surveys shall not disclose any encroachment from or onto any of the Real Property or any portion thereof or any other survey defect which has not been cured to Buyer's reasonable satisfaction prior to the Closing. Seller shall pay all fees, costs and expenses with respect to the Surveys.

(iii) Consents. To the extent required by the terms of any Lease set forth in Schedule 3.2(c), a consent from the landlord/lessor under each such Lease to the transfer of any such Lease by reason of the transactions contemplated under this Agreement; and

(k) Additional Contribution. Seller shall have paid, or cause to the paid, the Additional Contribution to the Company's balance sheet.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COMPANY

As an inducement to Buyer to enter into this Agreement, Seller and the Company hereby jointly and severally make, as of the date hereof, the following representations and warranties to Buyer.

4.1 Organization and Power.

The Company is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware. The Operating Company is a limited liability company, duly organized, validly existing and in good standing under the Laws of the state of Ohio. Each member of the Company Group is qualified to do business and is in good standing in the jurisdictions listed across from the name of such member of the Company Group on the attached Schedule 4.1, which jurisdictions constitute all of the jurisdictions in which the ownership of properties or the conduct of business requires such member of the Company Group to be so qualified. Each member of the Company Group has all requisite limited liability company power and authority and all licenses, permits and authorizations necessary to own and operate its assets and to carry on its business as presently conducted. The Organizational Documents of each member of the Company Group that have previously been furnished to Buyer reflect all amendments thereto and are correct and complete. No member of the Company Group in default under or in violation of any provision of its Organizational Documents.

4.2 Authorization.

The Company has all necessary limited liability company power and authority to execute and deliver this Agreement and each other agreement, document or instrument or certificate contemplated hereby and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and each other agreement, document or instrument or certificate contemplated hereby to which it is a party and each of the transactions contemplated hereby or thereby have been duly and validly authorized by the Company and no other act or proceeding on the part of any entity in the Company Group, their respective equityholders are necessary to authorize the execution, delivery or performance by the Company of this Agreement or each other agreement, document or instrument or certificate contemplated hereby or the consummation of any of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by the Company. This Agreement and each other agreement, document or instrument or certificate contemplated hereby, assuming the due authorization, execution and delivery thereof by Buyer (to the extent a party thereto), constitutes a valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity ("Enforceability Exceptions").

4.3 Capitalization.

(a) As of immediately prior to the Closing, the issued and outstanding equity interest of the Company consists solely of 13,500 Class A Common Units and 13,500 Class A-1 Preferred Units held by Seller and 11,052 Class B Common Units held by Seller and 248 Class B Common Units held by Splitter (collectively, the "Company Units"). All of the Company Units were duly authorized, validly issued and are free of all preemptive rights. There are no outstanding (i) securities convertible into or exchangeable for the equity interests of the Company, (ii) options, warrants or other rights to purchase or subscribe for equity interests in the Company, or (iii) contracts or understandings of any kind relating to the issuance, transfer, repurchase, redemption, reacquisition or voting of any equity interests of the Company, any such convertible or exchangeable securities or any such options, warrants or rights, pursuant to which, in any of the foregoing cases, the Company, is party or bound. With respect to any equity securities of the Company subject to a "substantial risk of forfeiture" (within the meaning of Code Section 83 and the Treasury Regulations promulgated thereunder), the applicable holder thereof made a valid Code Section 83(b) election. There are no outstanding or authorized equity appreciation, phantom equity or similar rights with respect to the Company and (y) there are no agreements to which the Company is a party or by which it is bound with respect to the voting (including voting trusts or proxies), registration under the Securities Act or any other securities Law, or sale or transfer (including agreements relating to preemptive rights, rights of first refusal, co-sale rights or "drag-along" rights) of any securities of the Company. There are no agreements with respect to the voting (including voting trusts or proxies) or sale or transfer (including agreements relating to rights of first refusal, co-sale rights or "drag-along" rights) of any securities of the Company. All of the issued and outstanding Company Units were issued in material compliance with applicable federal and state securities Laws. The Issued Units have been duly authorized and, upon issuance to Buyer in accordance with this Agreement, validly issued, and shall have been issued in accordance with the registration or qualification provisions of the Securities Act, and any applicable state securities Laws, or, in each case, pursuant to valid exemptions therefrom. Immediately following the Closing shall be as set forth on Schedule 4.3(a).

(b) The Company is the beneficial and record owner of all authorized and outstanding equity interests of the Operating Company, free and clear of all Liens (except for Permitted Liens and those imposed by federal or state securities laws). All the issued and outstanding equity interests of the Operating Company are duly authorized, validly issued, fully paid and free of any preemptive rights in respect thereto. There are no outstanding (i) securities convertible into or exchangeable for the equity interests of the Operating Company, (ii) options, warrants or other rights to purchase or subscribe for equity interests in the Operating Company, or (iii) contracts or understandings of any kind relating to the issuance, transfer, repurchase, redemption, reacquisition or voting of any equity interests in the Operating Company, any such convertible or exchangeable securities or any such options, warrants or rights, pursuant to which, in any of the foregoing cases, the Operating Company, is party or bound. With respect to any equity securities of the Company subject to a "substantial risk of forfeiture" (within the meaning of Code Section 83 and the Treasury Regulations promulgated thereunder), the applicable holder thereof made a valid Code Section 83(b) election. There are no outstanding or authorized equity appreciation, phantom equity or similar rights with respect to the Operating Company and (y) there are no agreements to which the Operating Company is a party or by which it is bound with respect to the voting (including voting trusts or proxies), registration under the Securities Act or any other securities Law, or sale or transfer (including agreements relating to preemptive rights, rights of first refusal, co-sale rights or "drag-along" rights) of any securities of the Operating Company. There are no agreements with respect to the voting (including voting trusts or proxies) or sale or transfer (including agreements relating to rights of first refusal, co-sale rights or "drag-along" rights) of any securities of the Operating Company.

(c) Except for the Company's ownership of the Operating Company, no entity in the Company Group owns or controls, directly or indirectly, any stock, partnership interest, joint venture interest, equity participation or other security or interest in any other Person.

4.4 No Breach.

Except as set forth on the attached Schedule 4.4, the execution, delivery and performance by the Company of this Agreement and each other agreement, document or instrument or certificate contemplated hereby and the consummation of each of the transactions contemplated hereby or thereby do not and will not (a) violate, conflict with, result in any material breach of, constitute a default under, result in the termination or acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice or consent under (i) any entity in the Company Group's Organizational Documents or (ii) any Company Material Contract, (b) result in the creation or imposition of any Lien upon any material assets of the Company Group or any of the equity interests of any entity in the Company Group, (c) require the Company Group to obtain any authorization, consent, approval, exemption or other action by or notice to any court, other Governmental Authority or other Person or entity under, the provisions of any applicable Law, or (d) violate or require any consent or notice under any Law, statute, regulation, rule, judgment, decree, order, stipulation, injunction, charge or other restriction of any Governmental Authority to which any entity in the Company Group or any of its assets are subject, or by which any entity in the Company Group or any of its assets are bound or affected.

4.5 Financial Statements; Indebtedness.

(a) Schedule 4.5(a) sets forth: (i) the unaudited balance sheets and statements of cash flow of the Operating Company as of December 31, 2019, and the related monthly unaudited statements of operations for the one-month period then ended (such statements, the "Latest Balance Sheet"); and (ii) audited balance sheets, statements of cash flows and statements of operations for the twelve-month periods ended December 31, 2018 and December 31, 2017 (together with the Latest Balance Sheet, the "Financial Statements").

(b) Each of the Financial Statements (including in all cases, the notes thereto, if any) is accurate, correct and complete, is based upon and consistent with information contained in the books and records of the Operating Company (which books and records are accurate, correct and complete) and fairly presents the financial condition and results of operations of the Operating Company as of the periods referred to therein in accordance with GAAP. The Financial Statements have been prepared in accordance with GAAP, as consistently applied by the Operating Company throughout such periods. The Operating Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded in a timely manner and as necessary to permit preparation of Financial Statements in accordance with GAAP and to maintain accountability for earnings and assets. During the periods covered by the Financial Statements, the Operating Company's external auditor was independent of the Operating Company and its management.

(c) Except as set forth on Schedule 4.5(c), all Accounts Receivable are (i) valid receivables incurred in the ordinary course of business from bona fide sales of products and/or services, (ii) properly reflected on the Operating Company's books and records and balance sheets in accordance with the Operating Company's historical accounting practices, as consistently applied, and (iii) are not subject to any counterclaim, defense, or a claim for a chargeback, deduction, credit, set-off or other offset, other than as reflected by the reserve for bad debts. Notwithstanding anything to the contrary, the foregoing statement shall not be deemed to be a representation as to the collectability of any such Accounts Receivable. No Person has any Lien (other than Permitted Liens) on any Accounts Receivable or any part thereof, and no agreement for deduction, free goods or services, discount or other deferred price or quantity adjustment has been made by the Operating Company with respect to any Accounts Receivable of the Operating Company other than in the ordinary course of business or as set forth on Schedule 4.5(c).

(d) Schedule 4.5(d) sets forth all Indebtedness of the Company.

4.6 Absence of Undisclosed Liabilities.

No entity in the Company Group has any Indebtedness, obligation or liability (in any case, whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due) other than: (i) liabilities and obligations set forth on face of the Latest Balance Sheet, (ii) liabilities and obligations which have arisen since the date of the Latest Balance Sheet in the ordinary course of business; (iii) liabilities and obligations under the contracts, agreements and arrangements set forth in Schedule 4.10, or under contracts, agreements and arrangements that are not required to be described thereon; and/or (iv) liabilities set forth on Schedule 4.6 (none of which, in the case of clauses (i), (ii) or (iii) hereof, is a liability resulting from, arising out of, relating to, in the nature of, or caused by any breach of contract, breach of warranty, tort, infringement, violation of Law, environmental matter, claim or lawsuit).

4.7 No Material Adverse Effect .

Since December 31, 2015, no member of the Company Group has suffered a Material Adverse Effect.

4.8 Absence of Certain Developments.

Except as set forth in Schedule 4.8, since January 1, 2018, the Company Group has conducted the Business only in the ordinary course of business and in a manner materially consistent with past custom and practice, and no member of the Company Group has:

(a)

(i) discharged or satisfied any material Lien or paid any material obligation or liability, other than current liabilities paid in the ordinary course of business, or cancelled, compromised, waived or released any material right or claim;

(ii) (A) sold, assigned, leased, licensed or otherwise disposed of any of its material assets, except for sales of products in the ordinary course of business; (B) mortgaged, pledged or subjected its assets to any Lien, except for Permitted Liens; or (C) cancelled without fair consideration any material debts or material claims owing to or held by it;

(iii) conducted its cash management customs and practices (including the collection of receivables, payment of payables, and pricing and credit practices) or otherwise managed its assets and liabilities other than in the ordinary course of business;

(iv) made any capital expenditures or commitments therefor in excess of the amounts set forth in the Operating Company's budget;

(v) declared, set aside or paid any dividend or distribution of cash or other property to any equityholders of the Company with respect to its equity interests or purchased, redeemed or otherwise acquired any shares or any warrants, options or other rights to acquire its shares, or made any other payments to any equityholder of the Company;

(vi) amended or authorized the amendment of the Organizational Documents of any entity in the Company Group;

(vii) (A) made, changed or revoked any Tax election, settled or compromised any Tax claim or assessment related to Taxes, entered into any closing agreement related to Taxes, or changed (or made a request to any Governmental Authority to change) any material aspect of its method of accounting for Tax purposes; (B) prepared or filed any Tax Return (or any amendment thereof) unless such Tax Return or amendment shall have been prepared in a manner consistent with past practice; or (C) except as otherwise required by Law, made any material change in accounting or Tax reporting principles, methods or policies; or

(viii) agreed, committed, arranged or entered into any understanding to do anything set forth in this Section 4.8(a).

(b)

(i) sold, assigned, leased, licensed, transferred, abandoned or permitted to lapse any material Government Licenses, or any of the Company Proprietary Rights or other intangible material assets, or disclosed any proprietary confidential information to any Person, except in the ordinary course of business (and in any event not with respect to any Company Proprietary Rights), or granted any license or sublicense of any rights under or with respect to any Intellectual Property other than non-exclusive licenses granted by the Company Group in the ordinary course of business consistent with past practices;

(ii) (A) awarded or paid any bonuses to any employee, officer or director of the Company Group except (x) to the extent accrued on the Latest Balance Sheet or reflected on the Financial Statements and set forth on Schedule 4.8 or (y) as required under the terms of a Plan or PEO Plan; (B) entered into any new employment, deferred compensation, severance, change in control, transaction sale or similar agreement (nor amended any such existing agreement), or materially changed the job title, role or responsibilities of any key employee of the Company Group other than as set forth on Schedule 4.8; (C) increased or agreed to increase the compensation payable or to become payable by it or benefits to be provided to any current or former director, officer, employee or consultant of the Company Group other than in the ordinary course of business consistent with past practice, (D) except as required by Law or as contemplated by this Agreement, adopted, amended or terminated any Plan (or any such arrangement that would constitute a Plan if it were in effect on the date hereof) or made any other material change in employment terms for any employee, officer or director; or (E) terminated, amended or renegotiated any existing collective bargaining agreement or entered into any new collective bargaining agreement or multiemployer plan;

(c) made any loans or advances to, or Guarantees for the benefit of, or entered into any transaction with any Insider, except for the transactions contemplated by this Agreement and for advances consistent with past custom and practice made to employees, officers and directors for travel or other business expenses incurred in the ordinary course of business;

(d) suffered any extraordinary loss, damage, destruction or casualty loss or waived any rights of material value, whether or not covered by insurance and whether or not in the ordinary course of business;

(e) created, incurred, assumed or guaranteed any Indebtedness, except trade payables or other current liabilities incurred in the ordinary course of business and liabilities under contracts entered into in the ordinary course of business;

(f) acquired (including by merger, consolidation, or acquisition of stock or assets) any interest in, or any assets of, any Person or any division thereof;

(g) failed to promptly pay and discharge current liabilities in an amount in excess of $20,000 except where disputed in good faith by appropriate proceedings;

(h) (A) made any material change in the standard prices or terms of distribution of the products or services of any entity in the Company Group, (B) made any material change to its standard allowance or return policies with respect to the products or services of any entity in the Company Group, (C) except in the ordinary course of business, granted any material pricing, discount, allowance or return terms for any specific customer or supplier, including by materially modifying the manner in which the Company Group licenses or otherwise distributes its products to such customer, or (D) materially decreased the amount of any subscription or maintenance renewal fees due to any entity in the Company Group from the amount of such subscription or maintenance renewal fee payable to any entity in the Company Group during the preceding 12-month period;

(i) instituted or settled any material Proceeding except for workers' compensation claims in the ordinary course of business;

(j) accelerated, terminated, modified or cancelled any Company Material Contract; or

(k) agreed, committed, arranged or entered into any understanding to do anything set forth in this Section 4.8(b).

4.9 Real Properties.

(a) Leased Real Property. The attached Schedule 4.9(a) sets forth the address of each Leased Real Property and a list of all Leases (including all amendments, extensions, renewals, guaranties and other agreements with respect thereto) for each Leased Real Property. The Seller has delivered to Buyer a true and complete copy of each such Lease document set forth in Schedule 4.9(a). Except as set forth in Schedule 4.9(a)(i), with respect to each of the Leases: (i) such Lease is legal, valid, binding on the applicable entity in the Company Group, and to the Knowledge of the Seller, on the other parties thereto, and is enforceable (subject to the effect of any Enforceability Exceptions) on the applicable entity in the Company Group, and to the Knowledge of the Seller, the other party thereto and in full force and effect; (ii) no entity in the Company Group nor, to the Knowledge of the Seller, any other party to the Lease, is in material breach or default under such Lease, and, to the Knowledge of the Seller, no event has occurred, and no circumstance or condition exists that (with or without notice or lapse of time) will or would reasonably be expected to, (A) give any entity the right to declare a default, seek material damages or exercise any other remedy under any such Lease or (B) give any entity the right to accelerate the maturity or performance of any such Lease; (iii) the Company Group has no disputes with respect to such Lease and has received no notice from the other party thereto; (iv) no security deposit or portion thereof deposited with respect to such Lease has been applied in respect of a breach or default under such Lease which has not been redeposited in full; (v) there are no material forbearance programs in effect with respect to such Lease; (vi) no entity in the Company Group has assigned, subleased, mortgaged, deeded in trust or otherwise transferred or encumbered such Lease or any interest therein, except as set forth in Schedule 4.9(a); (vii) the Company Group's possession and quiet enjoyment of the Leased Real Property under such Lease has not been disturbed; (viii) no entity in the Company Group owes, nor will owe in the future, any brokerage commissions or finder's fees with respect to such Lease; (ix) the other party to such Lease is not an Affiliate of, and otherwise does not have any economic interest in the Company Group; (x) no entity in the Company Group has collaterally assigned or granted any other security interest in such Lease or any interest therein except insofar as any such Lease is encumbered by the creditor(s) included in the Final Indebtedness; and (xi) there are no Liens (other than Permitted Liens) on the Leased Real Property resulting from any action or inaction by the Company Group.

(b) Owned Real Property. Schedule 4.9(b) sets forth the address and description of each Owned Real Property. With respect to each Owned Real Property: (A) the Company or Subsidiary (as the case may be) has insurable title to such Owned Real Property, free and clear of all liens and encumbrances, except Permitted Liens, (B) except as set forth in Schedule 4.9(b)(i), no member of the Company Group has leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; (C) other than the right of Buyer pursuant to this Agreement, there are no outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein. No member of the Company Group is a party to any agreement or option to purchase any real property or interest therein.

(c) The Leased Real Property identified in Schedule 4.9(a), and the Owned Real Property identified in Schedule 4.9(b) (collectively, the " Real Property") comprise all of the real property used or intended to be used in, or otherwise related to, the Business. To Seller's Knowledge, no portion of the Real Property is subject to any pending or threatened condemnation or other similar proceeding by any Governmental Authority.

4.10 Contracts and Commitments.

(a) Except as set forth on Schedule 4.10(a) (such listed contracts and agreements required to be listed on Schedule 4.10(a) being the "Company Material Contracts"), no entity in the Company Group is party to, bound by or subject to:

(i) any Guarantee or any agreement related to Indebtedness of the Company Group;

(ii) joint development agreement, joint venture agreement, collaboration agreement, partnership agreement, strategic alliance agreement or similar agreement;

(iii) leases or subleases, either as lessee or sublessee, lessor or sublessor, of personal property or intangibles, where the lease or sublease provides for an annual payment in excess of $10,000;

(iv) any agreement or offer letter (A) for the employment of any Person on a full-time, part-time or consulting basis, (B) providing severance, change in control or transaction sale benefits or (C) relating to loans to directors, officers, managers, employees or Affiliates, other than advances in the ordinary course of business;

(v) any collective bargaining agreement or other contract with any labor union or other labor organization;

(vi) settlement, conciliation or similar agreement;

(vii) agreement relating to the acquisition or disposition of assets or any interests in any Person or business enterprise;

(viii) agreement concerning non-solicitation, non-competition or prohibiting the Company or the Business from freely engaging in the Business or otherwise including exclusivity provisions or "most favored nation" provisions;

(ix) agreement under which it is a licensee of or is otherwise granted by a third party any rights to use any Intellectual Property (other than non-exclusive end user licenses of commercially-available software used solely for the Company Group's internal use and with a total replacement cost of less than $5,000);

(x) agreement under which it is a licensor or otherwise grants to a third party any rights to use any Intellectual Property;

(xi) agreement for the development of Intellectual Property for the benefit of the Company Group;

(xii) any agreement with a Key Supplier;

(xiii) any agreement with a Key Customer; or

(xiv) any contract for the sale of supplies or services currently in performance or that has not been closed that is between the Company Group and a Governmental Authority or entered into by the Company Group as a subcontractor at any tier in connection with a contract between another Person and a Governmental Authority.

(b) Except as disclosed on Schedule 4.10(b), (i) no Company Material Contract has been canceled by the other party or breached by any entity in the Company Group, or to the Seller's Knowledge, by the other party, in any material respect that has not been duly cured or reinstated by the other party and the Seller does not have any Knowledge of any such planned breach or cancellation by the other party of any Company Material Contract, (ii) each entity in the Company Group has performed all of its respective material obligations required to be performed by it under such Company Material Contracts and no entity in the Company Group is in receipt of any claim of breach or default under any such Company Material Contract, and (iii) no event has occurred which, with the passage of time or the giving of notice or both, would result in a material breach or default by any entity in the Company Group under any such Company Material Contract. Each Company Material Contract is legal, valid, binding and enforceable (subject to any Enforceability Exceptions) on the applicable entity in the Company Group, and to the Knowledge of the Seller, the other party thereto, and is in full force and effect.

(c) Except as set forth in Schedule 4.10(c), the Company has delivered to Buyer a true and correct copy of all Company Material Contracts, together with all amendments, waivers or other changes thereto.

4.11 Proprietary Rights.

(a) Except as set forth on Schedule 4.11(a)(i), each entity in the Company Group has a valid and enforceable written license to use pursuant to the agreements set forth on Schedule 4.11(a)(ii), or otherwise exclusively owns and possesses all right, title and interest in and to, all Company Proprietary Rights, free and clear of all Liens (other than Permitted Liens). All of the Registered Company Proprietary Rights (as defined below) are valid, subsisting, in full force and effect and enforceable.

(b) Schedule 4.11(a) sets forth a complete and correct list of: (i) all issued and applied-for patents and all other registered Intellectual Property Rights or applications to register Intellectual Property Rights owned by or exclusively licensed to any entity in the Company Group, including Internet domain name registrations ("Registered Company Proprietary Rights"); (ii) all trade names and material unregistered marks owned and used by any entity in the Company Group; (iii) all proprietary computer software the Intellectual Property Rights of which are owned by any entity in the Company Group (e.g., internally developed back office software, etc.) ("Company Software").

(c) No entity in the Company Group has infringed, diluted, misappropriated or otherwise violated, and the operation of the Business does not infringe, misappropriate, dilute or otherwise violate, any Intellectual Property Rights of any third party; the Seller has no Knowledge of any facts which indicate a likelihood of any of the foregoing; no entity in the Company Group has received any written notices alleging any of the foregoing (including any demands or unsolicited offers to license any Intellectual Property Rights from any third party or any requests for indemnification from customers relating to any infringement, dilution, misappropriation or violation of any third party's Intellectual Property Rights); and no entity in the Company Group has either requested and been denied, or requested and received any written opinions of counsel related to the foregoing. The Company Proprietary Rights owned by any entity in the Company Group, together with Intellectual Property and Intellectual Property Rights licensed to any entity in the Company Group pursuant to a license agreement set forth on Schedule 4.11(c) constitute all Intellectual Property and Intellectual Property Rights used in or necessary for the operation of the Business as currently conducted and the Company Proprietary Rights shall be available for use by the Operating Company immediately after the Closing Date on identical terms and conditions to those under which the Business and the Operating Company owned or used the Company Proprietary Rights immediately prior to the Closing Date. Except as set forth on Schedule 4.11(c), the Company Group is in compliance with all obligations under any agreement pursuant to which the Company Group has obtained the right to use any third party software.

(d) To the Knowledge of the Seller no third party has infringed, misappropriated, diluted, or otherwise violated any of the Company Proprietary Rights owned by the Company Group and the Seller has no Knowledge of any facts that indicate a likelihood of any of the same.

(e) Except as set forth on Schedule 4.11(e), (i) no loss or expiration of any of the Registered Company Proprietary Rights is currently threatened or pending or reasonably foreseeable (other than any expirations of the statutory period(s) associated with such Registered Company Proprietary Rights in the normal course as mandated by applicable Laws); (ii) no claim by any third party contesting the validity, enforceability, use or ownership of any of the Registered Company Proprietary Rights has been made in writing, is currently outstanding or, to the Knowledge of the Seller, is threatened against any entity in the Company Group, and the Seller has no Knowledge of any facts that indicate a likelihood of any of the same; and (iii) each entity in the Company Group has taken commercially reasonable actions to maintain and protect all of the Company Proprietary Rights owned by the Company Group (other than any Company Proprietary Rights owned (as opposed to licensed) by the Company Group which any entity in the Company Group has elected to abandon or allow to expire or otherwise enter the public domain prior to the date hereof). No entity in the Company Group is subject to any written agreements that restrict their ability to compete or otherwise operate their respective businesses anywhere in the world or that restrict and/or condition in any manner the use, transfer or licensing by any entity in the Company Group of any Company Proprietary Rights owned (as opposed to licensed) by any entity in the Company Group, respectively (other than any such restrictions and/or conditions imposed on the ability of any entity in the Company Group to grant exclusive licenses under any Company Proprietary Rights owned by such entity to a third Person as a result of having previously granted non-exclusive licenses in such Intellectual Property to other third Persons).

(f) Each entity in the Company Group has taken commercially reasonable steps to protect their rights in their own trade secrets and confidential information and the foregoing has only been disclosed by an entity in the Company Group to third parties on a “need to know” basis. Except as set forth on Schedule 4.11(f), each employee, consultant and independent contractor engaged by an entity in the Company Group and granted access to trade secrets or confidential information of it has entered into one or more agreements with that entity or is otherwise bound by an enforceable legal obligation requiring such employee, consultant or independent contractor to maintain the confidentiality of any such trade secrets or confidential information. To the Knowledge of the Company there has been no violation by any such employee, consultant or independent contractor that has resulted or is likely to result in the loss of protection of any trade secret or confidential information owned by any entity in the Company Group. Each entity in the Company Group has used reasonable efforts to protect the confidentiality of confidential information provided to any of them by customers and other third parties under an obligation of confidentiality.

(g) No entity in the Company Group has received any formal or written notice, nor is there any pending Proceeding against any entity in the Company Group, alleging that such entity is obligated to indemnify any third party for alleged infringements, misappropriation, dilution or other violations of Intellectual Property Rights, and the Seller has no Knowledge of any facts that indicate a likelihood that any such notice would be forthcoming.

(h) The Company Group and the conduct of its Business are in compliance with, and since January 1, 2013, have been in compliance with, all Data Security Requirements and there have not been any actual or alleged incidents of data security breaches, unauthorized access or use of any of the Business Systems, or unauthorized acquisition, destruction, damage, disclosure, loss, corruption, alteration, or use of any Business Data or other written or formal notices received relating to Data Security Requirements, and such Proceeding alleging violation of Data Security Requirements by the Company Group is pending, or to the Knowledge of the Seller, threatened. The consummation of the transactions contemplated by this Agreement will not result in any liabilities in connection with any Data Security Requirements.

(i) Except as set forth on Schedule 4.11(i), (x) only the object code relating to any Company Software has been disclosed to any Person by each entity in the Company Group; and (y) no Person has asserted to any entity in the Company Group in writing any right to access any Source Code for any Company Software.

(j) Except as set forth on Schedule 4.11(j), all Intellectual Property, including Company Software, owned by any entity in the Company Group was: (i) developed by employees of such entity in the Company Group working within the scope of their employment for such entity; or (ii) developed by agents, consultants, contractors, subcontractors or others who have executed an appropriate valid and irrevocable instrument of assignment of all rights, including Intellectual Property Rights, relating thereto in favor of the applicable entity in the Company Group, as assignee. All employees or contractors of each entity in the Company Group that have developed or created parts of the Company Software have, to the extent permitted by applicable Law, assigned all of their rights in such Company Software, including all Intellectual Property Rights therein, exclusively to such entity in the Company Group on behalf of which it performed such development or creation. Each entity in the Company Group has obtained a valid and irrevocable assignment of all Intellectual Property and Intellectual Property Rights that were acquired by such entity in the Company Group from any Person in connection with a merger, consolidation or purchase of assets or similar transaction.

(k) The Company Software is solely used for the Company and its Subsidiaries' internal business purposes and is not distributed or otherwise made available to any third parties (including customers).

(l) The computer software, computer firmware, computer hardware (whether general purpose or special purpose) and the data stored or contained therein or transmitted thereby, and other similar or related items of automated, computerized and/or software system(s), in the possession or control of the Company Group (the "Business Systems") that are used by any entity in the Company Group are sufficient in all material respects for the operation of their respective businesses as currently conducted. Except as set forth in Schedule 44.11(l), to Seller's Knowledge the Business Systems have not suffered a material outage, interruption or other failure in the past 24 months and are free of unauthorized "back door", "time bomb", "virus", "Trojan horse", "worm", "drop dead device", or other software routines or hardware components that are reasonably likely to permit unauthorized access or the unauthorized disablement or erasure of such Company Software or data by any third Person ("Contaminants"). The Company Group has purchased a sufficient amount of hardware and sufficient number of licenses, including where based on hardware or number of seats, for the operation of the Business Systems of the Company Group as presently conducted.

(m) Except as set forth on Schedule 4.11(m), each entity in the Company Group has taken reasonable steps consistent with industry standard security practices for software to protect the information technology systems used in the connection with the operation of the Business Systems from Contaminants and other loss or impairment of data and related software. There have been no unauthorized intrusions or breaches of the security of the Company Group's information technology systems at any time during the 24-month period prior to the date hereof and, to the Knowledge of the Seller, no attempts to accomplish the same, made by any third Person.

(n) No entity in the Company Group is developing or obligated to develop any Intellectual Property for the benefit of any third party.

4.12 Government Licenses and Permits.

Schedule 4.12 contains a complete listing of all Government Licenses owned or otherwise possessed by the Company Group. The Company Group owns or possesses all right, title and interest in and to all of the material Government Licenses that are necessary to own and operate the Business. The Company Group is in compliance in all material respects with, and from and after November, 2014, has complied in all material respects with, all terms and conditions of any such Government License. From and after November 2014, the Company Group has not received any notice that any entity in the Company Group is in material violation of any of the terms or conditions of such Government Licenses. No loss or expiration of any such Government License is pending, reasonably foreseeable, or, to the Seller's Knowledge, threatened other than expiration in accordance with the terms thereof.

4.13 Litigation; Proceedings.

Except as set forth on Schedule 4.13, there are no Proceedings pending or, to the Seller's Knowledge, threatened against or affecting any entity in the Company Group or any of its assets (or, to the Seller's Knowledge, pending or threatened against or affecting any of the officers, employees or managers of the Company Group, solely in their capacity as such), or to which the Company Group or its assets may be bound or affected, at law or in equity, or before or by any Governmental Authority. No material Proceedings have been filed against any entity in the Company Group from and after November, 2014, and no entity in the Company Group is subject to any judgment, order or decree of any court or Governmental Authority. No entity in the Company Group has received any written opinion, memorandum or legal advice from legal counsel to the effect that it is presently exposed, from a legal standpoint, to any liability or disadvantage which would be material to the Company Group and no entity in the Company Group is engaged in any legal action to recover monies due to it or for damages sustained by it.

4.14 Compliance with Laws.

Each entity of the Company Group and, to the Seller's Knowledge, each of their current managers, officers and management-level employees (in each case, solely in their capacity as such) (each, a "Related Individual") has complied in all material respects and is in compliance in all material respects with, and no entity in the Company Group, nor, to the Seller's Knowledge, any Related Individual, has in the conduct of the business of the Company Group materially violated any applicable Law, including of the U.S. Citizenship and Immigration Service and the Social Security Administration. Except as set forth on Schedule 4.14, no notice of any Proceeding has been received by any entity in the Company Group or, to the Seller's Knowledge, by any Related Individual, or filed, commenced or, to the Company's Knowledge, threatened against any entity in the Company Group or, to the Seller's Knowledge, any Related Individual, alleging a violation of or liability or potential responsibility under any such Law referred to in the preceding sentence which has not heretofore been duly cured and for which there is no remaining material liability or obligation. Each entity of the Company Group and, to the Seller's Knowledge, each Related Individual has complied in all material respects and is in compliance in all material respects with all orders, decrees or judgments promulgated or issued by any Governmental Authority. The Company Group has not materially violated any rules or regulations of the U.S. Citizenship and Immigration Service or the Social Security Administration in any manner, whether by failure to keep the Company Group's "I-9" compliance files up to date or otherwise.

4.15 Environmental, Health and Safety Matters.

(a) Except as set forth in Schedule 4.15(a):

(i) Each member of the Company Group is and has at all times been in compliance in all material respects with all Environmental Laws, which compliance includes obtaining, maintaining and complying in all material respects with all Governmental Licenses required by Environmental Laws;

(ii) Each member of the Company Group has not received any notices, reports or other information, and there are no claims or Proceedings pending or, to the Seller's Knowledge, threatened against any entity in the Company Group, in each case alleging the violation of or liability under any Environmental Laws;

(iii) No member of the Company Group has treated, stored, arranged for disposal of, transported, handled, used, released, exposed any Person to, or owned or operated any property or facility contaminated by, any Hazardous Material, in each case as has given or would give rise to liability under any Environmental Law;

(iv) No member of the Company Group has designed, manufactured, distributed, sold, marketed, supplied, installed, serviced or repaired products or items containing any Hazardous Materials so as to give rise to liability under Environmental Laws; and

(v) No member of the Company Group has assumed, undertaken, provided an indemnity with respect to, or otherwise become subject to, any liability of any other Person relating to Environmental Laws or Hazardous Materials.

(b) Seller and the Company have provided to Buyer all environmental, health or safety assessments, reports, and audits and other material environmental, health or safety documents relating to the current or former properties, facilities or operations of the Company Group that are in Seller's or the Company's possession or control relating to the Company Group or its facilities or operations.

4.16 Employees.

Schedule 4.16 sets forth a true, complete and correct list of every current employee of the Company Group, including: (a) the entity in the Company Group employing such employee; (b) 2018 fiscal year base salary or hourly rate; (c) 2018 fiscal year bonus; (d) classification as exempt or non-exempt; (e) current base salary or hourly rate; (f) year-to-date bonus paid or earned; (g) any outstanding loan amount owed by such employee to the Company Group; (h) job title and department; (i) state of employment; (j) hire date; (k) accrued but unused vacation time as of January 1, 2019; and (l) whether the employee is paid on a salary basis or hourly basis. Except as set forth on Schedule 4.16, the Company Group has complied and is in compliance in all material respects with all applicable Laws relating to the employment of labor, including but not limited to provisions thereof relating to wages, hours, equal opportunity, employment discrimination, harassment, collective bargaining, layoffs, immigration compliance and the payment of social security and other Taxes. Except as set forth on Schedule 4.16, there are no Proceedings pending with any Governmental Authority or, to the Seller's Knowledge, threatened against the Company Group relating to the employment of labor. There is no unfair labor practice charge or complaint pending or, to the Seller's Knowledge, threatened against the Company Group before the National Labor Relations Board or any similar foreign, state or local body. From and after November 2014, no entity in the Company Group has experienced any union organization attempts, labor disputes, strikes, work stoppage or slowdowns due to labor disagreements. There is no labor strike, dispute, work stoppage or slowdown pending or to the Seller's Knowledge threatened. There is no request for representation pending and no question concerning representation has been raised involving the employees of the Company Group. There is no material grievance or arbitration proceeding pending against any entity in the Company Group. No entity in the Company Group is a party to or bound by any collective bargaining agreement or other agreement with any labor union or labor organization. Except as would not result in any material Losses for any entity in the Company Group, (i) each entity in the Company Group has paid all wages, salaries, bonuses, commissions, wage premiums, fees, expense reimbursement, severance, and other compensation that have come due and payable to its employees, consultants, independent contractors, and other individual service providers pursuant to any Law, contract, or policy of any entity in the Company Group; and (ii) each individual who is providing or within the past three years has provided services to the Company Group and is or was classified and treated as an independent contractor or other non-employee service provider is and was properly classified and treated as such for all applicable purposes. From and after November 2014, no entity in the Company Group has implemented any employee layoffs that could implicate the Worker Adjustment and Retraining Notification Act or any similar Law (the "WARN Act"), and no such layoffs are currently planned, contemplated or announced. Except as set forth on Schedule 4.16, within the past three years no current or former employee of the Company Group has complained of sexual harassment or any similar misconduct, and the Company Group has promptly investigated all such complaints.

4.17 Employee Benefit Plans.

(a) Schedule 4.17 sets forth a list of each (i) employee pension benefit plan (as defined in Section 3(2) of ERISA) whether or not terminated (the "Employee Pension Plans"); (ii) employee welfare benefit plans (as defined in Section 3(1) of ERISA) whether or not terminated (" Employee Welfare Plans"); and (iii) each deferred compensation, bonus, incentive, severance, change in control, retention, stock purchase, stock option or equity incentive (including equity-based incentives), profit sharing, retirement, welfare, post-employment welfare, paid-time-off or vacation plan, policy, program, agreement or arrangement or any material benefit plan, policy, program, agreement or arrangement ("Other Plans") maintained, sponsored or contributed to, or required to be contributed to, by any entity in the Company Group or with respect to which any member of the Company Group has any liability (including on account of at any time being treated as a single employer under Section 414 of the Code). Any Employee Pension Plan, any Employee Welfare Plan and any Other Plan shall be referred to herein collectively as the "Plans." Schedule 4.17 separately sets forth a list of each Plan maintained solely by a professional employer organization for the benefit of current or former employees of the Company Group (collectively, "PEO Plans").

(b) No member of the Company Group contributes to or has any current or potential liability with respect to any multiemployer plan (as defined in Section 3(37) of ERISA) or other plan subject to Title IV of ERISA, including as a result of any member of the Company Group being treated as a single employer under Section 414 of the Code. No member of the Company Group provides or could be required to provide post-retirement health, accident or life insurance benefits to current or former employees, current or former independent contractors, current or future retirees, their spouses, dependents or beneficiaries, other than limited medical benefits required to be provided to former employees, their spouses and other dependents under Code Section 4980B or any state Law substantially similar to Code Section 4980B under which the covered individual pays the full cost of such coverage.

(c) All Plans (and related trusts and insurance contracts) and, solely with respect to the Company Group's participation under, all PEO Plans have been established, funded, administered and maintained, in form and in operation in all material respects with their terms and with the applicable requirements of ERISA, the Code and all other applicable Laws. Each Plan and each PEO Plan which is intended to meet the requirements of "qualified plans" under Section 401(a) of the Code has been amended on a timely basis and received a favorable determination letter from the Internal Revenue Service that such plan is qualified under Section 401(a) of the Code or is entitled to rely upon an opinion or advisory letter issued to the sponsor of an IRS approved master and prototype or volume submitter plan document, and, to the Knowledge of the Seller, nothing has occurred since the date of such determination or application, respectively, that would reasonably be expected to adversely affect the qualified status of any such Plan or PEO Plan.

(d) No member of the Company Group has: (i) engaged in any non-exempt prohibited transaction (as defined in Section 406 of ERISA or Section 4975 of the Code); (ii) breached any fiduciary duty (as determined under ERISA) owed by it with respect to the Plans or any PEO Plan; (iii) failed to file and distribute all reports, returns and similar documents and information required to be filed with any Governmental Authority or distributed to any plan participant, including, in accordance with ERISA or the Code; or (iv) otherwise engaged in any transaction in violation of Sections 404 or 406 of ERISA.

(e) With respect to each Plan the Company has delivered to Buyer: (i) true and complete copies of each Plan (or, if not written, a written summary of its terms); (ii) any related trust agreement, promissory note or other funding instrument; (iii) the most recent IRS determination or opinion letter, if applicable; (iv) the most recent summary plan description and other material written communication (or a description of any material oral communications) concerning the benefits provided under the Plan; (v) the most recent financial statements of each Plan and Form 5500 annual report (including attached schedules), if applicable; and (vi) the most recent actuarial valuation reports, if applicable. With respect to each PEO Plan, the Company has delivered to Buyer: (i) a summary of the benefits provided under each PEO Plan, and (ii) a copy of the PEO Plan intended to meet the requirements of a “qualified plan” under Section 401(a) of the Code and the related IRS determination or opinion letter.

(f) With respect to each Plan and, solely with respect to the Company Group’s participation under, each PEO Plan, all required payments, contributions, premiums, reimbursements, accruals or other material payments for all periods prior to the date hereof have been made (or, to the extent such amounts will become due prior to the Closing, will be made) on a timely basis. The Company Group does not have any material unfunded liabilities with respect to any Plan or PEO Plan and there are no Liens on assets of the Company Group relating to any Plan or PEO Plan.

(g) There do not exist any pending or, to the Knowledge of the Seller, any threatened actions, suits, claims (other than routine undisputed claims for benefits), disputes, audits or investigations with respect to any Plan, or, solely with respect to the Company Group’s participation under, the PEO Plans which could result in or subject any entity in the Company Group to any material liability, and there are no circumstances which the Company Group reasonably expects to give rise to any such actions, suits, claims, disputes, audits or investigations.

(h) Except as set forth on Schedule 4.17(h), the consummation of the transactions contemplated by this Agreement or any documents or agreements contemplated hereby will not accelerate the time of the payment, funding or vesting of, or increase the amount of, or result in the payment or forfeiture of compensation or benefits under any Plan, PEO Plan, or otherwise.

4.18 Insurance.

Schedule 4.18 sets forth an accurate description (including premiums and policy limits) of each insurance policy to which the Company Group is a party, a named insured or, to the Seller's Knowledge, otherwise the beneficiary of coverage. The Company Group has maintained since November 2014, similar insurance policies with good and reputable insurers and with similar coverage. All of such current insurance policies are legal, valid, binding and enforceable (subject to the effect of any Enforceability Exceptions) on the applicable entity in the Company Group, and to the Knowledge of the Seller, the other party thereto, and in full force and effect and no entity in the Company Group is nor has any such entity ever been in material breach or default with respect to its obligations under such insurance policies. Neither this Agreement nor the transactions contemplated hereby will conflict with, result in any material breach of, constitute a default under, result in the termination of, or loss of coverage under, any such insurance policies.

4.19 Tax Matters.

(a) Each entity in the Company Group has timely filed all Tax Returns required to be filed by it, each such Tax Return has been prepared in compliance with all applicable Laws and regulations, and all such Tax Returns are true, complete and accurate in all respects. All Taxes due and payable by each entity of the Company Group (whether or not shown on any Tax Return) have been paid.

(b) Except as set forth in Schedule 4.19(b):

(i) no deficiency or proposed adjustment which has not been settled or otherwise resolved for any amount of Tax has been proposed, asserted or assessed in writing by any taxing authority to and received by any entity in the Company Group against such entity in the Company Group;

(ii) no agreement, waiver or other document or arrangement extending or having the effect of extending the period for the assessment of collection of Taxes (including, but not limited to, any applicable statute of limitation), has been executed or filed with the IRS or any other taxing authority by or on behalf of any entity in the Company Group and no power of attorney with respect to any Tax matter is currently in force;

(iii) no entity in the Company Group has requested or been granted an extension of the time for filing any Tax Return to a date later than the Closing Date;

(iv) there is no action, suit, taxing authority proceeding or audit now in progress, pending or threatened in writing by any taxing authority and received by any entity in the Company Group against or with respect to such entity in the Company Group with respect to any Tax;

(v) other than with respect to any written or unwritten contract, agreement or arrangement entered into in the ordinary course of business, the primary purpose of which is not the allocation, sharing, reimbursement, indemnification or other payment of Tax and in which such provisions regarding the allocation, sharing, reimbursement, indemnification or other payment of Tax are typical of such contract, agreement or arrangement, no entity in the Company Group is a party to or bound by any Tax allocation or Tax sharing agreement, and no entity in the Company Group has any current or potential contractual obligation to indemnify any other Person with respect to Taxes and will not have any obligation to make any such payments after Closing;

(vi) no claim has ever been made by a taxing authority in a jurisdiction where any entity in the Company Group does not pay Tax or file Tax Returns that such entity in the Company Group is or may be subject to Taxes assessed by such jurisdiction;

(vii) the entities in the Company Group have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any shareholder, stockholder, employee, creditor, independent contractor, or other third party;

(viii) no entity in the Company Group has a permanent establishment in any foreign country, as defined in the relevant Tax treaty, if any, between the United States of America and such foreign country; and

(ix) no entity in the Company Group is subject to any private ruling of the IRS or comparable ruling of other taxing authorities.

(c) No entity in the Company Group (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (ii) has any liability for the Taxes of any Person (other than an entity in the Company Group) under Treas. Reg. Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract, or otherwise.

(d) No entity in the Company Group will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Code Section 7121 (or any corresponding or similar provision of state, local or foreign law); (iii) deferred intercompany gain or any excess loss account described in Treasury Regulation under Code Section 1502 (or any corresponding or similar provision of state, local or foreign law); (iv) installment sale made prior to the Closing Date; (v) prepaid amount received on or prior to the Closing Date; (vi) election under Code Section 108(i) (or any corresponding or similar provision of state, local or foreign law); or (vii) use of an improper method of accounting for a taxable period on or prior to the Closing Date.

(e) No entity in the Company Group is a party to any "reportable transaction," as defined in Treas. Reg. Section 1.6011-4(b), and none has been a party to such a transaction nor has claimed any Tax benefit from any such transaction in any taxable year that remains open to or for assessment.

(f) No entity in the Company Group is a party to any agreement, contract, arrangement or plan that has resulted or could result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Code Section 280G (or any corresponding provision of state, local or foreign law).

(g) Each contract, arrangement, or plan of the Company Group that is a "nonqualified deferred compensation plan" (as defined for purposes of Code Section 409A(d)(1)) is in documentary and operational compliance with Code Section 409A and the applicable guidance issued thereunder in all material respects. No entity in the Company Group has any indemnity obligation for any Taxes imposed under Code Section 4999 or 409A.

(h) The Company and its Subsidiaries have at all times since their formation been classified for U.S. federal income tax purposes as disregarded entities within the meaning of Treasury Regulation Section 301.7701-2, have not made an election to be treated as associations within the meaning of Treasury Regulation Section 301.7701-3, and will be classified as disregarded entities through the Closing.

(i) Schedule 4.19(i) contains a list of states, territories and jurisdictions (whether foreign or domestic) in which any entity in the Company Group files Tax Returns.

4.20 Brokerage.

There are no claims for brokerage commissions, finder's fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Company Group or any person acting on behalf of the Company Group.

4.21 Affiliate Transactions.

Except as disclosed on 4.21, no Insider or employee is a party to any oral or written agreement, contract, commitment or transaction with the Company Group or has any interest in any property used by the Company Group (other than the Organizational Documents of the Company Group, employment agreements and employee invention assignment and confidentiality agreements, equity issuance agreements and equity incentive agreements, a form of each of which has been delivered to Buyer). No Insider owns or has otherwise retained any rights to use any assets (including any Intellectual Property), rights or contractual benefits which are used by the Company Group. Without limiting the foregoing, except as disclosed on Schedule 4.21, no Insider is an officer, director or employee of any customer or supplier of the Company Group.

4.22 Officers and Directors; Bank Accounts.

Schedule 4.22 lists all officers and managers of the Company Group, and all of the Company Group's bank accounts (designating each authorized signatory and the level of each signatory's authorization).

4.23 Key Customers, Key Suppliers and Resellers.

Schedule 4.23(a) sets forth a list of the customers of the Company Group with annual purchases in the aggregate in excess of $100,000 (the " Key Customers") along with the (a) dollar amounts of such revenue generated from such customers for each of the most recent two fiscal years and (b) revenue for the twelve-month period ended as of the date hereof. Schedule 4.23(b) contains an accurate list of the ten largest suppliers of the Company Group for the most recent two fiscal years (the "Key Suppliers"), as measured by the dollar amounts of purchases therefrom or thereby, and showing the approximate total purchases by the Company Group from each such supplier. Except as set forth on Schedule 4.23(c), none of the Key Suppliers has notified any entity in the Company Group that it shall stop or significantly decrease the rate of supplying materials, products or services, or materially increase the pricing of such materials, products or services, to the Company Group, and no Key Customer: (i) has notified any entity in the Company Group that it shall stop purchasing or significantly decrease the volume of purchases of materials, products or services from any entity in the Company Group or threatened to do any of the foregoing; or (ii) has provided notice that it has made, or indicated that it shall make, an assignment for the benefit of creditors or commence any Proceeding under any bankruptcy, reorganization, insolvency, dissolution or liquidation Law of any jurisdiction. With respect to each Key Customer, there has been no material change, and no such Person has requested or notified any entity in the Company Group that it may request a material change, in the terms or prices at which such Person purchases materials, products or services from any entity in the Company Group.

4.24 Sufficiency of Assets. The properties and assets (tangible and intangible) owned or leased by the Company Group, together with the services to be provided by Seller pursuant to the Administrative Services Agreement, (a) are delivered free and clear of any Liens, and (b) constitute all of the properties, assets (tangible and intangible), and services necessary or desirable to conduct the Business after the Closing in substantially the same manner as presently conducted.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLER

As a material inducement to Buyer to enter into and perform its obligations under this Agreement, as of the date hereof, Seller represents and warrants to Buyer as follows:

5.1 Organization and Power.

Seller is duly organized, validly existing and in good standing under the Laws of the state of its formation and has the requisite limited liability company power and authority to conduct its business as it is now being conducted. Seller has all requisite limited liability company power and authority to execute and deliver this Agreement and each other agreement, document or instrument or certificate contemplated hereby to which Seller is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

5.2 Authorization.

Seller has full power, authority and legal capacity to enter into this Agreement and each other agreement, document or instrument or certificate contemplated hereby to which Seller is a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance by Seller of this Agreement and each other agreement, document or instrument or certificate contemplated hereby and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by Seller, and no other act or proceeding on the part of Seller is necessary to authorize the execution, delivery or performance of this Agreement or each other agreement, document or instrument or certificate contemplated hereby and the consummation of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by each other party hereto, this Agreement constitutes, and each other agreement, document or instrument or certificate contemplated hereby upon execution and delivery by Seller, and assuming the due authorization, execution and delivery by each other party thereto, will each constitute, a valid and binding obligation of Seller, enforceable in accordance with their terms, subject to the effect of any Enforceability Exceptions.

5.3 No Violation.

The execution, delivery and performance by Seller of this Agreement and each other agreement, document or instrument or certificate contemplated hereby and the consummation of each of the transactions contemplated hereby or thereby, do not and will not (a) violate, conflict with, result in any breach of, constitute a default under, result in the termination or acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under Seller's Organizational Documents or any contract, agreement, arrangement, indenture, mortgage, loan agreement, lease, sublease, license, sublicense, franchise, permit, obligation or instrument to which Seller is a party or by which it is bound or affected or to which any of its assets are bound or affected, (b) result in the creation or imposition of any Lien upon any assets of Seller, (c) require any authorization, consent, approval, exemption or other action by or notice to any Governmental Authority or other Person or entity under, the provisions of any Law or any contract, agreement, arrangement, Lease, sublicense, franchise, permit, indenture, mortgage, obligation or instrument to which Seller is subject, or by which Seller is bound or affected or to which Seller or any of its assets are bound or affected that has not been obtained on or before the Closing or (d) violate or require Seller to obtain consent or give notice under any Law or other restriction of any Governmental Authority to which Seller or any of its assets are subject, or by which Seller or any of its assets are bound or affected.

5.4 Litigation.

There are no Proceedings pending or, to the best of Seller's Knowledge, threatened against or affecting Seller, at law or in equity, or before or by any Governmental Authority which would adversely affect Seller's performance under this Agreement, the other agreements contemplated hereby to which Seller is a party, or the consummation of the transactions contemplated hereby or thereby.

5.5 Brokerage.

There are no claims for brokerage commissions, finder's fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made or alleged to have been made by or on behalf of Seller.

5.6 Securities.

Seller holds of record and owns beneficially 13,500 Class A Common Units, 13,500 Class A-1 Preferred Units and 11,052 Class B Common Units, free and clear of any Liens or any other restrictions on transfer (other than any restrictions under the Securities Act and state securities Laws). Except for this Agreement, Seller is not a party to any option, warrant, right, contract, call, put or other agreement or commitment providing for the disposition, transfer, repurchase or acquisition of any equity interests of the Company or any options exercisable for the Company's equity interests. Seller is not a party to any voting trust, proxy or other agreement or understanding with respect to the voting of any of the Company's equity interests.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF BUYER

As a material inducement to Seller to enter into and perform their obligations under this Agreement, as of the Closing Date, Buyer represents and warrants to the Company and Seller as follows:

6.1 Organization and Power. Buyer is a corporation, duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has all requisite corporate power and authority to execute and deliver this Agreement and each other agreement, document or instrument or certificate contemplated hereby and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

6.2 Authorization. The execution, delivery and performance by Buyer of this Agreement and each other agreement, document or instrument or certificate contemplated hereby and each of the transactions contemplated hereby or thereby have been duly and validly authorized by Buyer and no other corporate act or proceeding on the part of Buyer or its board of directors or stockholders is necessary to authorize the execution, delivery or performance by Buyer of this Agreement or each other agreement, document or instrument or certificate contemplated hereby or the consummation of any of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by Buyer and this Agreement constitutes, and each other agreement, document or instrument or certificate contemplated hereby, assuming the due authorization, execution and delivery thereof by the other parties thereto, will upon execution and delivery by Buyer will each constitute, a valid and binding obligation of Buyer, enforceable against it in accordance with its terms, subject to (a) the effect of any Enforceability Exceptions.

6.3 No Violation. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, shall (a) violate any law or other restriction to which Buyer is subject or any provision of its Organizational Documents or (b) result in a breach or acceleration of, or create in any party the right to accelerate, terminate, modify, or require any notice under any agreement, or other arrangement by which it is bound or to which any of its assets are subject. No permit, consent, approval or authorization of, declaration to or filing with, or notice to, any Governmental Authority is required in connection with the execution, delivery or performance by Buyer of this Agreement or any other agreement, document or instrument or certificate contemplated hereby, or the consummation by Buyer of any the transactions contemplated hereby or thereby.

6.4 Litigation. There are no Proceedings pending or, to Buyer's Knowledge, threatened against or affecting Buyer, at law or in equity, or before or by any Governmental Authority which would adversely affect Buyer's performance under this Agreement, the other agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby.

6 . 5 Brokerage. There are no claims for brokerage commissions, finder's fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer.

6 . 6 Issued Units. In connection with entering into this Agreement and the subscription for and purchase of the Issued Units hereunder, Buyer represents and warrants to the Company that: (a) Buyer is (i) is purchasing the Issued Units for Buyer's own account (and not on behalf of any other persons) with the present intention of holding such Issued Units for purposes of investment and not with a view to, or intention of, distribution thereof in violation of any applicable securities laws and the Issued Units shall not be disposed of in contravention of applicable securities laws, and (ii) agrees that Buyer shall not offer, sell or otherwise dispose of any Issued Units in contravention of applicable securities Laws; and (b) Buyer is able to bear the economic risk of Buyer's investment in the Issued Units for an indefinite period of time because such Issued Units have not been registered under the Securities Act and, therefore, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is available.

ARTICLE 7

INDEMNIFICATION

7.1 Survival of Representations and Warranties .

(a) With respect to any claim or claims for breaches or alleged breaches of representations and warranties contained in Article 4 , Article 5 or Article 6 hereof (except for Seller Fundamental Representations and Buyer Fundamental Representations), no indemnifying party will be liable with respect to any breach or alleged breach of such representations and warranties contained in Article 4 , Article 5 or Article 6 unless a written Claim Notice for indemnification with respect to such breach or alleged breach is given by the indemnified party to Seller (in the case of a claim for indemnification pursuant to Sections 7.2(a)(i) or 7.2(b)(i)), or by the indemnified party to Buyer (in the case of any claim for indemnification pursuant to Section 7.2(c)(i)) on or before the date which is 30 days after the Company Group's receipt of its 2019 audited financials (the "General Survival Date "), it being understood that so long as such written Claim Notice is given on or prior to the General Survival Date, such representations and warranties shall continue to survive until such matter is resolved, but only with respect to the matter(s) identified in such Claim Notice(s).

(b) Notwithstanding the foregoing subsection (i), any claim (A) arising out of any breach or alleged breach by Seller or the Company of Seller Fundamental Representations shall survive for five years following the Closing Date, (B) arising out of any breach by Seller or any member of the Company Group of the covenants or agreements made by Seller or the Company Group contained in this Agreement or in any certificate delivered in connection with this Agreement, shall survive pursuant to the terms of the applicable covenant, (C) arising out of any breach or alleged breach by Buyer of Buyer Fundamental Representations or any breach by Buyer of the covenants or agreements made by Buyer contained in this Agreement or in any certificate delivered in connection with this Agreement shall survive for five years following the Closing Date, and (D) any claim arising out of any breach or alleged breach of the representations and warranties contained in Section 4.17 (Employee Benefit Plans), to the extent related to Taxes, or Section 4.19 (Tax Matters) (such representations in this subsection (D), the "Tax Representations "), shall survive 60 days after the expiration of the applicable statute of limitations (each such period and the General Survival Date, as applicable, the "Applicable Survival Date ").

(c) Notwithstanding anything in this Section 7.1 to the contrary, in the event that any breach or alleged breach of any representation or warranty by the Company or a Seller results from any action or inaction on the part of any member of the Company Group or Seller that constitutes fraud, intentional misrepresentation or criminal activity, such representation or warranty shall survive (regardless of any investigation by or on behalf of the damaged Party or the knowledge of any Party) and shall continue in full force and effect without any time limitation with respect to such breach or alleged breach. The termination of the Applicable Survival Date shall not affect the rights of a Person in respect of any claim made by such Person, solely to the extent set forth in a duly delivered valid Claim Notice delivered prior to the Applicable Survival Date in accordance with the terms and conditions of this Article 7. It is the express intent of the Parties that, if the Applicable Survival Date is longer than the statute of limitations that would otherwise have been applicable to such item, then, by contract, the applicable statute of limitations with respect to such item shall be increased to the extended survival period contemplated hereby. The Parties further acknowledge that the time periods set forth in this Section 7.1 for the assertion of claims under this Agreement are the result of arms'-length negotiation among the Parties and that they intend for the time periods to be enforced as agreed by the Parties.

7.2 Indemnification.

(a) Seller agrees to indemnify Buyer and its Affiliates (including, following the Closing, the Company Group) and its and their respective members, managers, officers, directors, employees, stockholders, equityholders, agents, insurers, representatives, successors and assigns (the "Buyer Indemnitees") and hold them harmless against any Losses paid, incurred, suffered or sustained by any such Buyer Indemnitee or to which any Buyer Indemnitee becomes subject to that are incident to, arise out of, in connection with, or related to (i) the breach or alleged breach of any representation or warranties in Article 4, (ii) any failure by Seller or any entity in the Company Group to perform or comply with any covenant or agreement applicable to such Person contained in this Agreement, (iii) any Seller Transaction Expenses, (iv) the Reorganization, and (v) any matter set forth on Schedule 7.21. Notwithstanding the foregoing, to the extent that any indemnifiable Loss pursuant to the preceding sentence results in a Loss to any entity in the Company Group, then, at Buyer's sole election, Seller shall indemnify the Operating Company in respect of the full value of any such Loss; provided that, in such case, for the purposes of Section 7.4, Buyer shall control the Operating Company. For the avoidance of doubt, nothing in this Section 7.2 shall be deemed to limit, restrict, characterize or in any way affect the rights and obligations of each of Buyer, Company, Seller and Vertex Parent under the terms of the Environmental Matters Indemnification Agreement.

(b) Seller agrees to indemnify Buyer Indemnitees and hold them harmless against any Losses paid, incurred, suffered or sustained by any such Buyer Indemnitee or to which any Buyer Indemnitee becomes subject to, as a result of (i) the breach or alleged breach by Seller of any representation or warranty in Article 5 and (ii) any failure by Seller to perform or comply with any covenant or agreement applicable to such Person contained in this Agreement.

(c) Buyer shall indemnify and hold harmless Seller and its respective agents, representatives, and successors and assigns against any Losses which Seller may suffer, sustain or become subject to as the result of (i) the breach or alleged breach by Buyer of any representation or warranty in Article 6 and (ii) the breach by Buyer of any covenant or agreement contained in this Agreement.

(d) For purposes of determining whether there has been a breach or alleged breach of any representation or warranty, and in calculating the amount of any Loss with respect to any such breach or alleged breach, all qualifications in any representation or warranty referencing the terms "material," "materiality," "Material Adverse Effect" or other terms of similar import or effect shall be disregarded; provided, however, this provision shall not apply to Section 4.7 (No Material Adverse Effect). In addition, for purposes of this Article 7, the term "alleged breach" shall mean any action, demand or claim by a third party against a Buyer Indemnitee which, if true, would give rise to a breach of a representation, warranty, covenant or agreement by Seller.

7.3 Indemnification Limitations. The Buyer Indemnitees shall not be entitled to recover for any Losses under Section 7.2(a)(i) until the aggregate Losses suffered by the Buyer Indemnitees under Section 7.2(a)(i) exceeds $320,000 (the "Basket"). Seller's aggregate liability under Section 7.2(a)(i) shall not exceed $4,840,000 (the "Cap"). Neither the Cap nor the Basket shall be applicable to the extent that any such Loss arises from (i) fraud, intentional misrepresentation or criminal activity or (ii) any breach or alleged breach of a Seller Fundamental Representation or Tax Representations (and, in the case of clauses (i) and (ii), no such Losses shall count towards satisfaction of the Basket or the Cap). Notwithstanding anything in this Agreement to the contrary, Seller's aggregate liability for all Losses under 7.2(a) shall not exceed the Aggregate Consideration except in the case of fraud, intentional misrepresentation or criminal activity.

7.4 Indemnification Procedures.

(a) Notice of Claim. Any indemnified party (an "Indemnitee") making a claim for indemnification pursuant to Section 7.1 must give the party from whom indemnification is sought (an "Indemnitor") written notice of such claim describing such claim and the nature and amount of such Loss, to the extent that the nature and amount thereof are determinable at such time (a "Claim Notice") promptly after the Indemnitee receives any written notice of any Proceeding against or involving the Indemnitee by a third party or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying an Indemnitor will not relieve the Indemnitor of its obligations pursuant to Section 7.1, except to the extent Indemnitor is materially prejudiced as a result of such failure or delay. Indemnitor must notify Indemnitee in writing within 15 days of receipt of a Claim Notice if it disputes the amount of, or its liability with respect to, the Claim Notice.

(b) Control of Defense; Conditions. With respect to the defense of any Proceeding against or involving an Indemnitee in which the claimant seeks only the recovery of a sum of money for which indemnification is provided, at its option, the Indemnitor may appoint as lead counsel of such defense a legal counsel of national standing selected by the Indemnitor or such other counsel selected by Indemnitor and approved by Indemnitee, in such Indemnitee's sole discretion; provided that before the Indemnitor assumes control of such defense it must first (i) enter into an agreement with the Indemnitee (in form and substance satisfactory to the Indemnitee) pursuant to which the Indemnitor agrees to be fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnitee) for all Losses relating to such Proceeding, subject to the limitations set forth in this Article 7, and (ii) provide written assurances to the Indemnitee of its ability to defend such Proceeding and satisfy any judgment with respect thereto.

(c) Control of Defense; Exceptions, etc. The Indemnitee will be entitled to participate in the defense of such claim and to employ separate counsel of its choice for such purpose at its own expense; provided that notwithstanding the foregoing, the Indemnitor will bear the reasonable fees and expenses of such separate counsel incurred prior to the date upon which the Indemnitor effectively assumes control of such defense. The Indemnitor will not be entitled to assume control of the defense of any claim, and will pay the reasonable fees and expenses of legal counsel retained by the Indemnitee, if: (i) the Indemnitee reasonably believes that an adverse determination of such Proceeding could be materially detrimental to or materially injure the Indemnitee's reputation or business; (ii) the Indemnitee reasonably believes that a conflict of interest exists which, under applicable principles of legal ethics, could prohibit a single legal counsel from representing both the Indemnitee and the Indemnitor in such Proceeding, other than a conflict which may exist due to the underlying nature of the duty to indemnify or may be waived; (iii) such Proceeding is related to any Taxes of the Company Group incurred with respect to a taxable period (or portion thereof) beginning after the Closing Date; or (iv) a court of competent jurisdiction rules that the Indemnitor has failed or is failing to prosecute or defend such claim. In such event, Indemnitee shall prosecute or defend such claim and Indemnitor will be entitled to participate in the defense of such claim and to engage separate counsel of its choice for such purpose at its own expense.

(d) Settlement of Claims. The Indemnitor must obtain the prior written consent of the Indemnitee (which will not be unreasonably withheld) prior to entering into any settlement of any claim or Proceeding or ceasing to defend any claim or Proceeding.

7.5 Payments. Any payment that Seller is obligated to make to any Buyer Indemnitee pursuant to this Article VII shall be paid by bank wire transfer of immediately available funds by Seller to Buyer or to the Company, as the case may be. Any payment owed by Buyer to Seller shall be made by bank wire transfer of immediately available funds to Seller in accordance with wire instructions furnished by Seller to Buyer. Any payment pursuant to a claim for indemnification shall be made not later than 15 days after receipt by the Indemnitor of written notice from the Indemnitee stating the amount of the claim, unless the claim is subject to defense as provided in Section 7.4 or Indemnitor has provided notice that it disputes the claim.

7.6 Adjustments. Amounts paid by any Party as indemnification payments shall be treated as adjustments to the Purchase Price, unless otherwise required by applicable Law.

7.7 Contribution and Waiver. From and after the Closing, Seller shall not seek, or have any right to seek, indemnification or contribution from any Buyer Indemnitee with respect to any action, suit, Proceeding, complaint, claim or demand brought by any Buyer Indemnitee (for any amount for which Seller is otherwise expressly responsible pursuant to this Agreement, applicable Law or otherwise).

7 . 8 Risk Allocation. A Party's entitlement to indemnification pursuant to this Agreement will not be affected by any examination made for or on behalf of any of the Parties hereto or the knowledge of any of their officers, directors, stockholders, equityholders, employees, agents or representatives.

7 . 9 No Double Recovery; Mitigation . Notwithstanding anything in this Agreement to the contrary, no party will be entitled to indemnification or reimbursement under any provision of this Agreement for any amount to the extent such party or its Affiliates have been indemnified or reimbursed for such amount under any other provision of this Agreement or the Exhibits hereto. Each Buyer Indemnitee shall mitigate any Losses for which such Buyer Indemnitee seeks indemnification under this Agreement, to the extent required by applicable Law.

7.10 Use of Insurance Proceeds. The Losses incurred by a Buyer Indemnitee will be reduced by the net amount of any insurance proceeds actually paid to such Buyer Indemnitee in respect of such Loss, and giving effect to deductibles or self-insured or co-insurance payments made and net of the present value of any reasonably probable increase in insurance premiums or other reasonable charges paid or to be paid by the Buyer Indemnitee resulting from such Loss and all reasonable costs and expenses incurred by the Buyer Indemnitee in recovering such proceeds from its insurers or other Person.

7 . 1 1 Exclusive Remedy. Except for claims relating to or arising out of fraud, intentional misrepresentation or criminal conduct, the remedies provided for in this Article 7 , Section 8.4 and Section 8.6(a) will be the sole and exclusive remedies of the Parties and their respective shareholders, stockholders, officers, directors, employees, affiliates, agents, representatives, successors and assigns with respect to the transactions contemplated by this Agreement.

ARTICLE 8

ADDITIONAL AGREEMENTS; COVENANTS AFTER CLOSING

8 . 1 Press Release and Announcements; Confidentiality of Agreement . Unless required by law or rules of any applicable self-regulatory organization, as determined after consultation with outside legal counsel (in which case each of Buyer and Seller shall use its commercially reasonable efforts to consult with the other party and allow reasonable time to comment prior to any such disclosure as to the form and content of such disclosure to the extent not legally prohibited), and subject to disclosures permitted by this Section 8.1, from and after the date hereof, no press releases, announcements to the employees, customers or suppliers of the Company or any of its Subsidiaries or other releases of information related to this Agreement or the transactions contemplated hereby will be issued or released without the consent of Buyer and Seller. The Company, Seller and Buyer agree to keep the terms of this Agreement confidential; *provided*, *however*, that any such party may disclose such terms to (i) its accountants and advisors who have a "need-to-know" solely for the purpose of providing services to such party, (ii) its existing investors in the ordinary course of such party's business, and (iii) existing and potential investors, lenders and acquirers and the accountants and advisors of any of the foregoing; *provided*, *however*, that in the case of this clause (iii) any such recipient is bound by a written agreement (or in the case of attorneys or other professional advisors, formal ethical duties) requiring such recipients not to disclose the terms of this Agreement to any third party and to use such terms only for purposes of evaluating the applicable investment, loan or acquisition.

8.2 Expenses.

Each Party hereto shall be solely responsible for and shall bear all of its own costs and expenses incident to its obligations under and in respect of this Agreement and the transactions contemplated hereby, including, but not limited to, any such costs and expenses incurred by any party in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement (including the fees and expenses of legal counsel, accountants, investment bankers or other representatives and consultants), whether or not the transactions contemplated hereby are consummated.

8.3 Further Actions; Mutual Assistance.

a. No later than forty-five (45) days after the Closing Date, Seller will have in place and must continue to maintain, consistent with the Seller's obligations under the Administrative Services Agreement, directors and officers insurance coverage for each entity in the Company Group on terms and conditions reasonably acceptable to Buyer.

b. Each Party hereto shall, and shall cause its Affiliates to, execute and deliver such further instruments and take such additional action as any other Party hereto may reasonably request to effect or consummate the transactions contemplated hereby. Each of the Parties hereto agrees that they will mutually cooperate in a commercially reasonable manner in the expeditious filing of all notices, reports and other filings with any Governmental Authority required to be submitted jointly by Buyer, on the one hand, and Seller on the other hand, in connection with the execution and delivery of this Agreement, the other agreements contemplated hereby and the consummation of the transactions contemplated hereby or thereby.

8.4 Specific Performance.

Each of the Parties acknowledges and agrees that Buyer would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, each of the Parties hereto agrees that Buyer shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court in the United States or in any state having jurisdiction over the parties and the matter in addition to any other remedy to which it may be entitled pursuant hereto. Each of the Parties further agrees that Buyer shall not be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.4 and each Party hereby irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

8.5 Transfer Taxes.

All transfer, documentary, sales, use, stamp, registration, conveyance or similar Taxes or charges (" Transfer Taxes") arising out of the transactions contemplated hereby and all charges for or in connection with the recording of any document or instrument contemplated hereby shall be paid by Seller when due. The party responsible under applicable Law will file all necessary Tax Returns and other documentation in connection with the Transfer Taxes and charges encompassed in this Section 8.5.

8.6 Tax Matters.

(a) Seller shall indemnify Buyer Indemnitees, the Company and their respective Affiliates and hold them harmless from and against any Losses attributable to or arising from (i) any and all Taxes (or the non-payment thereof) of each entity of the Company Group for all Pre-Closing Tax Periods, (ii) any and all Taxes of any member of an affiliated, consolidated, combined, or unitary group of which any entity in the Company Group (or any predecessor) is or was a member on or prior to the Closing Date, including pursuant to Treas. Reg. Section 1.1502-6 (or any analogous or similar state, local, or foreign Law), and (iii) any and all Taxes of any Person imposed on Seller or any entity of the Company Group as a transferee, successor, or otherwise, by contract or pursuant to any Law, rule or regulation, which Taxes relate to an event or transaction occurring before the Closing. Notwithstanding the foregoing, to the extent that any indemnifiable Loss pursuant to the preceding sentence results in a Loss to any entity in the Company Group, then, at Buyer's sole election, Seller shall indemnify the Operating Company in respect of the full value of any such Loss. Seller shall reimburse, in accordance with the provisions of Section 7.5, Buyer for any Taxes of the Company Group which are the responsibility of Seller pursuant to this Section 8.7(a) no later than five business days prior to the payment of such Taxes by Buyer, any member of the Company Group or any of their respective Affiliates, as applicable.

(b) Filing of Tax Returns. Pursuant to the terms and conditions of the Administrative Services Agreement, the Seller shall prepare, or cause to be prepared, and file or cause to be filed, all Tax Returns for the Company Group for all Pre-Closing Tax Periods and for any Straddle Period. Seller shall cooperate with the Company and shall timely provide the Company with reasonable access to such Tax Returns, and all relevant books, records, and information reasonably necessary to prepare such Tax Returns. The Seller shall permit the Company to review and comment on such Tax Returns and shall make such revisions to such Tax Returns as are reasonably requested by the Company. The Seller shall use its commercially reasonable efforts to close any taxable period that would otherwise be a Straddle Period effective as of the Closing Date. Unless otherwise required by applicable law, no Tax Returns relating to a Pre-Closing Tax Period shall be amended without Company's prior written consent, not to be unreasonably withheld, conditioned or delayed; provided, however, that the Seller may make such amendments without the Company's consent, to the extent such amendment would not increase the Tax liability of the Company under the indemnification provisions of this Agreement.

(c) Pre-Closing Tax Period. "Pre-Closing Tax Period" shall mean all Taxable periods ending on or before the Closing Date and the pre-Closing portion of any Straddle Period.

(d) Straddle Periods. In the case of any Taxable period that includes (but does not end on) the Closing Date (a " Straddle Period"), the amount of any Taxes based on or measured by income, payroll, sales or receipts of the Company Group for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date, and the amount of other Taxes of the Company Group for a Straddle Period which relate to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction the numerator of which is the number of days in the Taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

(e) Cooperation on Tax Matters. Buyer, the Company and Seller shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer, the Company and Seller agree (i) to retain all books and records with respect to Tax matters pertinent to the Company Group relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Buyer or Seller, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (ii) to give the other parties reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, Buyer or Seller, as the case may be, shall allow such party to take possession of such books and records. Buyer, the Company and Seller further agree, upon request, to use their commercially reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(f) Contest Provisions.

(i) Buyer, on one hand, and Seller, on the other hand, shall promptly notify the other in writing upon receipt of a written notice of any issues in any pending or threatened Tax audits or assessments with respect to Taxes of any member of the Company Group for any Pre-Closing Tax Period ("Tax Contest Claims"); provided, however, that no failure or delay to provide notice of a Tax Contest Claim shall reduce or otherwise affect the obligations of the parties hereunder unless such party was prejudiced thereby and then only to the extent of such prejudice. This Section 8.7(f) shall govern all Tax Contest Claims.

(ii) Buyer shall control the conduct of any issues in any Tax Contest Claim in respect of Taxes of the Company Group for Pre-Closing Tax Periods or Straddle Periods; provided, however, that to the extent such Tax Contest Claim could reasonably be expected to result in an indemnification obligation pursuant to the terms of this Agreement (A) Buyer must consult, in good faith, with Seller regarding the taking of any action with respect to the conduct of such Tax Contest Claim and Buyer shall keep Seller informed regarding the progress and substantive aspects of any such Tax Contest Claim, including providing Seller with all written materials relating to such Tax Contest Claim received from the relevant taxing authority and all written materials submitted to such taxing authority by Buyer; (B) Seller shall be entitled to participate in any such Tax Contest Claim at its own cost and expense, including having an opportunity to comment on any written materials prepared for submission to a taxing authority in connection with any such Tax Contest Claim and to attend any conferences relating to any such Tax Contest Claim; and (C) Buyer shall not compromise or settle any such Tax Contest Claim without obtaining the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

(g) Purchase Price Allocation. Within 120 days of the Closing Date, Buyer shall provide Seller with an allocation of the Purchase Price and the liabilities of the Company Group (plus other relevant items) to the assets of the Company Group for all purposes (including Tax and financial accounting) (the "Purchase Price Allocation.") Buyer shall permit Seller to review and comment on the Purchase Price Allocation and shall make such revisions as are reasonably requested by Seller. Buyer, the Company, and Seller shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Purchase Price Allocation.

8.7 Release.

Effective upon the Closing, except with respect to any claim (a) arising out of this Agreement, or any other agreement contemplated hereby with respect to which Seller is a party, (b) for indemnification under the Company's Organizational Documents and under any applicable insurance policy, so long as such claim for indemnification does not arise out of any matter indemnified by Seller under Article 7 hereof, or (c) for reimbursement of business expense in the ordinary course of business and in accordance with Company policy, Seller, on behalf of itself and its assigns and heirs, hereby unconditionally and irrevocably waives, releases and forever discharges the Company and each of its past and present managers, officers, employees, agents, predecessors, successors, assigns, insurers, equityholders, partners, and Affiliates ("Releasees") from any and all liabilities of any kind or nature whatsoever, in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, with respect to the business of the Company and Seller shall not seek to recover any amounts in connection therewith or thereunder from the Company. Without limiting the generality of the foregoing, Seller waives all rights under California Civil Code Section 1542 (or any similar provision of any other state law), which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Such released liabilities shall include, without limitation, any right to recover against the Company for any indemnification claims made against or paid by Seller pursuant to Article 7. Seller understands that this is a full and final release of all claims, demands, causes of action and liabilities of any nature whatsoever, whether or not known, suspected or claimed, that could have been asserted in any legal or equitable proceeding against any Releasee, except as expressly set forth in this Section 8.7. Seller represents that it is not aware of any claim by it other than the claims that are waived, released and forever discharged by this Section 8.7.

ARTICLE 9

MISCELLANEOUS

9 . 1 Vertex Parent Guarantee. Vertex Parent hereby unconditionally, absolutely and irrevocably guarantees, as a principal and not as a surety, to each of the Company and Buyer the prompt payment in full of all payment obligations of Seller as and when due hereunder (the "Obligations"). The guaranty of Vertex Parent under this Section 9.1 is one of payment, not collection, and a separate action or actions may be brought and prosecuted against Vertex Parent, irrespective of whether any action is brought against Seller or whether Seller is joined in any such action or actions. Except as set forth in the following sentence, the obligations of Vertex Parent pursuant to this Section 9.1 shall, to the fullest extent permitted under applicable Law, be absolute and unconditional irrespective of any change in corporate existence or ownership of Vertex Parent or any bankruptcy, insolvency or similar proceeding affecting Seller or Vertex Parent. The liability of Vertex Parent under this Section 9.1 is, in all cases, subject to all defenses, setoffs and counterclaims of Seller set forth in this Agreement with respect to payment and performance of the Obligations; provided, however, that Vertex Parent shall be bound by Seller's waiver of any condition, defense, setoff or counterclaim and by any amendment to this Agreement to which Seller agrees. Vertex Parent waives presentment, demand and any other notice with respect to the Obligations and any defenses that Vertex Parent may have with respect to Obligations other than as set forth in the immediately preceding sentence. The Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon the provisions of this Section 9.1.

9.2 Amendment and Waiver.

This Agreement may not be amended, altered or modified except by a written instrument executed by Buyer and Seller. No course of dealing between or among any persons having any interest in this Agreement, or action taken by any such Person (including in any investigation by or on behalf of any Party), will be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Person under or by reason of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

9.3 Notices.

All notices, demands and other communications to be given or delivered to the Company, Buyer or Seller under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when personally delivered, sent by reputable overnight courier or transmitted by email or telecopy (transmission confirmed by the applicable sender's system), to the addresses indicated below (unless another address is so specified in writing); provided that if any deliverable under this Agreement is due on a non-business day, the due date for such deliverable shall be deemed to be the subsequent business day following such non-business day.

Notices to Seller:

Vertex Energy Operating LLC
1331 Gemini Street, Suite 250
Houston, TX 77058
Attention: Ben Cowart, President
Email: benc@vertexenergy.com

with a copy to:

Ruddy Gregory PLLC
44 Cook Street, Suite 640
Denver, CO 80206
Attention: James P. Gregory, Esq.
Email: jgregory@ruddylaw.com

Notices to Buyer:

Tensile-Heartland Acquisition Corporation
c/o Tensile Capital Management
700 Larkspur Landing Circle, Suite 255
Larkspur, CA 94939
Telephone: (415) 830-8160
Attention: Doug Dossey and Neal Barcelo
Email: ddossey@tensilecapital.com and nbarcelo@tensilecapital.com

with copies to:

Kirkland & Ellis LLP
555 California Street Suite 2700
San Francisco, CA 94104
Attention: Noah D. Boyens, P.C.
Email: nboyens@kirkland.com

9.4 Assignment.

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of each of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any rights, benefits or obligations set forth herein may be assigned by any of the Parties hereto, without the prior written consent of Buyer and Seller and any attempted assignment without such prior written consent shall be void.

9.5 Severability.

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.6 No Strict Construction.

(a) Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any Party, whether under any rule of construction or otherwise. No party to this Agreement shall be considered the draftsman. The parties acknowledge and agree that this Agreement has been reviewed, negotiated, and accepted by all parties and their attorneys and shall be construed and interpreted according to the ordinary meaning of the words used so as fairly to accomplish the purposes and intentions of all parties hereto.

(b) For purposes of this Agreement, whenever the context requires, the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections,” “Schedules” and “Exhibits” are intended to refer to an Article or Section of, or Schedule or Exhibit to, this Agreement.

(e) The words “ordinary course of business” or similar phrases shall mean ordinary course of business consistent with past custom and practice, including with respect to magnitude, quantity and frequency.

(f) Any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law as from time to time amended, modified or supplemented, including (in the case of statutes) by succession of comparable successor Laws.

(g) Any document or item will be deemed “delivered”, “provided” or “made available” by a party to the other party within the meaning of this Agreement if such document or item is included in the electronic data room and the other party and its authorized representatives had continuous, unrestricted access thereto for a period of at least two business days prior to the date of this Agreement.

(h) Any reference herein to “dollars” or “$” shall mean United States dollars.

9.7 Captions.

The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

9.8 No Third Party Beneficiaries.

Except as otherwise expressly set forth in this Agreement, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement, such third parties specifically including employees or creditors of the Company Group.

9.9 Complete Agreement.

This Agreement (including the exhibits and disclosure schedules, which are incorporated by reference in this Agreement) and the documents referred to herein contain the complete agreement between the Parties and supersede any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way.

9.10 Counterparts.

This Agreement may be executed in one or more counterparts, any one of which may be by facsimile or digital imaging device (i.e., pdf format), all of which taken together shall constitute one and the same instrument.

9.11 Governing Law.

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any action, suit or other Proceeding, at law or in equity, arising out of or relating to this Agreement or any agreements or transactions contemplated hereby shall only be brought in any federal court in the State of Delaware or the Court of Chancery of the State of Delaware. THE PARTIES AGREE THAT JURISDICTION AND VENUE IN ANY ACTION BROUGHT BY ANY PARTY PURSUANT TO THIS AGREEMENT SHALL PROPERLY AND EXCLUSIVELY LIE IN SUCH COURTS. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY AND EXCLUSIVELY SUBMITS TO THE JURISDICTION OF SUCH COURTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY WITH RESPECT TO SUCH ACTION. THE PARTIES IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN SUCH COURT, AND HEREBY WAIVE ANY OBJECTION THAT SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH ACTION. THE PARTIES FURTHER AGREE THAT THE MAILING BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OF ANY PROCESS REQUIRED BY ANY SUCH COURT SHALL CONSTITUTE VALID AND LAWFUL SERVICE OF PROCESS AGAINST THEM, WITHOUT NECESSITY FOR SERVICE BY ANY OTHER MEANS PROVIDED BY STATUTE OR RULE OF COURT. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Share Purchase and Subscription Agreement as of the date first written above.

BUYER:
TENSILE-HEARTLAND ACQUISITION CORPORATION

By: /s/ Douglas J. Dossey
Name: Douglas J. Dossey
Title: Director

COMPANY:
HPRM LLC

By: /s/ Benjamin P. Cowart
Name: Benjamin P. Cowart
Title: CEO

SELLER:
VERTEX ENERGY OPERATING, LLC

By: /s/ Benjamin P. Cowart
Name: Benjamin P. Cowart
Title: CEO

Solely for the purposes of Section 2.5,

MYRTLE GROVE LLC:
VERTEX REFINING MYRTLE GROVE LLC

By: /s/ Benjamin P. Cowart
Name: Benjamin P. Cowart
Title: CEO

Solely for the purposes of Section 2.5 and Section 9.1,
VERTEX PARENT:
VERTEX ENERGY, INC.

By: /s/ Benjamin P. Cowart
Name: Benjamin P. Cowart
Title: CEO

Exhibit 10.1

HPRM LLC

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

Dated as of January 17, 2020

THE COMPANY INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH COMPANY INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

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HPRM LLC
AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of HPRM LLC, dated as of January 17, 2020, is entered into by and among the Members (as defined below).

WHEREAS, the Company (as defined below) was formed as a Delaware limited liability company pursuant to the filing of a Certificate of Formation on February 28, 2019, with the Secretary of State of Delaware;

WHEREAS, Vertex Energy Operating, LLC entered into the initial limited liability company operating agreement for the Company on March 27, 2019 (the "Initial Operating Agreement");

WHEREAS, the parties hereto desire to amend and restate the terms and provisions of the Initial Operating Agreement in its entirety, and this Amended and Restated Limited Liability Company Operating Agreement supersedes and replaces the Initial Operating Agreement of the Company;

WHEREAS, pursuant to a Contribution and Exchange Agreement, dated as of the date hereof, the Class B Holder (as defined below) contributed 100% of the issued and outstanding membership interests in Vertex Refining OH LLC, an Ohio limited liability company, having a value of twenty-four million eight hundred thousand dollars ($24,800,000), to the Company in exchange for thirteen thousand five hundred (13,500) Class A Common Units, thirteen thousand five hundred (13,500) Class A-1 Preferred Units and eleven thousand three hundred (11,300) Class B Common Units (the "Contribution and Exchange");

Whereas, the Class B Holder distributed 248 Class B Common Units to Vertex Energy and Vertex Energy contributed said Class B Common Units to Vertex Splitter Corporation as of the date hereof;

WHEREAS, pursuant to a Share Purchase and Subscription Agreement dated as of the date hereof among the Class A Holder, the Class B Holder, the Company and VEI, the Class A Holder then purchased from the Class B Holder all thirteen thousand five hundred (13,500) Class A Common Units and all thirteen thousand five hundred (13,500) Class A-1 Preferred Units then issued and outstanding (the "Class A Sale") and the Class A Holder purchased from the Company seven thousand five hundred (7,500) newly-issued Class A-1 Preferred Units and seven thousand five hundred (7,500) newly-issued Class A Common Units;

WHEREAS, concurrent with the execution of this Agreement, the Company entered into an agreement with the Class B Holder pursuant to which the Class B Holder will provide certain administrative services to the Company (the "Administrative Services Agreement");

WHEREAS, on July 25, 2019, Vertex Energy, Inc. ("VEI") issued Tensile Capital Partners Master Fund LP warrants to purchase 1,500,000 shares of common stock of VEI with an exercise price of $2.25 per share of common stock (the "Warrants"); and

WHEREAS, on July 25, 2019, pursuant to a Subscription Agreement, dated as of July 25, 2019, by and between Tensile Capital Partners Master Fund LP and VEI, Tensile Capital Partners Master Fund LP purchased 1,500,000 shares of common stock of VEI.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

The following definitions shall be applied to the terms used in this Agreement for all purposes, unless otherwise clearly indicated to the contrary.

"Additional Member" means a Person admitted to the Company as a Member pursuant to Section 10.2.

"Adjusted Capital Account Deficit" means with respect to any Capital Account as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Person's Capital Account balance shall be:

(a) reduced for any items described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6); and

(b) increased for any amount such Person is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(1) and 1.704-2(i) (relating to Minimum Gain).

"Adjusted EBITDA" means, for any period, the sum of EBITDA for such period plus, to the extent an acquisition has been consummated during such period, EBITDA attributable to such acquisition (but only that portion of EBITDA attributable to the portion of such period that occurred prior to the date of consummation of such acquisition).

"Admission Date" has the meaning set forth in Section 9.6.

"Administrative Services Agreement" has the meaning set forth in the preamble.

"Advisory Agreement" means the advisory agreement, dated as of the date hereof, by and between Tensile Capital Management LLC and the Company.

"Affiliate" of any Person means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies whether through ownership of voting securities, by contract or otherwise.

"Aggregate Catch-Up Amount" means an amount equal to (a) the sum of all Distributions made in respect of Class A-1 Preferred Units pursuant to Section 4.1(a)(i) and 4.1(a)(ii), multiplied by the quotient of (b) the number of Class B Common Units held by all Class B Unitholders divided by the number of Class A-1 Preferred Units held by all Class A Unitholders.

"Agreement" has the meaning set forth in the preamble.

"Approved Sale" has the meaning set forth in Section 12.9(a).

"Approving Unitholders" has the meaning set forth in Section 12.9(a).

"Assignee" means a Person to whom a Company Interest has been transferred but who has not become a Member pursuant to Article X.

"Authorized Representative" has the meaning set forth in Section 5.7(d).

"Base Rate" means, on any date, a variable rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the "prime rate" at large U.S. money center banks.

"Board" has the meaning set forth in Section 5.1.

"Book Value" means, with respect to any Company property, the Company's adjusted basis for federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation Section 1.704-1(b)(2)(iv)(d)-(g) as reasonably determined by the Board in good faith.

"Blocker Shares" has the meaning set forth in Section 9.2(c).

"Business" means the collection, storage, transportation, transfer, refining, re-refining, distilling, aggregating, processing, blending, sale of used motor oil, used lubricants, wholesale finished lubricants, recycled fuel oil, or related products and services such as vacuum gas oil, base oil, and asphalt flux, provided, however, the business shall not include Swap Transactions where both sides of the transaction are outside the Territory, or sales of imported Group III base oil.

"Business Day" means each day of the week except Saturdays, Sundays and days on which banking institutions are authorized by law to close in San Francisco, California or Houston, Texas.

"Call" has the meaning set forth in Section 6.10(a).

"Call Purchase Price" has the meaning set forth in Section 6.10(a).

"Capital Account" means the capital account maintained for a Member pursuant to Section 3.2.

"Capital Contribution" means any cash, cash equivalents, promissory obligations or the Fair Market Value of other property which a Member contributes to the Company pursuant to Section 3.1 or 5.1.

"Cash Sweep Trigger Event" has the meaning set forth in Section 4.7.

"Cause" shall have the meaning ascribed to such term in any written employment, consulting or severance agreement (or legally binding offer letter or other similar agreement) between the Company or any Subsidiary of the Company and such Management Member, or in the absence of any such written agreement defining such term, shall mean any of the following: (a) a material failure to perform responsibilities or duties to the Company or any Subsidiary of the Company under the Administrative Services Agreement and/or any written employment, consulting or severance agreement (or legally binding offer letter or other similar agreement) between the Company or any Subsidiary of the Company and such Management Member or those other responsibilities or duties as requested from time to time by such Management Members' manager(s) and/or the Board; (b) engagement in illegal or improper conduct or in gross misconduct; (c) commission or conviction of, or plea of guilty or nolo contendere to, a felony, a crime involving moral turpitude or any other act or omission that the Company or any Subsidiary of the Company in good faith believes may harm the standing and reputation of the Company or any Subsidiary of the Company; (d) a material breach of the duty of loyalty to the Company or any of its Subsidiaries or a material breach of the written code of conduct and business ethics of the Company or any of its Subsidiaries or any agreement between such Management Member and the Company or any of its Subsidiaries; (e) dishonesty, fraud, gross negligence or repetitive negligence committed without regard to corrective direction in the course of discharge of duties as an employee or consultant; (f) personal bankruptcy or insolvency; or (g) excessive and unreasonable absences from duties for any reason (other than authorized vacation or sick leave or as a result of disability).

"Certificate" means the Company's Certificate of Formation as filed with the Secretary of State of Delaware, as amended and/or restated from time to time.

"Class A Common Units" means a Unit representing a fractional part of the Company Interests of the Members and having the rights and obligations specified with respect to Class A Common Units in this Agreement.

"Class A Holder" means Tensile-Heartland Acquisition Corporation and its permitted transferees, so long as such entities continue to own Class A Units.

"Class A Holder Exempt Transfer" means (a) a Transfer by the Class A Holder to any equityholder of the Class A Holder (and any subsequent transfers among such equityholders), (b) a sale of Units by the Class A Holder in a Public Sale, (c) a Transfer by the Class A Holder to any Qualified Purchaser of any class of Equity Securities representing, in the aggregate, together with all other Transfers effected pursuant to this clause (c), twenty-five percent (25%) or less of such class of Equity Securities held by the Class A Holder, or (d) a Transfer between the Class A Holder and any of its Affiliates; provided that this Agreement will continue to apply to the Units held by the Class A Holder after any Transfer pursuant to clauses (a), (c) and (d) above and the transferees of such Units pursuant to such clauses shall agree in writing to be bound by the provisions of this Agreement, and to be subject to the same terms and conditions as the Class A Holder.

"Class A Holder Managers" has the meaning set forth in Section 5.3(a)(i).

"Class A Preference" has the meaning set forth in Section 4.1(d)(i).

"Class A Preferred Units" means the Class A-1 Preferred Units and the Class A-2 Preferred Units.

"Class A-1 Preferred Units" means a Unit representing a fractional part of the Company Interests of the Members and having the rights and obligations specified with respect to Class A-1 Preferred Units in this Agreement.

"Class A-2 Preferred Units" means a Unit representing a fractional part of the Company Interests of the Members and having the rights and obligations specified with respect to Class A-2 Preferred Units in this Agreement.

"Class A Sale" has the meaning set forth in the preamble.

"Class A Units" means the Class A Common Units and the Class A Preferred Units.

"Class A Unitholder" means a Member holding any Class A Units.

"Class A Yield" means, with respect to each Class A Preferred Unit, the amount accruing on such Class A Preferred Unit on a daily basis, at the rate of twenty two and one half percent (22.5%) per annum, compounded quarterly based on the date of issuance of such Class A Preferred Unit, on the sum of (a) the Unreturned Capital of such Class A Preferred Unit plus (b) the Unpaid Class A Yield thereon for all prior periods. In calculating the amount of any Distribution to be made during a partial period, the portion of each Class A Preferred Unit's Class A Yield for such partial period shall be prorated based upon the number of elapsed days prior to such Distribution in such partial period.

"Class B Holder" means Vertex Energy Operating LLC, so long as it continues to hold Class B Common Units.

"Class B Holder Managers" has the meaning set forth in Section 5.3(a)(ii).

"Class B Common Unit" means a Unit representing a fractional part of the Company Interests of the Members and having the rights and obligations specified with respect to Class B Common Units in this Agreement.

"Class B Unitholder" means a Member holding any Class B Common Units.

"Code" means the United States Internal Revenue Code of 1986, as amended through the date hereof. Such term shall, at the Board's sole discretion, be deemed to include any future amendments to the Code and any corresponding provisions of succeeding Code provisions (whether or not such amendments and corresponding provisions are mandatory or discretionary).

"Commitment" means, with respect to each Member, the aggregate amount of Capital Contributions made or agreed to be made by such Member as specified in Schedule I attached hereto as the same may be modified from time to time under the terms of this Agreement; provided that notwithstanding any other provision in this Agreement to the contrary, no Member shall be under any obligation to make any additional Capital Contributions other than as originally set forth in Schedule I, unless such Member shall otherwise agree in writing.

"Company" means HPRM, LLC, a Delaware limited liability company, established in accordance with this Agreement, as such limited liability company may be from time to time constituted, and including its successors.

"Company Confidential Information" has the meaning set forth in Section 5.7(d).

"Company Interest" means the interest of a Member in Profits, Losses and Distributions.

"Company Repurchase Notice" has the meaning set forth in Section 3.7(c).

"Competitive Activity" means, with respect to any Management Member, directly or indirectly, owning any interest in, managing, controlling, participating in, consulting with, rendering services for, or in any other manner engaging in any Competitive Business; provided that neither (a) being a passive owner of not more than five percent (5%) of the outstanding stock of any class of securities of a publicly-traded corporation engaged in a Competitive Business, so long as such Management Member has no active participation in the business of such corporation nor (b) performing any services for the Company shall be considered a Competitive Activity.

"Competitive Business" means a business engaging in (a) the operation of one or more used oil re-refineries and, in connection therewith, purchasing used lubricating oils and/or re-refining such oils into processed oils and other products for the distribution, supply and sale to end-customers and/or (b) Swap Transactions where either side of the transaction takes place within the Territory.

"Competitor" means any Person engaged in a Competitive Business if such person has annual revenues in excess of $25,000,000 or an annual collected volume of used oil in excess of 5,000,000 gallons.

"Consolidated Net Income" means the consolidated net income (or loss) for such period, determined on a consolidated basis in accordance with GAAP, excluding consolidated net income of any acquisition for any period prior to the consummation of such acquisition, any gains or losses from dispositions outside of the ordinary course, any extraordinary, non-recurring or unusual non-cash gains or non-cash losses, charges or expenses and any non-cash gains or non-cash losses from discontinued operations, any gains or losses due solely to the cumulative effect of any change in accounting principles and the effects resulting from purchase accounting adjustments.

"Contribution and Exchange" has the meaning set forth in the preamble.

"Corporate Opportunity" has the meaning set forth in Section 5.7(a).

"Cure Period" has the meaning set forth in Section 6.9(d).

"Delaware Act" means the Delaware Limited Liability Company Act, 6 Del.L. § 18-101, *et seq.*, as it may be amended from time to time, and any successor to the Delaware Act.

"Director Indemnification Agreement" means an indemnification agreement between a member of the Board of the Company and the Company.

"Dispute Procedure" means, in any case where a determination or approval of the Board is called for hereunder and is expressly made subject to a resolution pursuant to the Dispute Procedure herein set forth, the Class B Holder may demand the engagement by the Company of an independent accounting firm reasonably acceptable to the Board for the purpose of calculating the accuracy and/or compliance of any such determination or approval with the applicable provisions hereof. In any such instance, absent manifest error the calculation of the independent accounting firm shall be binding. The fees for such independent accounting firm shall be borne as follows: (a) in the event that the independent accounting firm's calculation varies from the Board-approved measure by more than five percent (5%) in favor of the Class B Holder, the Company shall bear the expense and (b) if the independent accounting firm's valuation varies from the Board-approved measure by five percent (5%) or less in favor of the Class B Holder, the Class B Holder will bear the expense.

"Distribution" means each distribution made by the Company to a Member, whether in cash, property or securities of the Company and whether by liquidating distribution or otherwise; provided that none of the following shall be a Distribution (a) any recapitalization or exchange of securities of the Company, and any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units, (b) any redemption or repurchase by the Company of any securities effected *pro rata* as amongst the holders of Units, (c) any fees or expenses that are required to be and are paid and/or reimbursed to any Member and/or the Affiliate of any Member, or (d) distributions made pursuant to Section 4.1(b).

"EBITDA" means EBITDA means, for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period but without duplication: (a) interest expense; (b) all federal, state, provincial, local and foreign income tax and franchise tax expenses; (c) depreciation and amortization; (d) reimbursement of expenses paid to the Class A Holder pursuant to the Advisory Agreement not to exceed one million dollars ($1,000,000) annually; (e) transaction fees, administration fees, costs, charges and expenses associated with acquisitions, mergers, financings, investments, loans, or similar fees, costs charges and expenses, whether or not consummated, other than any transaction fees payable to any Member or any of their respective Affiliates; (f) non-cash fees, costs, charges and expenses incurred pursuant to any management equity plan or any other management or employee benefit plan or agreement; (g) non-cash losses (or minus non-cash gains) resulting from currency exchange rate fluctuations, stock compensation, interest rate swaps or hedges and deferred rent adjustments but excluding any non-cash loss to the extent that it represents an accrual or reserve for potential cash losses resulting from any of the foregoing in any future period; (h) any (i) non-cash purchase accounting adjustments, (ii) non-cash impairment charges, write-downs or write-offs and (iii) other non-cash adjustments, in each case made pursuant to GAAP; (i) non-recurring integration expenses, severance amounts and retention and relocation payments; (j) one-time fees, losses, costs, charges and expenses due to changes in accounting policy and (k) other non-cash charges or other expenses as reasonably approved by the Board subject to the Dispute Procedure.

"Effective Date" means the effective date of this Agreement.

"Electing Class A Unitholders" has the meaning set forth in Section 6.9(a).

"Entity" has the meaning set forth in Section 12.7(a).

"Equity Securities" means (a) Units or other equity interests in the Company (including other classes or groups thereof having such relative rights, powers and duties as may from time to time be established by the Board, including rights, powers and duties senior to existing classes and groups of Units and other equity interests in the Company), (b) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other equity interests in the Company and (c) warrants, options or other rights to purchase or otherwise acquire Units or other equity interests in the Company. For purposes of Section 6.10, this definition shall not include subpart (b).

"Expanded Territory" means Virginia, New York, Connecticut, Massachusetts, New Hampshire, Vermont, Rhode Island, New Jersey, Wisconsin, North Carolina, South Carolina, Missouri, Iowa and Minnesota.

"Event of Withdrawal" means the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company.

"Fair Market Value" means, with respect to any asset or equity interest, its fair market value determined according to Article XIII.

"Fiscal Period" means any interim accounting period within a Taxable Year established by the Board and which is permitted or required by Code Section 706.

"Fiscal Year" means the Company's annual accounting period established pursuant to Section 7.2.

"Free Cash Flow" has the meaning set forth in Section 4.7.

"GAAP" means U.S. generally accepted accounting principles, consistently applied.

"Governmental Entity" means the United States of America or any other nation, any state, local or other political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"Indemnified Person" has the meaning set forth in Section 6.4(a).

"Invested Capital" means the Class A Unitholder's cumulative Capital Contributions (including amounts loaned to the Company or any of its Subsidiaries, as applicable), plus the amount paid by the Class A Unitholder to the Class B Holder pursuant to the Class A Sale transaction.

"IPO" means the initial sale pursuant to a registration statement filed under the Securities Act of any equity securities of the Company, whether by the Company or any holder of equity securities of the Company.

"Loss" or "Losses" means items of Company loss and deduction determined according to Section 3.2.

"Maintenance Capital Expenditures" means capital expenditures required to maintain or replace assets, as reasonably determined by the Board.

"Management Incentive Unit Agreement" means a Management Incentive Unit Agreement between the Company and a Management Member as in effect from time to time.

"Management Incentive Units" has the meaning set forth in Section 3.6(a).

"Management Member" has the meaning set forth in Section 3.6(a).

"Manager" has the meaning set forth in Section 5.1.

"Member" means each of the members named on Schedule I attached hereto and any Person admitted to the Company as a Substituted Member or Additional Member, but only so long as such Person is shown on the Company's books and records as the owner of one or more Units.

"Member Approval Matters" has the meaning set forth in Section 6.12.

"Member Repurchase Notice" has the meaning set forth in Section 3.7(c).

"Minimum Gain" means the partnership minimum gain determined pursuant to Treasury Regulation Section 1.704-2(d).

"Original Cost" of any Management Incentive Unit will be equal to the price paid therefor (in each case, as proportionally adjusted for all Unit splits, Unit dividends, and other recapitalizations or similar adjustments affecting such Management Incentive Unit subsequent to any such purchase), if any.

"Other Agreements" has the meaning set forth in Section 9.4.

"Participating Management Incentive Unit" means a Management Incentive Unit, the Participation Threshold of which has been reduced to zero (taking into account any adjustments described in Section 3.6(d))

"Participating Unit" means, with respect to any Distribution pursuant to Section 4.1(a)(iv) hereof, any (i) Class A Common Unit and (ii) Class B Common Unit, other than (A) a Management Incentive Unit that is not a Participating Management Incentive Unit or (B) a Management Incentive Unit that is not a Vested Unit.

"Participating Unitholders" has the meaning set forth in Section 9.2(a)(i).

"Participation Threshold" has the meaning set forth in Section 3.6(c).

"Person" means an individual or any corporation, partnership, limited liability company, trust, unincorporated organization, association, joint venture or any other entity or organization, regardless of whether a legally recognized person.

"Potential Participating Unitholder" has the meaning set forth in Section 9.2(a).

"Preemptive Holder" has the meaning set forth in Section 12.8(a).

"Preemptive Notice" has the meaning set forth in Section 12.8(c).

"Preemptive Reply" has the meaning set forth in Section 12.8(c).

"Primary Common Units" means the Class A Common Units and the Class B Common Units other than Management Incentive Units.

"Profits" means items of Company income and gain determined according to Section 3.2.

"Proposed Purchaser" means the proposed transferee(s) of a Transfer that is subject to the rights set forth in Section 9.2(b)(i), which proposed transferee(s) shall be Qualified Purchasers.

"Public Sale" means any sale of equity securities of the Company (other than rights to acquire equity securities of the Company) to the public pursuant to an offering registered under the Securities Act or to the public through a broker, dealer or market maker pursuant to the provisions of Rule 144 adopted under the Securities Act.

"Qualified Purchaser" means an unaffiliated third Person that is not a Competitor.

"Redemption" has the meaning set forth in Section 6.9(a).

"Redemption Notice" has the meaning set forth in Section 6.9(a).

"Regulatory Allocations" has the meaning set forth in Section 4.5.

"Related Party" means any Unitholder, any transferee thereof as permitted pursuant to Section 9.2, any Affiliate or portfolio company of any of the foregoing and/or any Person which any of the foregoing controls, is controlled by or is under common control with; provided that for purposes of this definition, the Company and its Subsidiaries will not be considered a "Related Party" of any Unitholder.

"Related Party Transaction" means any agreement, contract, transaction, payment or arrangement between the Company or any of its controlled Affiliates, on the one hand, and any Related Party, on the other hand; provided that for purposes of this definition, the following will not be considered a "Related Party Transaction": (a) employment and/or related or similar agreements entered into with a Unitholder who is also a director, manager, officer or employee of the Company or any of its Subsidiaries (in each case, in a manner consistent with the Company's budget), (b) any issuance of Equity Securities of any of its Subsidiaries pursuant to an equity incentive plan approved pursuant to Section 6.12(b), (c) any issuance of Equity Securities subject to Section 12.8 below and the exercise of rights acquired pursuant to such Equity Securities, or (d) indemnification, advancement of expenses and/or exculpation of liability made pursuant to this Agreement or pursuant to Director Indemnification Agreements.

"Repurchase Notice" has the meaning set forth in Section 3.7(c).

"Repurchase Option" has the meaning set forth in Section 3.7(a).

"Required Manager" has the meaning set forth in Section 5.5(a).

"Revised Partnership Audit Procedures" means the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015, P.L. 114 74 (together with any subsequent amendments thereto, Treasury Regulations promulgated thereunder, and published administrative interpretations thereof).

"Sale Notice" has the meaning set forth in Section 9.2(a)(i).

"Sale of the Company" means either (a) the sale, lease, license, transfer, conveyance or other disposition, in one transaction or a series of related transactions, of a majority of the assets of the Company and its Subsidiaries, taken as a whole, or (b) a transaction or a series of related transactions (whether by merger, exchange, contribution, recapitalization, consolidation, reorganization, combination or otherwise) the result of which is the holders of the Company's outstanding voting securities as of the date of this Agreement are no longer the beneficial owners, in the aggregate, after giving effect to such transaction or series of related transactions, directly or indirectly through one or more intermediaries, of more than 50% of the voting power of the outstanding voting securities of the Company. Notwithstanding the foregoing, no such transaction or series of related transactions (whether by merger, exchange, contribution, recapitalization, consolidation, reorganization, combination or otherwise) in connection with a Public Sale shall be deemed a Sale of the Company.

"Securities Act" means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

"Securities and Exchange Commission" means the United States Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

"Subsidiary" means, with respect to any Person of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall control any managing director or general partner of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a "Subsidiary" of the Company shall be given effect only at such times that the Company has one or more Subsidiaries, and, unless otherwise indicated, the term "Subsidiary" refers to a Subsidiary of the Company.

"Substituted Member" means a Person that is admitted as a Member to the Company pursuant to Section 10.1.

"Supplemental Repurchase Notice" has the meaning set forth in Section 3.7(c).

"Swap Transaction" means the exchange of used motor or industrial oil at one location with another used motor or industrial oil collection business or re-refiner at another location, provided, however, it shall not include any such transaction that would require the Company to provide products or services that the Company is not then able to perform or provide.

"Tax Matters Representative" has the meaning set forth in Section 8.3.

"Taxable Year" means the Company's accounting period for federal income tax purposes determined pursuant to Section 8.2.

"Tensile" means Tensile Partners Master Fund LP.

"Tensile Group" means Tensile Capital Management, its Affiliates and any of their respective managed investment funds and portfolio companies (including the Class A Holder, but excluding the Company and its Subsidiaries) and their respective partners, members, directors, employees, stockholders, agents, any successor by operation of law (including by merger) of any such Person, and any entity that acquires all or substantially all of the assets of any such Person in a single transaction or series of related transactions.

"Termination Date" has the meaning set forth in Section 3.7(a).

"Territory" means Ohio, Kentucky, Pennsylvania, Indiana, Illinois, Michigan, Tennessee and West Virginia.

"Total Equity Value" means the total gross proceeds which would be received by the holders of the Company's Equity Securities if the assets and business of the Company and its Subsidiaries as a going-concern were sold in an orderly transaction to a willing buyer, and such proceeds were then distributed in accordance with this Agreement (as then in effect) after payment of, or provision for, appropriate obligations and liabilities (including all taxes, costs and expenses incurred in connection with such transaction and any reserves established by the Board for contingent liabilities in connection with the transaction in which Total Equity Value is being determined), all as determined by the Board subject to the Dispute Procedure.

"Transfer" has the meaning set forth in Section 9.1. The terms "Transferee," "Transferor," "Transferred," and other forms of the word "Transfer" shall have the correlative meanings.

"Transferring Unitholder" has the meaning set forth in Section 9.2(b)(i).

"Treasury Regulations" means the income tax regulations promulgated under the Code and any corresponding provisions of succeeding regulations.

"Unit" means a Company Interest of a Member or an Assignee in the Company representing a fractional part of the Company Interests of all Members and Assignees, whether a Class A-1 Preferred Unit, Class A-2 Preferred Unit, Class A Common Unit or Class B Common Unit; provided that any class or group of Units issued shall have the relative rights, powers and duties set forth in this Agreement and the Company Interest represented by such class or group of Units shall be determined in accordance with such relative rights, powers and duties.

"Unitholder" means a holder of Units.

"Unpaid Class A Yield" of any Class A Preferred Unit means, as of any date, any positive amount equal to (a) the aggregate Class A Yield accrued on such Class A Preferred Unit for all periods prior to such date, less (b) the aggregate amount of prior Distributions made by the Company that constitute payment of Class A Yield on such Class A Preferred Unit pursuant to Section 4.1(a)(i).

"Unreturned Capital" means, with respect to any Class A Preferred Unit, an amount equal to the sum of (a) the aggregate amount of Capital Contributions made or deemed made in exchange for or on account of such Class A Preferred Unit, less (b) the aggregate amount of prior Distributions made by the Company that constitute a return of the Capital Contributions therefor pursuant to Section 4.1(a)(ii).

"Vertex Company Group" means Vertex Energy Operating LLC and its Subsidiaries, together with its parent, Vertex Energy

"Vertex Energy" shall mean Vertex Energy, Inc. or its successors or assigns.

"Vertex Triggering Event" means (a) any termination of the Administrative Services Agreement pursuant to its terms, (b) any material breach by the Class B Holder or VEI of the Environmental Remediation and Indemnity Agreement dated as of the date hereof by and among the Class A Holder, the Class B Holder, VEI and the Company (c) any dissolution, winding up or liquidation of any substantive member of the Vertex Company Group, (d) any sale, lease, license or disposition of any material assets of any substantive member of the Vertex Company Group or (e) any transaction or series of related transactions (whether by merger, exchange, contribution, recapitalization, consolidation, reorganization, combination or otherwise) involving any substantive member of the Vertex Company Group, the result of which is that the holders of the voting securities of the relevant member of the Vertex Company Group as of the date hereof are no longer the beneficial owners, in the aggregate, after giving effect to such transaction or series of transactions, directly or indirectly, through one or more Subsidiaries, of more than fifty percent (50%) of the voting power of the outstanding voting securities of the relevant member of the Vertex Company Group, in each case of clauses (c) and (d), that results in material impairment to the financial condition of the Vertex Company Group on a consolidated basis.

"Vested Units" has the meaning set forth in Section 3.6(f).

"Warrants" has the meaning set forth in the preamble.

"Warrant Value" means, as of the date of determination, with respect to each Warrant or partial Warrant, (a) if such Warrant or partial Warrant has not been exercised, the amount of the gain that would be realized upon the exercise of such Warrant or partial Warrant at the close of business on the date of determination, calculated using the ten- (10-) day volume weighted average price of underlying Vertex Energy stock at the close of business on the date of determination, (b) if such Warrant or partial Warrant has been exercised, the amount of gain actually realized upon the exercise of such Warrant or partial Warrant, or (c) if such Warrant or partial Warrant has been sold prior to being exercised, the difference between the price paid by the applicable purchaser of such Warrant or partial Warrant and the aggregate exercise price applicable to such Warrant or partial Warrant.

"Year-End Tax Distributions" has the meaning set forth in Section 4.1(e).

ARTICLE II

ORGANIZATIONAL MATTERS

2.1 **Formation of Company**. The Company was formed on February 28, 2019 pursuant to the provisions of the Delaware Act.

2.2 **Limited Liability Company Agreement**. The Members hereby execute this Agreement for the purpose of establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the Delaware Act. The Members hereby agree that during the term of the Company set forth in Section 2.6 the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and the Delaware Act. On any matter upon which this Agreement is silent, the Delaware Act shall control. No provision of this Agreement shall be in violation of the Delaware Act and to the extent any provision of this Agreement is in violation of the Delaware Act, such provision shall be void and of no effect to the extent of such violation without affecting the validity of the other provisions of this Agreement; provided that where the Delaware Act provides that a provision of the Delaware Act shall apply "unless otherwise provided in a limited liability company agreement" or words of similar effect, the provisions of this Agreement shall in each instance control; provided further that notwithstanding the foregoing, Section 18-210 of the Delaware Act shall not apply or be incorporated into this Agreement.

2.3 **Name**. The name of the Company shall be HPRM, LLC. The Board in its sole discretion may change the name of the Company at any time and from time to time. Notification of any such change shall be given to all of the Members. The Company's business may be conducted under its name and/or any other name or names deemed advisable by the Board.

2.4 **Purpose**. The purpose and business of the Company shall be any business which may lawfully be conducted by a limited liability company formed pursuant to the Delaware Act.

2.5 **Principal Office; Registered Office**. The principal office of the Company shall be at 4001 E. 5 th Avenue, Columbus, OH 43219, or such other place as the Board may from time to time designate. The Company may maintain offices at such other place or places as the Board deems advisable. Notification of any such change shall be given to all of the Members. The registered office of the Company required by the Delaware Act to be maintained in the State of Delaware shall be the registered office set forth in the Certificate or such other office (which need not be a place of business of the Company) as the Board (as defined below) may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Delaware shall be the initial registered agent named in the Certificate or such other person or persons as the Board may designate from time to time in the manner provided by law. The principal office of the Company shall be at such place as the Board may designate from time to time, which need not be in the State of Delaware, and the Company shall maintain records there.

2.6 **Term**. The term of the Company commenced upon the filing of the Certificate in accordance with the Delaware Act and shall continue in existence until termination and dissolution thereof in accordance with the provisions of Article XII.

2.7 **No State-Law Partnership**. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 2.7, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state or local income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

ARTICLE III

CAPITAL CONTRIBUTIONS

3.1 **Members**.

(a) The Board may at any time, subject to Section 6.12(b), without the need for any amendment hereunder, authorize and issue any class of Units. All Units issued hereunder shall be uncertificated unless otherwise determined by the Board.

(b) Each Member named on Schedule I attached hereto has made Capital Contributions to the Company as set forth on Schedule I and holds the number of Units of the Company set forth on Schedule I. Each Member acknowledges and agrees that portions of this Agreement, including Schedule I, may be redacted or information herein may otherwise be aggregated to prevent disclosure of confidential information.

(c) Each Member who is issued Units by the Company pursuant to the authority of the Board set forth in Section 5.1 shall make the Capital Contributions to the Company determined by the Board pursuant to the authority of the Board set forth in Section 5.1 in exchange for such Units.

(d) No Member shall be required or, except as approved by the Board pursuant to Section 5.1 and in accordance with the other provisions of this Agreement, permitted to (i) make any Capital Contribution in excess of its Commitment as set forth on Schedule I or (ii) loan any money or property to the Company or borrow any money or property from the Company.

3.2 **Capital Accounts**.

(a) The Company shall maintain a separate Capital Account for each Member according to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). For this purpose, the Company may (in the discretion of the Board), upon the occurrence of the events specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Treasury Regulation Section 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

(b) For purposes of computing the amount of any item of Company income, gain, loss or deduction to be allocated pursuant to Article IV and to be reflected in the Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose); provided that:

(i) The computation of all items of income, gain, loss and deduction shall include those items described in Code Section 705(a)(l)(B) or Code Section 705(a)(2)(B) and Treasury Regulation Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includable in gross income or are not deductible for federal income tax purposes.

(ii) If the Book Value of any Company property is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(e) or (f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property.

(iii) Items of income, gain, loss or deduction attributable to the disposition of Company property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the Book Value of such property.

(iv) Items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the property's Book Value in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

(v) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

3.3 **Negative Capital Accounts**. No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

3.4 **No Withdrawal**. No Person shall be entitled to withdraw any part of such Person's Capital Contribution or Capital Account or to receive any Distribution from the Company, except as expressly provided herein.

3.5 **Loans From Members**. Loans by Members to the Company shall not be considered Capital Contributions. If any Member shall advance funds to the Company in excess of the amounts required hereunder to be contributed by such Member to the capital of the Company as its Commitment, the making of such advances shall not result in any increase in the amount of the Capital Account of such Member. The amount of any such advances shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such advances are made.

3.6 **Management Incentive Units**.

(a) From time to time from and including the date hereof, the Board shall, subject to Section 6.12(b), have the power and discretion to approve the issuance of any class of Units to any manager, employee, independent contractor or consultant of the Company or its Subsidiaries including employees of VEI providing services under the Administrative Services Agreement (each such person, a "Management Member"). The Board shall have power and discretion to approve which managers, employees, independent contractors, or consultants shall be offered and issued such Units ("Management Incentive Units"), the number of Management Incentive Units to be offered and issued to each Management Member and the purchase price and other terms and conditions (including any deemed Capital Contributions in respect thereof) with respect thereto; provided that (i) holders of Management Incentive Units shall not have any voting rights with respect to their Management Incentive Units and (ii) the Board shall not issue more than eight hundred (800) Management Incentive Units that are Class A-1 Preferred Units, six hundred (600) Management Incentive Units that are Class A Common Units or four hundred fifty (450) Management Incentive Units that are Class B Common Units.

(b) The provisions of this Section 3.6 are designed to provide incentives to managers, employees, independent contractors or consultants of the Company or its Subsidiaries. This Section 3.6, together with the other terms of this Agreement and the Management Incentive Unit Agreements relating to Management Incentive Units, are intended to be a compensatory benefit plan within the meaning of Rule 701 of the Securities Act, and, unless and until the Company's Equity Securities are publicly traded, the issuance of Management Incentive Units are, to the extent permitted by applicable federal securities laws, intended to qualify for the exemption from registration under Rule 701 of the Securities Act.

(c) On the date of each grant of Management Incentive Units to a Management Member, the Board will establish (and document in the applicable Management Incentive Unit Agreement) an initial "Participation Threshold" amount with respect to each such Management Incentive Unit granted on such date. The Participation Threshold determined by the Board shall be based on the Company's net fair market value at the date of issuance, and shall be calculated in such a manner that each such Management Incentive Unit would not be entitled to any distributions under Section 4.1 any earlier than such later date as the Company's net fair market value has appreciated above that which existed on the date of issuance.

(d) Each Management Incentive Unit's Participation Threshold shall be adjusted after the grant of such Management Incentive Unit as follows:

(i) In the event of any Distribution pursuant to Section 4.1(a)(iv), the Participation Threshold of each Management Incentive Unit outstanding at the time of such Distribution shall be reduced (but not below zero) by the amount of such Distribution.

(ii) In the event of any change in the Company's capital or economic structure not addressed above (including any redemption of outstanding Units), the Board may equitably adjust the Participation Thresholds of the outstanding Management Incentive Units to the extent necessary (in the Board's good faith judgment) to prevent such capital structure change from changing the economic rights represented by the Management Incentive Units in a manner that is disproportionately favorable or unfavorable in relation to the economic rights of other classes or series of outstanding Units.

(e) In connection with any approved issuance of Management Incentive Units to a Management Member hereunder, such Management Member shall execute a counterpart to this Agreement (or a joinder to this Agreement in a form acceptable to the Company), accepting and agreeing to be bound by all terms and conditions hereof, and shall enter into such other documents and instruments to effect such purchase (including, without limitation, a Management Incentive Unit Agreement) as are required by the Board.

(f) If the Board so determines, the Management Incentive Units issued to any Management Member shall become vested in accordance with the vesting schedule determined by the Board in connection with the issuance of such Management Incentive Units (and reflected in the relevant Management Incentive Unit Agreement). Management Incentive Units that are subject to vesting and that are vested per such vesting schedule or by the Board are referred to herein as "Vested Units". Management Incentive Units that are subject to vesting and that are not yet vested per such vesting schedule, or as otherwise provided by the Board, are referred to herein as "Unvested Units". Management Incentive Units that are not subject to vesting or that are fully vested on the date of issuance shall be deemed "Vested Units" for all purposes hereunder.

(g) The Management Incentive Units to be issued under this Agreement may be intended to be "profits interests," within the meaning of IRS Revenue Procedures 93-27 and 2001-43.

(h) Each Management Member shall make and file with the Internal Revenue Service a "Section 83(b) Election" with respect to the Management Incentive Units in such form as required by applicable Treasury Regulations. Any such Section 83(b) Election shall be filed within 30 days of the grant date of a Management Incentive Unit to a Management Member. Each Management Member acknowledges and understands that it is such Management Member's sole obligation and responsibility to timely file such Section 83(b) Election, and neither the Company nor its legal or financial advisors shall have (i) any obligation or responsibility with respect to such filing or (ii) any liability resulting or arising from the failure to timely file such Section 83(b) Election.

(i) By executing this Agreement, each Member authorizes and directs the Company to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "IRS Notice") apply to any interest in the Company transferred to a service provider by the Company on or after the effective date of such Revenue Procedure in connection with services provided to the Company, including the Management Incentive Units. For purposes of making such Safe Harbor election, the Tax Matters Representative is hereby designated as the "member who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by the Tax Matters Representative constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the IRS Notice. The Company and each Member hereby agree to comply with all requirements of the Safe Harbor described in the IRS Notice, including, without limitation, the requirement that each Member shall prepare and file all federal income tax returns reporting the income tax effects of each "Safe Harbor Partnership Interest" issued by the Company in a manner consistent with the requirements of the IRS Notice. A Member's obligations to comply with the requirements of this Section 3.6(i), shall survive such Member's ceasing to be a Member of the Company and/or the termination, dissolution, liquidation and winding up the Company, and, for purposes of this Section 3.6(i), the Company shall be treated as continuing in existence.

3.7 **Repurchase Option**. Except as otherwise set forth in a Management Member's Management Incentive Unit Agreement:

(a) If a Management Member ceases to be employed by the Company or its Subsidiaries for any reason (or in the case of a Management Member who was not an employee, if such Management Member is no longer acting as a manager of or consultant or independent contractor to the Company or any of its Subsidiaries for any reason) (the date of such cessation, the "Termination Date"), the Management Incentive Units issued to such Management Member and any other Units held by such Management Member (whether held by such Management Member or one or more transferees of such Management Member, other than the Company or any other Member of the Company) will be subject to repurchase by the Company and then the other Members of the Company (each of the aforementioned solely at their option) pursuant to the terms and conditions set forth in this Section 3.7 (the "Repurchase Option").

(b) Commencing on the later of (x) the Termination Date of a Management Member and (y) the one hundred eighty-first (181s)t day following the date upon which the Management Incentive Units that are subject to such repurchase have become Vested Units, the Company and then the other Members of the Company may elect to repurchase all or any portion of the Management Incentive Units at a price per Unit equal to (i) with respect to any (A) Unvested Units or (B) in the event of (1) such Management Member's termination for Cause, (2) such Management Member's resignation or (3) such Management Member's participation in a Competitive Activity, at the lower of Original Cost or Fair Market Value (determined as of a date within sixty (60) days prior to the date of repurchase) as specified by the purchasing Members and (ii) otherwise, at Fair Market Value (determined as of the later of (x) or (y) above). The Company and the purchasing Members, as the case may be, may elect to purchase all or any portion of any Unvested Units before purchasing any other Management Incentive Units. In the event any rights pursuant to the Repurchase Option may arise, the Company will promptly notify the other Members thereof.

(c) Subject to Section 3.7(b), the Company may elect to exercise the Repurchase Option to purchase by delivering written notice (a "Company Repurchase Notice") to the holder or holders of the Management Incentive Units specifying the number of Management Incentive Units the Company intends to purchase, no later than eighteen (18) months after the latest of (i) the Termination Date of such Management Member, (ii) the date that the Company becomes aware of such Management Member's participation in a Competitive Activity and (iii) the one hundred eighty-first (181st) day following the date upon which the Management Incentive Units that are subject to such repurchase have become Vested Units. To the extent that any portion of the Management Incentive Units are not being repurchased by the Company, the other Members may exercise the Repurchase Option for the remaining Management Incentive Units by delivering written notice (a "Member Repurchase Notice") to the holder or holders of the applicable Management Incentive Units, the Company and the other purchasing Members within ten (10) business days of the expiration of the latest period during which the other purchasing Members were entitled to deliver Repurchase Notices. To the extent that any of the other purchasing Members do not elect to repurchase their full allotment of Management Incentive Units no later than the tenth business day following delivery of the first Member Repurchase Notice delivered by any other purchasing Member (and, immediately following the completion of such tenth business day, the Company will notify in writing each of the other purchasing Members if any of the other purchasing Members have not elected to purchase their full allotment of Management Incentive Units), the other purchasing Members that have elected to purchase their full allotment shall be entitled to purchase all or any portion of the remaining Management Incentive Units by providing notice (the "Supplemental Repurchase Notice" and together with the Company Repurchase Notice and the Member Repurchase Notice, a "Repurchase Notice") to each of the parties receiving the Member Repurchase Notice within ten (10) business days following the delivery of the first Member Repurchase Notice delivered by any of the other purchasing Members; provided that if in the aggregate such other purchasing Members elect to purchase more than the remaining available Management Incentive Units, such remaining available Management Incentive Units purchased by each other purchasing Member will be reduced on a pro rata basis based upon the number of Units then held by each electing other purchasing Member. Each Repurchase Notice will set forth the number of Management Incentive Units to be acquired from such holder(s), the aggregate consideration to be paid for such Management Incentive Units and the time and place for the closing of the transaction. If any Management Incentive Units are held by any transferees of a Management Member, the other purchasing Members and the Company, as the case may be, will purchase the Management Incentive Units elected to be purchased from all such holder(s) of Management Incentive Units, pro rata according to the number of Management Incentive Units held by each such holder(s) at the time of delivery of such Repurchase Notice (determined as nearly as practicable to the nearest Management Incentive Units). If Management Incentive Units of different classes or series are to be purchased pursuant to the Repurchase Option and such Management Incentive Units are held by any transferees of a Management Member, the number of Management Incentive Units of each class or series of Management Incentive Units to be purchased will be allocated among all such holders, pro rata according to the total number of Management Incentive Units to be purchased from such Persons.

(d) The closing of the transactions contemplated by this Section 3.7 will take place on the date designated in the applicable Repurchase Notice, which date will not be more than sixty (60) days after the delivery of such notice. The Company will pay for the Management Incentive Units to be purchased by it by first offsetting amounts outstanding under any bona fide debts owing by such Management Member to the Company or any of its Subsidiaries, now existing or hereinafter arising (irrespective as to whether such amounts are owing by the holder of such Management Incentive Units), and will pay the remainder of the purchase price by, at its option, delivery of (i) either a check payable to, or by wire transfer of immediately available funds to an account designated in writing by the holder to, the holder of such Management Incentive Units, (ii) if terms required by creditors in agreements or indentures with the Company or its Subsidiaries have the effect of restricting or prohibiting the Company or its Subsidiaries from making the payment in clause (i), a subordinated promissory note payable in three equal annual installments commencing on the first anniversary of the closing of such purchase and bearing interest at a rate per annum equal to five percent (5%) or (iii) both (i) and (ii), in the aggregate amount of the purchase price for such Management Incentive Units. Each other purchasing Member will pay for the Management Incentive Units to be purchased by it by, at the option of such member, by delivery of either a check payable to, or by wire transfer of immediately available funds to an account designated in writing by the holder to, the holder of such Management Incentive Units. Notwithstanding anything to the contrary contained herein, all repurchases of Management Incentive Units by the Company will be subject to applicable restrictions under all applicable laws and in the Company's and its Subsidiaries' debt and equity financing agreements. If any such restrictions prohibit the repurchase of Management Incentive Units hereunder which the Company is otherwise entitled to make, the Company may make such repurchases as soon as it is permitted to do so under such restrictions, and during such period of time, the purchase price payable to the holder shall accrue interest at a rate per annum equal to five percent (5%). The purchasing Members and/or the Company, as the case may be, will receive customary representations and warranties from each seller regarding the sale of the Management Incentive Units, including, but not limited to, representations that such seller has good and marketable title to the Management Incentive Units to be transferred free and clear of all liens, claims and other encumbrances.

(e) In addition to the foregoing, in the event the Class B Holder exercises the call option set forth in Section 6.10, all Management Incentive Units shall become fully vested, and shall be repurchased from the holders of such Management Incentive Units on the same terms and conditions as those applicable to the purchase of the Class A Units.

(f) The provisions of this Section 3.7 will terminate upon the last to occur of (i) a Sale of the Company and (ii) with respect to any Management Incentive Units still subject to vesting as of a Sale of the Company, the lapse of such vesting restrictions.

ARTICLE IV

DISTRIBUTIONS AND ALLOCATIONS

4.1 **Distributions**.

(a) Subject to any restrictions contained in any credit agreement to which the Company is a party or by which it is bound and subject to applicable law, the Board shall make Distributions in the event of a liquidation described in Section 12.2, a Sale of the Company, a Redemption or a Cash Sweep Trigger Event to the Unitholders in the following order and priority:

(i) First, the Class A Unitholders, together as a separate and distinct class, shall be entitled to receive an amount equal to the greater of (A) the aggregate Unpaid Class A Yield with respect to their Class A Preferred Units outstanding immediately prior to such Distribution and (B) an amount equal to fifty percent (50%) of the aggregate Invested Capital (such greater amount, the "Class A Preference"), in each case of clauses (A) and (B) in the proportion that each Class A Unitholder's share of Class A Preference with respect to its Class A Preferred Units outstanding immediately prior to such Distribution bears to the aggregate unpaid Class A Preference with respect to all Class A Preferred Units outstanding immediately prior to such Distribution until each Class A Unitholder has received Distributions with respect to its Class A Preferred Units pursuant to this Section 4.1(a)(i) in an amount equal to the aggregate unpaid Class A Preference with respect to such Class A Unitholder's Class A Preferred Units outstanding immediately prior to such Distribution. No Distribution or any portion thereof shall be made under any of the other paragraphs below in this Section 4.1(a) until the entire amount of the Class A Preference with respect to the Class A Preferred Units outstanding immediately prior to such Distribution has been paid in full;

(ii) Second, the Class A Unitholders, together as a separate and distinct class, shall be entitled to receive all or a portion of any Distribution (ratably among such Class A Unitholders based upon the Unreturned Capital of each Class A Preferred Unit held by each such Class A Unitholder as of the time of such Distribution) equal to the aggregate Unreturned Capital with respect to the Class A Preferred Units outstanding immediately prior to such Distribution, and no Distribution or any portion thereof shall be made under any paragraph below in this Section 4.1(a) unless and until the entire amount of Unreturned Capital with respect to the Class A Preferred Units outstanding immediately prior to such Distribution has been paid in full;

(iii) Third, the Class B Unitholders together as a separate and distinct class, shall be entitled to receive all or a portion of such Distribution (ratably among such Class B Unitholders based upon the number of Class B Common Units held by each such Class B Unitholders as of the time of such Distribution) equal to the Aggregate Catch-Up Amount, and no Distribution or any portion thereof shall be made under any paragraph below in this Section 4.1(a) unless and until the entire amount of the Aggregate Catch-Up Amount has been paid in full; and

(iv) Fourth, to the holders of Participating Units in proportion to the number of Participating Units held by such holder.

(v) Notwithstanding anything to the contrary in this Agreement, at the time of each Distribution which would otherwise be made pursuant to this Section 4.1(a) other than a Distribution in connection with a liquidation described in Section 12.2, a Sale of the Company, a Redemption or a Cash Sweep Trigger Event, such Distribution shall be made to the Unitholders pursuant to Section 4.1(a)(iv).

(b) For the avoidance of doubt, if the amount to be distributed pursuant to Section 4.1(a)(iv) with respect to any particular Distribution exceeds the amount of any outstanding Management Incentive Unit's Participation Threshold (determined immediately prior to such Distribution), then such Management Incentive Unit, subject to any other vesting terms applicable to such Management Incentive Units, shall constitute a Participating Management Incentive Unit for purposes of Section 4.1(a) only after a portion of the amount to be distributed in such Distribution equal to such Management Incentive Unit's Participation Threshold has first been distributed to the holders of outstanding Units pursuant to Section 4.1(a)(iv) (including outstanding Management Incentive Units that have lesser Participation Thresholds (determined immediately prior to such Distribution)).

(c) Notwithstanding the foregoing, any unvested Management Incentive Unit, determined as of the date of any Distribution, shall not participate in such Distribution (other than Distributions pursuant to Section 4.1(d)); provided that to the extent that such Unit subsequently becomes wholly or partially vested, then all Distributions made pursuant to Section 4.1(a)(i) through Section 4.1(a)(iv) following the vesting of such Unit shall be made such that, on a cumulative basis and as nearly as practicable, the Distributions with respect to such Unit equal the Distributions that would have been made with respect to such Unit had it been so vested on the "Grant Date" set forth in such Management Member's Management Incentive Unit Agreement pursuant to which such Management Member was granted Units, as reasonably determined by the Board.

(d) Notwithstanding anything to the contrary in this Agreement (including, without limitation, Section 4.1(a)), the Company shall distribute to each Member an amount equal to:

(i) forty-five percent (45%) (or such greater or lesser percentage as the Board may determine in good faith from time to time to represent the combined maximum marginal federal, state and local income tax rates applicable to any Member or its partners or equityholders, if applicable, for such Taxable Year, taking into account the character of any income) of:

(A) the items of income or gain the Company expects to report or does report to such Member on Schedule K-1 in connection with the Company's U.S. partnership return on Form 1065 for the current Fiscal Year (including as a guaranteed payment for the use of capital) in excess of items of deduction or loss for the current Fiscal Year (except as provided in the last sentence of Section 4.1(e)); reduced by

(B) the excess of the aggregate items of deduction or loss reported by the Company to such Member on Schedule K-1 for all prior Fiscal Years over the items of income or gain reported to such Member for all prior Fiscal Years (except as provided in the last sentence of Section 4.1(e)), but only to the extent that such excess can be applied or used for the current Fiscal Year.

All such distributions shall be made by wire transfer not later than five (5) Business Days before the first due date, without regard to extensions, on which a federal income tax return reflecting such taxable income would be required to be filed by such Member ("Year-End Tax Distributions"). To the extent that federal estimated tax payments will be required to be made by such Member on account of its Units, then Distributions shall be made at least five (5) Business Days prior to those dates upon which federal estimated tax payments are required for individuals and corporations, as applicable (such Distributions for federal estimated tax payments to be based upon good faith estimates of the Board), with the amount thereof being offset against the Year-End Tax Distributions that would otherwise be due. To the extent that the Company and its Subsidiaries do not have sufficient available cash to satisfy Distributions pursuant to this Section 4.1(d)4.1(b), such available cash shall be distributed to the Members in proportion to their Distribution entitlements under this Section 4.1(d) for the relevant taxable period, with any shortfall satisfied upon the Company or its Subsidiaries subsequently having additional available cash.

(e) Each Distribution pursuant to Section 4.1(a) and each distribution pursuant to Section 4.1(d) shall be made to the Persons shown on the Company's books and records as Members as of the date of such distribution (with respect to Section 4.1(a)) or as of the date of such distribution (with respect to Section 4.1(d)), as applicable; provided that any transferor and transferee of Units may mutually agree as to which of them should receive payment of any such distribution under Section 4.1(d). Tax distributions made to Members pursuant to Section 4.1(d) shall not be creditable against (and shall not reduce) future Distributions to be made to the Members in accordance with Section 4.1(a). For avoidance of doubt, distributions to the Class A Unitholders pursuant to Section 4.1(d) shall be determined without regard to items of depreciation or amortization allocated under, or attributable to, (i) any special basis adjustment with respect to any Member pursuant to Sections 734(b), 743(b) and 754 of the Code, (ii) the principles of Sections 704(c) of the Code, or (iii) the Class A Sale.

4.2 **Allocations**. After first giving effect to the special allocations provided in Section 4.3, any remaining net Profits or Losses for any Fiscal Year shall be allocated among the Members in such a manner that, as of the end of such Fiscal Year, to the maximum extent possible the sum of (a) the Capital Account of each Member, (b) such Member's share of Minimum Gain (as determined according to Treasury Regulation Section 1.704-2(g)) and (c) such Member's partner non-recourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)) shall be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement, determined as if (x) the Company were to liquidate the assets of the Company for an amount equal to their Book Value, (y) all Company liabilities were satisfied (limited with respect to each non-recourse liability to the Fair Market Value of the asset securing such liability), and (z) the Company were to distribute the proceeds of liquidation pursuant to Section 12.2.

4.3 **Special Allocations**. The following special allocations shall be made in the following order:

(a) If there is a net decrease in Minimum Gain during any Taxable Year, each Member shall be allocated Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(f). This Section 4.3(a) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(b) If there is a net decrease during a Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)), Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) shall be allocated to the Members in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(i)(4).

(c) If any Member that unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after all other allocations pursuant to this Article IV have been tentatively made as if this Section 4.3(c) were not in the Agreement, then Profits for such Taxable Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 4.3(c) is intended to be a qualified income offset provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) Nonrecourse deductions (as determined according to Treasury Regulation Section 1.704-2(b)(1)) for any Taxable Year shall be allocated first, to the Unitholders up to an amount equal, and in proportion, to the allocation of Profits to such Unitholders for such Taxable Year pursuant to Section 4.2, and, thereafter, to each Unitholder, ratably among Unitholders based upon the number of outstanding Primary Common Units held by each Unitholder immediately prior to such allocation.

(e) Losses attributable to partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be specially allocated to the Member who bears the economic risk of loss with respect to the partner nonrecourse debt to which such Losses are attributable in accordance with Regulations Section 1.704-2(i)(1).

(f) Profits and Losses described in Section 3.2(b)(v) shall be allocated in a manner consistent with the manner in which adjustments to Capital Accounts are required to be made pursuant to Treasury Regulation Sections 1.704-1(b)(2)(iv)(j), (k) and (m).

(g) If, and to the extent that, any Member is deemed to recognize any item of income, gain, loss, deduction or credit as a result of any transaction between such Member and the Company pursuant to Code Sections 1272, 1274, 7872, 483, 482 or any similar provision now or hereafter in effect, the Board shall allocate any corresponding Profit or Loss of the Company to the Member who recognized such item if the Board determines that such allocation is necessary or desirable in order to reflect the Member's economic interests in the Company.

4.4 **Tax Allocations**.

(a) The income, gains, losses, deductions and credits of the Company will be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts; except that if any such allocation is not permitted by the Code or other applicable law, the Company's subsequent income, gains, losses, deductions and credits will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value in accordance with the "remedial method" pursuant to Treasury Regulation 1.704-3(d).

(c) If the Book Value of any Company asset is adjusted pursuant to Section 3.2(b), subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) in accordance with such method determined by the Board.

(d) Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members according to their interests in such items as determined by the Board taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).

(e) For purposes of determining a Member's proportional share of the Company's "excess non-recourse liabilities" within the meaning of Treasury Regulation Section 1.752-3(a)(3), each Member's interest in income and gain shall be in proportion to the Units held by such Member (excluding any Management Incentive Units with a Participation Threshold greater than zero).

(f) Allocations pursuant to this Section 4.4 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, Distributions or other Company items pursuant to any provision of this Agreement.

4.5 **Curative Allocations**. The allocations set forth in Section 4.3 (the "Regulatory Allocations") are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Members intend to allocate Profit and Loss of the Company or make Distributions. Accordingly, notwithstanding the other provisions of this Article IV, but subject to the Regulatory Allocations, income, gain, deduction, and loss shall be reallocated among the Members so as to eliminate the effect of the Regulatory Allocations and thereby cause the respective Capital Accounts of the Members to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss (and such other items of income, gain, deduction and loss) had been allocated without reference to the Regulatory Allocations. In general, the Members anticipate that this will be accomplished by specially allocating other Profit and Loss (and such other items of income, gain, deduction and loss) among the Members so that the net amount of the Regulatory Allocations and such special allocations to each such Member is zero. In addition, if in any Fiscal Year or Fiscal Period there is a decrease in partnership minimum gain, or in partner nonrecourse debt minimum gain, and application of the minimum gain chargeback requirements set forth in Section 4.3(a) or Section 4.3(b), would cause a distortion in the economic arrangement among the Members, the Members may, if they do not expect that the Company will have sufficient other income to correct such distortion, request the Internal Revenue Service to waive either or both of such minimum gain chargeback requirements. If such request is granted, this Agreement shall be applied in such instance as if it did not contain such minimum gain chargeback requirement.

4.6 **Indemnification and Reimbursement for Payments on Behalf of a Member**. If the Company is obligated to pay any amount to a Governmental Entity (or otherwise makes a payment to a Governmental Entity) that is specifically attributable to a Member or a Member's status as such (including federal withholding taxes, state personal property taxes, and state unincorporated business taxes), but not including any such amounts attributable to a Member's status as an employee of the Company or its Subsidiaries, then such Person shall indemnify the Company in full for the entire amount paid (including interest, penalties and related expenses). The Board may offset Distributions to which a Person is otherwise entitled under this Agreement against such Person's obligation to indemnify the Company under this Section 4.6. A Member's obligation to make contributions to the Company under this Section 4.6 shall survive the Member's ceasing to be a Member and the termination, dissolution, liquidation and winding up of the Company, and for purposes of this Section 4.6, the Company shall be treated as continuing in existence. The Company may pursue and enforce all rights and remedies it may have against each Member under this Section 4.6, including instituting a lawsuit to collect such contribution with interest calculated at a rate equal to the Base Rate plus three (3) percentage points per annum (but not in excess of the highest rate per annum permitted by law).

4.7 **Cash Sweep Trigger Event**. If, at any fiscal quarter-end, the Company's operating cash flow, per GAAP, less Maintenance Capital Expenditures ("Free Cash Flow") for the preceding twelve- (12-) month period is less than two million dollars ($2,000,000) (a " Cash Sweep Trigger Event "), the Company shall, for the immediately following quarter, and unless waived in writing by the holders of a majority of the Class A Units, make Distributions pursuant to Section 4.1(a) in an amount equal to at least seventy-five percent (75%) of the Free Cash Flow for such immediately following quarter. Such Distributions shall be due within thirty (30) days of the end of such immediately following quarter.

ARTICLE V

MANAGEMENT

5.1 **Authority of Board**. Except for situations in which the approval of the Members is specifically required by this Agreement, (a) all management powers over the business and affairs of the Company shall be exclusively vested in a board of managers (the "Board") and (b) the Board shall conduct, direct and exercise full control over all activities of the Company. Each member of the Board is referred to herein as a "Manager." The Managers shall be the "managers" of the Company for the purposes of the Delaware Act. No Manager shall have the authority to bind the Company, unless the Board has granted such authority to such Manager.

5.2 **Actions of the Board**. The Board may act (a) through meetings and written consents pursuant to Section 5.3 and (b) through any Person or Persons to whom authority and duties have been delegated pursuant to Section 5.4.

5.3 **Composition**.

(a) The Board shall initially consist of five (5) Managers:

(i) the Class A Holder shall have the right to appoint three (3) Managers of the Board (the " Class A Holder Managers"); and

(ii) the Class B Holder shall have the right to appoint two (2) Managers of the Board (the " Class B Holder Managers").

Subject to Section 6.12(m), the number of Managers serving on the Board may be modified from time to time by a resolution of the Board. The Managers appointed by the Class A Holder shall initially be Douglas Dossey and Neal Barcelo. The Managers appointed by the Class B Holders shall initially be Benjamin Cowart and Alvaro Ruiz. Each such individual is hereby decreed duly appointed to the Board as of the Effective Date. At any time, the Class A Holder may remove (with or without cause) and, at its option and at any time thereafter, replace, one or more of the Class A Holder Managers. At any time, the Class B Holders may remove (with or without cause) and, at its option and at any time thereafter, replace, the Class B Holder Managers.

(b) Subject to the provisions of Section 5.5(b) below, each of the Managers shall be entitled to one (1) vote on any and all matters presented to the Board, regardless of whether action is taken by vote, consent or other approval of the Managers.

(c) In the event that any Manager designated hereunder by the Class A Holder ceases to serve as a member of the Board, the resulting vacancy on the Board shall be filled by a Manager appointed by the Class A Holder. In the event that any Manager designated hereunder by the Class B Holders ceases to serve as a member of the Board, the resulting vacancy on the Board shall be filled by a Manager appointed by the Class B Holders.

5.4 **Proxies**. A Manager may vote at a meeting of the Board or any committee thereof either in person or by proxy executed in writing by such Manager. A telegram, telex, cablegram or similar transmission by the Manager, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Manager shall (if stated thereon) be treated as a proxy executed in writing for purposes of this Section 5.4. Proxies for use at any meeting of the Board or any committee thereof or in connection with the taking of any action by written consent shall be filed with the Board, before or at the time of the meeting or execution of the written consent as the case may be. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the majority of the Board who shall decide all questions concerning the qualification of voters, the validity of the proxies and the acceptance or rejection of votes. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and that the proxy is coupled with an interest. Should a proxy designate two (2) or more Persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such Persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one (1) be present, then such powers may be exercised by that one (1); or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the votes that are the subject of such proxy are to be voted with respect to such issue.

5.5 **Meetings, etc.**

(a) Meetings of the Board and any committee thereof shall be held at the principal office of the Company or at such other place as may be determined by the Board or such committee. A majority of the Managers (including at least one Class A Holder Manager and at least one Class B Holder Manager (as applicable, the "Required Manager"); provided that if a Required Manager fails to attend three (3) consecutive duly noticed meetings of the Board, such requirement with respect to the non-attending Required Manager shall not apply to any subsequent meetings of the Board until such Required Manager is in attendance) present in person or through their duly authorized attorneys-in-fact, shall constitute a quorum at any meeting of the Board. Business may be conducted once a quorum is present. Regular meetings of the Board shall be held on such dates and at such times as shall be determined by the Board, and it is intended that the Board shall meet at least four (4) times per calendar year. Special meetings of the Board may be called by (i) Managers holding a majority of the votes of all Managers, or, in the case of a special meeting of any committee of the Board, by Managers holding a majority of the votes of all members thereof on at least twenty-four (24) hours' prior written notice to the other Managers, or (ii) the holders of a majority of the Class B Common Units on at least seven (7) days' prior written notice to the Managers, in each case, which notice shall state the purpose or purposes for which such meeting is being called, its location, date and hour. The actions taken by the Board or any committee at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Manager as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Board or any committee thereof may be taken by vote of the Board or any committee at a meeting of the Managers thereof or by written consent (without a meeting, without notice and without a vote) so long as such consent is signed by at least the minimum number of Managers that would be necessary to authorize or take such action at a meeting of the Board or such committee in which all members thereof were present. Prompt notice of the action so taken without a meeting shall be given to those Managers who have not consented in writing. A meeting of the Board or any committee may be held by conference telephone or similar communications equipment by means of which all individuals participating in the meeting can be heard.

(b) Each Manager shall have one vote on all matters submitted to the Board or any committee thereof (whether the consideration of such matter is taken at a meeting, by written consent or otherwise); provided that (i) the three (3) votes which may be exercised by the Class A Holder Managers may be exercised in the aggregate by any one or more of such Class A Holder Managers, whether or not any such Class A Holder Managers shall have been elected or not or present at any meeting of the Board or not, such that, for illustration, if only two (2) Class A Holder Managers were elected or present at any meeting of the Board, then such Managers would have three (3) votes in the aggregate at such meeting and if only one (1) Class A Holder Manager were in attendance at a meeting of the Board and only two (2) Class A Holder Managers had been elected by the Class A Holder, then such Manager would have three (3) votes at such meeting, and (ii) the two (2) votes which may be exercised by the Class B Holder Managers may be exercised in the aggregate by any one or more of such Class B Holder Managers, whether or not any such Class B Holder Managers shall have been elected or not or present at any meeting of the Board or not, such that, for illustration, if only one (1) Class B Holder Manager were elected or present at any meeting of the Board, then such Manager would have two (2) votes in the aggregate at such meeting. The affirmative vote (whether by proxy, consent or otherwise) of members of the Board holding a majority of the votes of all members of the Board shall be the act of the Board. Except as otherwise provided by the Board when establishing any committee, the affirmative vote (whether by proxy, consent or otherwise) of members of such committee holding a majority of the votes of all members of such committee shall be the act of such committee. Prompt notice of any action taken by a committee shall be delivered to each Manager who is not a member of such committee or in attendance at such committee meeting.

(c) The Company shall pay the reasonable out-of-pocket expenses incurred by each Manager in connection with attending the meetings of the Board and any committee thereof (unless such expenses shall have been paid or are required to be paid by any other Person). Except as otherwise provided in the immediately preceding sentence or elsewhere in this Agreement, the Managers shall not be compensated for their services as members of the Board.

5.6 **Delegation of Authority**. The Board may, from time to time, delegate to one or more Persons (including any Manager or other individual, and including through the creation and establishment of one or more committees) such authority and duties as the Board may deem advisable; provided that the Board may not abdicate the general responsibilities of the Board. The holders of a majority of the Class A Units shall have the right to appoint a Class A Holder Manager to serve as a member of any committee of the Board. In addition, the Board may assign titles (including, without limitation, chief executive officer, president, principal, vice president, secretary, assistant secretary, treasurer, or assistant treasurer) and delegate certain authority and duties to such persons. Any number of titles may be held by the same Manager or other individual. Subject to Section 6.12(k), the salaries or other compensation, if any, of such agents of the Company shall be fixed from time to time by the Board. Any delegation pursuant to this Section 5.6 may be revoked at any time by the Board in its sole discretion.

5.7 **Conflicts of Interest; Non-Competition; Confidentiality**.

(a) Each Manager, officer and Member of the Company shall, to the fullest extent permitted by the Delaware Act, have no duties of any kind or nature (at law, in equity, under this Agreement or otherwise, including any fiduciary duties or any similar duties) to the Company, to any other Member or holder of Units, to any Affiliate of any Member or holder of Units, to any creditor of the Company or any of its subsidiaries or to any other Person; provided that the implied contractual covenant of good faith and fair dealing shall be applicable only to the limited extent as required by the Delaware Act. The provisions of this Agreement, to the extent that they restrict the duties (including fiduciary duties) and liabilities of a Manager or officer of the Company otherwise existing at law or in equity or by operation of the preceding sentence, are agreed by the Members to replace such duties and liabilities of such Manager or officer of the Company. Each Member shall submit to the Company all business, commercial and investment opportunities presented to such Member or its Affiliates or of which such Member or any of its Affiliates becomes aware which relate to the Business in the Territory or the Expanded Territory, together with such supporting information and analysis as shall be necessary for the Board to reach an informed decision (each, a "Corporate Opportunity"). Without limiting Section 5.7(b) below, (i) if such Corporate Opportunity is within the Territory the Company shall be afforded the option to pursue it for inclusion in the Company's Business, and such Member shall not (and shall cause each of its Affiliates to not) pursue the Corporate Opportunity unless the Board has notified such Member in writing that the Company does not intend to pursue it and does not object to the Member's (or its Affiliate's) pursuit of the Corporate Opportunity, and (ii) if such Corporate Opportunity is within the Expanded Territory, the Company shall be afforded the option to pursue it for inclusion in the Company's Business, and such Member shall not (and shall cause each of its Affiliates to not) pursue the Corporate Opportunity unless the Board, including the vote of at least one of the Class B Holder Managers, has determined that the Company does not intend to pursue such Corporate Opportunity or that such pursuing Member's participation in the Company's Business, or the Company's Business, would be materially and detrimentally impaired or the Member would become potentially conflicted as a result, and notified such Member in writing of such determination. In each case described in subparagraph (i) or (ii), the Board shall act expeditiously in reaching a decision whether or not to pursue the Corporate Opportunity, and it shall provide notice of its decision, including, with respect to a decision under (i) whether to allow the submitting Member to pursue the Corporate Opportunity independently, within ten (10) business days of receiving the submission of the Corporate Opportunity.

(b) Notwithstanding the foregoing, no Member or any Affiliate of any Member shall, directly or indirectly, anywhere in the Territory, own, operate, manage, control, engage in, Participate in, invest in, permit its name to be used by, act as consultant or advisor to, render services for (alone or in association with any person) or otherwise assist in any manner any Competitive Business. "Participate" includes any direct or indirect interest in any enterprise, whether as an officer, director, manager, employee, partner, sole proprietor, agent, representative, independent contractor, executive, franchisor, franchisee, creditor, owner or otherwise. Notwithstanding the foregoing, nothing herein shall prohibit any Member or its any of any Member's Affiliates from: (i) being a passive owner of not more than five percent (5%) of the outstanding stock of any class of securities of a publicly-traded corporation engaged in a Competitive Business, so long as such Member (or such Affiliate of a Member) has no active participation in the business of such corporation or (ii) performing any services for the Company.

(c) No Member or any Affiliate of any Member shall, directly, or indirectly, induce or attempt to induce any Person that is, as of the Effective Date and/or was in the two- (2-) year period prior to the Effective Date, a customer of Vertex Refining OH, LLC, to cease doing business with the Company, or reduce the rate of doing business with the Company, or otherwise in any way interfere with the relationship between any such customer and the Company, including by offering any services to such customer that are also offered by Vertex Refining OH, LLC.

(d) Each Member agrees to keep in strict confidence and disclose only for purposes reasonably related to its ownership of Equity Securities or as expressly required by law, consistent with provisions of this Section, all information relating to the Company or its Members or Affiliates that it receives through, in relation to, or as a result of being a Member, the service of such Member's representatives or agents on the Board or committees of the Company, or the undertaking by the Member, the Member's Affiliates or the representatives or agents of the Member of any actions on behalf of the Company, whether or not such information is a trade secret or is marked as confidential (the "Company Confidential Information"); provided that the following types of information shall not constitute Company Confidential Information: (i) information that was known to the party receiving such information prior to receiving it as Company Confidential Information; (ii) information that is or becomes publicly known through no breach of this section; (iii) information that was received by the party receiving such information without breach of this Agreement from a third party who was without restriction as to the use and disclosure of the information; or (iv) information that was independently developed by the party receiving such information without use of any Company Confidential Information. Without the prior written consent of a majority of the Class A Holder and the Class B Holder, each Member agrees not to disclose (other than for purposes reasonably related to its interest in the Company or as required by applicable law) any Company Confidential Information other than disclosure to such Member's Affiliates and direct or indirect equity owners, directors, officers, employees, agents, advisors, accountants or other representatives responsible for matters relating to the Company (each such Person being hereinafter referred to as an "Authorized Representative"), to the extent each such Authorized Representative is subject to similar confidentiality restrictions to those set forth in this Section 5.7(d); provided that such Member and its Authorized Representatives may disclose any such Company Confidential Information to the extent that (A) such information has become generally available to the public other than as a result of the breach of this Section 5.7(d) by such Member or any of its Authorized Representatives, (B) such information is required to be included in any report, statement or testimony pursuant to applicable law, (C) such disclosure is required in connection with an audit by any taxing authority; (D) such disclosure is required by any regulatory authority in their examination of the records of the Company, such Member or any Affiliate of either of them; (E) such disclosure is to such Member's attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its involvement with the Company; (F) such disclosure is to any Affiliate, partner or member of such Member in the ordinary course of business; or (G) such disclosure is authorized by the written consent of the Board (including the vote of at least one Class A Holder Manager and at least one Class B Holder Manager); provided, however, that, with respect to disclosures pursuant to (B), (C) and (D), the Member subject to the disclosure requirement shall only disclose such part of the Company Confidential Information that, upon the advice of its legal counsel, it is required to disclose pursuant to applicable law and shall, to the extent permitted by law, provide prompt written notice and reasonable assistance to the non-disclosing Members and the Company such that the non-disclosing Members and the Company may seek an appropriate protective order or other equitable relief in relation to such disclosure. Notwithstanding the foregoing, the Company acknowledges that, (x) in the ordinary course of business of the Tensile Group and the Vertex Company Group, the members of the Tensile Group and the Vertex Company Group evaluate, pursue, acquire, sell, manage, advise and serve on the boards of other Persons, (y) the receipt of Company Confidential Information by the members of the Tensile Group and the Vertex Company Group may inevitably enhance such Persons' or their respective Affiliates' knowledge and understanding of the industries in which the Company and its subsidiaries operate in a way that cannot be separated from such Persons' or their respective Affiliates' other knowledge, and the Company and each Member agrees that this Section 5.7(c) shall not restrict such Persons' or their respective Affiliates' use of such general industry knowledge and understanding, including in connection with investments in other companies (including in the same or similar industries) and (z) none of the members of the Tensile Group or the Vertex Company Group shall be deemed to have used any Company Confidential Information in contravention of this Section 5.7(d) because of the fact of its evaluation, pursuit, acquisition, sale or management of, provision of advice to, or service on the board of any such other investment. To the extent of any conflict between the provisions of Section 5.7(a) and this Section 5.7(d), with respect to the use of general industry knowledge and understanding, the provisions of this Section 5.7(d) shall control. Neither the alteration, amendment or repeal of this Section 5.7(d) nor the adoption of any provision of this Agreement inconsistent with this Section 5.7(d) shall eliminate or reduce the effect of this Section 5.7(d) in respect of any matter occurring, or any cause of action, suit or claim that, but for this Section 5.7(d), would accrue or arise, prior to such alteration, amendment, repeal or adoption.

5.8 **Limitation of Liability**.

(a) Except as otherwise provided herein or in an agreement entered into by such Person and the Company, no Manager or any of such Manager's Affiliates shall be liable to the Company or to any Member for any act or omission performed or omitted by such Manager in its capacity as a member of the Board pursuant to authority granted to such Person by this Agreement; provided that, except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to such Person's gross negligence, willful misconduct or knowing violation of law or for any present or future breaches of any representations, warranties or covenants by such Person or its Affiliates contained herein or in other agreements with the Company. The Board may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and no Manager or any of such Manager's Affiliates shall be responsible for any misconduct or negligence on the part of any such agent appointed by the Board (so long as such agent was selected in good faith and with reasonable care). The Board shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Board in good faith reliance on such advice shall in no event subject the Board or any Manager thereof to liability to the Company or any Member.

(b) Whenever this Agreement or any other agreement contemplated herein provides that the Board (or, pursuant to Article XII, the liquidators) shall act in a manner which is, or provide terms which are, "fair and reasonable" to the Company or any Member, the Board (or, pursuant to Article XII, the liquidators) shall determine such appropriate action or provide such terms considering, in each case, the relative interests of each party to such agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable GAAP practices or principles.

(c) Whenever in this Agreement or any other agreement contemplated herein, the Board (or, pursuant to Article XII, the liquidator) is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion," with "complete discretion" or under a grant of similar authority or latitude, the Board (or, pursuant to Article XII, the liquidators) shall be entitled to consider such interests and factors as it desires including its own interests and shall have no duty or obligation to consider any interest of or factors affecting the Company or the holders of its Equity Securities, provided that, the Board (or, pursuant to Article XII, the liquidators) shall act in good faith.

(d) Whenever in this Agreement the Board (or, pursuant to Article XII, the liquidator) is permitted or required to take any action or to make a decision in its "good faith" or under another express standard, the Board (or, pursuant to Article XII, the liquidators) shall act under such express standard and, to the extent permitted by applicable law, shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein, and, notwithstanding anything contained herein to the contrary, so long as the Board (or, pursuant to Article XII, the liquidators) acts in good faith, the resolution, action or terms so made, taken or provided by the Board (or, pursuant to Article XII, the liquidators) shall not constitute a breach of this Agreement or any other agreement contemplated herein or impose liability upon the Board, any Manager thereof or any of such Manager's Affiliates.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 **Limitation of Liability**. Except as provided in this Agreement or in the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member or Manager shall be obligated personally for any such debts, obligations or liabilities solely by reason of being a Member or acting as a Manager of the Company. Except as otherwise provided in this Agreement, a Member's liability (in its capacity as such) for Company liabilities and Losses shall be limited to the Company's assets; provided that a Member shall be required to return to the Company any Distribution made to it in clear and manifest accounting or similar error. The immediately preceding sentence shall constitute a compromise to which all Members have consented within the meaning of the Delaware Act. Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Delaware Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

6.2 **Lack of Authority**. No Member in its capacity as such (other than through its Manager or as a Manager) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to make any expenditures on behalf of the Company. The Members hereby consent to the exercise by the Board and the Managers of the powers conferred on them by law and this Agreement.

6.3 **No Right of Partition**. No Member shall have the right to seek or obtain partition by court decree or operation of law of any Company property, or the right to own or use particular or individual assets of the Company.

6.4 **Indemnification**

(a) Subject to Section 4.6, the Company hereby agrees to indemnify and hold harmless any Person (each an " Indemnified Person") to the fullest extent permitted under the Delaware Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Company is providing immediately prior to such amendment), against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Person (or one or more of such Person's Affiliates) by reason of the fact that such Person is or was a Member or is or was serving as a Manager, officer, principal, member, employee or other agent of the Company or is or was serving at the request of the Company as a Manager, director, officer, principal, member, employee or other agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise; provided that (unless the Board otherwise consents) no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person's or its Affiliates' gross negligence, willful misconduct or knowing violation of law or for any present or future breaches of any representations, warranties or covenants by such Indemnified Person or its Affiliates contained herein or in other agreements with the Company. Expenses, including attorneys' fees, incurred by any such Indemnified Person in defending a proceeding shall be paid by the Company in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company.

(b) The right to indemnification and the advancement of expenses conferred in this Section 6.4 shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement (including the Director Indemnification Agreements), by-law, vote of Managers or otherwise.

(c) Subject to clause (g) below, the Company may maintain insurance, at its expense, to protect any Indemnified Person against any expense, liability or loss described in Section 6.4(a) above whether or not the Company would have the power to indemnify such Indemnified Person against such expense, liability or loss under the provisions of this Section 6.4.

(d) Notwithstanding anything contained herein to the contrary (including in this Section 6.4), any indemnity by the Company relating to the matters covered in this Section 6.4 shall be provided out of and to the extent of Company assets only and no Member (unless such Member otherwise agrees in writing or is found in a final decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the Company.

(e) In the event of a Sale of the Company, the Company shall take all action necessary to ensure that the indemnification obligations to each Indemnified Person set forth in this Section 6.4 are assumed by the Person that survives such transaction.

(f) If this Section 6.4 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person pursuant to this Section 6.4 to the fullest extent permitted by any applicable portion of this Section 6.4 that shall not have been invalidated and to the fullest extent permitted by applicable law.

(g) The Company shall maintain both directors and officers and errors and omissions insurance coverage from carriers selected by the Board and with limits and other terms acceptable to the Board.

(h) The Company hereby acknowledges and agrees that the Class A Holder Managers and the Class B Holder Managers have certain rights to indemnification, advancement of expenses and/or insurance provided by the Tensile Group and the Vertex Company Group, respectively, which the Class A Holder Managers and the Tensile Group, and Class B Holder Managers and the Vertex Company Group, intend to be secondary to the primary obligation of the Company to indemnify the Class A Holder Managers and the Class B holder Managers as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to the Class A Holder Managers' and the Class B Holder Managers' willingness to serve on the Board. The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to the Class A Holder Managers and the Class B Holder Managers are primary and any obligation of the Tensile Group or the Vertex Company Group to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Class A Holder Managers or the Class B Holder Managers respectively, are secondary), (ii) that the Company shall be required to advance the full amount of expenses incurred by any Class A Holder Manager and any Class B Holder Manager and shall be liable for the full amount of all such expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement (or any other agreement between the Company and a Class A Holder Manager or a Class B Holder Manager), without regard to any rights a Class A Holder Manager may have against the Tensile Group, or a Class B Holder Manager may have against the Vertex Company Group, and (iii) that the Company irrevocably waives, relinquishes and releases the Tensile Group and the Vertex Company Group from any and all claims against either of them, respectively, for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Tensile Group on behalf of a Class A Holder Manager, or by the Vertex Company Group on behalf of a Class B Holder Manager, with respect to any claim for which such Class A Holder Manager or Class B Holder Manager, as the case may be, has sought indemnification from the Company shall affect the foregoing, and the Tensile Group shall have a right of contribution and/or be subrogated to the extent of any such advancement or payment to all of the rights of recovery of such Class A Holder Manager against the Company, and the Vertex Company Group shall have a right of contribution and/or be subrogated to the extent of any such advancement or payment to all of the rights of recovery of such Class B Holder Manager against the Company. The Company agrees that both the Tensile Group and the Vertex Company Group are express third party beneficiaries of the terms of this Section 6.4(g).

6.5 **Members Right to Act**. For matters that expressly require the approval of the Members (rather than the approval of the Board on behalf of the Members), the Members shall act through meetings and written consents as described in paragraphs (a) and (b) below:

(a) Except as otherwise expressly provided by this Agreement, acts by the Members holding a majority of the Class A Common Units and Class B Common Units together as a single class shall be the act of the Members. Any Member entitled to vote at a meeting of Members or to express consent or dissent to Company action in writing without a meeting may authorize another person or persons to act for it by proxy. For each matter upon which the Members are entitled to vote, each Class A Unitholder shall be entitled to one vote per Class A Common Unit held by such Class A Unitholder. Each Class B Unitholder shall be entitled to one vote per Class B Common Unit held by such Class B Unitholder. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall (if stated thereon) be treated as a proxy executed in writing for purposes of this Section 6.5(a). No proxy shall be voted or acted upon after eleven (11) months from the date thereof, unless the proxy provides for a longer period. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and that the proxy is coupled with an interest. Should a proxy designate two (2) or more Persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such Persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or, if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the votes that are the subject of such proxy are to be voted with respect to such issue.

(b) The actions by the Members permitted hereunder may be taken at a meeting, called by the Board or by Members holding a majority of the Units entitled to vote on such matters on at least twenty-four (24) hours' prior written notice to the other Members entitled to vote, which notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Members entitled to vote or consent at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Members entitled to vote or consent as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Members entitled to vote or consent may be taken by vote of the Members entitled to vote or consent at a meeting or by written consent (without a meeting, without notice and without a vote) so long as such consent is signed by the Members having not less than the minimum number of Units that would be necessary hereunder to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the action so taken without a meeting shall be given to those Members entitled to vote or consent who have not consented in writing. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof.

6.6 ***Reserved.***

6.7 ***Reserved.***

6.8 ***Reserved.***

6.9 **Redemption Rights of the Class A Unitholders**

(a) Subject to the terms and conditions set forth in this Section 6.9, the Class A Unitholders, acting by a majority vote, may, (i) on or after the fifth anniversary of the Effective Date or (ii) in the event of a Vertex Triggering Event as set forth in Section 6.11, elect for the Company to redeem (a "Redemption") all of the Class A Units held by Class A Unitholders (the " Electing Class A Unitholders") by sending the Company a written notice (a " Redemption Notice") of such election setting forth the number of Class A Units to be redeemed. The cash purchase price for such redeemed Class A Units shall be the greater of (y) the fair market value of such Units (without discount for illiquidity, minority status or otherwise) as determined by a qualified third party agreed to in writing by a majority of the Electing Class A Unitholders and the Class B Holder and (z) the original per-Unit price for such Class A Units plus any unpaid Class A Preference thereon.

(b) On or prior to the date of the Redemption, the Electing Class A Unitholders shall execute and deliver to the Company documentation effectuating the Redemption. Such documentation shall include a redemption agreement that includes assignment powers, customary fundamental representations and warranties in favor of the Company with respect to due authorization, due execution and title to the Units being redeemed.

(c) The Company shall pay the purchase price for the Units being redeemed by check or wire transfer of immediately available funds.

(d) If the Company fails to meet its obligations with respect to a Redemption set forth in Section 6.9 within one hundred and eighty (180) days after receipt of a Redemption Notice (the "Cure Period"), the Class A Yield on any Class A Preferred Units subject to the applicable Redemption Notice that have not been redeemed shall be increased to twenty-five percent (25%) per annum until such time as such Class A Units are redeemed, and such increase shall apply retroactively to the date of the applicable Redemption Notice. In addition, the Electing Class A Unitholders may, with written notice to the Company, and without consent of the Class B Unitholders, invoke the provisions of Section 12.9 in connection with such process, cause the Company to initiate a process intended to result in a Sale of the Company, which may include an auction process using a nationally recognized investment bank, intended to result in a Sale of the Company. In such case, the Board and all Members will approve the Sale of the Company pursuant to the terms of this Agreement and will fully cooperate in such sale process.

6.10 **Call Right of the Vertex Company Group**

(a) Subject to the terms and conditions set forth in this Section 6.10, on or after the third anniversary of the Effective Date, any member of the Vertex Company Group may elect to purchase all, but not less than all, of the Equity Securities held by the Class A Unitholders and the Equity Securities held by any Transferee of a Class A Unitholder, by sending notice to the respective holder of such Equity Securities (a "Call"). The purchase price for such Equity Securities (the "Call Purchase Price") shall be the greatest of (i) the amount due per Section 4.1(a)(i) and Section 4.1(a)(ii) had the Class A Yield accrued at thirty percent (30%) per annum on all Invested Capital made in respect of such Equity Securities, (ii) two hundred and seventy-five percent (275%) of the total Invested Capital with respect to such Equity Securities, and (iii) the amount payable with respect to such Equity Securities pursuant to Section 4.1(a) assuming a Total Equity Value equal to the greater of (A) six (6) times the trailing twelve (12) months' Adjusted EBITDA and (B) six (6) times the next twelve (12) months' projected Adjusted EBITDA for the period starting the first day of the month immediately following the Call calculated based on the Company's Board-approved budget (provided that if no budget has been approved by the Board for the full twelve (12) month period following the Call, the amount payable pursuant this clause (B) shall be calculated by applying a six- (6-) times multiple to the sum of (1) the projected EBITDA for each month in such twelve (12) month period for which the Board has approved a budget and (2) the trailing twelve (12) month average monthly Adjusted EBITDA calculated as of the final month for which the Board has approved a budget for each month in such twelve (12) month period for which the Board has not approved a budget), less in the case of clauses (A) and (B) the Warrant Value. In the event that the Call Purchase Price is calculated pursuant to clause (iii)(B) of this Section 6.10(a), the Company shall recalculate the Call Purchase Price replacing the amount calculated pursuant to clause (iii)(B)(2) of this Section 6.10(a) with actual Adjusted EBITDA for each month included in such calculation, and shall pay to the Class A Unitholders and their Transferees any excess over the Call Purchase Price previously paid by the applicable member(s) of the Vertex Company Group within five (5) business days following the end of such period.

(b) On or prior to the date of the Call, the applicable member(s) of the Vertex Company Group executing the Call shall execute and deliver to the Class A Unitholders documentation effecting the Call as reasonably requested by, and in a form reasonably acceptable to, the Class A Unitholders. Such documentation shall include a unit purchase agreement that includes assignment powers, customary representations and warranties in favor of the Class A Unitholders, and a general unconditional release of the Class A Unitholders.

(c) The applicable member(s) of the Vertex Company Group effecting the Call shall pay the Call Purchase Price by check or wire transfer of immediately available funds at the closing of the Call.

6.11 **Additional Rights of the Class A Holder**. Upon the occurrence of a Vertex Triggering Event, the Class A Holder may elect to (a) terminate the Administrative Services Agreement and appoint new management of the Company, (b) trigger a Redemption pursuant to Section 6.9(a) and/or (c) purchase the Class B Common Units from the Class B Unitholders at the fair market value of such Units (without discount for illiquidity, minority status or otherwise) as determined by a qualified third party agreed to in writing by a majority of the Class A Unitholders and a the Class B Holder, in which case the Class A Unitholders and the Class B Unitholders shall execute a customary unit purchase agreement that includes assignment powers and customary representations and warranties regarding the Units sold and the operations of the Company in favor of the Class B Unitholders.

6.12 **Protective Provisions.** The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, including through the delegation of any authority pursuant to Section 5.6, take any of the following actions (the "Member Approval Matters"), in each case, without the prior written approval of the holders of a majority of the Class A Common Units and the Class B Holder:

(a) enter into, amend, modify, supplement or terminate any Related Party Transaction;

(b) create, issue, redeem or repurchase any Equity Securities (including in connection with an IPO), other than in connection with (i) the Class A Unitholders' rights to Redemption set forth in Section 6.9, (ii) the Vertex Company Group's Call right set forth in Section 6.10, or (iii) as otherwise expressly contemplated hereby;

(c) declare or pay dividends or Distributions of any kind pursuant to Section 4.1(b) other than any Distribution made in connection with a liquidation described in Section 12.2, a Sale of the Company, a Redemption or a Cash Sweep Trigger Event;

(d) (i) incur or assume (including by way of acquisition) any indebtedness (including capital leases) in a transaction or series of related transactions, (ii) guarantee, endorse or otherwise as an accommodation become responsible for the material obligations of another Person, or (iii) enter into or consummate any transactions or series of related transactions involving the issuance by the Company or any of its Subsidiaries of any debt securities, including rights to acquire debt securities;

(e) enter into any transaction or series of related transactions that would result in a transfer of Equity Securities representing over 50% of the Company's Equity Securities or voting power of the Company (including any Sale of the Company), other than pursuant to Section 6.9, Section 6.11, Section 9.1 or Section 9.2(b);

(f) sell, transfer or otherwise dispose of, or grant any encumbrance over, all or substantially all of the assets of the Company, taken as a whole, or consummate a merger, amalgamation, stock purchase, asset purchase, reorganization, consolidation, share exchange or entry into a business combination by the Company or any of its Subsidiaries with another person or entity (other than any such transaction solely by and among the Company and/or any of its wholly-owned Subsidiaries);

(g) acquire any equity securities or any other instrument convertible into equity securities of any other Person (other than wholly-owned Subsidiaries) or enter into any joint venture or similar agreement with any Person;

(h) (i) create, reclassify or issue (including by merger or otherwise) any Equity Securities or any equity securities of any Subsidiary or (ii) authorize any such creation, reclassification or issuance of any Equity Securities or equity securities of the Company, other than any creation, reclassification and/or issuances of equity securities of any wholly owned Subsidiary of the Company that are issued solely to the Company or its wholly-owned Subsidiaries;

(i) (i) consummate an IPO or (ii) list any Equity Securities on any securities exchange or substantially equivalent market, including any private Rule 144A market;

(j) amend, modify, supplement or terminate the Administrative Services Agreement except as set forth in the Administrative Services Agreement or as otherwise permitted pursuant to the Class A Unitholders' rights upon a Vertex Triggering Event set forth in Section 6.11;

(k) amend, modify, supplement or terminate any of the Company's governing documents or the governing documents of any of its Subsidiaries;

(l) hire, appoint, terminate, demote, make any change in terms of employment of (including a material change of compensation or responsibilities) or grant any incentive equity or any incentive-equity-like compensation to any senior employee (including those relevant to the Company through the Administrative Services Agreement), except as set forth in the Administrative Services Agreement or otherwise permitted pursuant to the Class A Unitholders' rights upon a Vertex Triggering Event set forth in Section 6.11;

(m) change the size or composition of the Board or its committees (or similar governing bodies of any Subsidiary) other than as expressly provided in Section 5.1;

(n) approve the annual budget (including any capital expenditures), any strategic operating or business plan and any related business policies of the Company or its Subsidiaries or make any material amendment or change thereto, including by way of example and not limitation, the Company's accounting policies and procedures;

(o) enter into or develop any material new line of business or amend, cease or terminate any existing (at the applicable time) material line of business; or

(p) take any actions that would impact the tax treatment or jurisdiction of the Company.

ARTICLE VII

BOOKS, RECORDS, ACCOUNTING AND REPORTS

7.1 **Records and Accounting**. The Company shall keep, or cause to be kept, appropriate books and records with respect to the Company's business, including all books and records necessary to provide any information, lists and copies of documents required to be provided pursuant to Section 7.3 or pursuant to applicable laws. All matters concerning (a) the determination of the relative amount of allocations and distributions among the Members pursuant to Articles III and IV and (b) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Board, whose determination shall be final and conclusive as to all of the Members absent manifest clerical error.

7.2 **Fiscal Year**. The Fiscal Year of the Company shall end on December 31st of each year or such other annual accounting period as may be established by the Board.

7.3 **Reports**.

(a) The Company shall use its reasonable efforts to deliver or cause to be delivered to each Class A Unitholder (provided that such Class A Unitholder together with its Affiliates holds five percent (5%) or more of the Class A Common Units and/or five percent (5%) or more of the Class A Preferred Units (excluding any Management Incentive Units in such calculation)) and each Class B Unitholder (provided that such Class B Unitholder together with its Affiliates holds five percent (5%) or more of the Class B Common Units (excluding any Management Incentive Units in such calculation)) the following:

(i) within one hundred (100) days after the end of each Fiscal Year, (a) statements of income and cash flows of the Company for such Fiscal Year, and a balance sheet of the Company as of the end of such Fiscal Year, all prepared in accordance with GAAP and audited by an independent accounting firm approved by the Class A Unitholders and a copy of such firm's annual management letter regarding internal controls and other matters to the Board and (b) a statement of changes in such Person's equity and Capital Account balance for such Fiscal Year; and

(ii) within twenty (20) days after the end of each calendar month, a monthly report, containing the Company's monthly unaudited statements of income and cash flows for such month, a balance sheet of the Company as of the end of such month and accompanying management discussion and analysis.

(b) The Company shall deliver or cause to be delivered (and shall use reasonable efforts to do so within ninety (90) days after the end of each Fiscal Year) to each Person who was a Member at any time during such Fiscal Year all information necessary for the preparation of such Person's United States federal and state income tax returns. Except as set forth in the immediately preceding sentence or any separate written agreement between the Company and any Member, no Member (other than the Class A Holder and the Class B Unitholders) shall have the right to any other information from the Company, except as may be required pursuant to the Delaware Act.

7.4 **Transmission of Communications**. Each Person that owns or controls Units on behalf of, or for the benefit of, another Person or Persons shall be responsible for conveying any report, notice or other communication received from the Board to such other Person or Persons.

ARTICLE VIII

TAX MATTERS

8.1 **Preparation of Tax Returns**. The Company shall arrange for the preparation and timely filing of all tax returns required to be filed by the Company. Each Member will, upon request, supply to the Company all pertinent information in its possession relating to the operations of the Company necessary to enable the Company's tax returns to be prepared and filed.

8.2 **Tax Elections**. The Taxable Year shall be the Fiscal Year set forth in Section 7.2, unless the Board shall determine otherwise in its sole discretion and in compliance with applicable laws. The Board shall, in its sole discretion, determine whether to make or revoke any available election pursuant to the Code (including, without limitation, any election pursuant to Treasury Regulation Section 301.7701-3); provided that the Company shall make an election under Section 754 of the Code that is effective for the Taxable Year ending on the date hereof. Each Member will upon request supply any information necessary to give proper effect to such election.

8.3 **Tax Controversies**. The Class A Holder is hereby designated the "tax matters partner" within the meaning of Section 6231(a)(7) of the Code prior to its amendment by the Revised Partnership Audit Procedures and shall be the "partnership representative" of the Company for any taxable period subject to the provisions of Section 6223 of the Code, as amended by the Revised Partnership Audit Procedures (in each such capacity, the "Tax Matters Representative"), and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings. The Tax Matters Representative shall keep the Board fully informed of the progress of any examinations, audits or other proceedings, it being agreed that no holder of Units (other than the Class A Holder, in its capacity as Tax Matters Representative) shall have any right to participate in any such examinations, audits or other proceedings. Notwithstanding the foregoing, the Tax Matters Representative shall not settle or otherwise compromise any issue in any such examination, audit or other proceeding without first obtaining approval of the Board.

ARTICLE IX

RESTRICTIONS ON TRANSFER OF UNITS; CERTAIN TRANSFERS

9.1 **Transfers by Members**. No Member may sell, transfer, assign, pledge, encumber or otherwise directly or indirectly dispose of (any of the foregoing, a "Transfer") any interest in any Units, including to the Company or any of its Subsidiaries, without the prior written consent of a majority of the Class A Holders and a majority of the Class B Holders, except Transfers pursuant to and in accordance with (a) Section 6.9, (b) Section 6.11, or (c) Section 9.2(c).

9.2 **Certain Transfers of Units**.

(a) **Right of First Refusal**.

(i) Subject to the restrictions on Transfer set forth in Section 9.1, in the event a Class B Unitholder is permitted and desires to sell all, but not less than all, of the Class B Common Units then held thereby, such Class B Unitholder shall, at least 30 calendar days prior to engaging in any process or discussions with any potential acquirers thereof, notify the Board and Class A Unitholders in writing thereof and provide the Class A Unitholders the opportunity to purchase such Class B Common Units at a price and on other terms and conditions mutually agreeable to such Class A Unitholders, such Class B Unitholders and the Board. The number of Class B Common Units purchased by each Class A Unitholder that elects to participate in such sale shall be equal to the product of (i) the number of Class B Common Units subject to such sale and (ii) the quotient of (A) the number of Class A Units held by such Class A Unitholder and (B) the total number of Class A Units held by all of the Class A Unitholders electing purchase Class B Common Units in such sale.

(ii) In the event that (A) the Class A Unitholders decline to purchase any of such Class B Unitholder's Class B Common Units or (B) such Class B Unitholder and the Class A Unitholders are unable to agree upon price or other terms and conditions of such purchase, such Class B Unitholder may, in accordance with the procedures and subject to the conditions provided by the Board to such Class B Unitholder in respect thereof, discuss with Qualified Purchasers the sale of such Class B Unitholder's Class B Common Units; provided that prior to consummating any sale of Class B Common Units, such Class B Unitholder shall provide the Board with a summary of the key terms and conditions upon which a Qualified Purchaser has irrevocably agreed, subject to this Section 9.2(a)(ii), to purchase all of such Class B Unitholder's Class B Common Units. The Class A Unitholders may elect to purchase such Class B Unitholder's Class B Common Units at such price and on and subject to such other terms and conditions. The number of Class B Common Units purchased by each Class A Unitholder that elects to participate in such sale shall be equal to the product of (i) the number of Class B Common Units subject to such sale and (ii) the quotient of (A) the number of Class A Units held by such Class A Unitholder and (B) the total number of Class A Units held by all of the Class A Unitholders electing purchase Class B Common Units in such sale. If, and only if, the Class A Unitholders decline to purchase any of such Class B Unitholder's Class B Common Units, then such Class B Unitholder may sell all, but not less than all, of such Class B Unitholder's remaining Class B Common Units to such Qualified Purchaser, subject to the other terms and conditions set forth in this Agreement, provided that the provisions of Section 9.2(b) shall apply to such selling Class B Unitholder *mutatis mutandis* as if such Class B Unitholder were a Class A Unitholder.

(b) **Participation Rights**.

(i) At least twenty (20) days prior to any Transfer by any Class A Unitholder (a " Transferring Unitholder") of any of such Transferring Unitholder's Class A Common Units for value (other than pursuant to Section 9.2(c)), the Transferring Unitholder will deliver written notice (the "Sale Notice") to the Company and to the other holders of Units (the " Potential Participating Unitholders"), specifying in reasonable detail the identity of the Proposed Purchaser and the terms and conditions of the Transfer. Each Potential Participating Unitholder may elect to participate in the contemplated Transfer by delivering written notice (a "Tag-Along Notice") to the Transferring Unitholder within fifteen (15) days after delivery of the Sale Notice. If no Tag-Along Notice is delivered to the Transferring Unitholder within such fifteen (15) day period, none of the Potential Participating Unitholders shall have the right to participate in the Transfer, and the Transferring Unitholder shall have the right for a six (6) month period to transfer to the Proposed Purchaser up to the number of Units stated in the Sale Notice, on terms and conditions no more favorable to the Transferring Unitholder than those stated in the Sale Notice. If any of the Potential Participating Unitholders has validly elected to participate in such Transfer (such Potential Participating Unitholders, the "Participating Unitholders"), each of the Transferring Unitholder and such Participating Unitholders will be entitled to sell in the contemplated Transfer, on the same economic terms (with the price paid for different classes of Units reflecting their respective proportionate share of the Total Equity Value), a number of Primary Common Units equal to the product of (A) the quotient determined by dividing the number of Primary Common Units owned by such person by the aggregate number of Primary Common Units owned by all Unitholders participating in such sale, and (B) the number of Primary Common Units to be sold in the contemplated Transfer.

(ii) Any of the Participating Unitholders may elect to sell in any Transfer contemplated under this Section 9.2 a lesser number of Units than such Participating Unitholder is entitled to sell hereunder, in which case the Transferring Unitholder shall have the right to sell an additional number of Units in such Transfer equal to the number that such Participating Unitholder has elected not to sell. The Transferring Unitholder will use commercially reasonable efforts to obtain the agreement of the Proposed Purchaser(s) to the participation of the Participating Unitholders in any contemplated Transfer, and the Transferring Unitholder will not transfer any of its Units to the Proposed Purchaser(s) unless (A) simultaneously with such Transfer, the Proposed Purchaser(s) purchase from the Participating Unitholders the Units which such Participating Unitholders are entitled to sell to such Proposed Purchaser(s) pursuant to Section 9.2(b)(i) above or (B) simultaneously with such Transfer, the Transferring Unitholder purchases (on the same terms and conditions specified in Section 9.2(b)(i) above) the number of Units from the Participating Unitholders which the Participating Unitholders would have been entitled to sell pursuant to Section 9.2(b)(i) above.

(iii) The Transferring Unitholder and the Participating Unitholders shall bear the out-of-pocket costs of any Transfer pursuant to this Section 9.2(b) which are borne by the Transferring Unitholder, to the extent such costs are incurred for the benefit of all Persons participating in the Transfer and are not otherwise paid by the Company or the Proposed Purchaser, on a pro rata basis and in a manner giving effect to the relative rights and preferences of the Units being transferred. Costs incurred by the Participating Unitholders participating in the Transfer on their own behalf will not be considered costs of the Transfer hereunder.

(iv) Each Participating Unitholder agrees to execute and deliver any documentation reasonably required to consummate any such Transfer; provided that (A) no Participating Unitholder shall be required to make any representations or warranties in connection with such Transfer other than representations and warranties as to (1) such Participating Unitholder's ownership of his or its Units to be Transferred free and clear of all liens, claims and encumbrances, other than those arising hereunder, (2) such Participating Unitholder's power and authority to effect such Transfer, (3) the valid, binding and enforceable nature of the agreements entered into by such Participating Unitholder in order to effect such Transfer, (4) the absence of any legal or contractual impediments to the Transfer of such Participating Unitholder's Units, and (5) any other representations or warranties being made by the Transferring Unitholder solely with respect to itself in its capacity as an equityholder of the Company, but not including any representations or warranties regarding the business or prospects of the Company and/or its Subsidiaries, and (B) the indemnity obligations of each Participating Unitholder arising under the definitive documentation for such Transfer shall be several, and shall relate solely to (1) the representations and warranties described above and (2) the representations and warranties made by or relating to the Company in connection with such Transfer, but shall be limited, in the case of clause (B)(1), to such Participating Unitholder's pro rata portion of the aggregate consideration paid to the Transferring Unitholder and all of the Participating Unitholders in such Transfer and, in the case of clause (B)(2), to the lesser of (i) such Participating Unitholder's pro rata portion of the indemnification obligation and (ii) such Participating Unitholder's pro rata portion of the aggregate consideration actually received by the Transferring Unitholder and all of the Participating Unitholders in such Transfer. Notwithstanding the foregoing, if a Member electing to participate does not agree to execute and deliver or does not execute and deliver any documentation required by this Section 9.2(b) or otherwise requested by the Transferring Unitholder or the Proposed Purchaser in connection with the Transfer, such Member shall not be entitled to participate in the proposed Transfer.

(c) **Permitted Transfers**. The restrictions contained in Section 9.2(a) shall not apply to a Transfer pursuant to (i) a Public Sale, (ii) an Approved Sale, (iii) Section 6.9, (iv) Section 6.11 or (v) a Class A Holder Exempt Transfer, provided that all restrictions contained in this Agreement will continue to apply to the Units after any such Transfer pursuant to clause (v) above and the transferees of such Units pursuant to such clause shall agree in writing to be bound by the provisions of this Agreement without which written agreement any such Transfer shall be invalid and void. If the consummation of a Transfer pursuant to this Section 9.2 would cause an Approved Sale to occur, the provisions of Section 12.9(a) shall control such Transfer. Upon the Transfer of Units pursuant to clause (ii) of this Section 9.2(c), the transferor will deliver a written notice to the Company and the other parties to this Agreement, which notice will disclose in reasonable detail the identity of such transferee. Notwithstanding anything in this Agreement to the contrary, in connection with any Transfer permitted pursuant to this Section 9.2(c), the Class A Holder shall have the right to Transfer a proportionate number of shares of the Class A Holder (the " Blocker Shares") (based on the proportion of its directly or indirectly owned Units being sold), rather than the Units owned by the Class A Holder, on terms and conditions no less favorable to the Class B Holder than the terms and conditions of such transaction with respect to the Transfer of Units, including the right to sell the Blocker Shares to the purchaser in such Transfer for a price equal to the amount that the Class A Holder would have otherwise received in such Transfer if the Class A Holder had sold its Units.

9.3 **Restricted Units Legend**. The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this Agreement, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is then available. Each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units (if such securities remain Units as defined herein after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [·], 2019, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE LIMITED LIABILITY COMPANY AGREEMENT, AS MAY BE AMENDED AND MODIFIED FROM TIME TO TIME, AND THE COMPANY RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SECURITIES UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO ANY TRANSFER. A COPY OF SUCH CONDITIONS SHALL BE FURNISHED BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE."

The Company shall imprint such legend on certificates (if any) evidencing Units. The legend set forth above shall be removed from the certificates (if any) evidencing any units which cease to be Units in accordance with the definition thereof.

9.4 **Transfer**. Prior to Transferring any Units (other than pursuant to an Approved Sale pursuant to Section 12.9(a), a Public Sale or an IPO), the Transferring holder of Units shall cause the prospective transferee to be bound by this Agreement and any other agreements executed by holders of Units relating to such Units in the aggregate (collectively the "Other Agreements") and to execute and deliver to the Company and the other holders of Units counterparts of this Agreement and the applicable Other Agreements. Any Transfer or attempted Transfer of any Units in violation of any provision of this Agreement shall be invalid and void, and the Company shall not record such Transfer on its books or treat any purported transferee of such Units as the owner of such securities for any purpose.

9.5 **Assignee's Rights**.

(a) A Transfer of any Unit in a manner in accordance with this Agreement shall be effective as of the date of assignment and compliance with the conditions to such Transfer and such Transfer shall be shown on the books and records of the Company. Profits, Losses and other Company items shall be allocated between the transferor and the Assignee according to Code Section 706. Distributions made before the effective date of such Transfer shall be paid to the transferor, and Distributions made after such date shall be paid to the Assignee.

(b) Unless and until an Assignee becomes a Member pursuant to Article X, the Assignee shall not be entitled to any of the rights granted to a Member hereunder or under applicable law, other than the rights granted specifically to Assignees pursuant to this Agreement; provided that, without relieving the transferring Member from any such limitations or obligations as more fully described in Section 9.6, such Assignee shall be bound by any limitations and obligations of a Member contained herein that a Member would be bound on account of the Assignee's Company Interest (including the obligation to make Capital Contributions on account of such Company Interest).

9.6 **Assignor's Rights and Obligations**. Any Member who shall Transfer any Unit in a manner in accordance with this Agreement shall cease to be a Member with respect to such Units or other interest and shall no longer have any rights or privileges, or, except as set forth in this Section 9.6, duties, liabilities or obligations, of a Member with respect to such Units or other interest (it being understood, however, that the applicable provisions of Sections 5.8, 6.1 and 6.4 shall continue to inure to such Person's benefit), except that unless and until the Assignee (if not already a Member) is admitted as a substituted Member in accordance with the provisions of Article X (the "Admission Date"), (a) such assigning Member shall retain all of the duties, liabilities and obligations of a Member with respect to such Units or other interest, including, without limitation, the obligation (together with its Assignee pursuant to Section 9.5(b)) to make and return Capital Contributions on account of such Units or other interest pursuant to the terms of this Agreement and (b) the Board may, in its sole discretion, reinstate all or any portion of the rights and privileges of such Member with respect to such Units or other interest for any period of time prior to the Admission Date. Nothing contained herein shall relieve any Member who Transfers any Units or other interest in the Company from any liability of such Member to the Company with respect to such Company Interest that may exist on the Admission Date or that is otherwise specified in the Delaware Act and incorporated into this Agreement or for any liability to the Company or any other Person for any materially false statement made by such Member (in its capacity as such) or for any present or future breaches of any representations, warranties or covenants by such Member (in its capacity as such) contained herein or in other agreements with the Company.

ARTICLE X

ADMISSION OF MEMBERS

10.1 **Substituted Members**. Subject to the provisions of Article XI hereof, in connection with the permitted Transfer of a Company Interest of a Member, the transferee shall become a Substituted Member on the effective date of such Transfer, which effective date shall not be earlier than the date of compliance with the conditions to such Transfer, and such admission shall be shown on the books and records of the Company.

10.2 **Additional Members**. Subject to the provisions of Article XI hereof, a Person may be admitted to the Company as an Additional Member only upon furnishing to the Board (a) counterparts of this Agreement and the applicable Other Agreements and (b) such other documents or instruments as may be necessary or appropriate to effect such Person's admission as a Member (including entering into such documents as the Board may deem appropriate in its discretion). Such admission shall become effective on the date on which the Board determines in its sole discretion that such conditions have been satisfied and when any such admission is shown on the books and records of the Company.

ARTICLE XI

WITHDRAWAL AND RESIGNATION OF MEMBERS

11.1 **Withdrawal and Resignation of Members**. No Member shall have the power or right to withdraw or otherwise resign as a Member from the Company prior to the dissolution and winding up of the Company pursuant to Article XII without the prior written consent of the Board, except as otherwise expressly permitted by this Agreement. Any Member, however, that attempts to withdraw or otherwise resign as a Member from the Company without the prior written consent of the Board upon or following the dissolution and winding up of the Company pursuant to Article XII but prior to such Member receiving the full amount of Distributions from the Company to which such Member is entitled pursuant to Article XII shall be liable to the Company for all damages (including all lost profits and special, indirect and consequential damages) directly or indirectly caused by the withdrawal or resignation of such Member, and such Member shall be entitled to receive the Fair Market Value of such Member's equity interest in the Company as of the date of its resignation (or, if less, the amount that such Member would have received on account of such equity interest had such Member not resigned or otherwise withdrew from the Company), as conclusively determined by the Board, on the date which is six (6) months (or such earlier date determined by the Board) following the completion of the distribution of Company assets as provided in Article XII to all other Members. Upon a transfer of all of a Member's Units in a Transfer permitted by this Agreement, subject to the provisions of Section 9.6, such Member shall cease to be a Member.

ARTICLE XII

DISSOLUTION AND LIQUIDATION

12.1 **Dissolution**. The Company shall not be dissolved by the admission of Additional Members or Substituted Members or the attempted withdrawal or resignation of a Member. The Company shall dissolve, and its affairs shall be wound up, upon:

(a) the vote of the members of the Board holding at least a majority of the votes of all members of the Board; or

(b) the entry of a decree of judicial dissolution of the Company under Section 35-5 of the Delaware Act or an administrative dissolution under Section 18-802 of the Delaware Act.

Except as otherwise set forth in this Article XII, the Company is intended to have perpetual existence. An Event of Withdrawal shall not cause a dissolution of the Company and the Company shall continue in existence subject to the terms and conditions of this Agreement.

12.2 **Liquidation and Termination**. On dissolution of the Company, the Board shall act as liquidator or may appoint one or more Persons as liquidator. The liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Delaware Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidators shall continue to operate the Company properties with all of the power and authority of the Board. The steps to be accomplished by the liquidators are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the liquidators shall cause a proper accounting to be made by a recognized firm of independent certified public accountants of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the liquidators shall cause the notice described in the Delaware Act to be mailed to each known creditor of and claimant against the Company in the manner described thereunder;

(c) the liquidators shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine); and

(d) all remaining assets of the Company shall be distributed to the Members in accordance with Section 4.1(a) by the end of the Taxable Year of the Company during which the last day of the plan of liquidation of the Company occurs (or, if later, by ninety (90) days after the date of the liquidation).

The distribution of cash and/or property to the Members in accordance with the provisions of this Section 12.2 and Section 12.3 constitutes a complete return to the Members of their Capital Contributions and a complete distribution to the Members of their Company Interests and all of the Company's property and constitutes a compromise to which all Members have consented within the meaning of the Delaware Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds. If any Member's Capital Account is not equal to the amount to be distributed to such Member pursuant to Section 12.2(d), Profits and Losses for the Fiscal Year in which the Company is dissolved shall be allocated among the Members in such a manner as to cause, to the extent possible, each Member's Capital Account to be equal to the amount to be distributed to such Member pursuant to Section 12.2(d).

12.3 **Deferment; Distribution in Kind**. Notwithstanding the provisions of Section 12.2, but subject to the order of priorities set forth therein, if upon dissolution of the Company the liquidators determine that an immediate sale of part or all of the Company's assets would be impractical or would result in a materially adverse economic effect (or would otherwise not be beneficial) to the Members, the liquidators may, in their sole discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy Company liabilities (other than loans to the Company by Members) and reserves. Subject to the order of priorities set forth in Section 12.2, the liquidators may, in their sole discretion, distribute to the Members, in lieu of cash, either (a) all or any portion of such remaining Company assets in-kind in accordance with the provisions of Section 12.2(d), (b) as tenants in common and in accordance with the provisions of Section 12.2(d), undivided interests in all or any portion of such Company assets or (c) a combination of the foregoing. Any such distributions in kind shall be subject to (x) such conditions relating to the disposition and management of such assets as the liquidators deem reasonable and equitable and (y) the terms and conditions of any agreements governing such assets (or the operation thereof or the holders thereof) at such time. Any Company assets distributed in kind will first be written up or down to their Fair Market Value, thus creating Profit or Loss (if any), which shall be allocated in accordance with Sections 4.2 and 4.3. The liquidators shall determine the Fair Market Value of any property distributed in accordance with the valuation procedures set forth in Article XIII.

12.4 **Cancellation of Certificate**. On completion of the distribution of Company assets as provided herein, the Company is terminated (and the Company shall not be terminated prior to such time), and the Board (or such other Person or Persons as the Delaware Act may require or permit) shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 12.4.

12.5 **Reasonable Time for Winding Up**. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Sections 12.2 and 12.3 in order to minimize any losses otherwise attendant upon such winding up.

12.6 **Return of Capital**. The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from Company assets).

12.7 **Public Offering**.

(a) If at any time an IPO of any of the Equity Securities of the Company to be registered under the Securities Act is approved by the Board and pursuant to Section 6.12(i), the Members and the Company will take all necessary or desirable actions in connection with the consummation of such registered offering; provided that no Member will be required to incur any expense in connection with such registered offering or any reorganization of the Company related thereto (unless such expenses are reimbursed by the Company or such Member is selling Equity Securities in such registered offering). It is the intent of the Members that immediately prior to the initial registered offering of Equity Securities of the Company, regardless of whether pursuant to the immediately preceding sentence and regardless of whether pursuant to a sale by the Company or by any Member, (i) a Delaware corporation will be incorporated (the "Entity"), (ii) the Equity Securities of the Company will be recapitalized or reorganized (whether by merger, exchange, contribution, a combination of the foregoing or otherwise) at the Board's election into (A) a single class of common stock of the Entity or (B) classes of capital stock of the Entity which have the same relative rights and preferences as such Equity Securities and (iii) each Member hereby agrees that it will consent to and vote for a recapitalization, reorganization or exchange of the existing Equity Securities of the Company into capital stock of the Entity that the Board finds acceptable in its discretion (consistent with the requirements of clause (ii) above) and will take all necessary or desirable actions in connection with the consummation of the recapitalization, reorganization or exchange. Without limiting the generality of the foregoing, each Member hereby waives any and all dissenter's rights, appraisal rights or similar rights in connection with such recapitalization, reorganization or exchange. The securities to be so held by the Members will be allocated among the Members (or additional securities will be issued to one or more Members) so that, immediately after such recapitalization, reorganization or exchange, each Member holds securities having an aggregate value equal to the amount which such Members would have received if, immediately prior to such recapitalization, reorganization or exchange, the Company had distributed to its Members an aggregate amount equal to the aggregate value of the securities which are to be held by all Members immediately after such recapitalization, reorganization or exchange in a complete liquidation immediately prior to such recapitalization, reorganization or exchange, with each share of such securities, if any, offered to the public as part of such offering having a "value" for such purposes equal to the price per share of sales to the public as part of such offering.

(b) If at any time the conversion of the Company into a corporation is approved by the Board and pursuant to Section 6.12(e) (whether by way of a statutory conversion, merger, consolidation or any other form of reorganization), in connection with any such conversion the Company (or its successor corporation) will enter into a registration rights agreement with the Class A Holder, the Class B Holder and any other Members that the Board shall determine, containing customary terms and conditions which shall include, without limitation, customary long-form and short-form demand and piggyback registration rights for the Class A Holder and customary piggyback registration rights for the Class B Holder. The Company (or its successor corporation) shall pay all costs and expenses arising from or related to any such registrations.

(c) If the Class A Holder and/or any of its Affiliates sell any of their Equity Securities in any IPO, then each of the Class B Unitholders shall have the right to participate and sell in such IPO (subject to underwriter restrictions), on the same economic terms, the percentage of their Equity Securities received in the reorganization described in Section 12.7(a) equal to the percentage of Equity Securities sold by the Class A Holder and its Affiliates received in the reorganization described in Section 12.7(a). By way of example only, if the Class A Holder and its Affiliates sell ten percent (10%) of the Equity Securities received pursuant to Section 12.7(a) in an IPO, then each Class B Unitholder shall be entitled to sell ten percent (10%) of the Equity Securities it receives pursuant to Section 12.7(a) in such IPO.

12.8 **Preemptive Rights**.

(a) Subject to the provisions of Section 12.8(b) below, if the Company proposes to issue and sell any of its Equity Securities (other than issuances of (i) Equity Securities issued by the Company or any of its Subsidiaries to the target of an acquisition, its Affiliates or equityholders in connection with the acquisition of Equity Securities or assets constituting a line of business of another Person that is not an Affiliate of the Company or any Member or (ii) any Equity Securities issued by the Company to any of the Company's or any Subsidiary's lenders as part of a financial restructuring transaction, provided that none of such lenders are an Affiliate of any Member) the Company will offer to sell to the Class A Holder and the Class B Unitholders (or their respective designees, subject to the last sentence of this Section 12.8(a)) (each, a "Preemptive Holder" and collectively, the "Preemptive Holders") a portion of the number or amount of such securities proposed to be sold in any such transaction or series of related transactions equal to the product of the percentage such Preemptive Holder holds of all Primary Common Units then outstanding, multiplied by the number of securities proposed to be issued and sold by the Company in any such transaction or series of related transactions, all on the same economic terms (including, without limitation, price and liquidation preferences) and otherwise on substantially the same terms and conditions (taking into account and in a manner consistent with the relative size of the investment by each of the other Unitholders) as the securities that are being offered in such transaction or series of transactions; provided that if the offeree in such transaction or series of transactions is required also to purchase other equity or debt securities of the Company, any Preemptive Holder exercising its rights pursuant to this Section 12.8 shall also be required to purchase the same strip of securities (on the same economic terms and conditions) that such offeree is required to purchase.

(b) Notwithstanding the foregoing, the provisions of this Section 12.8 shall not be applicable to the issuance of securities (i) upon the conversion of Equity Securities of one class into Equity Securities of another class, (ii) upon the conversion of any duly authorized convertible debt or debentures into Equity Securities, (iii) upon a Unit split or other subdivision or combination of the outstanding Equity Securities, or (iv) in any transaction in respect of a security that is offered to all Members on a pro rata basis.

(c) In connection with the issuance or sale of any Equity Securities to which the preemptive rights described in this Section 12.8 apply, the Company will cause to be given to each Preemptive Holder a written notice setting forth in reasonable detail the terms and conditions upon which it may purchase such securities pursuant to its rights contained in Section 12.8(a) (the "Preemptive Notice"). After receiving a Preemptive Notice, if such Preemptive Holder wishes to exercise the preemptive rights granted by this Section 12.8 such Preemptive Holder must give notice to the Company in writing, within ten (10) Business Days after the date that such Preemptive Notice is given, that such Preemptive Holder irrevocably agrees to purchase the shares or other securities offered pursuant to this Section 12.8 on the date of sale to such offeree (the "Preemptive Reply"). If a Preemptive Reply is not delivered in accordance with this Section 12.8, securities offered to such Preemptive Holder in accordance herewith may thereafter, for a period not exceeding one-hundred-twenty (120) days following the expiration of such ten (10) Business Day period, be issued, sold or subjected to rights or options to any purchaser at a price not less than the price at which they were offered to such Preemptive Holder and on other terms and conditions no more favorable in the aggregate to the purchasers thereof than those offered to such Preemptive Holder. Any such securities not so issued, sold or subjected to rights or options to any purchaser during such one-hundred-twenty (120) day period will thereafter again be subject to the preemptive rights provided for in this Section 12.8. Notwithstanding anything to the contrary in this Section 12.8, in the event that the Board determines that the Company needs the proceeds of all or a portion of any investment sooner than the process set forth herein would allow, then the Class A Holder shall have the right to purchase the entire amount of such securities immediately and thereafter either offer an equivalent portion of such securities as that otherwise provided herein to each Preemptive Holder or request the Company promptly to offer additional securities (in the equivalent amounts otherwise provided herein) to each Preemptive Holder.

12.9 **Approved Sale**.

(a) If the Class A Unitholders and the Class B Holder, pursuant to Section 6.12(e), or the Class A Unitholders, pursuant to Section 6.9 (the "Approving Unitholders") approve a sale of all or substantially all of the Company's assets determined on a consolidated basis or a sale of all of the Company's outstanding Units to any prospective transferee or group of prospective transferees (whether by merger, exchange, contribution, recapitalization, consolidation, reorganization, combination or otherwise) (collectively an "Approved Sale"), the Company shall deliver written notice to the Unitholders, setting forth in reasonable detail the terms and conditions of the Approved Sale (including, to the extent then determined, the consideration to be paid with respect to each class of Units eligible to participate in such Approved Sale). Each Unitholder will be deemed to have consented to and agrees to raise no objections against (and to confirm such consent in writing to) such Approved Sale. If the Approved Sale is structured as (i) a merger, consolidation or other transaction for which dissenter's rights, appraisal rights or similar rights are available under applicable law, each Unitholder will waive any and all dissenter's rights, appraisal rights or similar rights in connection with such transaction or (ii) a sale of Units (including by recapitalization, consolidation, reorganization, combination or otherwise), each Unitholder will agree to sell all of its Units and rights to acquire Units on the terms and conditions approved by the Approving Unitholders and to sign any definitive written sale agreement that is signed by the Approving Unitholders with respect to such sale, so long as such terms and conditions are not contrary to the provisions of this Section 12.9. Each Unitholder shall be obligated to join in writing on a pro rata basis (based upon the consideration paid in respect of such Unitholder's Units in such Approved Sale in relation to the aggregate consideration paid in respect of all Units in such Approved Sale) in any indemnification, escrow, holdback or other obligations that the Company or the Approving Unitholders agrees to provide in connection with the Approved Sale (other than any such non-escrow obligations that relate solely to a particular Unitholder, such as indemnification with respect to representations and warranties given by a Unitholder regarding such Unitholder's title to and ownership of Units, in respect of which only such Unitholder shall be liable). In addition, each such Unitholder shall agree in writing to the same individual covenants applicable to all Unitholders in their capacity as such (which, for the avoidance of doubt, shall not include any non-competition or non-solicitation covenants). Each such Unitholder will take all reasonably necessary actions in connection with the consummation of the Approved Sale as reasonably requested by the Approving Unitholders.

(b) The obligations of the Unitholders with respect to an Approved Sale are subject to the satisfaction of the following conditions: (i) upon the consummation of the Approved Sale and subject to the provisions of this Agreement, each Unitholder will receive its pro rata share of the aggregate consideration received by other holders of Units in the same form of consideration as any other holder of Units (which portion of consideration, subject to the provisions of this Agreement, shall reflect that as such Unitholder would have received if the aggregate consideration paid in connection with closing such Approved Sale had been paid directly to the Company and then distributed by the Company in a complete liquidation (but without the Company paying any amounts in such liquidation with respect to any obligations that are being assumed by the buyer in connection with such Approved Sale)); (ii) if any holders of Units are given an option as to the form and amount of consideration to be received, each holder of Units will be given the same option; (iii) in no event shall a Unitholder be liable, in connection with any indemnification obligations relating to an Approved Sale, for an amount in excess of the consideration received or receivable by such Unitholder in connection with such Approved Sale, and (iv) no Unitholder shall be required to make any representations and warranties not made by all the other Unitholders in connection with an Approved Sale (except representations and warranties regarding (A) such Unitholder's ownership of his or its Units to be Transferred free and clear of all liens, claims and encumbrances, other than those arising hereunder, (B) such Unitholder's power and authority to effect such Approved Sale, (C) the valid, binding and enforceable nature of the agreements entered into by such Unitholder in order to effect such Approved Sale and (D) the absence of any legal or contractual impediments to the Approved Sale of such Unitholder's Units).

(c) If the Company or the holders of the Company's Equity Securities enter into any negotiation or transaction for which Rule 506 (or any similar rule then in effect) promulgated by the Securities and Exchange Commission may be available with respect to such negotiation or transaction (including a sale of assets, merger, consolidation or other reorganization), the Unitholders, at the request of the Company, will appoint a purchaser representative (as such term is defined in Rule 501 promulgated by the Securities and Exchange Commission) reasonably acceptable to the Board. If any such Unitholder appoints a purchaser representative designated by the Company, the Company will pay the fees of such purchaser representative, but if any such Unitholder declines to appoint the purchaser representative designated by the Company, such holder will appoint another purchaser representative, and such holder will be responsible for the fees of the purchaser representative so appointed.

(d) Each Unitholder shall bear the out-of-pocket costs of any sale of Units pursuant to an Approved Sale, to the extent such costs are incurred for the benefit of all such Unitholders and are not otherwise paid by the Company or the acquiring party, in the same proportion in which such Unitholders receive the net proceeds realized by the Company from such Approved Sale. Costs incurred by the Class B Unitholder on their own behalf will not be considered costs of the transaction hereunder.

(e) Subject to the other provisions of this Section 12.9, each Unitholder, whether in his or its capacity as an equity holder, officer or manager of the Company, or otherwise, shall take or cause to be taken all such actions as may be necessary or reasonably desirable in order to consummate an Approved Sale and any related transactions, including, without limitation, executing, acknowledging and delivering consents, assignments, waivers and other documents or instruments; furnishing information and copies of documents; filing applications, reports, returns, filings and other documents or instruments with governmental authorities; and otherwise reasonably cooperating with the Approving Unitholders and the prospective purchaser. In connection with an Approved Sale, each Unitholder hereby appoints the Approving Unitholders (i) as the Member representative to act on behalf of all of the Members and (ii) as its true and lawful proxy and attorney-in-fact, with full power of substitution, to transfer such Units (but solely in compliance with the terms of this Section 12.9) and to execute any purchase agreement or other documentation (but solely in compliance with the terms of this Section 12.9) required to consummate such Approved Sale. The powers granted herein shall be deemed to be coupled with an interest, shall be irrevocable and shall survive death, incompetency or dissolution of any such Member.

(f) The Approving Unitholders shall, in their sole discretion, decide whether or not to pursue, consummate, postpone or abandon any proposed Approved Sale and the terms and conditions thereof. No Approving Unitholder nor any Affiliate of any Approving Unitholder shall have any liability to any Member arising from, relating to or in connection with the pursuit, consummation, postponement, abandonment or terms and conditions of any proposed Approved Sale except to the extent such Approving Unitholder shall have failed to comply with the provisions of this Section 12.9.

12.10 **Efficient Structure in Event of Approved Sale or IPO**. In the event of an Approved Sale or IPO, the Company and each of its Members will work to structure such Approved Sale or IPO to maximize the after-tax return to the Class A Unitholders' and Class B Unitholders' direct or indirect stockholders in connection therewith to the extent that such structure is not materially economically detrimental to the Company.

ARTICLE XIII

VALUATION

13.1 **Determination**. "Fair Market Value" of any asset, property or equity interest means the amount which a seller of such asset, property or equity interest would receive in an all-cash sale of such asset, property or equity interest in an arm's-length transaction with an unaffiliated third party consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value (and after giving effect to any transfer taxes payable in connection with such sale), in each case, as such amount is determined by the Board (or, if pursuant to Section 12.3, the liquidators) in its good faith judgment and using all factors, information and data deemed to be pertinent.

ARTICLE XIV

GENERAL PROVISIONS

14.1 **Amendments.** This Agreement may only be amended or modified upon the consent of the Board and the consent or approval of the Members holding a majority of the Class A Units and the consent or approval of the Class B Holder.

14.2 **Title to Company Assets.** Company assets shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such Company assets or any portion thereof. Legal title to any or all Company assets may be held only in the name of the Company or a wholly-owned Subsidiary of the Company. All Company assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such Company assets is held.

14.3 **Addresses and Notices.** All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if (a) delivered personally or, (b) sent by registered or certified mail, postage prepaid, (c) sent by reputable overnight courier (charges prepaid) or (d) via facsimile confirmed in writing in any of the foregoing manners, to the addresses set forth below, in each case with a follow-up email to the email addresses listed below notifying the addressee of the delivery of such notice or other communication in the manner set forth in clause (b) above, as applicable.

If to the Company:	HPRM, LLC c/o Vertex Refining OH, LLC 4001 E. 5th Avenue Columbus, OH 43219 Attention: Facsimile: E-mail:
with a copy (which shall not constitute notice) to:	Vertex Energy Operating LLC 1331 Gemini Street, Suite 250 Houston, TX 77058 Attention: Benjamin Cowart, President Facsimile No: (281) 754-4185 E-mail: benc@vertexenergy.com
If to the Class A Holder:	Tensile-Heartland Acquisition Corporation c/o Tensile Capital Management, LLC 700 Larkspur Landing Circle, Suite 255 Larkspur, CA 94939 Attention: Douglas J. Dossey and Neal Barcelo Facsimile No.: (415) 830-8178 E-mail: ddossey@tensilecapital.com and nbarcelo@tensilecapital.com

with a copy (which shall not constitute notice) to:	Kirkland & Ellis LLP 555 California Street, Suite 2700 San Francisco, CA 94105 Attention: Noah D. Boyens, P.C. and Chris Harding Facsimile No.: (415) 439-1500 E-mail: noah.boyens@kirkland.com and chris.harding@kirkland.com
If to the Class B Holder:	Vertex Energy Operating LLC 1331 Gemini Street, Suite 250 Houston, TX 77058 Attention: Benjamin Cowart, President Facsimile No: (281) 754-4185 E-mail: benc@vertexenergy.com
with a copy (which shall not constitute notice) to:	James P. Gregory, Esq. c/o Ruddy Gregory Law, PLLC 44 Cook Street, #640 Denver, CO 80206 Facsimile: (303) 265-9046 E-mail: jgregory@ruddylaw.com
If to any other Member:	At such address as indicated in the Company's records, or at such other address or to the attention of such other person as such Member has specified by prior written notice to the sending party.

If sent by mail, notice shall be considered delivered five (5) Business Days after the date of mailing; if sent by overnight courier with a nationally recognized courier, notice shall be considered delivered the next Business Day after the date of mailing; and if sent by any other means set forth above, notice shall be considered delivered upon actual delivery thereof. Any party may by notice to the other parties change the address to which notice or other communications to it are to be delivered or mailed.

14.4 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

14.5 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Company Profits, Losses, Distributions, capital or property other than as a secured creditor.

14.6 **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

14.7 **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto.

14.8 **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any dispute relating hereto shall be heard in the state or federal courts of Delaware, and in connection therewith the parties agree to jurisdiction and venue therein. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

14.9 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

14.10 **Further Action.** The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

14.11 **Delivery by Facsimile or Email.** This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of facsimile or email (including PDF), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use or delivery of a facsimile or email of a signature or the fact that any signature or agreement or instrument was transmitted or communicated electronically or through the use of a facsimile machine as a defense to the formation of a contract and each such party forever waives any such defense.

14.12 **Offset.** Whenever the Company is to pay any sum to any Member or any Related Party thereof, any amounts that such Member or such Related Party owes to the Company which are not the subject of a good faith dispute may be deducted from that sum before payment.

14.13 **Entire Agreement.** This Agreement, those documents expressly referred to herein and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

14.14 **Remedies.** Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and all of the rights which such Person has under any law. Any Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

14.15 **Descriptive Headings; Interpretation.** The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the word “including” in this Agreement shall be by way of example rather than by limitation and shall be interpreted without limitation. The use of the words “or,” “either” and “any” shall not be exclusive. The terms “hereby,” “hereof,” “hereunder,” and any similar terms as used in this Agreement shall refer to this Agreement. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. Wherever required by the context, references to a Fiscal Year shall refer to a portion thereof. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Wherever a conflict exists between this Agreement and any other agreement, this Agreement shall control but solely to the extent of such conflict.

* * * * *

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Amended and Restated Limited Liability Company Agreement as of the date first written above.

TENSILE-HEARTLAND ACQUISITION CORPORATION

By: /s/ Douglas J. Dossey
Name: Douglas J. Dossey
Its: Director

VERTEX ENERGY OPERATING, LLC

By: /s/ Benjamin Cowart
Name: Benjamin Cowart
Title: President

VERTEX SPLITTER CORPORATION

By: /s/ Benjamin Cowart
Name: Benjamin Cowart
Title: President

SCHEDULE I

Members, Commitments and Units Held

Contributions

Member	Contribution
Tensile-Heartland Acquisition Corporation	$ 21,000,000
Vertex Energy Operating, LLC	$ 11,052,000
Vertex Splitter Corporation	$ 248,000

Units Held

Member	Class A-1 Preferred Units	Class A-2 Preferred Units	Class A Common Units	Class B Common Units
Tensile-Heartland Acquisition Corporation	21,000	0	21,000	0
Vertex Energy Operating, LLC	0	0	0	11,052
Vertex Splitter Corporation	0	0	0	248

Exhibit 99.1

VERTEX ENERGY, INC. ANNOUNCES CLOSING OF PHASE 2 OF TENSILE CAPITAL JOINT VENTURE

-Pilot Test Validated Process That Creates High Purity Base Oil from Used Motor Oil Feedstock-
-Parties have Closed Phase 2 of the Agreement; Vertex to Receive $13.5 million Cash Infusion From Tensile Capital -
-Heartland Development Project to Commence Immediately-

HOUSTON, TX., January 22, 2020 -- Vertex Energy, Inc. (NASDAQ: VTNR, "Vertex" or the "Company"), a leading specialty refiner and marketer of high-quality hydrocarbon products, today announced that it has successfully closed Phase 2 of its previously disclosed, planned joint venture partnership with San Francisco-based investment firm Tensile Capital Management LLC ("Tensile").

As first announced on July 31, 2019, Vertex and Tensile entered into a joint venture arrangement with the goal of accelerating the full development of the Company's Heartland base oil refinery located in Ohio, subject to a successful pilot test validating a process by which used motor oil is converted into high purity base oil. As recently announced, the pilot test was completed, and the results successfully validated the proposed process improvements.

Under the terms of the agreements, the Heartland refinery will be owned jointly by Vertex and a fund managed by Tensile, through a newly created special purpose vehicle, HPRM LLC ("HSPV"). Vertex will retain a 35% interest in HSPV, while Tensile will hold a 65% interest.

In exchange for its interests in HSPV, Tensile has agreed to (1) purchase $13.5 million of HSPV interests from Vertex in exchange for a $13.5 million cash infusion to Vertex's balance sheet (less $1 million of interests in Vertex Refining Myrtle Grove LLC which Vertex is required to purchase in connection with the closing); and (2) invest $7.5 million of cash in HSPV at closing, with the option to deploy another $7.0 million into the HSPV in connection with the purchase of additional HSPV interests. Per the agreements, Vertex has the option to repurchase the Tensile interests in HSPV after three years, while Tensile can put its interest to Vertex after five years. Vertex will retain operational control of the Heartland refinery.

Vertex currently estimates the total development CAPEX related to HSPV will be in the range of $25 million to $30 million. The capital budget provides funding, which is expected to be sufficient, to (1) increase the production capacity of the Heartland refinery by 35%, to approximately 20 million gallons of base oil per year; (2) grow used motor oil (UMO) collections to support increased throughput for regionally-sourced feedstock; and (3) enhance the quality of finished products produced at the refinery. HSPV development activity will begin immediately and is anticipated to extend through the first half of 2023.

HSPV will require capital in phases, allowing for incremental EBITDA contributions to be realized, which are projected to begin in the second half of 2022, as initial development activities are completed. Upon full completion of the Heartland development project, which is planned to occur during the second half of 2023, the Company anticipates annualized EBITDA stemming from HSPV to be in the range of approximately $15 million to $20 million.

"Momentum continues to build around the Vertex investment opportunity," stated Benjamin P. Cowart, Chairman and CEO of Vertex Energy, who continued, "This transaction further positions us to become one of the leading producers and marketers of high purity base oils in North America, while providing a significant, liquidity event which is non-dilutive to common shareholders, and which significantly reduces our net leverage from current levels, while providing increased balance sheet optionality. The Heartland development project is a transformational event for us, one that has the potential to materially increase the refinery's annualized EBITDA during the next three years. Over the near-term, we see multiple potential catalysts for growth throughout our business, including widening product spreads ahead of IMO 2020, together with continued expansion of our UMO collections business."

Additional information regarding the transactions above can be found in the Current Report on Form 8-K which Vertex has filed today with the Securities and Exchange Commission.

Conference Call and Webcast

A conference call will be held on January 22, 2020 at 4:30 PM ET to discuss the phase two closing of Tensile Capital transaction, in addition to the recently announced partnership with Bunker One and conduct a question-and-answer session. A webcast of the conference call will be available in the Investor Relations section of the Company's website at www.vertexenergy.com. To listen to a live broadcast, go to the site at least 15 minutes prior to the scheduled start time in order to register, download, and install any necessary audio software.

To participate in the live teleconference:

Domestic Live: **844-369-8770**

To listen to a replay of the teleconference, which will be available through February 22, 2020:

Domestic Replay: **877-481-4010**
Conference ID: **57685**

About Vertex Energy

Houston-based Vertex Energy, Inc. (NASDAQ: VTNR) is a specialty refiner of alternative feedstocks and marketer of high-purity petroleum products. Vertex is one of the largest processors of used motor oil in the U.S., with operations located in Houston and Port Arthur (TX), Marrero (LA) and Heartland (OH). Vertex also co-owns a facility, Myrtle Grove, located on a 41-acre industrial complex along the Gulf Coast in Belle Chasse, LA, with existing hydro-processing and plant infrastructure assets that include nine million gallons of storage. The Company has built a reputation as a key supplier of Group II+ and Group III base oils to the lubricant manufacturing industry throughout North America.

About Tensile Capital Management

Tensile Capital Management LLC is a San Francisco-based private investment firm managing $1.4 billion in an "evergreen" fund focused on making long-term investments in a concentrated portfolio of select businesses. Tensile has the flexibility to invest in both public and private businesses through minority as well as control investments. The firm takes an active and collaborative approach to partnership with strong management teams and boards of directors, offering experience and insight, creative problem solving and strategic, long-term planning on key initiatives over an investment horizon of five to ten years.

Cautionary Statement Forward-Looking Statements

This press release may contain forward-looking statements, including information about management's view of Vertex Energy's future expectations, plans and prospects, within the safe harbor provisions under The Private Securities Litigation Reform Act of 1995 (the "Act"). In particular, when used in the preceding discussion, the words "believes," "hopes," "expects," "intends,", "expects", "projects", "plans," "anticipates," or "may," and similar conditional expressions are intended to identify forward-looking statements within the meaning of the Act, and are subject to the safe harbor created by the Act. Any statements made in this news release other than those of historical fact, about an action, event or development, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors, which may cause the results of Vertex Energy, its divisions and concepts to be materially different than those expressed or implied in such statements. These risk factors and others are included from time to time in documents Vertex Energy files with the Securities and Exchange Commission, including but not limited to, its Form 10-Ks, Form 10-Qs and Form 8-Ks. Other unknown or unpredictable factors also could have material adverse effects on Vertex Energy's future results.

The forward-looking statements included in this press release are made only as of the date hereof. Vertex Energy cannot guarantee future results, levels of activity, performance or achievements. Accordingly, you should not place undue reliance on these forward-looking statements. Finally, Vertex Energy undertakes no obligation to update these statements after the date of this release, except as required by law, and takes no obligation to update or correct information prepared by third parties that are not paid for by Vertex Energy.

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