

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

(Emergency Consideration Requested)

**DEBTORS'
EMERGENCY MOTION
FOR ENTRY OF AN ORDER
(I)(A) APPROVING BIDDING PROCEDURES;
(B) APPROVING THE SELECTION OF STALKING
HORSE PURCHASER; (C) APPROVING THE DEBTORS'
ENTRY INTO THE STALKING HORSE APA AND APPROVING
BID PROTECTIONS; (D) SCHEDULING AUCTIONS AND SALE
HEARING; (E) APPROVING FORM AND MANNER OF SALE NOTICE;
(F) APPROVING FORM AND MANNER OF POTENTIAL ASSUMPTION AND
ASSIGNMENT NOTICE; (G) APPROVING THE FORM AND MANNER OF POST-
AUCTION NOTICE; (H) APPROVING ASSUMPTION AND ASSIGNMENT
PROCEDURES; AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 2:00 p.m. (prevailing Central Time) on August 10, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on August 10, 2023 at 2:00 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk, Houston, TX 77002.

Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors' federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor's service address is 500 Appalachian Way, Morehead, KY 40351.

Jones' conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones' home page. The meeting code is "JudgeJones." Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones' home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

PRELIMINARY STATEMENT

1. In accordance with the Chapter 11 Milestones set forth in its DIP Credit Agreement, the Debtors are seeking approval of bidding procedures designed to maximize value while creating a swift, efficient, and consensual path to confirming a chapter 11 plan. The proposed sale process is designed to maximize the value of the Debtors' assets while preserving cash for the benefit of the Debtors' estates and its creditors by minimizing administrative costs associated with the chapter 11 process. To that end, prior to commencing these cases the Debtors and their advisors began a robust marketing process for the sale or disposition of substantially all of their assets under section 363 of the Bankruptcy Code. The assets that are being marketed for sale are: (i) the Richmond facility and related assets (collectively, the "Richmond Assets"); (ii) the Morehead facility and related assets (collectively, the "Morehead Assets" and together with the Richmond Assets, the "Richmond/Morehead Assets"); (iii) the Somerset facility and related assets (collectively, the "Somerset Assets"); and (iv) certain remaining real property, instruments, and robotics and intellectual property owned by the Debtors (the "Other Assets" and together with the Richmond/Morehead Assets and the Somerset Assets, collectively, the "Assets").

2. In compliance with the DIP Credit Agreement, the Debtors have selected CEFF II AppHarvest Holdings, LLC ("Equilibrium") or its designee to act as the stalking horse purchaser (the "Stalking Horse Purchaser") with respect to the purchase of the Richmond/Morehead Assets, substantially on the terms agreed upon in the form of Stalking Horse APA (as defined below). The

Stalking Horse APA will be subject to higher and better offers pursuant to the postpetition marketing process described herein.

3. The Debtors have determined, in the exercise of their business judgment, that the best way to maximize the value of the Assets for all stakeholders is to market-test the Assets through an auction process and to expeditiously sell the Assets to the highest or otherwise best bidder. In light of the extensive marketing process completed prepetition, the Debtors respectfully submit that the postpetition marketing process described herein is sufficient to test whether a higher or better bid is available for the Debtors' Assets.

RELIEF REQUESTED

4. The Debtors seek entry of an order (the "Bidding Procedures Order"), substantially in the form attached hereto:

- i. authorizing and approving the proposed bidding procedures (the "Bidding Procedures"), substantially in the form attached to the Bidding Procedures Order as Exhibit 1, in connection with the sale of (a) the Richmond/Morehead Assets, (b) the Somerset Assets, and (c) the Other Assets (each, a "Sale Transaction," and collectively, the "Sale Transactions");
- ii. authorizing the Debtors' to select Equilibrium or its designee as the Stalking Horse Purchaser for the Richmond/Morehead Assets;
- iii. authorizing and approving the terms of and the Debtors' entry into an Asset Purchase Agreement to be entered into by and among AppHarvest Richmond Farm, LLC, AppHarvest Morehead Farm, LLC, and Equilibrium (as amended, supplemented, or otherwise modified by the parties thereto, and including the disclosure schedules and exhibits attached hereto, the "Stalking Horse APA"), substantially in form and substance attached to the Bidding Procedures Order as Exhibit 2, including approval of the bid protections provided for therein (the "Bid Protections");
- iv. scheduling auctions of the Sale Transactions (each, an "Auction," and collectively, the "Auctions"), if necessary, and a hearing to consider approval of the Sale Transactions (the "Sale Hearing");
- v. authorizing and approving the form and manner of notice (the "Sale Notice"), substantially in the form attached to the Bidding Procedures Order as Exhibit 3, of the Sale Transactions, the Auctions, and the Sale Hearing;

- vi. authorizing and approving the form and manner of notice (the “Potential Assumption and Assignment Notice”), substantially in the form attached to the Bidding Procedure Order as Exhibit 4, to each non-Debtor counterparty (each, a “Counterparty,” and collectively, the “Counterparties”) to a relevant executory contract or unexpired lease relating to the Assets (collectively, the “365 Contracts”) regarding the potential assumption of certain 365 Contracts and the Debtors’ calculation of the amount necessary to cure any monetary defaults under such 365 Contract (such amounts, the “Cure Amounts”);
- vii. authorizing and approving the form and manner of notice (the “Post-Auction Notice”), substantially in the form attached to the Bidding Procedures Order as Exhibit 5, provided following each Auction, which shall include (a) the highest or otherwise best bid for the applicable Assets (each, a “Successful Bid,” and collectively, the “Successful Bid(s)”) and the next-highest or otherwise second-best bid (each a “Back-up Bid,” and collectively, the “Back-Up Bid(s)”) and (b) the identity of the Successful Bidder(s) and Back-Up Bidders(s);
- viii. authorizing and approving the procedures (the “Assumption and Assignment Procedures”) for the assumption and assignment of certain 365 Contracts in connection with the Sale Transactions, as applicable (collectively, the “Desired 365 Contracts”), including the notice of assumption and assignment to the Counterparties to the Desired 365 Contracts, substantially in the form attached to the Bidding Procedures Order as Exhibit 6 (the “Notice of Desired 365 Contracts”); and
- ix. granting related relief.

JURISDICTION

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors confirm their consent to the Court’s entry of a final order.

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory and other bases for the relief requested in this Motion are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), and section B of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas.

THE DEBTORS' BACKGROUND

8. The Debtors are a sustainable food company founded as a public benefits corporation and based in Appalachia that develop and operate some of the world's largest high-tech indoor farms, all of which use robotics and artificial intelligence to build a reliable, climate-resilient food system. The Debtors' farms are designed to grow produce using up to 90% less water than open-field growing, all while producing yields up to thirty times that of traditional agriculture and avoiding pollution from agricultural runoff. Through their operations Debtors aim to improve access to nutritious food, build domestic food supply, and ultimately lay the foundation for Appalachia to become the AgTech capital of North America.

9. On July 23, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under sections 101–1532 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "Court"). Additional information regarding the Debtors' business, capital structure and the circumstances preceding the Petition Date may be found in the *Declaration of Gary Broadbent, Chief Restructuring Officer of the Debtors, in Support of the Debtors' Chapter 11 Proceedings* [Docket No. 19] (the "Broadbent Declaration")² and the *Declaration of Tom Studebaker in Support of (I) the Debtors' Motion to Obtain Postpetition Financing; and (II) Other First Day Pleadings* [Docket No. 28]. In further support of this Motion, the Debtors submit the *Declaration of Richard W. Morgner in Support of Debtors' Emergency Motion for Entry of an Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors' Entry into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale*

² Capitalized terms used but not otherwise defined in this summary shall have the meanings given to them in the Broadbent Declaration.

Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Potential Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-Auction Notice (H) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief (the “Morgner Declaration”) attached hereto as Exhibit A.

THE DEBTORS’ ASSETS

10. The Assets the Debtors will be selling pursuant to the Bidding Procedures are the Richmond/Morehead Assets, the Sommerset Assets, and the Other Assets. The Richmond/Morehead Assets include the Debtors’ CEA facility and related assets located in Richmond, Kentucky, and their CEA facility and related assets located in Morehead, Kentucky. The Richmond facility and Morehead Facility are each 60-acre facilities that produce tomatoes. Broadbent Decl. ¶ 21; Morgner Decl. ¶ 10. The Somerset Assets consist of the Debtors’ CEA facility and related assets located in Pulaski, Kentucky. The Somerset facility is comprised of a 30-acre facility with a 125-square-kilometer grow area, focusing on strawberries and cucumbers and containing a unique blast chiller that extends the shelf life of the product and reduces waste, and related assets. Morgner Decl. ¶ 10. Finally, the Other Assets include, among other things, a \$5 million “Keep It Simple Security” convertible note invested in Red Sea Farms; approximately 200 acres of largely undeveloped land with converted office space located in Morehead, Kentucky; a converted office, also located in Morehead, Kentucky; and the Debtors’ proprietary robotics assets and related intellectual property. *Id.*

PREPETITION MARKETING PROCESS

11. In late 2022, the Debtors engaged TD Cowen, formerly Cowen, Inc., (“Cowen”) to launch marketing process for capital raise opportunities. Morgner Dec. ¶ 7. Despite their best efforts, the marketing failed to produce a satisfactory offer on favorable terms that would provide the Debtors with sufficient runway and flexibility to maintain the business. *Id.*

12. On June 9, 2023, the Debtors retained Jefferies LLC (“Jefferies”) as their investment banker to, among other things, advise the Debtors and facilitate outreach in connection with an evaluation of the Debtors’ immediate financing needs and potential strategic transactions, including bridge financing and asset sales. Morgner Dec. ¶ 8. A cross-sectional team of five managing directors across Jefferies’ Debt Advisory & Restructuring, Industrials, AgTech, and Consumer groups began a robust marketing process for the Assets (the “Marketing Process”). *Id.* ¶¶ 8–9. To date, Jefferies has contacted approximately 84 potential purchasers, including 65 financial buyers and 19 strategic buyers. *Id.* ¶ 9. About 22 parties have executed or are in the process of executing non-disclosure agreements with the Debtors in order to gain access to the virtual data room. *Id.*

13. Jefferies shared teasers, a confidential information memorandum, financials models, and other related financial and operational information with potential bidders. *Id.* Additionally, relevant information regarding the Debtors’ business has been made available in the virtual data room, which includes more than 800 files comprising more than 14,000 pages of diligence. *Id.*

THE BIDDING PROCEDURES

14. The Debtors request entry of the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. The Bidding Procedures are designed to promote a competitive and expedient sale process and will enable the Debtors to solicit and identify bids from potential buyers that constitute the highest and best offer(s) for the Assets, in an efficient manner and on a reasonable timeline.

I. The Proposed Sale Timeline.

15. The RSA Milestones require that a prompt schedule for the sale of the Assets be established in these chapter 11 cases in order to maximize the value of the Debtors’ estates. *See*

Broadbent Decl. ¶ 65. Accordingly, the proposed Bidding Procedures provide the following timeline for the marketing and bidding process for each of the proposed Sale Transactions as follows:³

<i>Richmond/Morehead Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
August 9, 2023	Potential Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Richmond/Morehead Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Richmond/Morehead Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Richmond/Morehead Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

<i>Somerset Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
August 9, 2023	Potential Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Somerset Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Somerset Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance

³ The Debtors, following consultation with the Consultation Parties, may extend any of the deadlines in these Bidding Procedures.

<i>Somerset Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
	Package of the Successful Bidder(s) and Back-up Bidder(s) for the Somerset Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

<i>Other Assets Sale Milestones</i>	
Date and Time (all in prevailing Central Time)	Event or Deadline
August 9, 2023	Potential Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Other Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Other Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Other Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections

<i>Other Assets Sale Milestones</i>	
Date and Time (all in prevailing Central Time)	Event or Deadline
August 31, 2023, subject to Court availability	Sale Hearing

16. In formulating the proposed sale timeline, the Debtors balanced the need to sell the Assets quickly and efficiently against the need to provide adequate time for potential purchasers to conduct due diligence and submit bids. Morgner Decl. ¶ 13. The five-week post-petition marketing and bidding process strikes an appropriate balance under the facts that exist here, including that the Debtors have previously marketed certain of the Assets in 2022, that the Marketing Process began pre-petition and was well under way as of the Petition Date, and that the Debtors have agreed in principle to enter into the Stalking Horse APA with the Stalking Horse Purchaser to establish a floor for the purchase price of the Richmond/Morehead Assets. *Id.*

II. The Bidding Procedures

17. The Bidding Procedures, attached as Exhibit 1 to the Bidding Procedures Order, set forth an orderly process that should foster a competitive bidding and auction process in a fair and transparent manner. Morgner Decl. ¶ 12. The proposed Bidding Procedures provide for appropriate requirements to submit a qualified bid, and provide potential bidders with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid. *Id.* If the Debtors receive two or more Qualified Bids with respect to the same Assets, the Bidding Procedures contemplate an open Auction process that will increase the likelihood that the Debtors will obtain the highest or otherwise best value for the Debtors' Assets to the benefit of the Debtors' estates. *Id.*

THE STALKING HORSE APA AND BID PROTECTIONS

18. Following arms'-length and good faith negotiations, the Debtors and the Stalking Horse Purchaser have agreed in principle upon the Stalking Horse APA whereby the Stalking

Horse Purchaser will purchase the Richmond/Morehead Assets. *Id.* ¶ 16. The Debtors submit that the Stalking Horse APA promotes competitive bidding and maximization of the value of the Richmond/Morehead Assets by establishing a baseline bid in connection with the Bid Procedures. *Id.*

19. The material terms of the Stalking Horse APA are summarized in the following table:⁴

Summary of Stalking Horse APA	
Parties	The Stalking Horse APA is entered into by and between [CEFF II AppHarvest Holdings, LLC] (“ <u>Buyer</u> ”), AppHarvest Richmond Farm, LLC (“ <u>AHRF</u> ”) and AppHarvest Morehead Farm, LLC (“ <u>AHMF</u> ”) (each of AHRF and AHMF a “ <u>Seller</u> ”, and collectively, “ <u>Sellers</u> ”).
Purchase Price (Stalking Horse APA, Section 2.1)	At the Closing, Buyer will pay to Sellers, by credit bid of Buyer’s pre-petition debt, an amount equal to US\$[113,179,726] (the “ <u>Purchase Price</u> ”).
Purchased Assets (Stalking Horse APA, Section 1.1)	The Transferred Assets consist of the following assets, properties and rights of Seller and its Subsidiaries: • Inventory; • Transferred Leased Property; • Transferred Owned Property; • Fixtures and Equipment, including, for greater certainty, all of those assets listed on Schedule 1.1(d) to the Stalking Horse APA; • Transferred Intellectual Property and all the goodwill of the Business and/or associated with or related to such Transferred Intellectual Property; • each Assumed Contract with respect to which an Order has been entered by the Bankruptcy Court authorizing the assumption and assignment of such Contract; • subject to the right of Sellers to retain copies, the Books and Records; • to the extent their transfer is permitted by Law, all Permits that are held by Sellers, or any Permits that are held by an Affiliate of Seller Related to the Business, and applications therefor or related thereto; • all credits, prepaid expenses, deposits with propagators for crops related to the Business, deferred charges, advance payments, refunds, security deposits, prepaid items and duties to the extent related to a Transferred Asset, but excluding any refunds of Taxes to the extent included in Section 1.2(e) of the Stalking Horse APA and any prepayments or deposits of any Asset Taxes prior to the date hereof for which Sellers shall receive credit to the extent provided in Section 5.4(b) of the Stalking Horse APA; and • any claim, right, award, recovery, indemnity, warranty, right to insurance proceeds, refund, reimbursement, audit right, duty, obligation, liability or other intangible right in favor of or owed to any Seller (other than rights arising under or relating to this Agreement, the other Transaction Documents or Sellers’ or any of their Affiliates’

⁴ The following summary is provided for convenience purposes only. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings ascribed such terms in the Stalking Horse APA attached to the Bidding Procedures Order as Exhibit 2. To the extent any of the terms below are inconsistent with the Stalking Horse APA, the Stalking Horse APA shall control in all respects.

Summary of Stalking Horse APA	
	directors' and officers' insurance policies (all rights described in this parenthetical, the "D&O Insurance Claims")), to the extent (i) related to any other Transferred Asset, (ii) related to any insurance proceeds as set forth in Section 5.9(a) of the Stalking Horse APA other than the Excluded Insurance Proceeds, or (iii) as set forth on Schedule 1.1(j) of the Stalking Horse APA.
Excluded Assets (Stalking Horse APA, Section 1.2)	Notwithstanding anything to the contrary set forth in this Agreement or in any of the other Transaction Documents, the Parties expressly acknowledge and agree that nothing in this Agreement shall be construed to obligate any Seller to Transfer to Buyer any assets, properties or rights of any Seller other than the Transferred Assets, that are not listed in Section 1.1, including the following (the "Excluded Assets"), which shall be excluded from the Transferred Assets. The Excluded Assets of the Stalking Horse APA, include, but are not limited to: • all cash and cash equivalents, checks, money orders, funds in time and demand deposits or similar accounts, marketable securities, short-term investments, and other cash equivalents and liquid investments; • all cash deposits in cash collateral, indemnity or other accounts solely to the extent comprising professional fee retainers, professional fee escrows, and indemnity accounts, held by or on behalf of Sellers', or the bankrupt estates', professionals; • any claim, right, award, recovery, indemnity, warranty, refund, reimbursement, audit right, duty, obligation, liability or other intangible right in favor of or owed to any Seller (i) to the extent arising under or related to the D&O Insurance Claims, (ii) to the extent related to a Transferred Asset and arising or attributable to the period of time prior to the Closing Date, (iii) to the extent related to any of the Excluded Liabilities, or (iv) the Excluded Insurance Proceeds; • all rights to the warranties, express or implied, and licenses granted by any third party related to the Excluded Assets; • all trade credits or refunds of costs or expenses borne by any Seller, in each case, attributable to the Transferred Assets and attributable to any period of time prior to the Closing Date; • any shares or other interests in any Person or any securities of any Person; • all invoices, shipping documents, purchase orders and other preprinted business forms that have any Trademark thereon other than those included in the Transferred Intellectual Property; • all Intellectual Property owned by any Seller or any of their Affiliates, other than the Transferred Intellectual Property; • all (i) organizational documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates, and other documents relating to any Seller's organization, maintenance, existence, and operation; and (ii) books and records, correspondence or communications to the extent related to (A) Taxes paid or payable by Sellers, (B) any claims, obligations or liabilities not included in Assumed Liabilities, or (C) the Stalking Horse APA, any other Transaction Documents or the negotiation or consummation of the Transactions (and including any attorney-client privilege associated with any of the items described in the preceding clauses (A), (B) or (C)); • all personnel records (including all human resources and other records) of any Seller or any of their Affiliates other than the personnel records of the Continuing Employees; • (i) all Tax assets and attributes of any Seller, (ii) all rights to Tax Refunds of any Seller and Claims related thereto, (iii) all rights to any refund of or credits for any Taxes paid by or on behalf of any Seller or with respect to a Pre-Closing Tax Period, other than refunds of Asset Taxes allocable to Buyer pursuant to Section 5.4(b) of the Stalking Horse APA or refunds related to any period prior to Closing, and (iv) all

Summary of Stalking Horse APA	
	rights to Tax Refunds and Claims related thereto with respect to any Excluded Asset or Excluded Liability; • all bank accounts and escrow accounts; • all cash in Sellers' adequate assurance account relating to utilities under Section 366 of the Bankruptcy Code; • any and all proceeds relating to any and all bonds, letters of credit, guarantees or other security provided by any Seller related to the Excluded Contracts; • all prepaid expenses related to the Excluded Contracts; • capital stock of each Seller; • all consideration received by any Seller or their Affiliates pursuant to, and all rights of any Seller and their Affiliates under, Stalking Horse APA or any Transaction Document, subject to the terms hereof and thereof; • all Excluded Contracts; • all Intracompany Receivables; • all Tax Returns; • all Actions owned by or available to any Seller, whether in Law or equity and under any forum (including, purely by way of example and without limitation, United States federal courts, any provincial court or state court, any foreign court and any extrajudicial dispute resolution mechanism), including any (i) Action set forth on Schedule 1.2(u)(i) of the Stalking Horse APA and (ii) Avoidance Action, attributable to any period of time prior to the Closing Date including, in each case, without limitation any Action (w) related to the acquisition, ownership, management, operation, use, function or value of any Transferred Asset or Excluded Asset, (x) against any counterparty to an Assumed Contract, or any Affiliate of such counterparty or (y) against any director, officer, manager, employee, contractor, consultant or advisor employed by or providing services to any Seller unless attributable to any period of time following the Closing Date; • subject to Section 1.7 of the Stalking Horse APA, all assets not transferrable pursuant to applicable Law or terms of the Stalking Horse APA; • any prepayments and good faith and other bid deposits submitted by any third party under the terms of the Bid and Contract Procedures Order; • all Accounts Receivable; and • all other assets, properties, or rights that are not specifically listed in Section 1.1 of the Stalking Horse APA as a Transferred Asset
Assumed Liabilities (Stalking Horse APA, Section 1.3)	The Purchaser is required to assume and agree to perform and discharge, when due, the following Assumed Liabilities: • all Liabilities with respect to the ownership, possession, use and operation of the Transferred Assets accruing on or after the Closing; • all Liabilities for, or related to any obligation for, any Tax that Buyer bears under Section 5.4 of the Stalking Horse APA; • all Liabilities under the Assumed Contracts, including all Cure Costs, occurring on or after the Closing; • all Liabilities under any Permitted Encumbrance to the extent related to any Transferred Asset; and • all Liabilities assumed by Buyer pursuant to Section 5.5 of the Stalking Horse APA
Excluded Liabilities (Stalking Horse APA, Section 1.4)	Seller retains and is responsible for paying or performing when due, or discharging, the following Excluded Liabilities: • all Income Taxes of Sellers; • all Liabilities relating to or arising out of the Excluded Assets; • all Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the Business or the Transferred Assets to the extent such Action relates to the Business or the Transferred Assets for any period prior to the Closing other than Liabilities under Section 1.3(b) of the Stalking Horse APA;

Summary of Stalking Horse APA	
	- all product Liability or similar claims for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by any Seller or based on any tort claim, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller prior to the Closing Date; - all recall, design defect, improper installation, manufacturing defect or similar or related claims of any products manufactured or sold or any service performed by any Seller prior to the Closing Date; - all Liabilities arising under or in connection with any present or former employee benefit plan providing benefits to any present or former employee of any Seller or any Seller Affiliate, other than as set forth in Section 1.3(e) of the Stalking Horse APA, provided, that all such Liabilities with respect to the Continuing Employees shall only be Excluded Liabilities to the extent arising or related to any period prior to the Closing; - except as provided in Section 5.5 of the Stalking Horse APA, including the Liabilities assumed by Buyer in relation to the Continuing Employees as set out in Section 5.5(j) of the Stalking Horse APA, all Liabilities with respect to any present or former employees, officers, directors, independent contractors or consultants of Seller, including for wages or other work-related benefits, bonuses, fees, accrued vacation, workers' compensation, employee deferred compensation including stock option plans, equity grants, other grants and agreements, severance, retention, termination or other payments; - all Accounts Payable; - all Liabilities of the Business relating to or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that do not constitute part of the Transferred Assets or Assumed Liabilities; - all Liabilities to indemnify, reimburse, or advance amounts to any present or former officer, director, employee, agent or independent contractors of any Seller (including with respect to any breach of fiduciary obligations by the same) to the extent such Liabilities relate to conduct that was undertaken prior to Closing; - all Liabilities under the Excluded Contracts, Intracompany Payables and/or resulting from the termination of obligations provided for in Section 1.9(b) of the Stalking Horse APA; - all Liabilities associated with debt, loans, notes, bonds, guarantees, indemnifications or credit facilities of any Seller and/or the Business or the Transferred Assets; and - all Liabilities arising out of, in respect of, or in connection with the failure by any Seller to comply with any Law
Bid Protections (Stalking Horse APA, Section 7.3)	If the Stalking Horse APA is validly terminated, in consideration of Buyer and its Affiliates having expended considerable time and expense in connection with the Stalking Horse APA and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Buyer as a stalking-horse bidder in connection with the Auction, should Seller enter into a written binding agreement with respect to a Competing Transaction, then in such event, Buyer shall be entitled to: - the Expense Reimbursement Amount, not to exceed US \$500,000; and - a Break-Up Fee of 3.0% of the Purchase Price
Termination Events (Stalking Horse APA, Section 7.1)	The Stalking Horse Agreement may be terminated by: - by mutual written consent of Buyer and Sellers; - automatically, upon the consummation of a Competing Transaction, or if the Bankruptcy Court approves a Competing Transaction; - by either Party, upon written notice to the other Party:

Summary of Stalking Horse APA	
	○ if there is in effect a final non-appealable Order of a Governmental Entity of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby (it being agreed that the Parties will promptly appeal any adverse determination which is appealable and pursue such appeal in accordance with their respective obligations under Section 5.3(d)(i)(C) of the Stalking Horse APA unless and until the Stalking Horse APA is terminated pursuant to this Section 7.1 of the Stalking Horse APA); ○ if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or ○ if Buyer is not selected as a Successful Bidder or a Back-Up upon entry of the Sale Order. • by Buyer: ○ upon written notice to Sellers in the event of a breach by Sellers of any representation or warranty or any covenant or agreement contained in the Stalking Horse APA that (A) would result in any of the conditions set forth in Section 6.1 or Section 6.2 of the Stalking Horse APA not being satisfied if such breach remained uncured as of the Closing and (B) such breach is incapable of being cured prior to the Termination Date or, if capable of being cured, such breach has not been cured within 30 days after the giving of written notice by Buyer to Sellers of such breach; provided that Buyer is not then in material breach of any representation, warranty, covenant or agreement contained in the Stalking Horse APA; ○ if, following entry by the Bankruptcy Court of the Sale Order, the Sale Order is materially amended, modified or supplemented without Buyer's prior written consent or is voided, reversed or vacated; or ○ if the Closing has not occurred by 5:00 p.m., prevailing Eastern time, on or before the Termination Date which date may be extended by mutual written agreement of the Parties; • by Sellers: ○ upon written notice to Buyer in the event of a breach by Buyer of any representation or warranty or any covenant or agreement contained in the Stalking Horse APA, if (A) such breach would result in a failure of a condition set forth in Section 6.1 or Section 6.3 of the Stalking Horse APA to be satisfied if such breach remained uncured as of the Closing and (B) such breach is incapable of being cured prior to the Termination Date or, if capable of being cured, such breach has not been cured within 30 days after the giving of written notice by Sellers to Buyer of such breach; provided that Sellers are not then in material breach of any representation, warranty, covenant or agreement contained in the Stalking Horse APA; or ○ if the Closing has not occurred by 5:00 p.m., prevailing Eastern time, on or before the Termination Date, which date may be extended by mutual written agreement of the Parties

20. The Debtors submit that the purchase price agreed upon for the Richmond/Morehead Assets in the Stalking Horse APA is the result of extensive, good-faith, arm's-length negotiations, and is currently the highest and best proposal. Morgner Decl. ¶ 18. The Debtors' proposed entry into the Stalking Horse APA for the Richmond/Morehead Assets is in the

best interest of the Debtors' estates and constitutes a sound exercise of the Debtors' business judgment. *Id.*

21. The Stalking Horse APA contains (a) a provision for reimbursement of reasonable and documented fees and expenses not to exceed \$500,000 (the "Expense Reimbursement") following the termination of the Stalking Horse APA under certain circumstances, and (ii) a breakup fee equal to 3.0% of the Purchase Price (the "Break-Up Fee," and together with the Expense Reimbursement, the "Bid Protections"), payable in the event that the Stalking Horse APA is terminated under certain circumstances and the Debtors consummate an alternative transaction. *Id.* ¶ 19. Based on the Marketing Process and arms'-length negotiations between the Debtors and the Stalking Horse Purchaser, the Debtors have determined that Bid Protections are necessary to retain the Stalking Horse Purchaser's commitment to the restructuring transactions provided for in the RSA and to consummation of the Richmond/Morehead Sale Transaction. *Id.* ¶ 20.

NOTICING PROCEDURES

22. The Debtors request that the Court approve the form and manner of service for the Sale Notice, the Potential Assumption and Assignment Notice, the Notices of Desired 365 Contracts, and the Post-Auction Notices (collectively, the "Notices"), each attached to the proposed Bid Procedures Order. The Debtors submit that service of the Notices as set forth below (the "Noticing Procedures") is proper and sufficient to provide notice of the applicable Auctions, the deadline to object to the Sale Transactions (the "Sale Objection Deadline"), the Cure Objection Deadline, the Contract Objection Deadline, and the Sale Hearing to all known and unknown parties.

23. The Debtors propose that within seven (7) days after the entry of the Bid Procedures Order, the Debtors shall file on the docket and serve the Sale Notice, the Bid Procedures Order and the Bid Procedures, by first-class mail, postage prepaid, provided, however, that to the extent

email addresses are available for any of the foregoing parties, such parties may be served by email, upon the following parties (collectively, the “Sale Notice Parties”): (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors; (c) Mastronardi Produce Limited, or counsel thereto; (d) CEFF II AppHarvest Holdings, LLC, an affiliate of Equilibrium, or counsel thereto; (e) Rabo AgriFinance LLC, or counsel thereto; (f) Greater Nevada Credit Union, or counsel thereto; (g) the Official Committee of Unsecured Creditors, if any; (h) the United States Attorney’s Office for the District of Delaware; (i) the Internal Revenue Service; (j) all entities that have, to the best knowledge of the Debtors’ management and advisors, expressed written interest in consummating the applicable Sale Transaction(s) with respect to the applicable Assets within the past six (6) months; and (k) all other entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Assets; *provided* that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email.

24. Within seven (7) days after the entry of the Bid Procedures Order or as soon as practicable thereafter, the Debtors will serve the Sale Notice by first-class mail, postage prepaid, upon: (a) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (b) the U.S. Trustee; (c) the Internal Revenue Service; (d) any governmental authority known to have a claim against the Debtors in these Chapter 11 Cases; (e) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (f) the Office of the Attorney General and Office of the Secretary of State in each state in which the Assets are held; (g) the counterparties to the 365 Contracts and all other applicable contracts and leases; (h) the Antitrust Division of the

United States Department of Justice; (i) the Federal Trade Commission; and (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1.

25. The Debtors shall file the Potential Assumption and Assignment Notice with the Court, post it on the case website at <https://cases.stretto.com/appharvest/>, and serve it on each Counterparty to a 365 Contract that may be a Desired 365 Contract by August 9, 2023. The Debtors shall file the applicable Post-Auction Notice and Notices of Desired 365 Contracts and serve such notices on the counterparties to the applicable Desired 365 Contracts, the Sale Notice Parties, and all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1 via ECF, by email, fax, or overnight delivery, as soon as practicable following the Auctions, if any, and in no event later than August 25, 2023. Finally, the Debtors shall also cause each of the Notices be posted on their case information website.

THE ASSUMPTION AND ASSIGNMENT PROCEDURES

26. The Debtors also request that the Court approve the form of the Potential Assumption and Assignment Notice and Notice of Desired 365 Contracts, each as attached to the Bid Procedures Order and the Assumption and Assignment Procedures described below. The Debtors submit that service of the Potential Assumption and Assignment Notice on the applicable Counterparties is proper and sufficient to provide notice to the Counterparties of the Assumption and Assignment Procedures and the proposed Cure cost associated with their contract(s).

27. To facilitate the Sale Transactions, the Debtors seek authority to assume and assign the applicable Desired 365 Contracts to the applicable Successful Bidder(s) in accordance with the following Assumption and Assignment Procedures:

- i. the Debtors shall file with the Court, post on the case website at <https://cases.stretto.com/AppHarvest>, and serve on each Counterparty to a 365

Contract an Potential Assumption and Assignment Notice on or prior to August 9, 2023 (the “Potential Assumption and Assignment Notice Deadline”).

- ii. The Potential Assumption and Assignment Notice shall include, without limitation: (i) a list of applicable 365 Contracts that may be Desired 365 Contracts; and (ii) the Cure Amounts, if any, that the Debtors believe is required to be paid. If a Counterparty objects to the Cure Amounts, the Counterparty must file with the Court and serve on each of (a) counsel to the Debtors, (b) counsel to the Creditors’ Committee, if any, and (c) the U.S. Trustee (the a written objection (a “Cure Objection”) on or before **August 24, 2023 at 4:00 p.m. (prevailing Central Time)** (the “Cure Objection Deadline”), provided that with respect to any Cure Objection for any 365 Contract included on any subsequent Potential Assumption and Assignment Notice filed by the Debtors, if any, such Cure Objections must be filed on or prior to the Contract Objection Deadline (defined below). Any Cure Objection must (i) be in writing; (ii) comply with the Bankruptcy Rules and Bankruptcy Local Rules; (iii) be filed via ECF on or before the Contract Objection Deadline; and (iv) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under Bankruptcy Code sections 365(b)(1)(A) and (B) for the applicable Desired 365 Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.
- iii. If, after the Potential Assumption and Assignment Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be potential Desired 365 Contracts in connection with an applicable Sale Transaction, or the Debtors seek to modify the previously stated Cure Amount associated with any 365 Contract, as soon as practicable thereafter and in no event later than August 25, 2023, the Debtors shall file with the Court and serve, by overnight delivery, on the applicable Counterparties a supplemental or amended Potential Assumption and Assignment Notice, and such Counterparties shall file any objection to Cure Amount not later than the Contract Objection Deadline.
- iv. Following the Auctions, if any, the Debtors shall file with the Court and serve, by overnight delivery, on the applicable Counterparties (i) a Notice of Desired 365 Contracts, and (ii) a Post-Auction Notice, as soon as practicable and in no event later than August 25, 2023.
- v. Any time after the date of service of the Notice of Desired 365 Contracts and prior to the Sale Hearing, the Debtors reserve the right, and are authorized but not directed, to: (i) add previously omitted Desired 365 Contracts as contracts to be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for a Sale Transaction; (ii) remove a Desired 365 Contract from the Notice of Desired 365 Contract that a Successful Bidder proposes be

assumed and assigned to it in connection with an applicable Sale Transaction; or (iii) modify the previously stated Cure Amount associated with any Desired 365 Contract.

- vi. The Counterparties shall file any objections to the assumption and assignment of their contract or adequate assurance of future performance by the Successful Bidder (an “Assignment Objection”), on or prior to August 28, 2023 at 4:00 p.m. (prevailing Central Time) (the “Contract Objection Deadline”). Unless otherwise provided, any Assignment Objection must (i) be in writing; (ii) comply with the Bankruptcy Rules and Bankruptcy Local Rules; (iii) be filed via ECF on or before the Contract Objection Deadline; and (iv) state with specificity the grounds for such objection, including, without limitation, basis for objecting to the assumption and assignment of the applicable 365 Contract, adequate assurance of future performance, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.
- vii. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the applicable Successful Bidder of those Desired 365 Contracts that have been selected by such Successful Bidder to be assumed and assigned. The Debtors and their estates reserve any and all rights with respect to any Desired 365 Contracts that are not ultimately designated.
- viii. If no Contract Objection is timely filed with respect to a Desired 365 Contract: (i) the Counterparty to such Desired 365 Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the applicable Successful Bidder of the Desired 365 Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder); (ii) any and all defaults under the Desired 365 Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and (B) upon payment of the Cure Amount set forth in the applicable Notice of Desired 365 Contracts for such Desired 365 Contract; and (iii) the Counterparty shall be forever barred from asserting any other claims related to such Desired 365 Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections and the applicable Sale Order.
- ix. To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the Cure Amount required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) (any such dispute, a “Cure Dispute”), the Debtors may (i) assume the applicable 365 Contract prior to the resolution of the Cure Dispute; provided that the Debtors shall (A) pay to the applicable Counterparty the undisputed

portion of the Cure Amount within five (5) business days after entry of the applicable Sale Order and (B) reserve cash in an amount sufficient to pay the disputed portion of the Cure Amount reasonably asserted by the applicable Counterparty (or such lesser amount as may be fixed or estimated by the Court or otherwise agreed to by the Counterparty and the Debtors) (the “Reserve Amount”), or (ii) adjourn their request to assume the 365 Contract pending resolution of the Cure Dispute (an “Adjourned Cure Dispute”); provided further that, to the extent the Adjourned Cure Dispute is resolved or determined unfavorably to the Debtors, the Debtors may withdraw the proposed assumption of the applicable 365 Contract after such determination by filing a notice of withdrawal, which, in the case of a lease, shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. The Debtors shall file notice of their intention to reserve for a Cure Amount or to adjourn their request for assumption. An Adjourned Cure Dispute may be resolved after the closing date of the applicable Sale Transaction in the Debtors’ discretion.

BASIS FOR RELIEF REQUESTED

I. The Proposed Bidding Procedures Should be Approved.

28. The Court should approve of the Bidding Procedures because they will enable the Debtors to maximize the proceeds received for the Assets. A debtor has a fiduciary duty to maximize the proceeds received by the estate in section 363 sales. *See Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010). Bidding procedures providing for a court-approved auction process allow a debtor to accomplish its duty of maximizing value by selling assets through exposure to the market. *See also In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (“[T]he auction procedure has developed over the years as an effective means for producing an arm’s length fair value transaction . . .”).

29. Bankruptcy courts evaluate whether to approve proposed bidding procedures under the business judgment standard. *See, e.g., In re Redwine Res.*, 2010 WL 5209287 at *2 (Bankr. N.D. Tex., June 24, 2010) (approving the debtor’s proposed bid procedures where finding the debtors “have exercised sound business judgment and presented sound business reasons”); *Integrated Res.*, 147 B.R. at 656–57 (noting that overbid procedures and break-up fee

arrangements that have been negotiated by a debtor are to be reviewed according to the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”). Here, the Debtors have determined in their business judgment that the proposed Bidding Procedures should enable them to elicit the highest or otherwise best offers available for the Assets by, among other things, (i) providing potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid; (ii) providing appropriate requirements for bids to constitute a qualified bid, and (iii) providing for a transparent auction process to promoting competitive bidding from interested parties. Morgner Decl. ¶ 12. Accordingly, the Court should approve the Bidding Procedures.

II. The Court Should Authorize Entry Into the Stalking Horse APA and Approve the Bid Protections.

30. The Court should approve the proposed Bid Protections. Courts have acknowledged that the approval of break-up fees and expenses in connection with substantial sales in bankruptcy is warranted to compensate an unsuccessful acquirer whose initial offer served as the basis and catalyst for higher or better offers. *See In re ASARCO, L.L.C.*, 650 F.3d 593, 602 n.9 (5th Cir. 2011). The Fifth Circuit requires that break-up fees and expenses be supported by a sound business justification. *See id.* at 602–03 (5th Cir. 2011) (favoring business judgment standard governing use of assets outside of the ordinary course of business in assessing propriety of fees and expenses incurred by bidders).

31. Here, the proposed Bid Protections are an appropriate exercise of the Debtors’ business judgment. First, the Break-Up Fee and Expense Reimbursement are necessary to successfully pursue the sale of the Richmond/Morehead Assets and will not chill bidding. Morgner Decl. ¶ 19. Second, by setting a floor for the value of the Assets, potential buyers will be encouraged to bid for the Assets, thereby maximizing the realizable value of the Assets for the

benefit of the Debtors' estates, creditors and other parties-in-interest. *Id.* ¶ 20. Third, the Bid Procedures require that any competing bid must exceed the Stalking Horse Bid by an amount in excess of the Break-Up Fee and Expense Reimbursement, and therefore, the payment of the Stalking Horse Bid Protections will not diminish the Debtors' estates to the extent they become payable. *Id.* ¶ 20. Finally, without the Break-Up Fee and the Expense Reimbursement, the Debtors might lose the opportunity to obtain the highest and best offer for the Richmond/Morehead Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Purchaser. *Id.* For the foregoing reasons, the Debtors submit that the Break-Up Fee and the Expense Reimbursement reflect a sound business purpose and request that the Court approve the Break-Up Fee and Expense Reimbursement.

III. The Form and Manner of the Noticing Procedures Should Be Approved.

32. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide their creditors with 21 days' notice of the Sale Hearing. Fed. R. Bankr. P. 2002(a). Pursuant to Bankruptcy Rules 2002(c)(1), such notice must include the time and place of the applicable Auction and Sale Hearing and the deadline for filing any objections to the relief requested herein. Fed. R. Bankr. P. 2002(c). The Debtors submit that notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, together with the service of the (i) Sale Notice, (ii) the Potential Assumption and Assignment Notice, (iii) the Notices of Desired 365 Contracts, and (iv) the Post-Auction Notices as provided for herein, constitutes good and adequate notice of Auctions, the Sale Hearing(s) and the proceedings with respect thereto in compliance with, and in satisfactions of, the applicable requirements of Bankruptcy Rule 2002.

IV. The Assumption and Assignment Procedures Should Be Approved.

33. The Assumption and Assignment Procedures provide an reasonable process by which (i) the Debtors and the Counterparties can reconcile cure obligations, if any, in accordance

with section 365 of the Bankruptcy Code, and (ii) such Counterparties can object to the assumption and assignment of the Desired 365 Contracts and any applicable Cure Amounts. Further, the Assumption and Assignment Procedures provide sufficient notice to the Counterparties to the Desired 365 Contracts regarding the potential assumption and assignment of the Desired 365 Contracts, and provide certainty to all parties-in-interest regarding their obligations and rights in respect thereof. Finally, it is appropriate for the Assumption and Assignment Procedures to provide that any Counterparty who fails to object to the proposed assumption and assignment of any Desired 365 Contract be deemed to consent to the assumption and assignment of the such Desired 365 Contract pursuant to section 365 of the Bankruptcy Code and on the terms set forth in the Sale Order. *See, e.g., Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (finding that by not objecting to sale motion, creditor was deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same). Accordingly, the Debtors request that the Court approve the Assumption and Assignment Procedures.

EMERGENCY CONSIDERATION

34. The Debtors request emergency consideration of this Motion on August 10, 2023. Establishing the Bidding Procedures by August 10, 2023 will create a Court-approved process that will provide the Debtors' and potential bidders with a transparent, competitive, and fair sale and financing bidding process going forward, which will help maximize value for the Debtors' estates within the accelerated timeline of these chapter 11 cases.

REQUEST FOR BANKRUPTCY RULE 6004 AND 6006 WAIVERS

35. Because time is of the essence with regard to the Sale Transactions, the Debtors request that the Court waive the 14-day stay (a) provided in Bankruptcy Rule 6004(h) in all orders

requested to be entered herein and (b) provided in Bankruptcy Rule 6006(d) in the proposed order approving the Sale Transactions.

RESERVATION OF RIGHTS

36. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

NOTICE

37. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors; (c) Mastronardi Produce Limited, or counsel thereto; (d) CEFF II AppHarvest Holdings, LLC, an affiliate of Equilibrium, or counsel thereto; (e) Rabo AgriFinance LLC, or counsel thereto; (f) Greater Nevada Credit Union, or counsel thereto; (g) the Food and Drug Administration; (h) the United States Department of Agriculture; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; and (k) any party that has requested notice

pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court enter an Order, granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: July 27, 2023
Houston, Texas

/s/ Matthew D. Cavanaugh

JACKSON WALKER LLP

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Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Matthew D. Cavanaugh
Matthew D. Cavanaugh

Certificate of Service

I certify that on July 27, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh
Matthew D. Cavanaugh

Exhibit A

Morgner Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

**DECLARATION OF RICHARD W. MORGNER
IN SUPPORT OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I)(A) APPROVING BIDDING PROCEDURES; (B) APPROVING THE SELECTION
OF STALKING HORSE PURCHASER; (C) APPROVING THE DEBTORS' ENTRY
INTO THE STALKING HORSE APA AND APPROVING BID PROTECTIONS;
(D) SCHEDULING AUCTIONS AND SALE HEARING; (E) APPROVING FORM AND
MANNER OF SALE NOTICE; (F) APPROVING FORM AND MANNER OF INITIAL
ASSUMPTION AND ASSIGNMENT NOTICE; (G) APPROVING THE FORM AND
MANNER OF POST-AUCTION NOTICE; (H) APPROVING ASSUMPTION AND
ASSIGNMENT PROCEDURES; AND (II) GRANTING RELATED RELIEF**

I, Richard W. Morgner, hereby declare under penalty of perjury as follows:

1. I submit this declaration (this "Declaration") in support of the *Debtors'* *Emergency Motion for Entry of an Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors' Entry into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Initial Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-Auction Notice (H) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief*, filed

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors' federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor's service address is 500 Appalachian Way, Morehead, KY 40351.

contemporaneously herewith (the “Motion”),² which seeks approval of, among other things (a) the Bidding Procedures that will govern the sale process and potential Auction for certain of the Debtors’ assets; (b) various dates and deadlines associated therewith; and (c) designation of the Stalking Horse Bid and approval of the Stalking Horse Agreement; and (d) the Stalking Horse Bid Protections.

2. Although Jefferies is being compensated for its work as the investment banker proposed to be retained by the Debtors, I am not being compensated separately for this Declaration or testimony. Except as otherwise indicated herein, all of the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by Jefferies professionals involved in advising the Debtors in these chapter 11 cases, or information provided to me by the Debtors or their other advisors. If called upon to testify, I could and would testify to the facts set forth herein on that basis. I am over the age of 18 years and authorized to submit this Declaration.

Professional Background and Qualifications

3. As set forth in further detail in the DIP Declaration,³ I am a Managing Director and Joint Global Head of the Debt Advisory & Restructuring Group at Jefferies LLC (“Jefferies”), a global investment banking firm listed on the New York Stock Exchange with its principal offices at 520 Madison Avenue, New York, New York 10022 and the proposed investment banker for the Debtors in the above-captioned chapter 11 cases.

² Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

³ “DIP Declaration” means the *Declaration of Richard W. Morgner in Support of Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors (A) To Obtain Postpetition Financing and (B) To Utilize Cash Collateral, (II) Granting Adequate Protection, and (III) Scheduling a Final Hearing* [Docket No. 30].

4. I have more than 30 years of investment banking and restructuring experience. Since joining Jefferies in 2009, I have provided investment banking expertise, and distressed mergers and acquisition and financing advice to companies, lenders, and investors in both in- and out-of-court restructurings. Prior to joining Jefferies, I was a Managing Director and Co-Head of the mergers and acquisitions group at Miller Buckfire, where my primary responsibilities included advising companies and investors in restructuring, distressed mergers and acquisitions, distressed financing, and special situations.

5. I have personally led or had material involvement in the execution of over 100 M&A transactions during my career, many of which involved companies experiencing financial distress. In addition, I have personally led or had material involvement in approximately 30 chapter 11 cases over the last 20 years. Examples of some of these cases where I was involved in a sale process include: *Vewd Software USA, LLC* (Bankr. S.D.N.Y.), *NPC International, Inc.* (Bankr. S.D. Tex.), *CarbonLite Holdings* (Bankr. D. Del.), *GenCanna Global* (Bankr. E.D. Ky.), *Dura Automotive Systems* (Bankr. D. Del.), *Hanjin Shipping Co.* (Bankr. D.N.J.), *Black Diamond Mining Co.* (Bankr. E.D. Ky.), *Dana Corporation* (Bankr. S.D.N.Y.), *Sundevil Power Holdings* (Bankr. D. Del.), *BMC Holdings* (Bankr. D. Minn.), and *Magnatrax* (Bankr. D. Del.).

General Background

6. As set forth more fully in the First Day Declaration,⁴ the Debtors are market leaders in the controlled environmental agriculture (“CEA”) space, operating four large-scale, high-tech controlled environmental agriculture (“CEA”) facilities dedicated to growing tomatoes, leafy greens, cucumbers and strawberries to build a climate-resilient, sustainable domestic food system in Appalachia. The Debtors’ greenhouse approach is complemented by substantial investment in

⁴ “First Day Declaration” means the *Declaration of Gary Broadbent, Chief Restructuring Officer of the Debtors, in Support of the Debtors’ Chapter 11 Proceedings* [Docket No. 19].

advanced technology: in addition to digital scouting, machine learning, and biological controls, as well as hybrid lighting systems for energy efficiency already in place in existing facilities, the Debtors own proprietary robotics technology for tomato harvesting with key technology around real-time detection, gentle grippers, and intelligent path selection.

Prepetition Marketing Process

7. I understand that in late 2022, the Debtors engaged TD Cowen, formerly Cowen, Inc., to launch marketing process for capital raise opportunities. Ultimately, the marketing failed to produce a satisfactory offer on favorable terms that would provide the Debtors with sufficient runway and flexibility to maintain the business.

8. The Debtors retained Jefferies as their investment banker on June 9, 2023 to, among other things, advise the Debtors and facilitate outreach in connection with an evaluation of the Debtors' immediate financing needs and potential strategic transactions, including bridge financing and asset sales. A cross-sectional team of five managing directors across Jefferies' Debt Advisory & Restructuring, Industrials, AgTech, and Consumer groups have been overseeing this outreach.

9. This outreach included a robust marketing process (the "Marketing Process") overseen by Jefferies. To date, Jefferies has contacted approximately 84 potential purchasers, including 65 financial buyers and 19 strategic buyers. About 22 parties have executed or are in the process of executing non-disclosure agreements with the Debtors in order to gain access to the virtual data room. Jefferies shared teasers, a confidential information memorandum, financials models, and other related financial and operational information with potential bidders. Relevant information regarding the Debtors' business has been made available in the virtual data room, which includes more than 800 files comprising more than 14,000 pages of diligence.

10. After an extensive process soliciting strategic transactions and engaging with key stakeholders, as detailed in the First Day Declaration, the Debtors obtained bridge financing and debtor in possession financing on a consensual basis with the support of two of their largest creditors. Now, the Debtors are poised to continue to pursue the Marketing Process in order to sell three “buckets” of assets: (a) the Richmond/Morehead Assets, comprised of two 60-acre facilities with a current focus on growing tomatoes and related assets; (b) the Somerset Assets, comprised of a 30-acre facility with a 125-square-kilometer grow area, focusing on strawberries and cucumbers and containing a unique blast chiller that extends the shelf life of the product and reduces waste, and related assets; and (c) the Other Assets, including a \$5 million Keep It Simple Security convertible note invested in Red Sea Farms; approximately 200 acres of largely undeveloped land with converted office space located in Morehead, Kentucky; a converted office, also located in Morehead, Kentucky; and the Debtors’ proprietary robotics assets and related intellectual property.

11. I believe that the Debtors’ Marketing Process should be sufficient to identify potential bidders for the Assets and that, at this juncture, entry into a Sale Transaction(s) presents the best means to maximize the value of the Debtors’ estates for all stakeholders. The Marketing Process has continued to proceed apace, and Jefferies continues to field several calls each day with potential investors.

Bidding Procedures

12. I have reviewed the Bidding Procedures, and I believe that the Bidding Procedures should facilitate an orderly, competitive, and efficient bidding and Auction process in a fair and transparent manner. The proposed Bidding Procedures contemplate an open Auction process for the Assets with appropriate requirements to submit a qualified bid, and provide potential bidders

with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid. I believe the Bidding Procedures should increase the likelihood that the Debtors will obtain the highest or otherwise best value for the Debtors' Assets, including the Richmond/Morehead Assets, to the benefit of the Debtors' estates.

13. In formulating the proposed sale timeline, the Debtors balanced the need to sell the Assets quickly and efficiently against the need to provide adequate time for potential purchasers to conduct due diligence and submit bids. The Bidding Procedures provide for an approximate five-week post-petition marketing and bidding process and I believe that this timeline is appropriate under the facts that exist here. The Debtors have previously marketed certain of the Assets in 2022, the Marketing Process began prepetition and was well under way as of the Petition Date, and the Debtors have agreed in principle with the Stalking Horse Purchaser upon a Stalking Horse APA to establish a floor for the purchase price of the Richmond/Morehead Assets.

14. I believe the Bidding Procedures are reasonable, and appropriate.

The Stalking Horse Bid

15. Pursuant to the ongoing Marketing Process, and in conjunction with arm's-length negotiations in connection with the DIP Credit Agreement, the Debtors are pursuing a stalking horse bid (the "Stalking Horse Bid") for the Richmond/Morehead Assets submitted by Equilibrium (the "Stalking Horse Purchaser"), the Debtors' largest secured creditor and lender under the DIP Credit Agreement. The Debtors, with the assistance of their advisors, determined that Equilibrium's Bid, a key element of negotiations in connection with the DIP Credit Agreement, provided substantial value to the estates and that Equilibrium was prepared to expeditiously complete the diligence process and execute definitive documentation to consummate the Sale Transaction, subject to higher or otherwise better offers at the Auction.

16. Negotiations in connection with the Stalking Horse APA and the restructuring transactions more broadly have included extensive arms'-length negotiations between the Stalking Horse Bidder and the Debtors and their advisors on economic and legal terms. Following arms'-length and good faith negotiations, the Debtors and the Stalking Horse Purchaser have agreed in principal on the Stalking Horse APA for the purchase of the Richmond/Morehead Assets. The Stalking Horse APA promotes competitive bidding and maximization of the value of the Richmond/Morehead Assets by establishing a baseline bid in connection with the Bid Procedures. Entry into the Stalking Horse APA for the Richmond/Morehead Assets is designed to incentivize potential bidders and thereby maximize the potential value of these assets for the benefit of the Debtors' estates and their various stakeholders.

17. In accordance with the Bidding Procedures, and in advance of the applicable Auction, the Debtors will continue to solicit higher or otherwise better proposals from third parties. The Stalking Horse Bid sets the "floor" price for the Richmond/Morehead Assets, which seeks to promote active bidding from seriously interested parties and to elicit the highest or otherwise best offers available for the Assets.

Material Terms of the Stalking Horse APA

18. Based on my review of the negotiations and proposals received to date, the purchase price for the Richmond/Morehead Assets in the Stalking Horse APA is the result of extensive, good-faith, arm's-length negotiations, and is currently the highest and best proposal. I believe that entering into the Stalking Horse APA is in the best interest of the Debtors' estates. I further believe that the terms of the Stalking Horse APA establish a baseline bid for the Richmond/Morehead Asset that, along with the Bidding Procedures, enables the Debtors to maximize the ultimate purchase price of the Richmond/Morehead Assets.

The Bid Protections

19. As set forth above, the Stalking Horse APA contemplates bid protections (the “Bid Protections”) including (a) a provision for reimbursement of reasonable and documented fees and expenses not to exceed \$500,000 (the “Expense Reimbursement Amount”) following the termination of the Stalking Horse APA under certain circumstances and (ii) a breakup fee equal to 3.0% of the Purchase Price, payable in the event that the Stalking Horse APA is terminated under certain circumstances and the Debtors consummate an alternative transaction (the “Break-Up Fee”). The Break-Up Fee and Expense Reimbursement are necessary to successfully pursue the sale of the Richmond/Morehead Assets and will not chill bidding. The Stalking Horse Bid sets a floor for the value of the Richmond/Morehead Assets, encouraging potential buyers to meet or exceed a fair price for the Richmond/Morehead Assets and maximizing the realizable value of the Richmond/Morehead Assets to the benefit of all parties in interest.

20. The payment of the Stalking Horse Bid Protections will not diminish the Debtors’ estates to the extent they become payable because any competing bid must exceed the Stalking Horse bid by an amount in excess of the Break-Up Fee and the Expense Reimbursement. I believe that, absent the Debtors’ commitment to the Break-Up Fee and the Expense Reimbursement in accordance with the terms of the RSA,⁵ the Debtors could lose the opportunity to obtain a highest and best offer for the Richmond/Morehead Assets and would lose all downside protections offered by the existence of the Stalking Horse Bid. Based on the Marketing Process and arms’-length negotiations between the Debtors and the Stalking Horse Bidder, the Debtors have determined that Bid Protections are necessary to retain the Stalking Horse Purchaser’s commitment to the

⁵ “RSA” means the Restructuring Support Agreement by and among the Company Parties, Equilibrium, and the Mastronardi Parties, dated as of July 24, 2023. See First Day Declaration at Ex. A.

restructuring transactions provided for in the DIP Credit Agreement and to consummation of the Richmond/Morehead Sale Transaction.

21. Still, after entry into the DIP Credit Agreement and RSA, the Debtors worked to minimize the amount and circumstances in which the fees would be payable. I believe that the Bid Protections, as a whole, are comparable to the bid protections often provided to the bidders in bankruptcy cases.

22. Executing the Stalking Horse APA has put the Debtors in a position, despite a challenging liquidity position, to solicit competing bids that may be materially higher or may provide otherwise better value to the Debtors' estates than the Stalking Horse Bid. Accordingly, I believe that the benefits of the Stalking Horse APA outweigh the costs associated with the Bid Protections.

23. In light of the circumstances and in the context of the proposed sale processes, I believe that the selection of the Stalking Horse Bidder may result in the submission of offers for the Richmond/Morehead Assets at higher values than would be received without the Stalking Horse, and consequently, should likely be the best way to maximize the value of the Assets.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: July 27, 2023

/s/ Richard W. Morgner

Richard W. Morgner

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

**ORDER
(I)(A) APPROVING
BIDDING PROCEDURES;
(B) APPROVING THE SELECTION
OF STALKING HORSE PURCHASER;
(C) APPROVING THE DEBTORS' ENTRY
INTO THE STALKING HORSE APA AND APPROVING
BID PROTECTIONS; (D) SCHEDULING AUCTIONS AND SALE
HEARING; (E) APPROVING FORM AND MANNER OF SALE NOTICE;
(F) APPROVING FORM AND MANNER OF POTENTIAL ASSUMPTION AND
ASSIGNMENT NOTICE; (G) APPROVING THE FORM AND MANNER OF POST-
AUCTION NOTICE; (H) APPROVING ASSUMPTION AND ASSIGNMENT
PROCEDURES; AND (II) GRANTING RELATED RELIEF**

(Related to Docket No.)

Upon the motion (“Motion”)² of AppHarvest Products, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (the “Order”) (a)(i) authorizing and approving the proposed auction and bidding procedures attached as **Exhibit 1** hereto (the “Bidding Procedures”) by which the Debtors will solicit and select the highest or otherwise best offer(s) for the sales of the Assets, (ii) approving the selection of Stalking

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development Company, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor’s service address is 500 Appalachian Way, Morehead, KY 40351.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

Horse Purchaser (as defined herein), (iii) approving the debtors' entry into the Stalking Horse APA attached as **Exhibit 2** hereto and approving bid protections, (iv) scheduling the Auctions and Sale Hearing, (v) approving the form and manner of the notice of the sale of the applicable Assets, Auction, and Sale Hearing, substantially in the form attached hereto as **Exhibit 3** (the "**Sale Notice**"), (vi) approving the form and manner of Potential Assumption and Assignment Notice substantially in the form attached hereto as **Exhibit 4**, (vii) approving the form and manner of Post-Auction Notice, substantially in the form attached hereto as **Exhibit 5**, (viii) approving assumption and assignment procedures, including the notice of assumption and assignment to the Counterparties to the Desired 365 Contracts, substantially in the form attached hereto as **Exhibit 6**; and (b) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declarations and the Morgner Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:

1. The relief requested in this Motion is **GRANTED** as set forth herein.
2. The Debtors have articulated good, compelling, sufficient, and sound business reasons for the Court to grant the relief requested in the Motion, including, without limitation, to

(a)(i) approve the Bidding Procedures; (ii) approve selection of Stalking Horse Purchaser, (iii) approve the Debtors' entry into the Stalking Horse APA and approving bid protections, (iv) scheduling Action and and Sale Hearing, (v) approve the form and manner of notice of the Sale Notice, (vi) approve the form and manner of Potential Assumption and Assignment Notice, (vii) approve the form and manner of Post-Auction Notice, and (viii) approve the Assumption and Assignment Procedures; and (d) grant the other relief requested in the Motion.

3. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the Hearing or by stipulation filed with the Court are overruled except as otherwise set forth herein.

A. Findings with Respect to the Bidding Procedures, Notice Procedures, Assumption and Assignment Procedures, and Sale Hearing.

4. The Bidding Procedures are fair, reasonable, and appropriate under the circumstances and represent the best method for maximizing the recovery on, and realizable value of, the Debtors' estates.

5. The Sale Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of applicable Assets, Sale Transaction(s), Auction, the Bidding Procedures, and the Sale Hearing, and no other or further notice is required.

6. The Potential Assumption and Assignment Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the potential assumption and assignment of the Desired 365 Contracts in connection with the sale of the applicable Assets and the related Cure Amounts, and no other or further notice is required.

7. The Post-Auction Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the applicable Successful Bid and Back-up Bid, and no other or further notice is required.

8. The Notice of Desired 365 Contracts is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the assumption and assignment of the Desired 365 Contracts in connection with the sale of the applicable Assets and the related Cure Amounts (to the extent amended from the Potential Assumption and Assignment Notice), and no other or further notice is required.

9. The Potential Assumption and Assignment Notice is reasonably calculated to provide all non-Debtor counterparties to the Debtors' Contracts with proper notice of the potential assumption and assignment of their Contract, the proposed cure amounts relating thereto, and the related Assumption Procedures; provided that the mere listing of any Contract on the Potential Assumption and Assignment Notice does not require or guarantee that such Contract will be assumed and assigned, and all rights of the Debtors with respect to such Contracts are reserved.

B. Findings with Respect to the Stalking Horse Purchaser and Bid Protections.

10. The Debtors have demonstrated and proven that their performance of the obligations related to the Stalking Horse Bid and the proposed Bid Protections are in the best interests of the Debtors, their creditors, their estates, and all parties in interest, and that the foregoing represents a sound exercise of the Debtors' business judgment. The Debtors have articulated good, sufficient, and sound business justifications for performance of the obligations related to the Stalking Horse Bid and the proposed Bid Protections. Namely, among other things, (1) the Stalking Horse Bid constitutes the highest or otherwise best offer that the Debtors have received to date; (2) the approval of the relief requested is a necessary and constructive step toward the completion of the sale process; and (3) the Stalking Horse Bid and the proposed Bid Protections

allow the Debtors to solicit the highest or otherwise best bid for the Assets through the Bid Procedures.³

11. The proposed Bid Protections (1) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b)(1)(A) and section 507(a)(2) of the Bankruptcy Code; and (2) are fair, reasonable, and appropriate, including in light of the size and nature of the Richmond/Morehead Sale Transaction, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Purchaser. The proposed Bid Protections are necessary to induce the Stalking Horse Purchaser to pursue the Sale Transaction and to be bound by the Stalking Horse APA. Further, the proposed Bid Protections were negotiated by the parties at arm's-length and in good faith by the Debtors and Stalking Horse Purchaser.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

I. Important Dates and Deadlines.

12. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

<i>Richmond/Morehead Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
August 9, 2023	Initial Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Richmond/Morehead Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Richmond/Morehead Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Richmond/Morehead Assets

³ The Stalking Horse Bid will serve as a minimum or floor bid on which the Debtors and their stakeholders may rely. As such, the Stalking Horse Purchaser and the Stalking Horse Protections are providing a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible price for the Assets will be received.

<i>Richmond/Morehead Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

<i>Somerset Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
August 9, 2023	Initial Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Somerset Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Somerset Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Somerset Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

<i>Other Assets Sale Milestones</i>	
Date and Time (all in prevailing Central Time)	Event or Deadline
August 9, 2023	Initial Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Other Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Other Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Other Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

13. The failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion or Sale Order and/or consummation of a Sale Transaction, including the assumption and assignment of Desired 365 Contracts to a Successful Bidder pursuant to a purchase agreement, and shall be deemed to constitute any such party's consent to entry of the applicable order and consummation of the applicable Sale Transaction and all other transactions related thereto.

14. The Debtors reserve the right, and are authorized to, modify the above timeline and Bidding Procedures in accordance with the Bidding Procedures.

II. Bidding Procedures.

15. The Bidding Procedures are approved in their entirety. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance therewith. The failure to specifically include or reference a particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

16. The process and requirements associated with submitting a Qualified Bid are approved as fair, reasonable, appropriate, and designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interest.

17. As further described in the Bidding Procedures, the deadline to submit a Bid with respect to the Richmond/Morehead Assets, the Somerset Assets, or the Other Assets shall be **August 21, 2023 at 4:00 p.m. (prevailing Central Time)**. Any disputes or objections, if any, to the selection of Qualified Bid(s), Successful Bid(s), or Back-up Bid(s) (each as defined in the Bidding Procedures) shall be resolved by this Court at the Sale Hearing.

18. The Debtors are authorized to conduct the Auction(s) in accordance with the Bidding Procedures. Unless a separate notice is served by the Debtors, the Auction(s) with respect to the Richmond/Morehead Assets, the Somerset Assets, or the Other Assets shall take place on **August 24, 2023**. The Auction(s) shall be held at such place or time as the Debtors shall select.

III. Notice Procedures.

19. The form of Sale Notice is approved.

20. Within seven (7) days after the entry of this Order, the Debtors shall serve the Sale Notice and this Order, including the Bid Procedures, by first-class mail, postage prepaid, upon: (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured

claims against the Debtors; (c) Mastronardi Produce Limited, or counsel thereto; (d) CEFF II AppHarvest Holdings, LLC, an affiliate of Equilibrium, or counsel thereto; (e) Rabo AgriFinance LLC, or counsel thereto; (f) Greater Nevada Credit Union, or counsel thereto; (g) the Official Committee of Unsecured Creditors, if any; (h) the United States Attorney's Office for the District of Delaware; (i) the Internal Revenue Service; (j) all entities that have, to the best knowledge of the Debtors' management and advisors, expressed written interest in consummating the applicable Sale Transaction(s) with respect to the applicable Assets within the past six (6) months; and (k) all other entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Assets; *provided* that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email.

21. In addition, within seven (7) days after the entry of this Order or as soon as reasonably practicable thereafter, the Debtors shall serve the applicable Sale Notice by first-class mail, postage prepaid, upon: (a) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (b) the U.S. Trustee; (c) the Internal Revenue Service; (d) any governmental authority known to have a claim against the Debtors in these Chapter 11 Cases; (e) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (f) the Office of the Attorney General and Office of the Secretary of State in each state in which the Assets are held; (g) the counterparties to the 365 Contracts and all other applicable contracts and leases; and (h) the Antitrust Division of the United States Department of Justice; (i) the Federal Trade Commission; and all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1.

22. Service of the Sale Notice as described above shall be good and sufficient notice of the applicable Sale Transaction and the Assumption and Assignment Procedures with respect to known interested parties.

23. The Debtors are directed to post the Sale notice on their case information website at <https://cases.stretto.com/appharvest/>.

24. The form of Post-Auction Notice is approved. The Debtors will serve the applicable Post-Auction Notice on the counterparties to the Desired 365 Contracts, the Sale Notice Parties, and all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1 via ECF, by email, fax, or overnight delivery, as soon as practicable, and in no event later than **August 25, 2023**.

IV. Assumption and Assignment Procedures.

25. The Assumption and Assignment Procedures, as detailed in the Motion and incorporated herein by reference as if fully set forth in the Order, are approved.

26. The form of Potential Assumption and Assignment Notice is approved.

27. The Debtors shall file with the Court, post on the case website at <https://cases.stretto.com/appharvest/>, and serve on each Counterparty to a 365 Contract, the Potential Assumption and Assignment Notice on or prior to **August 9, 2023** (the “Potential Assumption and Assignment Deadline”). If no Cure Amount is listed for a particular Desired 365 Contract, the Debtors’ asserted Cure Amount for such 365 Contract shall be deemed to be \$0.00. The Debtors shall serve, via email, if available, or first-class mail, the Potential Assumption and Assignment Notice that contains (a) the list of 365 Contracts, (b) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of 365 Contracts that may be Desired 365 Contracts and rights thereunder, (c) Cure Amount, if any, and (d) the

procedures for objecting thereto, on all counterparties to the 365 Contracts and all parties on the Rule 2002 Notice List. Service of such Potential Assumption and Assignment Notice as set forth herein shall be deemed good and sufficient notice of, among other things, the potential assumption and assignment of the 365 Contracts, the applicable Cure Amounts related thereto, and the procedures for objecting thereto, and no other or further notice is necessary.

28. Any objection with respect to the Debtors' proposed Cure Amount ("Cure Objection") for any 365 Contract included in the Potential Assumption and Assignment Notice shall be filed on or prior to **August 24, 2023 at 4:00 p.m. (prevailing Central Time)** for any Counterparties to a 365 Contracts (the "Cure Objection Deadline") provided that, with respect to any Cure Objection for any 365 Contract included on a subsequent Potential Assumption and Assignment Notice filed by the Debtors, such Cure Objections shall be filed on or prior to the Contract Objection Deadline. Any Cure Objection must (a) be in writing; (b) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules; (c) be filed with the Court by the Cure Objection Deadline; and (d) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under Bankruptcy Code sections 365(b)(1)(A) and (B) for the applicable Desired 365 Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

29. If, after the Potential Assumption and Assignment Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be potential Desired 365 Contracts in connection with an applicable Sale Transaction, or the Debtors seek to modify the previously stated Cure Amount associated with any 365 Contract, as soon as practicable thereafter

and in no event later than **August 25, 2023**, the Debtors shall file with the Court and serve, by overnight delivery, on the applicable Counterparties a supplemental or amended Potential Assumption and Assignment Notice, and such Counterparties shall file any objection to Cure Amount not later than the Contract Objection Deadline.

30. The form of Notice of Desired 365 Contracts is approved.

31. The Debtors shall serve, via email, if available, or first-class mail, the Notice of Desired 365 Contracts that contains (a) the list of Desired 365 Contracts, (b) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of the Desired 365 Contracts and rights thereunder, (c) Cure Amount, to the extent amended from the Potential Assumption and Assignment Notice, and (d) the procedures for objecting thereto, on all counterparties to the 365 Contracts and all parties on the Rule 2002 Notice List. Service of such Notice of Desired 365 Contracts as set forth herein shall be deemed good and sufficient notice of, among other things, the assumption and assignment of the 365 Contracts, the applicable Cure Amounts related thereto (to the extent amended from the Potential Assumption and Assignment Notice), and the procedures for objecting thereto, and no other or further notice is necessary.

32. The inclusion of a 365 Contract on the Potential Assumption and Assignment Notice will not (a) obligate the Debtors to assume any 365 Contract listed thereon nor the Successful Bidder to take assignment of such 365 Contract or (b) constitute any admission or agreement of the Debtors that such 365 Contract is an executory contract.

33. Any objection by a Counterparty, except a Cure Objection subject to the Cure Objection Deadline as described in paragraph 28 herein, to the assumption, assignment, or the Cure Amount related to, a Desired 365 Contract (a "Contract Objection") must (a) be in writing; (b) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules;

(c) be filed with the Court on or before **4:00 p.m. (prevailing Central Time) on August 28, 2023** (the “Contract Objection Deadline”); and (d) state with specificity the grounds for such objection, including, without limitation, basis for objecting to the assumption and assignment of the applicable 365 Contract, adequate assurance of future performance, and the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under Bankruptcy Code Sections 365(b)(1)(A) and B) for the applicable Desired 365 Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

34. Any time after the date of service of the Notice of Desired 365 Contracts and prior to the Sale Hearing, the Debtors reserve the right, and are authorized but not directed, to: (a) add previously omitted Desired 365 Contracts as contracts to be assumed and assigned to an applicable Successful Bidder in accordance with the definitive agreement for a Sale Transaction; (b) remove a Desired 365 Contract from the Notice of Desired 365 Contract that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale Transaction; or (c) modify the previously stated Cure Amount associated with any Desired 365 Contract.

35. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder(s) of the applicable Desired 365 Contracts. The inclusion of a Desired 365 Contract on the Notice of Desired 365 Contracts will not (a) obligate the Debtors to assume any Desired 365 Contract listed thereon nor the Successful Bidder to take assignment of such Desired 365 Contract or (b) constitute any admission or agreement of the Debtors that such Desired 365 Contract is an executory contract.

36. If no Cure Objection or Contract Objection is timely received with respect to a Desired 365 Contract: (a) the Counterparty to such Desired 365 Contract shall be deemed to have

consented to the assumption by the Debtors and assignment to the Successful Bidder of the Desired 365 Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the applicable Successful Bidder); (b) any and all defaults under the Desired 365 Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and (B) upon payment of the Cure Amount set forth in the applicable Notice of Desired 365 Contracts for such Desired 365 Contract; and (c) the Counterparty shall be forever barred from asserting any other claims related to such Desired 365 Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections and the Sale Order.

37. To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the applicable Sale Hearing, including, without limitation, any dispute with respect to the Cure Amount required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) (any such dispute, a “Cure Dispute”), the Debtors may (i) assume the applicable 365 Contract prior to the resolution of the Cure Dispute; *provided* that the Debtors shall (a) pay to the applicable Counterparty the undisputed portion of the Cure Amount within five (5) business days after entry of the applicable Sale Order and (b) reserve cash in an amount sufficient to pay the disputed portion of the Cure Amount reasonably asserted by the applicable Counterparty (or such lesser amount as may be fixed or estimated by the Court or otherwise agreed to by the Counterparty and the Debtors) (the “Reserve Amount”), or (ii) adjourn their request to assume the Contract or Lease pending resolution of the Cure Dispute (an “Adjourned Cure Dispute”); *provided further* that, to the extent the Adjourned

Cure Dispute is resolved or determined unfavorably to the Debtors, the Debtors may withdraw the proposed assumption of the applicable Contract or Lease after such determination by filing a notice of withdrawal, which, in the case of a Lease, shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. The Debtors shall file notice of their intention to reserve for a Cure Amount or to adjourn their request for assumption. An Adjourned Cure Dispute may be resolved after the closing date of the applicable Sale Transaction in the Debtors' discretion.

V. Sale Hearing.

38. A Sale Hearing to, as applicable, (a) approve the sale of the Richmond/Morehead Assets to a Successful Bidder, (b) approve the sale of the Somerset Assets to a Successful Bidder; (c) approve a sale of the Other Assets to a Successful Bidder, (d) approve designation of Back-up Bids and Back-up Bidders, if applicable, in accordance with the Bid Procedures, and (e) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held on **August 31, 2023 at [____] a.m./p.m. (prevailing Central Time)**, and may be adjourned or rescheduled upon notice by the Debtors. At the Sale Hearing, the Debtors will seek Court approval of the Successful Bid(s) and Back-up Bid(s), if applicable. Unless the Court orders otherwise, any Sale Hearing shall be an evidentiary hearing on matters relating to the applicable Sale Transaction(s) and there will be no further bidding at such hearing. In the event that a Successful Bidder cannot or refuses to consummate the applicable Sale Transaction because of the breach or failure on the part of such Successful Bidder, the Debtors, may, in accordance with the Bid Procedures, designate the applicable Back-up Bid to be the new Successful Bid and the Back-up Bidder to be the new Successful Bidder, and the Debtors shall be authorized, but not required, to

consummate the applicable Sale Transaction with the Back-up Bidder without further order of the Court.

39. Any and all objections, if any, to any proposed Sale Transaction, including any objection to the assignment of any Asset (a “Sale Objection”) must be filed no later than **August 28, 2023 at 4:00 p.m. (prevailing Central Time)** (the “Sale Objection Deadline”). For avoidance of doubt, any objections to a Successful Bidder’s proposed form of adequate assurance of future performance will be resolved at the applicable Sale Hearing.

VI. Stalking Horse and Bid Protections.

40. CEFF II AppHarvest Holdings, LLC (“Equilibrium”) shall be the Stalking Horse Purchaser for the Richmond/Morehead Assets.

41. The proposed Bid Protections are hereby approved and the Debtors are hereby authorized to pay the proposed Bid Protections to the Stalking Horse Purchaser pursuant to the terms and subject to the conditions of the Stalking Horse APA; *provided* that in the event that the Break-Up Fee is due and owing in accordance with the Stalking Horse APA, shall be payable or credited to Buyer only upon closing of the sale of the Transferred Assets (or a material portion of them).

VII. Additional Provisions

42. The findings of fact and conclusions of law herein constitute the Court’s findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of fact are conclusions of law, they are

adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

43. Except as otherwise provided herein, any objection provided pursuant to any of the provisions set forth in the Motion must: (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules, (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (d) be filed with this Court via ECF.

44. Any substantial contribution claims by any Bidder are deemed waived, to the extent based on such Bidder's submission of a bid in accordance with the Bid Procedures.

45. Notwithstanding anything herein or in the Bidding Procedures to the contrary, the rights of any party to object to a Sale Transaction in accordance with the Bidding Procedures on the grounds that such Sale Transaction, if consummated, would result in insufficient funds to pay in full administrative expense claims against the Debtors allowed under Section 503(b) of the Bankruptcy Code, whether under a chapter 11 plan of reorganization or pursuant to the applicable Sale Order, are expressly reserved.

46. Notwithstanding anything to the contrary herein, including, without limitation, this Order's authorization of, and approval of the Debtors' performance of obligations related to the Stalking Horse Protections, the entry of this Order and the relief granted hereby is without prejudice to the rights of any party to object or respond to the Sale, the Plan, the Stalking Horse Purchase Agreement, or any other document or instrument contemplated by any of the foregoing, and all such rights are reserved and preserved in all respects.

47. This Order shall be immediately effective and enforceable upon entry hereof.

48. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

49. Nothing in this order constitutes (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

50. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

51. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion under the circumstances and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

52. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

53. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this order.

54. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this order.

Dated: _____, 2023
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

BIDDING PROCEDURES FOR THE SALE OF THE DEBTORS' ASSETS

On July 23, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101–1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”).

The Debtors are conducting a marketing process for the sale or disposition of the following assets: (i) the Debtors’ Richmond facility and related assets (collectively, the “Richmond Assets”); (ii) the Debtors’ Morehead facility and related assets (collectively, the “Morehead Assets” and together with the Richmond Assets, the “Richmond/Morehead Assets”); (iii) the Debtors’ Somerset facility and related assets (collectively, the “Somerset Assets”); and (iv) certain remaining real property, instruments, and robotics and intellectual property owned by the Debtors² (the “Other Assets” and together with the Richmond/Morehead Assets and the Somerset Assets, collectively, the “Assets”) under section 363 of the Bankruptcy Code and/or pursuant to a chapter 11 plan (each such sale or disposition, a “Sale Transaction” and collectively, the “Sale Transactions”).

On [•], 2023, the Bankruptcy Court entered the *Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors’ Entry Into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Potential Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-Auction Notice; (H) Approving Assumption and Assignment Procedures; and (II) Granting Related*

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development Company, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor’s service address is 500 Appalachian Way, Morehead, KY 40351.

² Other Assets include without limitation the Debtor’s “Morehead North” property located at 600 Cumberland Drive, a house referred to as the “Log Cabin” located at 100 Lake Park Drive, a certain \$5 million Keep it Simple Security convertible note invested into Red Sea Farms, and assorted robotics assets and related IP.

Relief (the “Bidding Procedures Order”),³ approving, among other things, the bid procedures to be used in connection with the potential sale(s) of the Assets to the Stalking Horse Purchaser (as defined below) and/or to one or more Successful Bidder(s) (as defined below), as applicable (collectively, the “Bidding Procedures”). The Bidding Procedures are set forth below.

The Bidding Procedures Order also authorized, among other things, the Debtors’ entrance into that certain Asset Purchase Agreement, dated as of July [●], 2023 (as amended, supplemented, or otherwise modified by the parties thereto, the “Stalking Horse APA”)⁴ between the Debtors and CEFF II AppHarvest Holdings, LLC (“Equilibrium” or the “Stalking Horse Purchaser”), pursuant to which, after a comprehensive marketing and sale process initiated before the commencement of these chapter 11 cases, the Stalking Horse Purchaser has agreed to purchase the Richmond/Morehead Assets and to assume certain liabilities of the Debtors, each as specifically enumerated in the Stalking Horse APA and subject to the terms and conditions set forth therein. The Stalking Horse APA shall serve as the stalking horse bid (the “Stalking Horse Bid”) for the Richmond/Morehead Assets, subject to higher and better bids in accordance with the terms and conditions of these Bidding Procedures.

The Debtors may elect in their discretion to post a form of the applicable purchase agreement as to the remaining Assets (each, a “Form Purchase Agreement”) to the respective Data Room (as defined below).

ANY PARTY INTERESTED IN PROPOSING A POTENTIAL TRANSACTION SHOULD CONTACT THE DEBTORS’ PROPOSED INVESTMENT BANKER, JEFFERIES LLC, IF THEY HAVE ANY QUESTIONS OR NEED ADDITIONAL INFORMATION:

**RICH MORGNER (RMORGNER@JEFFERIES.COM),
STEPHEN GAVALAS (SGAVALAS@JEFFERIES.COM),
DERK VAN DER ERVE (DVANDERERVE@JEFFERIES.COM),
CHRISTOPHER HANLEY (CHANLEY@JEFFERIES.COM), AND
PHILIP ENGEL (PENGEL@JEFFERIES.COM).**

For the avoidance of doubt, the Debtors in an exercise of their reasonable business judgment may elect to exclude any Assets (other than the Richmond/Morehead Assets) from the Bidding Procedures and sell such Assets at either a private or public sale, subject to Bankruptcy Court approval of any alternative method of sale or disposition.

I. ASSETS TO BE SOLD

Richmond/Morehead Assets. The Debtors will offer for sale the Richmond/Morehead Assets in accordance with these Bidding Procedures through the Richmond/Morehead Sale Transaction pursuant to a purchase agreement (the “Richmond/Morehead APA”). For the avoidance of doubt, with respect to the Richmond/Morehead Assets, to the extent the Debtors do

³ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Bidding Procedures Motion.

⁴ A copy of the Stalking Horse Agreement is filed on the docket of the chapter 11 cases at Docket No. [●].

not receive Qualified Bids for all of the Richmond/Morehead Assets, the Debtors reserve the right not to consider or otherwise to proceed to an Auction for such bids. For the further avoidance of doubt, with respect to the Richmond/Morehead Assets, (a) a bid solely for the Richmond Assets or solely for the Morehead Assets shall not be a Qualified Bid and (b) the Stalking Horse Bid is deemed to be a Qualified Bid. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions and fund working capital.

Somerset Assets. The Debtors will offer for sale the Somerset Assets in accordance with these Bidding Procedures through the Somerset Sale pursuant to a purchase agreement (the “Somerset APA”) for all of the Somerset Assets. For the avoidance of doubt, with respect to the Somerset Assets, to the extent the Debtors do not receive Qualified Bids for all of the Somerset Assets, the Debtors reserve the right not to consider or otherwise to proceed to an Auction for such bids. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions, fund working capital, and secure the support of the DIP Lenders.

Other Assets. The Debtors will offer for sale the Other Assets in accordance with these Bidding Procedures through the Other Assets Sale pursuant to an asset purchase agreement (the “Other Assets APA”) of (a) all of the Debtors’ Other Assets; or (b) particular assets representing a portion of the Other Assets (each such bid, an “Other Assets Partial Bid”). For the avoidance of doubt, with respect to Other Assets Partial Bids, to the extent the Debtors do not receive Qualified Bids for all of the Other Assets, the Debtors reserve the right not to consider or otherwise proceed to an Auction or Sub-Auction for such bids. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions, fund working capital, and secure the support of the DIP Lenders.

II. KEY DATES

The Bidding Procedures provide interested parties with the opportunity to qualify for, and participate in, one or more potential Auctions (as defined below) to be conducted by the Debtors and to submit competing bids (each, a “Bid”) for some or all the Assets. In accordance with the Bidding Procedures, the Debtors will (a) coordinate with each Potential Bidder (as defined below) regarding the conduct of their respective due diligence, (b) evaluate bids from potential Bidders, (c) negotiate any Bid made, and (d) make such other determinations as are provided for in these Bidding Procedures (collectively, the “Bidding Process”).

The key dates for the sale process for each of (A) the Richmond/Morehead Assets (the “Richmond/Morehead Assets Sale”); (B) the Somerset Assets (the “Somerset Assets Sale”);

and (C) the Other Assets (the “Other Assets Sale”) are as follows.⁵ The Debtors, after consultation with the Consultation Parties, may extend any of the deadlines in these Bidding Procedures.

<i>Richmond/Morehead Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
August 9, 2023	Potential Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Richmond/Morehead Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Richmond/Morehead Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Richmond/Morehead Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

<i>Somerset Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
August 9, 2023	Potential Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Somerset Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Somerset Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Somerset Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder

⁵ As used herein, “Sale Transaction” shall mean, as applicable, the Richmond/Morehead Assets Sale, the Somerset Assets Sale, or the Other Assets Sale.

<i>Somerset Assets Sale Milestones</i>	
Date and Time (all in Central Time)	Event or Deadline
	or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

<i>Other Assets Sale Milestones</i>	
Date and Time (all in prevailing Central Time)	Event or Deadline
August 9, 2023	Potential Assumption and Assignment Notice Deadline
August 21, 2023, at 4:00 p.m.	Other Assets Bid Deadline
August 24, 2023, at [●][a./p.]m.	Auction for the Other Assets
August 24, 2023, at 4:00 p.m.	Cure Objection Deadline
August 25, 2023	Deadline to serve: (a) Post-Auction Notice, (b) Notice of Desired 365 Contracts, and (c) Adequate Assurance Package of the Successful Bidder(s) and Back-up Bidder(s) for the Other Assets
August 28, 2023, at 4:00 p.m.	Sale Objection and Cure Objection Deadline for objections based on: (1) the manner in which an Auction was conducted; (2) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets; (3) the objection to the assignment of any applicable Assets, including any Desired 365 Contract; (4) Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline), and (5) the ability of a Successful Bidder or Back-up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed or assigned to a Successful Bidder or Back-up Bidder for the applicable Assets
August 31, 2023	Deadline to file responses to Sale Objections and Contract Objections
August 31, 2023, subject to Court availability	Sale Hearing

III. POTENTIAL BIDDER REQUIREMENTS

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person or entity (other than the Stalking Horse Purchaser) interested in purchasing any or all of the Assets (a “Potential Bidder”) must deliver or have previously delivered to the Debtors the following preliminary documentation (collectively, the “Preliminary Bid Documents”):

- a. an executed confidentiality agreement (a “Confidentiality Agreement”) in the form provided by or otherwise acceptable to the Debtors;
- b. sufficient information, as reasonably determined by the Debtors, that the Potential Bidder (i) has or may reasonably obtain the financial capacity to close the Sale (including current audited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach) as well as an overview of any recent transactions), the adequacy of which must be acceptable to the Debtors;
- c. sufficient information, as reasonably determined by the Debtors, that the Potential Bidder has the ability to receive any and all necessary governmental, licensing, regulatory, and other approvals;
- d. identity of the Potential Bidder, including its legal name, jurisdiction and form of organization, and details regarding the ownership and capital structure of the Potential Bidder, including details related to the Potential Bidder’s beneficial owners, ultimate beneficial owners, and controlling entities, and any of the principals, corporate officers, or other representatives that are authorized to appear for and act on behalf of the Potential Bidder with respect to the contemplated transaction; and description of the nature and extent of any due diligence the Potential Bidder wishes to conduct; and
- e. sufficient information, as reasonably determined by the Debtors, that the Potential Bidder intends to access the Data Room (as defined below) for a purpose consistent with these Bidding Procedures.

Promptly after a Potential Bidder delivers Preliminary Bid Documents, the Debtors shall (i) determine and notify each Potential Bidder as to whether such Potential Bidder has submitted acceptable Preliminary Bid Documents, (ii) provide copies of any such notices to the Notice Parties and the Stalking Horse Purchaser, and (iii) provide copies of any such Preliminary Bid Documents to the Consultation Parties. Only those Potential Bidders that have submitted acceptable preliminary documentation (each, an “Acceptable Bidder”) to the reasonable satisfaction of the Debtors and their advisors may submit bids to purchase the Assets.

IV. DUE DILIGENCE

Only Acceptable Bidders, including the Stalking Horse Purchaser, shall be eligible to receive due diligence information and access to the Debtors’ electronic data room (the “Data Room”) and to additional non-public information regarding the Debtors as may be reasonably

requested by the Acceptable Bidder that the Debtors, in their business judgment, determine to be reasonable, available, and appropriate under the circumstances. The Debtors will provide to each Acceptable Bidder reasonable due diligence information, as reasonably requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room. The Debtors may designate one or more representatives to coordinate all reasonable requests for additional information and due diligence from Acceptable Bidders. Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement (an "Authorized Representative"). Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors or the Assets to any person or entity who is not an Acceptable Bidder or such Acceptable Bidder's applicable Authorized Representative.

The Debtors and their advisors shall coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

The Debtors make no representation or warranty as to the information provided through this due diligence process or otherwise, including the documents in the Data Room, except as set forth in any executed definitive documents for the applicable Sale(s). Each Acceptable Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the applicable Assets prior to making a bid; that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and the applicable Assets in making its bids; and that it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise regarding the applicable Assets or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or such Acceptable Bidder's Confidentiality Agreement.

Each Acceptable Bidder (including any Qualified Bidder) shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors and the Consultation Parties and their respective advisors regarding the ability of such Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction.

Failure by an Acceptable Bidder (including any Qualified Bidder) to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such bidder is no longer an Acceptable Bidder (including any Qualified Bidder) or that a bid made by such bidder is not a Qualified Bid.

Information Requests. The Debtors have designated Jefferies LLC (“Jefferies”) to coordinate the response to all reasonable requests for additional information and due diligence with respect to the Assets and potential Sale Transactions. Contact information for Jefferies is as follows: Jefferies LLC, 520 Madison Ave., New York, New York 10022, Attn: Richard Morgner (rmorgner@jefferies.com), Stephen Gavalas (sgavalas@jefferies.com), Derk van der Erve (dvandererve@jefferies.com), Christopher Hanley (chanley@jefferies.com), and Philip Engel (pengel@jefferies.com).

V. NO COMMUNICATIONS AMONG BIDDERS

There shall be no communications regarding potential Bids, a potential Sale Transaction, or another potential transaction between or among any bidders, including the Stalking Horse Purchaser, unless the Debtors have previously authorized such communication in writing (such authorization, for the avoidance of doubt, email from the Debtors’ counsel being sufficient). The Debtors reserve the right, in their reasonable business judgment, to disqualify any bidder that the Debtors believe in their reasonable judgment has communicated with another bidder in violation of these Bidding Procedures.

For the avoidance of doubt, the joining of Bids between Potential Bidders or Acceptable Bidders is permitted; *provided* that, if any Potential Bidders or Acceptable Bidders are interested in joining Bids, the Debtors’ advisors will facilitate the communications between such parties and the potential joining of Bids.

VI. SUBMISSIONS TO THE DEBTORS; CONSULTATION PARTIES

All submissions to the Debtors required or permitted to be made under the Bidding Procedures must be directed to each of the following persons or entities unless otherwise provided (collectively, the “Notice Parties”):

- A. Debtors: AppHarvest Operations Inc., 500 Appalachian Way, Morehead, KY 40351;
- B. Debtors’ Proposed Counsel: (1) Sidley Austin LLP, 787 7th Ave, New York, NY 10019, Attn: Anthony Grossi (agrossi@sidley.com) and Patrick Venter (pventer@sidley.com) and (2) Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn: Vienna Anaya (vanaya@jw.com) and Emily Meraia (emeraia@jw.com);
- C. Debtors’ Proposed Investment Banker: Jefferies LLC, 520 Madison Ave., New York, New York 10022, Attn: Jeffrey Finger (jfinger@jefferies.com) and Richard Morgner (rmorgner@jefferies.com); and

- D. Debtors' Proposed Financial Advisor: Portage Point Partners, LLC, 1330 6th Ave 22nd floor, New York, NY 10019, Attn: Matthew Ray (mray@pppllc.com), Tom Studebaker (tstudebaker@pppllc.com), and Steve Bremer (sbremer@pppllc.com).

The "Consultation Parties" as used in these Bidding Procedures are: (A) Greater Nevada Credit Union ("GNCU") and its designated advisors, Maynard Nexsen PC (the "GNCU Advisors"), *provided* that GNCU and the GNCU Advisors shall not be Consultation Parties if GNCU or its designee submits a Bid and for such time until such Bid is withdrawn; (B) Mastronardi Produce Limited ("Mastronardi") and its advisors, Davis Polk & Wardwell LLP (the "Mastronardi Advisors"), *provided* that Mastronardi and the Mastronardi Advisors shall not be Consultation Parties if Mastronardi or its designee submits a Bid and for such time until such Bid is withdrawn; (C) advisors to any official committee appointed in these chapter 11 cases; *provided* further that, to the extent that any party in the preceding clauses (A) through (C) is a potential bidder or a backstop party in connection with any potential Sale, such party shall not be a Consultation Party to the extent that doing so would violate the Procedures for Complex Cases in the Southern District of Texas; (D) solely with respect to the Somerset Assets and the Other Assets, Equilibrium and its designated advisors, PC, Armory Securities, and Amis Patel Brewer LLP (collectively, the "Equilibrium Advisors"); *provided* that Equilibrium and the Equilibrium Advisors shall not be Consultation Parties with respect to the Richmond/Morehead Assets; *provided further* that Equilibrium shall not be a Consultation Party with respect to the Somerset Assets and/or Other Assets if Equilibrium or its designee submits a Bid for the Somerset Assets and/or Other Assets, as applicable, and for such time until such Bid is withdrawn.

If a Consultation Party, in its capacity as such, receives material information in connection with Bids or bidders in a Sale Transaction(s) process, which information is not provided to all Potential Bidders in such Sale Transaction(s) process, such party shall be prohibited from being deemed a Qualified Bidder in connection with such Sale Transaction(s) process, unless such information is provided to all other Potential Bidders in such Sale Transaction(s) process by the applicable bid deadline or promptly following receipt of such information by such party.

In the event that any Consultation Party or an affiliate of the foregoing submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party or its affiliates established under these Bidding Procedures will be waived, discharged, and released without further action; *provided* that the bidding party will have the same rights as any other Qualified Bidder set forth above.

VII. BID DEADLINES

Any Bid must be transmitted via email (in .pdf or similar format) to the Debtors and their advisors specified herein so as to be **actually received** no later than 4:00 p.m. (prevailing Central Time) on or before the applicable Bid Deadline set forth in section II herein.

VIII. BID REQUIREMENTS

To participate in the Auction, an Acceptable Bidder (other than the Stalking Horse Purchaser) must deliver to the Debtors and their advisors an irrevocable offer for the purchase of the applicable Assets (each, a "Bid") and must meet the following criteria:

- A. **Proposed Sale Transaction.** Each Bid must clearly propose a Sale Transaction(s) as to the applicable Assets. Each Bid must specify which of such Assets are to be included in or excluded from the proposed Sale Transaction(s), as well as the disposition of any liabilities or obligations. Subject to section VIII.B of the Bidding Procedures, a Bid may be limited to one or more specific facilities, properties, or Assets. A Bid for the Richmond/Morehead Assets must propose a Sale Transaction as to both the Richmond Assets and the Morehead Assets.
- B. **Purchase Price.** Each Bid must clearly specify a purchase price, including and identifying separately any cash and non-cash components (the “Purchase Price”). A Bid that includes multiple facilities, properties, or other Assets must specify how the Purchase Price is to be allocated among each facility, property, or other Asset to be included in the Sale Transaction. For the avoidance of doubt, any Bid for the Richmond/Morehead Assets must provide for an amount of consideration greater than the amount of the purchase price consideration set forth in the Stalking Horse APA.
- C. **Good Faith Deposit.** Each Bid other than a credit bid must be accompanied by a cash deposit equal to 10% of the aggregate Purchase Price, submitted by wire transfer of immediately available funds to one or more escrow accounts designated by the Debtors (the “Good Faith Deposit”); *provided* that the Debtors in their business judgment, after consultation with the Consultation Parties, may elect to waive or modify the requirement of a Good Faith Deposit on a case-by-case basis. To the extent a Qualified Bid is modified before, during, or after an Auction in any matter that increases the purchase price contemplated by such Qualified Bid, the Debtors reserve the right to require that such Qualified Bidder increase its Good Faith Deposit.
- D. **Transaction Documents.** Each Bid must be accompanied by an executed purchase agreement with respect to the proposed sale transaction(s), including the exhibits, schedules, and ancillary agreements related thereto and any other related material documents integral to such Bid. In addition, (1) if a person or entity submitting a Bid has received a Form Purchase Agreement from the Debtors or their advisors, the executed purchase agreement accompanying such bidder’s Bid must be further accompanied by a redline copy marked to reflect any amendments or modifications to such form purchase agreement and (2) as to the Richmond/Morehead Assets, the executed purchase agreement accompanying such bidder’s Bid must be further accompanied by a redline copy marked against the Stalking Horse Agreement.
- E. **Proof of Financial Ability to Perform.** Each Bid must include written evidence that the Debtors reasonably conclude demonstrates that the bidder has the necessary financial ability to close the proposed Sale Transaction(s). Such information must include the following:
 1. contact names and telephone numbers for verification of financing sources;

2. evidence of the bidder's internal resources and, if applicable, proof of unconditional fully executed and effective financing commitments from one or more reputable sources in an aggregate amount equal to the cash portion of such Bid (including, if applicable, the payment of cure amounts), in each case, as are needed to close the proposed Sale Transaction(s);
 3. a description of the bidder's pro forma capital structure; and
 4. any other financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors demonstrating that such bidder has the ability to close the proposed Sale Transaction(s).
- F. **Contingencies; No Financing or Diligence Outs.** Each Bid must not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.
- G. **Identity.** Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid—including each equity holder or other financial backer of the bidder if such bidder is an entity formed for the purpose of consummating the proposed Sale Transaction(s) contemplated by such Bid—and the complete terms of any such participation. Each Bid should also include contact information for the specific person(s) and counsel whom the Debtors (and their advisors) should contact regarding such Bid.
- H. **Regulatory and Third-Party Approvals.** Each Bid must set forth each regulatory and third-party approval required for the bidder to consummate the proposed Sale Transaction(s), if any, and the date by which the bidder expects to receive such approvals, and those actions the bidder will take to ensure receipt of such approvals as promptly as possible.
- I. **Authorization.** Each Bid must contain evidence acceptable to the Debtors that the bidder has obtained authorization or approval from its board of directors (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Sale Transaction(s) contemplated by such Bid.
- J. **Contracts and Leases.** Each Bid must identify each and every executory contract and unexpired lease to be assumed and assigned in connection with the proposed sale transaction(s) (collectively, the "Assumed Contracts"). Each Bid must be accompanied by sufficient information to demonstrate adequate assurance of future performance by the bidder under all Assumed Contracts, which shall include audited and unaudited financial statements, tax returns, bank account statements, and a description of the business to be conducted at the premises, and such other documentation as the Debtors may request (the "Adequate Assurance Package"). The Adequate Assurance Package should be submitted in its own compiled PDF document.

- K. **Management and Employee Obligations.** Each Bid must indicate whether the bidder intends to hire all or some of the employees who are primarily employed in connection with the Assets to be included in the proposed Sale Transaction(s).
- L. **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the bidder: (1) has had an opportunity to conduct any and all due diligence regarding the proposed Sale Transaction(s) prior to making its offer; (2) has relied solely upon its own independent review, investigation, or inspection of any documents in making its Bid; (3) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or their advisors or other representatives regarding the Sale Transaction(s) or the completeness of any information provided in connection therewith or the Auction (if any); and (4) did not engage in any collusive conduct and acted in good faith in submitting its Bid.
- M. **No Break-Up Fee.** Each Bid must indicate that such bidder will not seek any transaction break-up fee, termination fee, expense reimbursement, working fee or similar type of payment.
- N. **Irrevocable; Commitment to Close.** Each Bid must state that in the event a Bid is chosen as the Back-Up Bid (as defined below), it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale. Each Bid must provide a commitment to close as soon as practicable, but in no event later than three months following conclusion of the Auction (the “Outside Date”).
- O. **Back-Up Bidder Commitment.** Each Bid must include a written commitment by the applicable Acceptable Bidder to serve as a Back-Up Bidder in the event that such Acceptable Bidder’s Bid is not selected as the Successful Bid and is the next highest or otherwise best bid.
- P. **Expected Closing Date.** Each Bid must state the Acceptable Bidder’s expected date of closing the applicable Sale.

Only Bids fulfilling all of the preceding requirements contained in this section may, or otherwise in the Debtors’ reasonable discretion be deemed to be “Qualified Bids,” and only those parties submitting Qualified Bids may, at the Debtors’ reasonable discretion be deemed to be “Qualified Bidders.”

By submitting a Bid, each bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from (A) submitting a Bid after conclusion of the Auction (if any) or (B) seeking to reopen the Auction (if any) once closed. **The submission of a Bid shall constitute a binding and irrevocable offer (a) for the Successful Bidder(s), until consummation of the Sale Transaction(s), (b) for the Back-Up Bidder (if any), as provided in the Bidding Procedures, as provided herein, and (c) for any Bidder other than the Successful Bidder(s) and Back-Up Bidder, until two (2) business days after entry of an order approving the Successful Bid and (if applicable) the Back-Up Bid for the applicable**

Assets (such order, a “Sale Order”), and each Bid must include a written acknowledgement and representation to such effect.

Within three (3) business days after the Bid Deadline, or as soon thereafter as is reasonably practicable, the Debtors shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; provided that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction. The Stalking Horse Purchaser shall be deemed to be a Qualified Bidder, the Stalking Horse Bid shall be deemed a Qualified Bid, and the Stalking Horse Purchaser may participate in the Auction with respect to the Assets.

IX. INDICATIONS OF INTEREST

The Debtors reserve the right to require Acceptable Bidders to submit written indications of interest prior to the Bid Deadline specifying, among other things, the Assets proposed to be acquired, the amount and type of consideration to be offered, and any other material terms to be included in a bid by such party. If an Acceptable Bidder fails to comply with any such request by the Debtors, the Debtors may deny such Acceptable Bidder further diligence access or deny such Acceptable Bidder further participation in the Auction process. The Debtors also reserve the right to exclude any Acceptable Bidder (prior to its submission of a Qualified Bid) from continuing in the Auction process if the Debtors determine that the consideration proposed to be paid by such Acceptable Bidder is insufficient.

X. EVALUATION OF QUALIFIED BIDS

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the date set for the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in the Bidding Procedures; provided that any Qualified Bid may be improved at the Auction (if any) as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in the Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtors reserve the right to work with (A) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the applicable Bid Deadline and (B) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the Auction (if any). The Debtors reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder and their Bid a single Qualified Bid for purposes of the Auction (if any)).

XI. NO QUALIFIED BIDS

If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, then the Debtors shall cancel the Auction and designate the Stalking Horse Bid as the Successful Bid as to the Richmond/Morehead Assets, pursue entry of a Sale Order approving the Sale of the Richmond/Morehead Assets to the Stalking Horse, and pursue alternative transaction(s) for the disposition of the Somerset Assets and the Other Assets. If the Debtors make such a determination, the Debtors shall file a notice with the Bankruptcy Court within one (1) business day of making such determination.

XII. AUCTION

If the Debtors receive two or more Qualified Bids with respect to the same Assets by the applicable Bid Deadline, the Debtors may, after consultation with the Consultation Parties, conduct an Auction to determine the Successful Bidder(s) (or Back-Up Bidder, as applicable) with respect to such Assets. In such event, the Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for particular Assets (the "Starting Bid"). When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate and/or relevant to the value of the Qualified Bid to the Debtors' estates: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid. Prior to the start of the Auction, the Debtors shall notify the Stalking Horse Purchaser and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Purchaser and each Qualified Bidder.

If an Auction is held, such Auction shall take place on August 24, 2023, at [●] [a./p.]m. (prevailing Central Time), via remote video or in person at the Debtors' election and shall be conducted in a timely fashion according to the procedures set forth below (the "Auction Procedures").

AUCTION PROCEDURES

- A. **The Debtors Shall Conduct the Auction; General Provisions.** The Debtors, with the assistance of their advisors, shall direct and preside over any Auction. At the commencement of the Auction, the Debtors (1) may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit any Overbids (as defined below); and (2) shall describe the terms of the Starting Bid. Only incremental Bids that comply with the terms set forth in section XII.B of the Bidding Procedures shall be considered "Overbids." Overbids shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders in attendance at the Auction. With respect to the Richmond/Morehead Assets, the initial Overbid

amount shall be no less than \$117,100,000 and each subsequent overbid shall be in increments of no less than \$250,000.

The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid (and Back-Up Bid, as applicable).

Only Qualified Bidders, the Debtors, the Consultation Parties and each of their respective legal and financial advisors, and any other parties specifically invited or permitted to attend by the Debtors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Except as otherwise permitted by the Debtors, only Qualified Bidders shall be entitled to bid at the Auction.

The Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction.

The Debtors may announce at the Auction modified or additional procedures for conducting the Auction or otherwise modify the Bidding Procedures.

B. Terms of Overbids. Each Overbid must comply with the following terms:

1. Minimum Overbid Increment. At the commencement of the initial solicitation of Overbids, the Debtors shall announce the minimum increment by which any Overbid must exceed the applicable Starting Bid. At the commencement of each subsequent round of solicitation of Overbids, the Debtors shall announce the minimum increment by which any Overbid must exceed the Prevailing Highest Bid (as defined below) at such time. The Debtors may, in their reasonable business judgment announce increases or reductions to the applicable minimum Overbid increment at any time during the Auction.
2. Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline by which time any Overbids must be submitted to the Debtors (an "Overbid Round Deadline"); provided that the Debtors, in their reasonable business judgment may extend any Overbid Round Deadline.
3. Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors' estates than any prior Qualified Bid or Overbid, as determined in the Debtors' business judgment but shall otherwise comply with the terms of the Bidding Procedures.

4. Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Starting Bid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all applicable Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid.
- C. Consideration of Overbids. The Debtors reserve the right, in their business judgment, to adjourn the Auction one or more times, to, among other things (1) facilitate discussions between the Debtors and Qualified Bidders, (2) allow Qualified Bidders the opportunity to consider how they wish to proceed, and (3) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent financing commitments to consummate the proposed Sale Transaction(s) at the prevailing Overbid amount.
 - D. No Round-Skipping. To remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder must submit an Overbid with respect to such round of bidding and to the extent a Qualified Bidder fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; provided that the Debtors may waive such requirement in their business judgment.
 - E. Closing the Auction. The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment and in consultation with their advisors, to be the highest or otherwise best Qualified Bid for the applicable Assets. Such Qualified Bid shall be designated the “Successful Bid” for such Assets and the Qualified Bidder submitting such Qualified Bid shall be designated the “Successful Bidder,” at which time the Auction with respect to such Assets shall be closed. At such time, the Debtors will designate a Back-Up Bid in accordance with the Bidding Procedures. In no case shall such Auction close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. The Debtors’ designation of a Qualified Bid as a Successful Bid (or Back-Up Bid, as applicable) shall be subject to and conditioned on the Bankruptcy Court’s approval of such Successful Bid (or Back-Up Bid, as applicable) and the Sale Transaction(s) contemplated thereby. As soon as reasonably practicable after the designation of a Successful Bid (or Back-Up Bid, as applicable), the Debtors shall finalize definitive documentation to implement the terms of such Successful Bid (or Back-Up Bid, as applicable) and cause such definitive documentation to be filed with the Bankruptcy Court.

- F. **No Collusion; Good Faith Offer.** Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (1) it has not engaged in any collusion with respect to the bidding process and (2) its Qualified Bid is a good faith offer and it intends to consummate the Sale Transaction(s) contemplated by its Qualified Bid if such Qualified Bid is the Successful Bid (or Back-Up Bid, as applicable) for the applicable Assets.
- G. **Rejection of Bids.** The Debtors in their reasonable business judgment may reject, at any time before entry of an order of the Bankruptcy Court approving a Successful Bid (or Back-Up Bid, as applicable), any Bid that the Debtors determine is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bankruptcy Code and/or the Bidding Procedures, or (3) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.

For the avoidance of doubt, nothing in these Auction Procedures (if an Auction is held) will prevent the Debtors or their respective governing bodies from exercising their respective fiduciary duties under applicable law or, as reasonably determined in good faith by the Debtors, terminating the Sale process as to some or all of the Assets.

XIII. DESIGNATION OF BACK-UP BIDDER

If for any reason the Successful Bidder(s) fails to consummate the Qualified Bid within the time permitted after the entry of the Sale Order approving the Sale to the Successful Bidder(s), then the Qualified Bidder or Qualified Bidders with the next-highest or otherwise second-best Bid (each, a “Back-Up Bidder”), as determined by the Debtors, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid or Bids (each, a “Back-Up Bid”), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court.

Upon designation of the Back-Up Bidder at the Auction, the Back Up Bid must remain open until the earlier of (1) the Closing of the Successful Bid notwithstanding any outside date set forth in such Back-Up Bidder’s proposed purchase agreement or chapter 11 plan and (2) the date that is three months following conclusion of the Auction.

XIV. RIGHT TO CREDIT BID

Any Qualified Bidder that has a valid and perfected lien on any Assets of the Debtors’ estates (a “Secured Party”) shall be entitled to credit bid all or a portion of the face value of such Secured Party’s claims against the Debtors toward the Purchase Price specified in such Qualified Bidder’s Bid; provided that a Secured Party shall be entitled to credit bid its claim(s) only with respect to Assets that are subject to a valid and perfected lien in favor of such Secured Party as to such claim(s). For the avoidance of doubt, (a) the Stalking Horse Purchaser is a Secured Party with respect to the Richmond/Morehead Assets and is entitled to credit bid the prepetition secured claims of the Stalking Horse Purchaser or its designee as set forth in the Stalking Horse APA and

(b) the DIP Lenders shall be entitled to credit bid, at their option, their respective DIP Facility Secured Claims with respect to the collateral that secures such DIP Facility Secured Claims.

XV. FIDUCIARY OUT

Notwithstanding anything to the contrary in the Bidding Procedures or any document filed with or entered by the Bankruptcy Court, nothing in the Bidding Procedures or the Bidding Procedures Order shall require a Debtor or its board of directors, board of managers, or similar governing body to take any action or to refrain from taking any action with respect to any Sale Transaction(s) or the Bidding Procedures to the extent such Debtor or governing body determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in the Bidding Procedures or any document filed with or entered by the Bankruptcy Court, until the closing of the Auction (if any), the Debtors and their respective directors, managers, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (A) consider, respond to, and facilitate unsolicited alternate proposals for sales or other transactions involving any or all of the Assets (each, an “Alternate Proposal”); (B) provide access to non-public information concerning the Debtors to any entity or enter into reasonable and customary confidentiality agreements or nondisclosure agreements with any entity; (C) maintain or continue discussions or negotiations with respect to Alternate Proposals; (D) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (E) enter into or continue discussions or negotiations with any person or entity regarding any Alternate Proposals; *provided* that the Debtors shall provide counsel to the Required Consenting Stakeholder and to Mastronardi reasonable updates on the status of discussions regarding any unsolicited Alternate Proposal (subject to any applicable confidentiality restrictions) within five (5) Business Days of the Debtors’ receipt of any such unsolicited Alternate Proposal; *provided further* that, for the avoidance of doubt, nothing in this section XV shall prevent the Company Parties from continuing the marketing process and/or otherwise seeking the highest and best price with respect to the Sale Transaction(s) or other transaction providing for the sale or disposition of the Richmond/Morehead Assets, the Somerset Assets, or the Other Assets..

XVI. “AS IS, WHERE IS”

Consummation of any sale transaction will be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors or their estates, except as specifically accepted or agreed to by the Debtors in the executed definitive documentation for the Sale Transaction(s) (“Definitive Sale Documents”). Consummation of any sale transaction will be without any representations or warranties whatsoever by the Debtors’ representatives or advisors. Unless otherwise specifically accepted or agreed to by the Debtors in Definitive Sale Documents, all of the Debtors’ right, title, and interest in and to the Assets disposed of in a sale transaction(s) will be transferred to the Successful Bidder(s) (or Back-Up Bidder, as

applicable) free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) of the Bankruptcy Code.⁶

By submitting a Bid, each bidder will be deemed to acknowledge and represent that it (A) has had an opportunity to conduct adequate due diligence regarding the Debtors and the proposed Sale Transaction(s) prior to making its Bid, (B) has relied solely on its own independent review, investigation, and inspection of any document, including executory contracts and unexpired leases, in making its Bid, and (C) did not rely on or receive from any person or entity (including any of the Debtors or their advisors or other representatives) any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Sale Transaction(s) or the completeness of any information provided in connection with the Sale Transaction(s) or the Auction (if any).

XVII. COMMISSIONS

The Debtors shall be under no obligation to pay any commissions, fees, or expenses to any bidder's agent, advisor, or broker. All commissions, fees, or expenses for any such agents, advisors, or brokers may be paid by bidders at such bidder's discretion. In no case shall any commissions, fees, or expenses for any bidder's agent, advisor, or broker be deducted from any proceeds derived from any Sale of the Assets.

XVIII. RESERVATION OF RIGHTS

The Debtors shall be entitled to modify the Bidding Procedures in their business judgment in any manner that will best promote the goals of the Bidding Procedures, or impose, at or prior to the Auction (if any), additional customary terms and conditions on a Sale Transaction(s), including: (A) extending the deadlines set forth in the Bidding Procedures; (B) adjourning the Auction at the Auction; (C) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (if any); (D) canceling the Auction; and (E) rejecting any or all Bids or Qualified Bids. For the avoidance of doubt, the Debtors reserve the right at any point prior to the selection of a Successful Bidder(s), to terminate the Sale processes contemplated hereunder with respect to any or all of the Debtors' Assets.

XIX. CONSENT TO JURISDICTION

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of the Bidding Procedures.

XX. SALE HEARING

The Bankruptcy Court shall hold a hearing to consider approval of the Successful Bid(s) (and Back-Up Bid(s), as applicable) and the Sale Transaction(s) contemplated thereby (a "Sale

⁶ For the avoidance of doubt, any Sale Transaction of the Richmond Assets will provide that the Richmond Assets are sold free and clear of claims related to that certain mechanic's lien asserted by Dalsem Greenhouse Technology B.V., the validity of which is contested by the Debtors.

Hearing”). The Sale Hearing with respect to any Successful Bid shall be held on the date set forth in Section II herein. **The Sale Hearing may be continued to a later date by the Debtors’ sending written notice to all Qualified Bidders and Consultation Parties prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any Bidder or other party.**

XXI. RETURN OF GOOD FAITH DEPOSIT

Any Good Faith Deposits provided by Qualified Bidders shall be held in one or more escrow accounts on terms acceptable to the Debtors. Any such Good Faith Deposits will be returned to Qualifying Bidders that are not Successful Bidder(s) (or Back-Up Bidders, as applicable) on the date that is three (3) business days after the Auction (if any). Any Deposit provided by a Successful Bidder(s) (or Back-Up Bidder, as applicable) shall be applied to the Purchase Price of the applicable Sale Transaction(s) at closing.

If a Successful Bidder(s) (or Back-Up Bidder, as applicable) fails to consummate the Sale Transaction(s) contemplated by its Successful Bid (or Back-Up Bid, as applicable) because of a breach by such Successful Bidder(s) (or Back-Up Bidder, as applicable), the Debtors will not have any obligation to return any Deposit provided by such Successful Bidder(s) (or Back-Up Bidder, as applicable), which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors and their estates.

Exhibit 2

Bid Protections

DRAFT 7.26.2023

FORM OF
ASSET PURCHASE AGREEMENT
by and among
CEFF II APPHARVEST HOLDINGS, LLC
APPHARVEST RICHMOND FARM, LLC
and
APPHARVEST MOREHEAD FARM, LLC
Dated as of July [__], 2023

[DISCLAIMER: This is a proposed asset purchase agreement only and not an offer that can be accepted. Until the authorized representatives of Sellers and Buyer agree to and execute a definitive written agreement, neither Sellers nor Buyer have any obligation (legal or otherwise) to conclude a transaction. Unless included in a definitive written agreement, communications (written or oral) shall not create any obligations whatsoever on Seller, and Buyer may not rely on them as the basis for taking or foregoing any action or opportunity or for incurring any costs. Each of Sellers and Buyer reserves the right to reject any or all proposals for any reason whatsoever and to accept any one or more proposals, and to negotiate such proposals in any matter it deems appropriate, and further reserves the right to revise and comment upon this proposed asset purchase agreement after the date hereof.]

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EXHIBITS

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SCHEDULES

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ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (including the Exhibits and Schedules hereto, each as amended or restated from time to time in writing, this “Agreement”), dated as of July [], 2023, is made by and among CEFF II AppHarvest Holdings, LLC, a Delaware limited liability company (“Buyer”), AppHarvest Richmond Farm, LLC, a Delaware limited liability company (“AHRF”) and AppHarvest Morehead Farm, LLC, a Delaware limited liability company (“AHMF”) (each of AHRF and AHMF a “Seller”, and collectively, “Sellers”). Buyer and Sellers are collectively referred to as the “Parties” and each individually as a “Party”. Exhibit A contains definitions of certain capitalized terms used in this Agreement.

RECITALS

WHEREAS, AHRF owns and operates a business as a cultivator, grower, harvester, producer, packager, seller and/or marketer of protected agriculture grown fresh produce, including tomatoes, at its facility located in Richmond, Kentucky (the “Richmond Business”);

WHEREAS, AHMF owns and operates a business as a cultivator, grower, harvester, producer, packager, seller and/or marketer of protected agriculture grown fresh produce, including tomatoes, at its facility located in Morehead, Kentucky (the “Morehead Business”; and collectively with the Richmond Business Sellers operate the “Business”);

WHEREAS, Sellers and certain of their Affiliates will commence voluntary cases under Chapter 11 of the Bankruptcy Code (collectively, the “Bankruptcy Case”) by filing petitions for relief in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”);

WHEREAS, Sellers will seek entry by the Bankruptcy Court of the Bid Procedures Order approving the Bid Procedures;

WHEREAS, Buyer and Sellers are contemplating, among other things, that following the execution of this Agreement, Buyer will act as a “stalking horse bidder” pursuant to the Bid Procedures for the Transferred Assets. Accordingly, in the absence of Sellers’ acceptance of a superior bid made in accordance with the Bid Procedures, Buyer will purchase Sellers’ right, title and interest in and to the Transferred Assets and assume the Assumed Liabilities on the terms and subject to the conditions set forth in this Agreement, in accordance with the Bid Procedures and subject to entry of the Sale Order by the Bankruptcy Court (the “Acquisition”); and

WHEREAS, the Parties desire to consummate the Acquisition as promptly as practicable following the satisfaction of the conditions precedent set out herein, including the entry of the Sale Order by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the foregoing, and of the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I PURCHASE AND SALE OF THE BUSINESS

1.1. Purchase and Sale of Assets. On the terms and subject to the conditions set forth herein, subject to Section 1.7, at the Closing, Sellers shall Transfer to Buyer, and Buyer shall purchase and acquire from Sellers the entirety of Sellers' right, title and interest in and to all of the following assets, properties and rights, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located, in the physical possession of Sellers or another Person, in each case free and clear of all Liens, claims, encumbrances, and interests (other than Permitted Encumbrances), Excluded Assets and Excluded Liabilities (the "Transferred Assets"):

- (a) Inventory;
- (b) Transferred Leased Property;
- (c) Transferred Owned Property;
- (d) Fixtures and Equipment, including, for greater certainty, all of those assets listed on Schedule 1.1(d);
- (e) Transferred Intellectual Property and all the goodwill of the Business and/or associated with or related to such Transferred Intellectual Property;
- (f) each Assumed Contract with respect to which an Order has been entered by the Bankruptcy Court (which may be the Sale Order) authorizing the assumption and assignment of such Contract;
- (g) subject to the right of Sellers to retain copies, the Books and Records;
- (h) to the extent their transfer is permitted by Law, all Permits that are held by Sellers, or any Permits that are held by an Affiliate of Seller Related to the Business, and applications therefor or related thereto;
- (i) all credits, prepaid expenses, deposits with propagators for crops related to the Business, deferred charges, advance payments, refunds, security deposits, prepaid items and duties to the extent related to a Transferred Asset, but excluding any refunds of Taxes to the extent included in Section 1.2(e) and any prepayments or deposits of any Asset Taxes prior to the date hereof for which Sellers shall receive credit to the extent provided in Section 5.4(b); and
- (j) any claim, right, award, recovery, indemnity, warranty, right to insurance proceeds, refund, reimbursement, audit right, duty, obligation, liability or other intangible right in favor of or owed to any Seller (other than rights arising under or relating to this Agreement, the other Transaction Documents or Sellers' or any of their Affiliates' directors' and officers' insurance policies (all rights described in this parenthetical, the "D&O Insurance Claims")), to the extent (i) related to any other Transferred Asset or (ii) related to any insurance proceeds as set forth in Section 5.9(a) other than the Excluded Insurance Proceeds.

1.2. Excluded Assets. Notwithstanding anything to the contrary set forth in this Agreement or in any of the other Transaction Documents, the Parties expressly acknowledge and agree that nothing in this Agreement shall be construed to obligate any Seller to Transfer to Buyer any assets, properties or rights of any Seller that are not listed in Section 1.1, including the following (the “Excluded Assets”), which shall be excluded from the Transferred Assets:

(a) all cash and cash equivalents, checks, money orders, funds in time and demand deposits or similar accounts, marketable securities, short-term investments, and other cash equivalents and liquid investments;

(b) all cash deposits in cash collateral, indemnity or other accounts solely to the extent comprising professional fee retainers, professional fee escrows, and indemnity accounts, held by or on behalf of Sellers’, or the bankrupt estates’, professionals;

(c) any claim, right, award, recovery, indemnity, warranty, refund, reimbursement, audit right, duty, obligation, liability or other intangible right in favor of or owed to any Seller (i) to the extent arising under or related to the D&O Insurance Claims, (ii) to the extent related to a Transferred Asset and arising or attributable to the period of time prior to the Closing Date, (iii) to the extent related to any of the Excluded Liabilities, or (iv) related to any insurance proceeds from Sellers’ or any of their Affiliates’ third party insurance policies to the extent such proceeds arise on account of acts or omissions that occurred prior to the Closing Date (together with the D&O Insurance Claims, the “Excluded Insurance Proceeds”);

(d) all rights to the warranties, express or implied, and licenses granted by any third party related to the Excluded Assets;

(e) all trade credits or refunds of costs or expenses borne by any Seller, in each case, attributable to the Transferred Assets and attributable to any period of time prior to the Closing Date;

(f) any shares or other interests in any Person or any securities of any Person;

(g) all invoices, shipping documents, purchase orders and other preprinted business forms that have any Trademark thereon other than those included in the Transferred Intellectual Property;

(h) all Intellectual Property owned by any Seller or any of their Affiliates, other than the Transferred Intellectual Property;

(i) all (i) organizational documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates, and other documents relating to any Seller’s organization, maintenance, existence, and operation; and (ii) books and records, correspondence or communications to the extent related to (A) Taxes paid or payable by Sellers, (B) any claims, obligations or liabilities not included in Assumed Liabilities, or (C) this Agreement, any other Transaction Documents or the negotiation or consummation of the Transactions (and including any attorney-client privilege associated with any of the items described in the preceding clauses (A), (B) or (C));

(j) all personnel records (including all human resources and other records) of any Seller or any of their Affiliates other than the personnel records of the Continuing Employees;

(k) (i) all Tax assets and attributes of any Seller, (ii) all rights to Tax Refunds of any Seller and Claims related thereto, (iii) all rights to any refund of or credits for any Taxes paid by or on behalf of any Seller or with respect to a Pre-Closing Tax Period, other than refunds of Asset Taxes allocable to Buyer pursuant to Section 5.4(b) or refunds related to any period prior to Closing, and (iv) all rights to Tax Refunds and Claims related thereto with respect to any Excluded Asset or Excluded Liability;

(l) all bank accounts and escrow accounts;

(m) all cash in Sellers' adequate assurance account relating to utilities under Section 366 of the Bankruptcy Code;

(n) any and all proceeds relating to any and all bonds, letters of credit, guarantees or other security provided by any Seller related to the Excluded Contracts;

(o) all prepaid expenses related to the Excluded Contracts;

(p) capital stock of each Seller;

(q) all consideration received by any Seller or their Affiliates pursuant to, and all rights of any Seller and their Affiliates under, this Agreement or any Transaction Document, subject to the terms hereof and thereof;

(r) all Seller Contracts that are not Assumed Contracts (the "Excluded Contracts");

(s) all Intracompany Receivables;

(t) all Tax Returns;

(u) all Actions owned by or available to any Seller, whether in Law or equity and under any forum (including, purely by way of example and without limitation, United States federal courts, any provincial court or state court, any foreign court and any extrajudicial dispute resolution mechanism), including any (i) Action set forth on Schedule 1.2(u)(i) and (ii) Avoidance Action, attributable to any period of time prior to the Closing Date including, in each case, without limitation any Action (w) related to the acquisition, ownership, management, operation, use, function or value of any Transferred Asset or Excluded Asset, (x) against any counterparty to an Assumed Contract, or any Affiliate of such counterparty or (y) against any director, officer, manager, employee, contractor, consultant or advisor employed by or providing services to any Seller (such Actions, the "Excluded Actions") unless attributable to any period of time following the Closing Date;

(v) subject to Section 1.7, all assets not transferrable pursuant to applicable Law or terms of this Agreement;

(w) any prepayments and good faith and other bid deposits submitted by any third party under the terms of the Bid and Contract Procedures Order;

(x) all Accounts Receivable; and

(y) all other assets, properties, or rights that are not specifically listed in Section 1.1 as a Transferred Asset.

Each Seller shall retain all of its respective right, title and interest in and to the Excluded Assets and Buyer shall not acquire and shall have no rights or Liabilities with respect to the right, title and interest of each Seller in and to the Excluded Assets.

1.3. Assumption of Liabilities. On the terms and subject to the conditions set forth herein, at the Closing, Buyer will assume, without duplication, and will otherwise in a timely manner pay, perform and discharge and be responsible for, in accordance with their respective terms, all of the following Liabilities (collectively, the “Assumed Liabilities”):

(a) all Liabilities with respect to the ownership, possession, use and operation of the Transferred Assets accruing on or after the Closing;

(b) all Liabilities for, or related to any obligation for, any Tax that Buyer bears under Section 5.4;

(c) all Liabilities under the Assumed Contracts, including all Cure Costs, occurring on or after the Closing;

(d) all Liabilities under any Permitted Encumbrance to the extent related to any Transferred Asset; and

(e) all Liabilities assumed by Buyer pursuant to Section 5.5.

1.4. Excluded Liabilities. Notwithstanding anything to the contrary set forth in this Agreement or in any of the other Transaction Documents, the Parties expressly acknowledge and agree that, except as set forth in Section 1.3, Buyer will not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for, any Liabilities of any Seller, including those arising from or in connection with the Transferred Assets or the Business, or for any Action against any Seller or relating to the Transferred Assets or the Business, whether existing on the Closing or arising thereafter as a result of any act, omission, event, thing or circumstances taking place or not taking place prior to the Closing, including the following (all such Liabilities that Buyer is not assuming being referred to collectively, as the “Excluded Liabilities”):

(a) all Income Taxes of Sellers;

(b) all Liabilities relating to or arising out of the Excluded Assets;

(c) all Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the Business or the Transferred Assets to the extent such

Action relates to the Business or the Transferred Assets for any period prior to the Closing other than Liabilities under Section 1.3(b);

(d) all product Liability or similar claims for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by any Seller or based on any tort claim, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller prior to the Closing Date;

(e) all recall, design defect, improper installation, manufacturing defect or similar or related claims of any products manufactured or sold or any service performed by any Seller prior to the Closing Date;

(f) all Liabilities arising under or in connection with any present or former employee benefit plan providing benefits to any present or former employee of any Seller or any Seller Affiliate, other than as set forth in Section 1.3(e), provided, that all such Liabilities with respect to the Continuing Employees shall only be Excluded Liabilities to the extent arising or related to any period prior to the Closing;

(g) except as provided in Section 5.5, including the Liabilities assumed by Buyer in relation to the Continuing Employees as set out in Section 5.5(j), all Liabilities with respect to any present or former employees, officers, directors, independent contractors or consultants of Seller, including for wages or other work-related benefits, bonuses, fees, accrued vacation, workers' compensation, employee deferred compensation including stock option plans, equity grants, other grants and agreements, severance, retention, termination or other payments;

(h) all Accounts Payable;

(i) all Liabilities of the Business relating to or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that do not constitute part of the Transferred Assets or Assumed Liabilities;

(j) all Liabilities to indemnify, reimburse, or advance amounts to any present or former officer, director, employee, agent or independent contractors of any Seller (including with respect to any breach of fiduciary obligations by the same) to the extent such Liabilities relate to conduct that was undertaken prior to Closing;

(k) all Liabilities under the Excluded Contracts, Intracompany Payables and/or resulting from the termination of obligations provided for in Section 1.9(b);

(l) all Liabilities associated with debt, loans, notes, bonds, guarantees, indemnifications or credit facilities of any Seller and/or the Business or the Transferred Assets; and

(m) all Liabilities arising out of, in respect of, or in connection with the failure by any Seller to comply with any Law.

1.5. Assumption and Assignment of Contracts.

(a) Sellers shall assign to Buyer, and Buyer shall assume, the Assumed Contracts at the Closing pursuant to the Sale Order, subject to the other provisions of this Section 1.5. Buyer shall pay all Cure Costs in respect of the Assumed Contracts, which shall not be the obligation, liability or responsibility of Sellers.

(b) The Sale Order shall provide for the assumption by the applicable Seller party thereto, and the assignment to the extent legally capable of being assigned by such Seller to Buyer, of each Assumed Contract.

(c) Notwithstanding the foregoing, a Seller Contract shall not be an Assumed Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Seller Contract is (i) deemed rejected under Section 365 of the Bankruptcy Code or (ii) the subject of an objection to assignment or assumption or requires a Necessary Consent of any Governmental Entity or other third party (other than, and in addition to, that of the U.S. Bankruptcy Court) in order to permit the assumption and assignment by the applicable Seller to Buyer of such Seller Contract pursuant to Section 365 of the Bankruptcy Code, and such objection has not been resolved or such Necessary Consent has not been obtained prior to the 90th day following the Closing (as such 90-day period may be extended by mutual agreement of Buyer and Sellers) or (iii) is terminated by any party thereto other than Sellers, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Buyer as an Assumed Contract hereunder and is not continued or otherwise extended upon assumption. For the avoidance of doubt, in no event shall the failure to assign to Buyer any Seller Contract due to the termination of such Seller Contract in accordance with subsection (ii) above, (x) reduce the Purchase Price payable to Sellers (if applicable) or (y) constitute a failure to satisfy the conditions to the obligation of Buyer under Section 6.2.

1.6. Executory Contract Schedule.

(a) Schedule 1.6 (the “Executory Contract Schedule”) sets forth a list of all executory contracts and unexpired leases relating to the Business or the Transferred Assets to which one or more of Sellers are party (the “Available Contracts”), which Executory Contract Schedule may not be complete as of the date hereof (but, nonetheless, as of the date hereof shall include all Material Contracts) and which may be updated from time to time after the date hereof by Sellers to add any executory contracts or unexpired leases not included on such schedule as of the date hereof. Notwithstanding the foregoing, the Executory Contract Schedule shall be completed and delivered to Buyer on or before the date that is fourteen (14) Business Days prior to the bid deadline set forth in the Bid Procedures Order. Prior to the Closing Date, Buyer, in its sole discretion by written notice to Sellers, shall designate in writing which Available Contracts from the Executory Contract Schedule (as updated from time to time in accordance with this Section 1.6(a)) relating to the Business or the Transferred Assets that Buyer wishes to “assume” (the “Assumed Contracts”) and subject to the right of Buyer, and no later than three (3) days prior to the Closing Date, Buyer may, in its sole discretion, determine not to “assume” any Available Contracts previously designated as an Assumed Contract; provided that Buyer shall be liable for and reimburse Seller for any administrative expense claims under sections 503, 507, and 365 of the Bankruptcy Code that (a) are incurred as a result of, arise out of, or in connection with the Available Contracts removed from the Executory Contract Schedule following the date of entry of

the Sale Order and (b) solely arise out of or relate to the period (whether or not invoiced during such period) subsequent to the date of entry of the Sale Order to the date of rejection of such Available Contracts. All Contracts of Sellers that are listed on the Executory Contract Schedule as of the Closing Date and which Buyer does not designate in writing for assumption shall not be considered Assumed Contracts or Transferred Assets and shall automatically be deemed “Excluded Contracts” (and for the avoidance of doubt, Buyer shall not be responsible for any related Cure Costs related to any Excluded Contracts). Upon Buyer’s reasonable request, Sellers shall provide additional detailed information as to the Liabilities under the Contracts sufficient for Buyer to make an informed assessment regarding whether to accept an assignment and assumption of such Available Contract hereunder. Sellers shall cause notices to be delivered reasonably promptly to any counterparties to Contracts that are designated as Excluded Contracts from time to time pursuant to this Section 1.6(a).

(b) Sellers shall compile and file one or more customary “cure notices” listing all then scheduled Available Contracts and asserting the Cure Costs associated with each such Available Contract (each, a “Cure Notice”). The Cure Notices shall provide that any failure by a non-Seller counter-party to timely object to the Cure Costs set forth in the applicable Cure Notice shall make the Cure Costs set forth in the Cure Notice binding.

(c) Sellers shall use reasonable best efforts to establish and verify all Cure Amounts for the Contracts set forth on the Executory Contract Schedule prior to entry of the Sale Order, including, through the filing of Cure Notices. Subject to the other provisions of this Section 1.6, Buyer agrees to pay all Cure Costs required to assume the Assumed Contracts pursuant to this Section 1.6 at the Closing; provided that, prior to the Closing Date, Buyer shall have the option to (x) pay the Cure Costs required to assume all such Contracts or (y) designate any such Available Contracts to be an Excluded Contract; provided that Buyer shall be liable for and reimburse Seller for any administrative expense claims under sections 503, 507, and 365 of the Bankruptcy Code that (a) are incurred as a result of, arise out of, or in connection with the designation of such Available Contracts as an Excluded Contract and (b) solely arise out of or relate to the period (whether or not invoiced during such period) subsequent to the date of entry of the Sale Order to the date of rejection of such Available Contracts. At Closing, Buyer shall promptly pay all Cure Costs in connection with the assumption and assignment of the Assumed Contracts (as set forth in this Agreement, as agreed to by Buyer and the contract counterparty, or as determined by the Bankruptcy Court). Sellers shall cooperate with Buyer to facilitate the payment of the Cure Costs to the Executory Contract counterparties. Sellers shall take all actions reasonably required to assume and assign the Assumed Contracts to Buyer (other than payment of Cure Amounts, if so required), including taking all actions reasonably required to obtain an Order containing a finding that the proposed assumption and assignment of the Assumed Contracts to Buyer satisfies all applicable requirements of Section 365 of the Bankruptcy Code.

(d) Upon objection by the non-debtor Available Contract counterparty to the Cure Amount asserted by Sellers with regard to any Assumed Contract (such contract, a “Disputed Contract”), Sellers, with the consent of Buyer, shall either (a) settle the objection of such party or (b) shall litigate such objection under procedures as the Bankruptcy Court shall approve and proscribe; provided that from and after the date of entry of the Confirmation Order, Buyer shall be liable for and reimburse Seller for all amounts, costs, or expenses incurred as a result of, arising out of, or in connection with litigation initiated by Sellers pursuant to this clause (b). In no event

shall any Seller settle a Cure Costs objection with regard to any Assumed Contract without the express written consent of Buyer. In the event that a dispute regarding the Cure Costs with respect to an Assumed Contract has not been resolved as of the Closing Date, the Parties shall nonetheless remain obligated to consummate the Acquisition. Upon an Order determining any Cure Costs regarding any Disputed Contract after the Closing, to the maximum extent permissible under sections 365(d)(2) and 365(d)(4) of the Bankruptcy Code, Buyer shall have the option to (x) pay the Cure Costs with respect to such Disputed Contract and assume the Disputed Contract as an “Assumed Contract” or (y) designate the Disputed Contract as an “Excluded Asset”, in which case, for the avoidance of doubt, Buyer shall not assume the Disputed Contract and shall not be responsible for the associated Cure Cost; provided that Buyer shall be liable for and reimburse Seller for any administrative expense claims under sections 503, 507, and 365 of the Bankruptcy Code that (a) are incurred as a result of, arise out of, or in connection with designation of such Disputed Contract as an “Excluded Asset” and (b) solely arise out of or relate to the period (whether or not invoiced during such period) subsequent to the date of entry of the Sale Order to the date of rejection of such Disputed Contracts.

(e) Buyer shall use commercially reasonable efforts to provide the Bankruptcy Court any evidence reasonably necessary to prove adequate assurance of future performance necessary to effect the assumption and assignment of the Assumed Contracts.

(f) Subject to Section 1.7, to the maximum extent permitted under applicable Law and the Bankruptcy Code, Sellers shall transfer and assign all Assumed Contracts to Buyer, and Buyer shall assume all Assumed Contracts from the Seller Parties, as of the Closing Date pursuant to the Sale Order and Section 365 of the Bankruptcy Code.

(g) At any time after the Closing, Sellers and Buyer may (but shall have no obligation to) mutually agree to seek authorization from the Bankruptcy Court, pursuant to section 365 of the Bankruptcy Code, to assume and assign an Available Contract that was not identified as an Assumed Contract as of Closing; provided that Buyer will be solely responsible to pay the Cure Amount required to assume such Available Contract.

1.7. Non-Assignment of Assets. Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or Transfer and will not effect the assignment or Transfer of any Transferred Asset (including any Assumed Contract) if (i) (A) prohibited by applicable Law, (B) an attempted assignment or transfer thereof would be reasonably likely to subject Buyer, its Affiliates or any of its or their respective Representatives to criminal Liability or (C) an attempted assignment or transfer thereof, without the approval, authorization, consent or waiver of, or granting or issuance of any license or permit by, any third party thereto (each such action, a “Necessary Consent”), would constitute a breach, default or violation thereof or of any Law or Order or in any way adversely affect the rights of Buyer thereunder or (ii) the Bankruptcy Court has not entered an Order approving such assignment or Transfer. In such event, or in the event that the assignment or Transfer of any Transferred Asset (including any Assumed Contract) is subject to a Necessary Consent being obtained, Sellers and Buyer will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Transferred Asset (including any Assumed Contract) or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Buyer as Buyer may reasonably request; provided, however, that Sellers shall not be obligated for the payment of any consideration

therefor or required to initiate any litigation or legal proceedings to obtain any such approval, authorization, consent or waiver. If any Necessary Consent is not obtained, or if an attempted assignment or transfer would give rise to any of the circumstances described in clauses (i) or (ii) of the first sentence of this Section 1.6, be ineffective or adversely affect the rights of Buyer to such Transferred Asset following the Closing, (x) Sellers and Buyer will, and will cause their respective Affiliates to, (1) use commercially reasonable efforts (including cooperating with one another to obtain such Necessary Consents, to the extent feasible) as may be necessary so that Buyer would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, (2) complete any such assignments or Transfers as soon as reasonably practicable and (3) upon receipt of any applicable Necessary Consents, Transfer or assign the applicable Transferred Asset to Buyer, and (y) Sellers will, and will cause their respective Affiliates to, reasonably cooperate with Buyer in good faith without further consideration in any arrangement reasonably acceptable to Buyer and Sellers intended to provide Buyer with the benefit of any such Transferred Assets at Buyer's sole cost and expense, in each case, for a period of 90 days following the Closing Date.

1.8. Wrong Pocket. Subject to Section 1.5 and Section 1.6, if at any time after the Closing (i) Buyer or its designee holds any Excluded Assets or Excluded Liabilities or (ii) any Seller holds any Transferred Assets or Assumed Liabilities, Buyer or the applicable Seller, as applicable, will reasonably promptly Transfer (or cause to be Transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party, without further consideration from the other Party. Prior to any such Transfer, the Party receiving or possessing any such asset will hold it in trust for such other Party.

1.9. Intracompany Arrangements.

(a) Each of Buyer and Sellers agrees that any Intracompany Payables between any Seller, on the one hand, and any other Seller or Affiliate thereof, on the other hand, shall be fully settled or otherwise deemed cancelled effective as of immediately prior to the Closing.

(b) Each of Buyer and Sellers agrees that, any contract, commitment or arrangement between any Seller, on the one hand, and any other Seller or Affiliate thereof, on the other hand, shall be terminated and be of no further force or effect and all obligations thereunder shall be fully satisfied and extinguished, notwithstanding any terms thereof to the contrary, effective as of immediately prior to the Acquisition.

(c) No additional consideration shall be payable by, and no additional amounts shall be owed by, Buyer or any of its Affiliates to Sellers or any of their Affiliates in connection with the transactions effected pursuant to this Section 1.8.

1.10. Further Conveyances and Assurances. From time to time following the Closing, Sellers and Buyer will, and will cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure to Buyer and its successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Agreement.

ARTICLE II CONSIDERATION; CLOSING

2.1. Consideration. At the Closing, Buyer will pay to Sellers, by credit bid of Buyer's pre-petition debt, an amount equal to \$[113,179,726]¹ (the "Purchase Price").

2.2. Closing. The closing of the purchase and sale of the Acquisition (the "Closing") shall take place remotely, via electronic exchange of documents, as soon as possible, but in no event later than three (3) Business Days following the date on which the last of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing but subject to the fulfillment or waiver of those conditions) has been satisfied or waived, or at such other date, time and place as the Parties may mutually agree. The actual date on which the Closing occurs, effective 10:00 a.m. prevailing Eastern time on such date, is called the "Closing Date."

2.3. Deliveries by Buyer. At the Closing, Buyer shall deliver, or cause to be delivered, to Sellers, the following:

- (a) evidence of a credit equal to the Purchase Price against the Debt secured by Buyer pursuant to Section 363(k) of the Bankruptcy Code;
- (b) the certificates to be delivered pursuant to Section 6.3(c);
- (c) a duly executed counterpart to each of the Transaction Documents other than this Agreement; and
- (d) such other instruments of assumption and other instruments or documents, including bills of sale and/or assignment and assumption agreements, in form and substance reasonably acceptable to Sellers, as may be necessary to effect Buyer's assumption of the Assumed Liabilities and the assignment of any Transferred Assets in accordance with the requirements of applicable Law and this Agreement, in each case duly executed by Buyer.

2.4. Deliveries by Sellers. At the Closing, Sellers shall deliver, or cause to be delivered, to Buyer, the following:

- (a) the certificate to be delivered pursuant to Section 6.2(c);
- (b) a duly executed counterpart to each of the Transaction Documents other than this Agreement;
- (c) an IRS Form W-9 with respect to each Seller that is a United States person within the meaning of Section 7701 of the Code, duly completed and executed;
- (d) the Books and Records; provided that the delivery obligations of Sellers hereunder shall be deemed satisfied if such Books and Records remain at the Transferred Owned Property or Transferred Leased Property;

¹ **Note to Buyer:** Please provide the relevant calculations leading to the Purchase Price calculation.

(e) a copy of the Sale Order as entered by the Bankruptcy Court, vesting the Transferred Assets in Buyer free and clear of any Liens (other than Permitted Encumbrances);

(f) an instrument of conveyance (including a quit claim deed, real property transfers or similar documents as customary in the applicable jurisdiction and as may be necessary in accordance with the requirements of applicable Law) conveying to Buyer fee simple title to the Transferred Owned Property, subject to Permitted Encumbrances, including any additional documents, forms, or affidavits needed to record such instrument in the real property records; and

(g) such other instruments of assumption and other instruments or documents, including bills of sale and/or assignment and assumption agreements, in form and substance reasonably acceptable to Buyer, as may be necessary to effect Buyer's assumption of the Assumed Liabilities and the assignment of any Transferred Assets to Buyer in accordance with the requirements of applicable Law and this Agreement, in each case duly executed by the applicable Seller.

2.5. **Withholding.** Buyer shall be entitled to deduct or withhold from consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct or withhold with respect to the making of such payment pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under applicable Law, provided, however that Buyer shall use commercially reasonable efforts to provide Sellers with at least ten Business Days' notice of the applicability of any such deduction or withholding prior to making such deduction or withholding, and shall afford Sellers a reasonable opportunity to provide any applicable certificates, forms or documentation that would reduce or eliminate the requirement to deduct or withhold Tax under applicable Law. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts shall be timely paid by Buyer to the applicable Tax Governmental Entity and shall be treated for all purposes of this Agreement as having been paid to Sellers. The Parties shall reasonably cooperate to determine whether any such deduction or withholding applies to the payment, and, if so, shall further cooperate to minimize applicable withholding Taxes and to obtain any available refund or credit of withheld amounts.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS

Except (a) as set forth in the corresponding numbered section or subsection of a Schedule of the Seller Disclosure Schedule or (b) to the extent relating to the Excluded Assets or the Excluded Liabilities, Sellers represent and warrant to Buyer:

3.1. **Organization; Good Standing.** Each Seller is duly formed validly existing and in good standing under the Laws of its jurisdiction of formation. Each Seller, subject to the necessary authority from the Bankruptcy Court, has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of the Business requires such qualification, except where the failure to be so qualified or in good standing, or to have such power or authority, would not, in the aggregate, have a Material Adverse Effect.

3.2. Authority; Approval. Subject to the entry of the Sale Order and any other Order required by the Bankruptcy Court in connection with the transactions contemplated hereby:

(a) each Seller has all right, power and authority to enter into and perform its obligations under the Transaction Documents to which it is or will become a party;

(b) the execution, delivery and performance of each Seller's obligations under the Transaction Documents to which it is or will become a party, and the performance of each Seller of its obligations under the Transaction Documents, have been duly and validity authorized by all requisite limited liability company action on the part of such Seller;

(c) No additional corporate, shareholder or similar authorization or consent is required in connection with the execution, delivery and performance by Sellers or their Affiliates of this Agreement or any of the other Transaction Documents to which they are or will become party; and

(d) this Agreement has been duly executed and delivered by each Seller and, assuming due authorization, execution and delivery by Buyer, subject to the required Bankruptcy Court approval, will constitute a valid and binding agreement of each Seller, enforceable against each Seller in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance, preferential transfer, reorganization, moratorium and similar Laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (the "Equitable Exception").

3.3. Governmental Filings; No Violations.

(a) Other than the filings, notices, reports, consents, registrations, approvals, permits and authorizations set forth on Section 3.3(a) of the Seller Disclosure Schedule, and subject to the issuance of the Sale Order and any other Order required by the Bankruptcy Court in connection with the transactions contemplated hereby, no filing, notice, report, consent, registration, approval, permit or authorization is required to be given, filed or obtained by any Seller to or from any Governmental Entity in connection with the execution, delivery and performance by any Seller of this Agreement or the transactions contemplated hereby.

(b) Other than the filings, notices, reports, consents, registrations, approvals, permits and authorization set forth on Section 3.3(b) of the Seller Disclosure Schedule, and subject to the issuance of the Sale Order and any other Order required by the Bankruptcy Court in connection with the transactions contemplated hereby, the execution, delivery and performance by Sellers of this Agreement does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of or default (with or without notice, lapse of time or both) under, or give rise to a right of termination or acceleration of any obligation under, or result in the creation of any Lien upon any of the Transferred Assets (i) under any provision of the articles, by-laws or comparable governing documents of any Seller, (ii) any Law or Order to which any Seller, the Business and the Transferred Assets are subject, or (iii) any Material Contract.

3.4. No Undisclosed Material Liabilities. As of the date of this Agreement, there are no material Liabilities of the Business of any kind whatsoever other than the material Liabilities disclosed (i) in Sellers' unaudited condensed consolidated balance sheet as of March 31, 2023, (ii)

in the Seller Disclosure Schedule, or (iii) as set forth in Section 3.4 of the Seller Disclosure Schedule.

3.5. Litigation. Except as set forth in Section 3.5 of the Seller Disclosure Schedule and except for the general pendency of the Bankruptcy Case and Actions arising in connection therewith or in the Ordinary Course seeking damages for amounts less than \$1,000,000 as of the date hereof, there are no Actions pending or, to the Knowledge of Sellers, threatened against any Seller that are attributable to any of the Transferred Assets or the ownership or operation thereof or the Business.

3.6. Transferred Owned Property. There are no pending, or, to the Knowledge of Sellers, threatened, appropriation, condemnation, eminent domain or like proceedings relating to any Transferred Owned Property.

3.7. Material Contracts.

(a) Other than this Agreement, the other Transaction Documents and the DIP Financing, Section 3.7(a) of the Seller Disclosure Schedule sets forth a true and correct list of the following Seller Contracts relating to the Transferred Assets (together, the “Material Contracts”):

(i) any joint venture agreements, partnership agreements, purchase and sale agreements or similar agreements that are material to the Business;

(ii) any Seller Contract which is reasonably expected by Sellers as of the date hereof to either (i) involve any future aggregate receipts of revenues by any Sellers or Sellers in excess of \$100,000 in the aggregate per annum or (ii) involve any future aggregate payments or obligations by any Seller or Sellers in excess of \$100,000 per annum in the aggregate;

(iii) any non-competition agreement or any agreement that purports to restrict, limit or prohibit the manner in which, or the locations in which, any Seller conducts the Business;

(iv) any Contract obligating Sellers or any of their Affiliates to provide or obtain any product or service exclusively to or from any Person, irrespective of any geographic, market or other restriction;

(v) any Contract granting to any Person a right of first refusal, first offer or similar preferential right to purchase or acquire any Transferred Asset;

(vi) any Contract that contains any “most favored nation” or minimum purchase or sale obligations;

(vii) any Contract containing a requirement to provide (including a requirement to provide if so requested by the counterparty) a performance bond, letter of credit or any other similar instrument;

(viii) any Seller Contract pursuant to which any Seller grants or receives any license with respect to Intellectual Property that is material to the Business, taken as a whole, that (i) is exclusive or (ii) requires aggregate payments to or from any of Sellers in excess of \$200,000 per annum, in each case of clauses (i) and (ii), other than (x) agreements granted on standardized terms for commercially available software or information technology services, or (y) outbound licenses granted in the Ordinary Course;

(ix) any Seller Contract with a Governmental Entity;

(x) any Transferred Lease; and

(xi) any Seller Contract pursuant to which any Seller currently leases personal property to or from any Person providing for lease payments in excess of \$50,000 per annum.

(b) Except as disclosed on Section 3.7(b) of the Seller Disclosure Schedule, no Seller is in breach or default under any Material Contract and no Seller has received a written notice of a breach or default of the terms of any Material Contract. The Material Contracts are in full force and effect in accordance with their terms, except as may be limited by the Equitable Exception, and to the Knowledge of Sellers, no event has occurred which constitutes, or which with notice or lapse of time or both would be reasonably be likely to constitute, a breach or default by any Seller (or to Sellers' Knowledge, any other party thereto) of its obligations under any of the Material Contracts (for the avoidance of doubt, not including with respect to the Bankruptcy Case).

3.8. Compliance with Laws; Permits.

(a) The Business is being conducted in all material respects pursuant to the Laws applicable to the Business or the Transferred Assets, except as resulting from the filing and pendency of the Bankruptcy Case. Seller has received any written notice of (i) any material investigation or review by any Governmental Entity with respect to the Business or the Transferred Assets or (ii) any material noncompliance with any applicable Laws that has not been cured as of the date hereof. Each Seller has obtained and is in material compliance with all Permits and Orders issued or granted by a Governmental Entity necessary to conduct its Business as presently conducted.

(b) Each of Sellers is in compliance with the Foreign Corrupt Practices Act of 1977 (the "FCPA"), and any other U.S. or foreign Law concerning anti-corruption or anti-bribery applicable to the Business, and no Seller is, to Sellers' Knowledge, being investigated by any Governmental Entity with respect to, or been given notice in writing by a Governmental Entity of, any violation by any of Sellers of the FCPA or any other U.S. or foreign Law concerning anti-corruption or anti-bribery applicable to the Business.

3.9. Brokers and Finders. Except as disclosed on Section 3.9 of the Seller Disclosure Schedule, there are no fees or expenses payable by any Seller to any investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Sellers in connection with the transactions contemplated hereby.

3.10. Employees. No Seller is a party to any collective bargaining agreement or other agreement with a labor union or like organization covering any of the Scheduled Employees. As of the date hereof, there is no pending or, to the Knowledge of Sellers, threatened strike, lockout, slowdown or work stoppage involving the Scheduled Employees.

3.11. Employee Benefit Plans. No Seller maintains or contributes to any Seller Plan, including any plan that is subject to Section 412 of the Code or Section 302 or Title IV of ERISA or any “multiemployer plans” within the meaning of Section 3(37) of ERISA.

3.12. Title to Transferred Assets. Sellers, as applicable, have good and valid title to, or in the case of leased assets, have or will have on the Closing Date good and valid leasehold interests in, all Transferred Assets, free and clear of all Liens (other than Permitted Encumbrances) and, at the Closing, Buyer will be vested with good and valid title to, or in the case of leased assets, good and valid leasehold interest in, the Transferred Assets, free and clear of all Liens (other than Permitted Encumbrances) and Excluded Liabilities, to the fullest extent permissible under Law, including pursuant to Section 363(f) of the Bankruptcy Code.

3.13. Intellectual Property.

(a) Sellers own, as applicable, all Transferred Intellectual Property, free and clear of all Liens other than Permitted Encumbrances. To the Knowledge of Sellers, all Transferred Intellectual Property is valid, subsisting and enforceable, and is not subject to any outstanding Order, judgment, decree or agreement adversely affecting Sellers’ use thereof or rights thereto.

(b) To the Knowledge of Sellers’ (i) Sellers’ conduct of the Business as currently conducted does not infringe, misappropriate or otherwise violate the Intellectual Property of any other Person, (ii) no Seller has received any written notice alleging any such infringement, misappropriation or violation by any Seller of Intellectual Property owned by any other Person, and (iii) none of the Transferred Intellectual Property is being infringed upon, misappropriated or otherwise violated by any other Person.

(c) There is no Action pending before any Governmental Entity (other than the Bankruptcy Case) concerning the ownership, validity, registrability, enforceability, infringement, misappropriation or violation of any material Transferred Intellectual Property. None of the Transferred Intellectual Property is subject to any outstanding injunction, directive, Order, decree, award, settlement or judgment restricting the use or validity thereof.

(d) To the Knowledge of Sellers, there have been no security breaches of or unauthorized access to the technology and computer systems and infrastructure, owned by Sellers and used in connection with the Business, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.14. Environmental Matters. Except for matters that relate to an Excluded Liability:

(a) the Business and the Transferred Assets are in compliance in all material respects with all applicable Environmental Laws;

(b) there are no written notices, writs, injunctions, decrees, Orders or judgments outstanding, or any actions, suits, proceedings or investigations pending or threatened, relating to compliance with or material Liability under any Environmental Law affecting the Business, the Transferred Owned Property or the Transferred Leased Property; and

(c) there has been no waste generated or released by Seller or any of its Affiliates or any legally responsible predecessor corporation of Seller, that has given or could reasonably be expected to give rise to any Liability under any Environmental Law for which the Business would incur material Liability.

3.15. Taxes. Other than as set forth in Section 3.15 of the Seller Disclosure Schedule:

(a) Sellers have filed all material Tax Returns with respect to the Transferred Assets required under applicable Law to be filed by Sellers with the appropriate Governmental Entities in all jurisdictions in which such Tax Returns are required to be filed prior to the Closing Date (taking into account any extension of time to file); and (ii) all material Taxes shown as due from Sellers on such Tax Returns with respect to such assets have been paid or arrangements for the payment thereof have been made, except to the extent nonpayment of which is permitted or required by the Bankruptcy Code.

(b) Each Seller has filed all material Tax Returns required under applicable Law to be filed by such Seller with the appropriate Governmental Entities in all jurisdictions in which such Tax Returns are required to be filed prior to the Closing Date (taking into account any extension of time to file); and (ii) all material amounts of Taxes shown as due on such Tax Returns have been paid or arrangements for the payment thereof have been made, except to the extent nonpayment of which is permitted or required by the Bankruptcy Code, and only to the extent that failure to file such Tax Return or to pay such Taxes would give rise to a Lien (other than a Permitted Encumbrance) on the Transferred Assets.

(c) No audit or other proceeding with respect to any material amounts of Taxes or material Tax Returns with respect to the Transferred Assets is currently in progress, or, to the Knowledge of Sellers, has been proposed or threatened.

(d) No Seller has received written notice of any outstanding, proposed or assessed Tax deficiency that has not been paid or accrued for and in accordance with applicable Law, nor has any Seller executed any waiver of any statute of limitations in respect of Taxes nor agreed to any extension of time with respect to a Tax assessment, collection or deficiency, which notice, waiver, or extension of time could give rise to a Lien (other than a Permitted Encumbrance) on the Transferred Assets.

(e) There are no liens for Taxes other than Permitted Encumbrances upon any of the Transferred Assets.

(f) There are not any outstanding ruling requests, and no rulings have been received, by any Seller relating to Taxes which ruling requests or rulings relate to Taxes which could be a Lien (other than a Permitted Encumbrance) on the Transferred Assets.

(g) Each Seller has complied with all applicable Laws relating to the payment and withholding of Taxes (including withholding and reporting requirements under Code Sections 1441 through 1464, 3401 through 3406, 6041 and 6049 and similar provisions under any other applicable Law) in all material respects and have, within the time and in the manner prescribed by Law, withheld from employee wages, if any, and paid over to the proper Governmental Entity all material required amounts.

(h) Each Seller has collected all material amounts of sales and use Taxes required to be collected, and has remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Entity, or has been furnished properly completed exemption certificates (and has maintained all such records and supporting documents in the manner required by all applicable sales and use Tax statutes and regulations).

(i) No Seller has (i) deferred payment of payroll Taxes or (ii) taken, claimed or applied for an employee retention tax credit, in each case, pursuant to the CARES Act.

(j) No Seller has executed any power of attorney with respect to any Tax or Tax Return, other than powers of attorney that are no longer in force.

3.16. Insurance. Section 3.16 of the Seller Disclosure Schedule sets forth a true and complete list of all insurance policies (the “Existing Insurance Policies”) maintained by Sellers applicable to the Transferred Assets, together with the insurer, the amount of the coverage, the type of insurance, the policy number and any pending claims thereunder. Except as set forth on Section 3.16 of the Seller Disclosure Schedule, Sellers are up-to-date in the payment of all premiums and other amounts payable under the Existing Insurance Policies to maintain the Existing Insurance Policies in full force and effect, and Sellers shall continue to make all such payments until the Closing. As of the date hereof, all such policies are in full force and effect and are sufficient for compliance by Sellers with all applicable Laws.

3.17. Real Property. On the Closing Date, Sellers shall convey to Buyer pursuant to Section 363 of the Bankruptcy Code good and marketable fee simple title and the deed to the Transferred Owned Property, free and clear of all Liens other than Permitted Encumbrances. Except as set forth on Section 3.17 of the Seller Disclosure Schedule, Sellers have not leased or otherwise granted to any Person the right to use or occupy the Transferred Owned Property or any portion thereof, and there are no Persons in possession or Person having the right to occupy or use any of the Transferred Owned Property. Sellers have no leases of any real property other than as set forth on Section 3.17 of the Seller Disclosure Schedule. Except as set forth on Section 3.17 of the Seller Disclosure Schedule, Sellers have not granted any options to purchase or lease or rights of first refusal to purchase or lease any of the Transferred Owned Property. The civic addresses of the parcels comprising the Transferred Owned Property are set out in Section 3.17 of the Seller Disclosure Schedule.

3.18. Status of Transferred Assets. Except as set forth on Section 3.18 of the Seller Disclosure Schedule, the Fixtures and Equipment and other tangible personal property are in good operating condition and repair and have been reasonably maintained consistent with standards generally followed in the industry (giving due account to the age and length of use of same, ordinary wear and tear excepted), are adequate and suitable for their present and intended uses and,

in the case of plants, buildings and other structures (including the roofs thereof), are structurally sound. To the Knowledge of Sellers, since the commencement of the Bankruptcy Case, no Fixtures and Equipment or other tangible personal property has been removed or transferred from the Business or otherwise sold, leased, assigned or transferred, other than replacements or repairs of Fixtures and Equipment in the Ordinary Course. The Transferred Assets constitute all of the assets of every nature and kind whatsoever necessary for Buyer to conduct and operate the Business immediately after the Closing in the manner previously conducted by Sellers.

3.19. Full Disclosure. There has been no event, transaction or information regarding the Business or the Transferred Assets that has come to Sellers' Knowledge that has not been disclosed to Buyer in writing that could reasonably be expected to have a Material Adverse Effect.

3.20. No Other Representations or Warranties.

(a) Except for the representations and warranties contained in this Article III, no Seller nor any other Person on Sellers' behalf makes any other express or implied representation or warranty with respect to Sellers, the Business, the Transferred Assets, the Assumed Liabilities or the transactions contemplated hereby, and each Seller expressly disclaims any other representations or warranties, whether made by Sellers, any Affiliate of Sellers or any of Sellers' or their Affiliates' respective Representatives.

(b) Each Seller acknowledges and agrees that, except for the representations and warranties expressly set forth in Article IV, neither Buyer nor any other Person has made any express or implied representation or warranty with respect to the transactions contemplated hereby or with respect to the accuracy or completeness of any other information provided, or made available, to Sellers in connection with the transactions contemplated hereby and none of Sellers have relied on any representation or warranty other than those expressly set forth in Article IV.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers:

4.1. Organization; Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and, to the extent such concept applies, is in good standing as a foreign legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, in each case, except where the failure to be so qualified or in good standing or to have such power or authority, would not, individually or in the aggregate, reasonably be likely to prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement.

4.2. Authority; Approval.

(a) Buyer has all right, power and authority to enter into and perform its obligations under the Transaction Documents to which it is or will become a party.

(b) The execution, delivery and performance of Buyer's obligations under the Transaction Documents to which it is or will become a party, and the performance of Buyer of its obligations under the Transaction Documents, have been dully and validly authorized by all requisite limited liability company action on the part of Buyer.

(c) No additional corporate or shareholder authorization or consent is required in connection with the execution, delivery and performance by Buyer of this Agreement or any of the other Transaction Documents to which it is or will become party.

(d) This Agreement has been duly executed and delivered by Buyer and, when executed and delivered by Sellers, will constitute a valid and binding agreement of Buyer enforceable against Buyer in accordance with its terms, subject to the Equitable Exception.

4.3. Governmental Filings; No Violations.

(a) Subject to the issuance of the Sale Order and any other Order required by the Bankruptcy Court in connection with the transactions contemplated hereby, no filing, notice, report, consent, registration, approval, permit or authorization is required to be given, filed or obtained by Buyer to or from any Governmental Entity in connection with the execution, delivery and performance by Buyer of this Agreement or the transactions contemplated hereby.

(b) The execution, delivery and performance by Buyer of this Agreement does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of or default (with or without notice, lapse of time or both) under, or give rise to a right of termination, loss of rights, adverse modification of provisions, cancellation or acceleration of any obligation under (i) any provision of the articles, by-laws or comparable governing documents of Buyer, (ii) subject to the Sale Order, any Law or Order to which Buyer is subject or (iii) subject to the Sale Order, any Contracts to which Buyer is a party, except, in the case of clauses (i) and (ii) above, for any such breach, violation, termination, default, creation or acceleration that would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement.

4.4. Litigation. There are no Actions pending, or, to the Knowledge of Buyer, threatened against Buyer, and Buyer is not subject to any Order, in each case, that would, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement.

4.5. Available Funds. Buyer has sufficient funds available to it in cash to pay or cause to be paid the Purchase Price, all Cure Costs and the other fees and expenses required to be paid by Buyer in connection with the transactions contemplated hereby, and to effect the transactions contemplated hereby. Upon the consummation of the transactions contemplated hereby, (a) Buyer will not be insolvent as defined in Section 101 of the Bankruptcy Code, (b) Buyer will not be left with unreasonably small capital, and (c) Buyer will not have incurred debts beyond its ability to pay such debts as they mature. There are no bankruptcy, reorganization or arrangement proceedings pending against, being contemplated by, or to the Knowledge of Buyer, threatened against Buyer.

4.6. Brokers and Finders. Except for fees and expenses payable by Buyer, there are no fees or expenses payable to any investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Buyer in connection with the transactions contemplated hereby.

4.7. Adequate Assurances Regarding Executory Contracts. Buyer is and will be capable of satisfying the conditions contained in Section 365 of the Bankruptcy Code with respect to the Transferred Assets, Transferred Owned Property, Transferred Leased Property, and Transferred Intellectual Property.

4.8. No Other Representations or Warranties.

(a) Except for the representations and warranties contained in this Article IV, neither Buyer nor any other Person makes any other express or implied representation or warranty with respect to the transactions contemplated hereby, and Buyer disclaims any other representations or warranties, whether made by Buyer, any Affiliate of Buyer or any of Buyer's or its Affiliate's respective Representatives.

(b) Buyer acknowledges and agrees that, except for the representations and warranties expressly set forth in Article III, no Seller nor any other Person has made any express or implied representation or warranty with respect to the transactions contemplated hereby, the Business, either Seller, the Transferred Assets, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities, the accuracy or completeness of any other information provided, or made available, to Buyer in connection with the transactions contemplated hereby and Buyer has not relied on any representation or warranty other than those expressly set forth in Article III.

(c) Buyer acknowledges and agrees that the enforceability of this Agreement against Sellers is subject to entry of the Sale Order.

ARTICLE V COVENANTS

5.1. Access.

(a) From the date hereof through the Closing Date, subject to Section 5.1(b), Buyer will be entitled, through its Representatives, to have reasonable access to the Scheduled Employees, the Transferred Assets, the Business and the Assumed Liabilities. Any such access will be conducted upon reasonable advance notice and under reasonable circumstances and will be subject to restrictions under applicable Law. Subject to Section 5.2, Sellers will direct and use their commercially reasonable efforts to cause their Representatives to cooperate with Buyer and Buyer's Representatives in connection with such access, and Buyer and its Representatives will cooperate with Sellers and their Representatives; provided that: (i) any such access shall be conducted at Buyer's expense, in accordance with applicable Law (including applicable privacy and competition laws), under the supervision of Sellers' personnel and in such a manner as to maintain confidentiality and not to interfere with the normal operations of the Business of Sellers and their Affiliates and (ii) the foregoing shall not require Sellers to disclose information or materials (A) protected by attorney-client, attorney work product or other legally recognized privileges or immunity from disclosure or the disclosure of which would result in the disclosure

of any trade secrets of third parties or violate any applicable Laws related to the exchange of information or any obligation of any Seller with respect to confidentiality; or (B) relating to other bids or potential bids for any of the Transferred Assets.

(b) All information received pursuant to this Section 5.1 shall be governed by the terms of Section 5.6.

5.2. Competing Transactions. Each Party acknowledges that this Agreement and the sale of the Transferred Assets and assumption and assignment of the Assumed Contracts are subject to approval by the Bankruptcy Court and the consideration and acceptance by Sellers of higher or better competing bids in respect of all or any part of the Transferred Assets or the Assumed Contracts, as determined in accordance with the provisions of the Bid Procedures Order.

5.3. Cooperation; Status Updates; Regulatory Filings.

(a) Cooperation. Subject to the terms and conditions set forth in this Agreement and the Bankruptcy Orders of the Bankruptcy Court, the Parties shall cooperate with each other and use their respective commercially reasonable efforts to: (i) take or cause to be taken all actions reasonably necessary, proper or advisable on their part under this Agreement or applicable Law to consummate the transactions contemplated hereby as promptly as reasonably practicable in accordance with the Bid Procedures; (ii) execute, acknowledge and deliver in proper form any further documents, certificates, agreements and other writings, and take such other action as such other Party may reasonably require, in order to effectively carry out the intent of the Transaction Documents, including such affidavits and instruments as required by Buyer's title company to issue a title policy to Buyer; (iii) make or cause to be made all registrations, filings, notifications, submissions and applications with, give all notices to and obtain any consents, governmental transfers, approvals, Orders, qualifications and waivers from any Governmental Entity necessary for the consummation of the transactions contemplated hereby; (iv) not take any action prior to the Closing that would reasonably be expected to prevent, materially impair or materially delay the consummation of the transactions contemplated hereby, except to the extent such action is otherwise expressly contemplated by this Agreement or the Bid Procedures or required by Law or the Bankruptcy Court; (v) cooperate with the other Party and take such actions as such other Party may reasonably request in connection with the consummation of the transactions contemplated hereby; and (vi) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated hereby.

(b) Status Updates. Each Seller and Buyer shall reasonably promptly notify the other Party or Parties, as applicable, in writing (email being sufficient) of the occurrence, to such Parties' or Party's, as applicable, knowledge, of any event or condition, or the existence of any fact or circumstance, that would reasonably be expected to result in any of the conditions set forth in Article VI not being satisfied as of a reasonably foreseeable Closing Date.

(c) Regulatory Filings. Sellers and Buyer shall prepare and file reasonably promptly all documentation to effect any necessary notices, reports and other filings and to obtain reasonably promptly all consents, clearances, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any Governmental Entity in order to consummate the transactions contemplated hereby within five Business Days after the date of this Agreement.

(d) Commercially Reasonable Efforts.

(i) Without limiting the generality of the foregoing, Buyer and Sellers agree to take or cause to be taken the following actions:

(A) the prompt use of its commercially reasonable efforts to avoid the entry of any permanent, preliminary or temporary injunction or other decree, decision, determination or judgment that would reasonably be expected to delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated hereby;

(B) the use of commercially reasonable efforts to cooperate in the defense through litigation on the merits of any claim asserted in any court, agency or other proceeding by any Person or entity, including any Governmental Entity, seeking to delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated hereby; and

(C) the prompt use of its commercially reasonable efforts to cooperate to take, in the event that any Order is entered or issued, or becomes reasonably foreseeable to be entered or issued, in any regulatory proceeding or inquiry of any kind that would make consummation of the transactions contemplated hereby in accordance with the terms of this Agreement unlawful or that would reasonably be expected to delay, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated hereby, any and all steps (including the appeal thereof or the posting of a bond necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate or remove such actual, anticipated or threatened Order) so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement.

5.4. Tax Matters.

(a) Transfer Taxes. [Solely to the extent not exempt in accordance with section 1146 of the Bankruptcy Code, all documentary, stamp, transfer, including land transfer, registration charges, including motor vehicle registration, sales, including sales, use, value added, excise, consumption, gross receipt, turnover, and other similar non-Income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the transactions contemplated hereby (collectively, “Transfer Taxes”) will be borne 50% by Buyer, and 50% by Sellers, regardless of the Party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Upon the reasonable request of any Party, the other Party or Parties will furnish proof of the payment of those Transfer Taxes to the appropriate Governmental Entity, where permitted. Sellers and Buyer will consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws relating to such Transfer Taxes, and will cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for or exemptions from such Transfer Taxes, including preparing exemption certificates and other instruments as are applicable to claim available exemptions from the payment of Transfer Taxes under applicable Law (including any exemption that Sellers’ sale of the Transferred Assets be

exempted from Transfer Taxes pursuant to Section 1146 of the Bankruptcy Code) and executing and delivering such affidavits and forms as are reasonably requested by the other Party.]²

(b) Asset Taxes. Sellers shall be allocated and bear all Asset Taxes for any period or portion thereof ending prior to the Closing Date, and Buyer shall be allocated and bear all Asset Taxes for any period or portion thereof that begins at or after the Closing Date. For purposes of this Section 5.4(b), (i) Asset Taxes that are based upon or related to gross receipts or imposed on a transactional basis (other than such Asset Taxes described in clause (ii)), shall be allocated to the period in which the transaction giving rise to such Asset Taxes occurred, and (ii) Asset Taxes that are ad valorem, property or other Asset Taxes imposed on a periodic basis pertaining to a Straddle Period shall be allocated between the portion of such Straddle Period ending immediately prior to the Closing Date and the portion of such Straddle Period beginning at the Closing Date by prorating each such Asset Tax based on the number of days in the applicable Straddle Period that occur before the date on which the Closing Date occurs, on the one hand, and the number of days in such Straddle Period that occur on or after the date on which the Closing Date occurs, on the other hand. For the avoidance of doubt, to the extent any Seller has prepaid or deposited any amounts of any Asset Taxes prior to the Closing, such Seller shall receive credit for such amounts in determining payments of Asset Taxes. Buyer shall be responsible for the preparation and timely filing of any Tax Returns and the payment to the applicable Governmental Entity of all Asset Taxes that become due or payable on or after the Closing Date, provided that to the extent any such Tax Returns relate to a Pre-Closing Tax Period or a Straddle Period, Sellers shall have the right to review and comment upon such Tax Returns prior to the filing thereof and Buyer shall incorporate any such reasonable comments that are timely provided and not file such Tax Returns without the consent of Sellers (not to be unreasonably withheld, conditioned, or delayed). Sellers shall be responsible for the preparation and timely filing of any Tax Returns and payment to the applicable Governmental Entities of all Asset Taxes that become due or payable prior to the Closing Date.

(c) Purchase Price Allocation.

(i) Subject to Section 5.2, reasonably promptly after the Closing Date, but no later than 45 days thereafter, Buyer will prepare and deliver to Sellers, an allocation schedule setting forth the Purchase Price, Assumed Liabilities, and any other items that are treated as consideration paid by Buyer for applicable Tax purposes (collectively, the “Tax Consideration”) to be allocated among Sellers and among the Transferred Assets of each Seller, pursuant to (and to the extent necessary to comply with) Section 1060 of the Code and the applicable regulations promulgated thereunder (the “Proposed Allocation Statement”). Sellers will have 20 Business Days following delivery of the Proposed Allocation Statement during which to notify Buyer in writing (an “Allocation Notice of Objection”) of any objections to the Proposed Allocation Statement, setting forth in reasonable detail the basis of their objections. If Sellers fail to deliver an Allocation Notice of Objection in accordance with this Section 5.4(c)(i), the Proposed Allocation Statement will be conclusive and binding on all Parties and will become the “Final

² NTD: subject to further review by Buyer. The potential scope of transfer taxes needs to be understood before EQ can agree to a 50/50 split.

Allocation Statement.” If Sellers submit an Allocation Notice of Objection, then for 20 Business Days after the date Buyer receives the Allocation Notice of Objection, Buyer and Sellers will use their commercially reasonable efforts to agree on the allocations in good faith. Failing such agreement within 20 Business Days of such notice, the unresolved allocations will be submitted to an independent, nationally recognized accounting firm mutually agreeable to Buyer and Sellers, which firm will be instructed to determine its best estimate of the allocation schedule based on its determination of the unresolved allocations and provide a written description of the basis for its determination within 45 Business Days after submission, such written determination to be final, binding and conclusive. The allocations determined by such accounting firm (or those on the Proposed Allocation Statement to the extent Sellers did not object) will be conclusive and binding on all Parties and will become the “Final Allocation Statement.” The fees and expenses of such accounting firm will be paid by and apportioned between Sellers and Buyer based on the aggregate dollar amount in dispute and the relative recovery as determined by the accounting firm or Sellers and Buyer, respectively (such that, by way of example, if the amount in dispute is \$100 and it is resolved \$70 in favor of Buyer and \$30 in favor of Sellers, then Sellers would bear 70% of the fees and expenses of such accounting firm and Buyer would bear 30% of the fees and expenses). For the avoidance of doubt, in administering any Action, the Bankruptcy Court shall not be required to apply the Final Allocation Statement in determining the manner in which the Purchase Price should be allocated as between Sellers and their respective estates.

(ii) Except to the extent otherwise required by a “determination” within the meaning of Section 1313(a) of the Code or by applicable Law, or as agreed to between the Parties as a result of any proposed assessment or reassessment by a relevant Tax authority, Sellers and Buyer and their respective Affiliates will report, act and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with the Final Allocation Statement and neither Sellers nor Buyer will take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation Statement.

(d) Cooperation and Audits. Buyer and Sellers will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records and documents relating to Taxes with regard to the Transferred Assets and Continuing Employees until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes. Notwithstanding anything in this Section 5.4(d) to the contrary, Sellers, Buyer and their respective Affiliates shall not be required to provide to Sellers and their Affiliates or Buyer and its Affiliates, as the case may be, any records, Tax Returns or any other information, in each case, which includes any information not solely related to the Transferred Assets, or Continuing Employees.

5.5. Employment Matters.

(a) Schedule 5.5(a) sets forth the names of all individuals who are Seller Employees as of the date hereof and (x) whose job responsibilities relate primarily to the

ownership, operation or use of the Transferred Assets or (y) whom Buyer and Sellers have otherwise designated as Scheduled Employees (the individuals set forth on Schedule 5.5(a), as such Schedule may be updated in accordance with this Section 5.5(a), the “Scheduled Employees”). Schedule 5.5(a) also sets forth, for each Scheduled Employee as applicable, the Scheduled Employee’s job title, date of hire, annual base salary, and target bonus opportunity for 2023 (if applicable) (the “Scheduled Employees Schedule”). The Scheduled Employees Schedule shall be held in confidence and shall not be filed with the Bankruptcy Court (unless under seal). From time to time following the date hereof (and not later than 15 Business Days prior to the date of the Sale Hearing), to the extent necessary, Sellers shall update the Scheduled Employees Schedule to reflect any changes thereto permitted by this Agreement. Sellers shall provide Buyer with any such updated Scheduled Employees Schedule at least 12 Business Days prior to the date of the Sale Hearing.

(b) At least ten Business Days prior to the date of the Sale Hearing, Buyer shall provide Sellers with its list of Target Employees.

(c) At least ten Business Days prior to the date of the Sale Hearing, Buyer shall deliver to Sellers the form of written offer of employment that is to be provided to the Target Employees.

(d) No later than seven Business Days prior to the date of the Sale Hearing, Buyer shall, in its sole discretion, in consultation with Sellers, offer employment effective as of the Closing in writing to each of the Target Employees (who are not independent contractors, if any).

(e) No later than seven Business Days prior to the date of the Sale Hearing, Buyer shall, in its sole discretion, offer to retain the services of the Target Employees who are independent contractors on terms and conditions substantially similar to the terms and conditions of each such Target Employee’s contract with the applicable Seller.

(f) No later than two Business Days prior to the date of the Sale Hearing, Buyer shall deliver to Sellers a list identifying: each Target Employee who has then accepted Buyer’s offer of employment or engagement (each Target Employee who accepts such offer on or prior to the Closing Date and commences employment or engagement with Buyer, a “Continuing Employee”), and a list identifying: each Target Employee who has then rejected Buyer’s offer of employment or engagement. In the event any, some or all of the Target Employees do not accept offers of employment or engagement with Buyer, no Material Adverse Effect shall have been deemed to occur solely due to such refusal.

(g) Nothing in this Agreement is intended to (i) prevent Buyer or any of its Affiliates from amending or terminating any compensation or benefit plan of Buyer or its Affiliates on or after the Closing Date in accordance with the terms of such plan and applicable Law, or (iii) prevent Buyer or any of its Affiliates from terminating the employment of any Continuing Employee. No current or former employee of Sellers or any Seller Affiliate or any beneficiary or dependent thereof is entitled to any third party beneficiary or other rights under this Section 5.5 or under any other provisions of this Agreement with respect to the compensation, terms and conditions of employment and/or benefits that may be provided to any such employee or

beneficiary or dependent by Sellers, Buyer or any of their respective Affiliates or under any benefit plan which Sellers, Buyer or any of its Affiliates may maintain, other than what is legally required in accordance with applicable Laws.

5.6. Confidentiality.

(a) Except as provided in this Section 5.6, no Party, nor its respective employees, agents, partners, affiliates, officers, directors and advisors, shall publish, disclose, or otherwise divulge Confidential Information of a Party to any Person at any time during or for two (2) years after the Closing or earlier termination of this Agreement, without the applicable Party's prior express written consent.

(b) A receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or otherwise by Applicable Laws, but only, to the extent practicable and legally permissible, after notice to the providing Party and affording the providing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the receiving Party shall reasonably cooperate, at the providing Party's expense, in connection with the providing Party's efforts to obtain such protective order or other relief. Further, subject to Section 5.2, each Party shall use all commercially reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by Applicable Laws, and to the extent practicable and legally permissible, shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise.

(c) Notwithstanding anything to the contrary herein, each Party may provide any Confidential Information: (i) to any Governmental Authority or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required to perform under or administer this Agreement; and (ii) to its Affiliates, and, in the case of Buyer, its limited partners, and its and their respective representatives and other advisors (including attorneys, accountants, consultants and rating agencies); provided such Persons agree to preserve the confidentiality of the Confidential Information in accordance with the terms and provisions of this Agreement or are otherwise required to maintain the confidentiality of such Confidential Information (it being agreed that the receiving Party shall be responsible and liable for any failure of such Persons to comply with the terms and provisions of this Agreement). Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially consistent with the obligations of this Section 5.6. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

(d) Notwithstanding anything to the contrary contained herein, nothing in this Section 5.6(d) shall limit the ability of the Parties or any of their respective Affiliates to make any disclosure to their respective tax advisors or any taxing authority.

5.7. Personal Information. The collection, use and disclosure of Personal Information by Buyer before the Closing is restricted to those purposes that relate to the transactions

contemplated by this Agreement, and Buyer will protect that Personal Information by security safeguards appropriate to the sensitivity of the information. If, for any reason, the Closing does not occur, the Personal Information will be returned to Sellers or destroyed within a reasonable time. Following the Closing, Buyer will: (i) use and disclose the Personal Information transferred to it under the terms of this Agreement solely for the purposes for which that Personal Information was collected or permitted to be used or disclosed before the transaction was completed, or otherwise as permitted by applicable Law including applicable privacy laws; (ii) protect that Personal Information by security safeguards appropriate to the sensitivity of the information; (iii) notify the individuals who are the subject of the Personal Information, including the Continuing Employees, that the transaction has been completed that the their Personal Information has been disclosed to Buyer; and (iv) give effect to any withdrawal of consent made to the collection, use, and disclosure of the Personal Information in accordance with applicable Law including applicable privacy laws.

5.8. Publicity. Except as required by the Bankruptcy Court in connection with the Bankruptcy Case, any disclosure statement that the Debtors may file in connection with the Bankruptcy Case and any public disclosure issued by any Seller as required by Law, and subject to Section 5.2, prior to the Closing or earlier termination of this Agreement, neither Party will issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party, except that such consent shall not be required in connection with ordinary or required pleadings made by any Debtor in the Bankruptcy Court or if disclosure is otherwise required by applicable Law, the rules and regulations of applicable national securities exchanges on which securities of AppHarvest are listed from time to time, or by the Bankruptcy Court; provided, however, that the Parties, will use their commercially reasonable efforts consistent with such applicable Law, applicable national securities exchanges, or Bankruptcy Court requirement to consult with the other Party with respect to the text of any such required disclosure.

5.9. Insurance Matters.

(a) Sellers shall, and shall cause their Affiliates to, assign, to the extent assignable, to Buyer any and all proceeds owing to Sellers under Sellers' or any of their Affiliates' third party insurance policies written prior to the Closing in connection with (i) the damage or destruction of any of the Transferred Assets from and after the date of this Agreement and prior to the Closing that is, or would have been but for such damage or destruction, included in the Transferred Assets or (ii) any Assumed Liability (other than, in the case of this clause (ii), where insurance proceeds are directly or indirectly funded by Sellers or any of their Affiliates through self-insurance or other similar arrangements); provided that, Sellers shall not be required to, or to cause their Affiliates to, assign to Buyer any Excluded Insurance Proceeds. If such proceeds are not assignable, Sellers agree to pay any such proceeds received by them or any of their Affiliates to Buyer promptly upon the receipt thereof.

(b) Except as set forth in Section 1.1(k), from and after the Closing, the Business, the Transferred Assets and the Assumed Liabilities shall cease to be insured by Sellers' or their Affiliates' insurance policies or by any of their self-insurance programs or other similar arrangements, and Buyer (i) agrees on or prior to Closing to arrange for its own insurance policies (including self-insurance or similar arrangements funded directly or indirectly by Buyer or any of

its Affiliates) with respect to the Business, the Transferred Assets and the Assumed Liabilities covering all periods from and after the Closing and (ii) without prejudice to any right to indemnification under this Agreement or any other Transaction Document, agrees not to seek, through any means, to benefit from any of Sellers' or their Affiliates' insurance policies which may provide coverage for claims relating in any way to the Business.

5.10. Conduct of Sellers. Until the earlier of the termination of this Agreement under Section 7.1 or the Closing, except (a) (i) as required by applicable Law, (ii) as required by the DIP Financing, or (iii) as authorized by any Order of the Bankruptcy Court, (b) as otherwise expressly contemplated by this Agreement or another Transaction Document, (c) with the prior written consent of Buyer, not to be unreasonably withheld, conditioned or delayed, (d) as set forth on Schedule 5.10, or (e) to the extent related to any Excluded Assets or Excluded Liabilities, Sellers will, or will cause the applicable Seller Affiliate to, consistent with the terms of the DIP Financing, (x) operate the Transferred Assets only in the Ordinary Course consistent with past practice, (y) use commercially reasonable efforts to preserve intact the Transferred Assets, reasonable wear and tear excepted, and as necessary to keep all of the Transferred Assets in substantially the same condition as at the date hereof, and (z) notwithstanding anything to the contrary in clauses (x) or (y), not:

(a) sell, assign, license, transfer, convey, or waive or release any right or claim relating to any of the Transferred Assets, lease, surrender, relinquish or otherwise dispose of any portion of the Transferred Assets;

(b) increase the total number of employees working as part of the Transferred Assets;

(c) except as required by the terms of and in accordance with any key employee retention program or key employee incentive program implemented by Sellers, or any other written employment or engagement agreement currently in effect between the applicable Seller and the employee, or applicable Laws, increase the compensation payable (whether through the payment of, or agreement to pay, bonus amounts or otherwise) to any employees;

(d) subject any portion of the Transferred Assets to any encumbrance, except for Permitted Encumbrances;

(e) incur any capital expenditures (other than for reasonably necessary repairs and Ordinary Course maintenance);

(f) amend or modify in any material respect, breach or terminate any Assumed Contract;

(g) take any action that would reasonably be expected to result in a Material Adverse Effect;

(h) sell, lease, remove from the Transferred Owned Property, transfer, license or otherwise dispose of, abandon or permit to lapse, fail to take any material action necessary to maintain, enforce or protect, or permit or create any encumbrance (other than Permitted Encumbrances) on any of the Transferred Assets; or

- (i) agree or commit to do any of the foregoing.

Nothing contained in this Agreement is intended to give Buyer or its Affiliates, directly or indirectly, the right to control or direct the Business prior to the Closing.

5.11. Notification of Certain Matters.

(a) Sellers will promptly notify Buyer: (i) of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) of any notice or other communication from any Governmental Entity related to or in connection with the transactions contemplated by this Agreement; or (iii) upon discovery thereof, any variances from, or the existence or occurrence of any event, fact or circumstance arising after the execution of this Agreement that would reasonably be expected to cause, any of the representations and warranties contained in Article III to be untrue or inaccurate such that the condition set forth in Section 6.2(a) will not be able to be satisfied. If the subject matter of any such notification required by the previous sentence requires any change in the Seller Disclosure Schedule, Sellers shall deliver to Buyer prior to the Closing a supplement to such Seller Disclosure Schedule (the “Updated Schedules”) with such change; provided that in no event will any Updated Schedule serve to amend, supplement or modify the Schedules for purposes of Section 6.2(a) or limit the remedies available to Buyer under or with respect to this Agreement; provided, further that if the Closing occurs, the Updated Schedules will be considered and deemed to be part of the Seller Disclosure Schedule for all purposes under this Agreement, and each reference in this Agreement to a particular Seller Disclosure Schedule will mean such Seller Disclosure Schedule in, or as updated by, the Updated Schedules; and (iv) the occurrence of any fact or circumstance that could reasonably be expected to have a Material Adverse Effect.

(b) Buyer will promptly notify Sellers: (i) of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) of any notice or other communication from any Governmental Entity related to or in connection with the transactions contemplated by this Agreement; or (iii) upon discovery thereof, any variances from, or the existence or occurrence of any event, fact or circumstance arising after the execution of this Agreement that would reasonably be expected to cause, any of the representations and warranties contained in Article IV to be untrue or inaccurate such that the condition set forth in Section 6.3(a) will not be able to be satisfied; and (iv) of any Actions relating to or involving or otherwise affecting Buyer or its Affiliates that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.4 or that relate to the transactions contemplated by this Agreement.

5.12. Transfer of Permits.

(a) From and after the date hereof, Sellers, on the one hand, and Buyer, on the other hand, shall reasonably cooperate to transfer to Buyer as of the Closing Date all Permits included in the Transferred Assets.

(b) In addition, at any time prior to the Closing Date, Buyer may, at its sole discretion and at its sole expense, request for Sellers to maintain in effect any Permit for up to three months after the Closing for the purposes of passing through the benefits of such Permit to

Buyer, and (i) provided Buyer timely pays any costs associated with such Permit, including any costs referred to in clause (iii) below and to the extent practicable and permitted by applicable Law, Sellers shall use commercially reasonable efforts to maintain in effect such Permit, (ii) Sellers and Buyer shall use commercially reasonable efforts to agree in writing on arrangements for the purposes of passing through the benefits of such Permit to Buyer, and (iii) any such arrangements described in the foregoing shall be at the sole expense of Buyer.

5.13. Sellers' Obligations. Each Seller hereby acknowledges and agrees that their representations and warranties made hereunder are made jointly and severally, and their respective covenants and obligations under this Agreement are joint and several responsibilities. Each of Sellers agrees to be jointly and severally responsible for any damage, loss, cost and expense for which either of them may be responsible hereunder.

5.14. Bankruptcy Matters.

(a) At Buyer's reasonable request, and at Buyer's sole cost and expense, Sellers shall reasonably cooperate with Buyer for a period of 90 days following the Closing Date to allow Buyer to enter into an amendment of any Assumed Contract upon assumption of such Assumed Contract by Buyer (and Sellers shall reasonably cooperate with Buyer to the extent reasonably requested by Buyer in negotiations with the counterparties thereof for a period of 90 days following the Closing Date).

(b) Subject to Section 5.2, Sellers shall use their respective commercially reasonable efforts to obtain one or more Orders of the Bankruptcy Court, which Order(s) shall be in form and substance reasonably acceptable to Buyer, and shall reflect the terms and conditions set forth herein, to assume and assign the Assumed Contracts to Buyer.

(c) In the period between the execution of this Agreement and the hearing of the application for the Sale Order, Sellers shall use commercially reasonable efforts to obtain any consents or approvals required in respect of the Acquisition including any consents or approvals required of any Governmental Entity for the transfer or assignment of Permits to Buyer or the reissuance of Permits in favor of Buyer; provided that Sellers shall not be required to incur material expenses or to initiate any litigation or legal proceeding to obtain any such consent, approval, transfer, assignment, or re-issuance.

(d) If a non-Seller counterparty to an Assigned Contract is unwilling to consent to the assignment of an Assigned Contract or is unwilling to consent on terms acceptable to Buyer, acting reasonably, and such consent is required in order to assign such Assigned Contract, the application to the Bankruptcy Court for the Sale Order shall include a request that the Bankruptcy Court order that such Assigned Contract be assigned pursuant to and in accordance with the terms of the Bid and Contract Procedures Order.

(e) Sellers agree that all pleadings with respect to the transactions contemplated hereby, including any reply in support thereof or any pleading relating to the assignment or assumption of Contracts, shall be provided to Buyer as soon as reasonably practicable prior to filing and shall be reasonably acceptable to Buyer.

(f) Reasonably promptly after the date hereof and the commencement of the Bankruptcy Case, Sellers shall file with the Bankruptcy Court an application seeking entry of the Bid Procedures Order and the Sale Order as provided for in the Restructuring Support Agreement, dated on or about July 23, 2023 (the “RSA”).

(g) Subject to Section 5.2, Sellers shall use their commercially reasonable efforts, subject to Bankruptcy Court availability and approval, to (i) hold the Auction, unless an Auction is not required to be held pursuant to the terms of the Bid Procedures, as provided in the Bid Procedures and (ii) lodge and have entered the Sale Order as provided in the RSA.

(h) If the Sale Order, or any other Orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby are appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Order), Sellers shall promptly notify Buyer in writing thereof and subject to rights otherwise arising from this Agreement, Sellers shall use commercially reasonable efforts to cooperate with any such appeal, petition or motion.

ARTICLE VI CONDITIONS TO CLOSING

6.1. Conditions Precedent to Each Party’s Obligations. The Parties’ obligations to consummate the transactions contemplated hereby are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Parties in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order of a Governmental Entity of competent jurisdiction or any Law preventing, restraining, enjoining, making illegal or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(b) the Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order, each of which shall be a Final Order, in full force and effect and not subject to a stay.

6.2. Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated hereby is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Sellers contained in this Agreement shall be true and correct in all respects on and as of the Closing Date, without giving effect to any qualification therein as to materiality or Material Adverse Effect, as if made at and as of the Closing Date (except with respect to representations and warranties that speak as to a specified date, which representations and warranties shall be true and correct in all respects at and as of such date), except for those failures to be true and correct that, individually or in the aggregate, do not constitute a Material Adverse Effect;

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

(c) Buyer shall have received from Sellers a certificate signed by an authorized officer of Sellers on behalf of Sellers certifying that the conditions set forth in Section 6.2(a) and Section 6.2(b) have been satisfied;

(d) Since the date of this Agreement there shall not have occurred any Material Adverse Effect;

(e) Since the date of this Agreement, Sellers or their Affiliates shall not have breached any of its obligations under the DIP Financing and such breach remains outstanding or was not otherwise cured within the cure period available under the DIP Financing;

(f) Sellers shall have delivered, or cause to be delivered, to Buyer the documents and other deliverables listed in Section 2.4 that are required to be delivered by Sellers prior to the Closing;

(g) Buyer or its Affiliate or designee shall have executed a master lease agreement for the lease of each of (i) the facility owned and operated prior to the Closing by AHRF in Richmond, Kentucky associated with the Richmond Business (the “Richmond Facility”), and (ii) the facility owned and operated prior to the Closing by AHMF in Morehead, Kentucky associated with the Morehead Business (the “Morehead Facility”), each such lease being in form and substance satisfactory to Buyer in its sole discretion; and

(h) Buyer or its Affiliate or designee shall have entered into an agreement with AppHarvest to exclusively license to Buyer or its Affiliate the Trademark APPHARVEST for a minimum of five (5) years, which license shall be sub-licensable to any lessee of the Richmond Facility or Morehead Facility.

6.3. Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated hereby are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects on and as of the Closing Date, without giving effect to any qualification therein as to materiality or Material Adverse Effect, as if made at and as of the Closing Date (except with respect to representations and warranties that speak as to a specified date, which representations and warranties shall be true and correct in all respects at and as of such date), except for those failures to be true and correct that, individually or in the aggregate, do not constitute a Material Adverse Effect.

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

(c) Sellers shall have received from Buyer a certificate signed by an authorized officer of Buyer on behalf of Buyer certifying that the conditions set forth in Section 6.3(a) and Section 6.3(b) have been satisfied.

6.4. No Frustration of Closing Conditions. Subject to Section 5.2, neither Buyer nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 6.1, Section 6.2 or Section 6.3, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its commercially reasonable efforts (or such other applicable efforts standard expressly contemplated hereby) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

ARTICLE VII TERMINATION

7.1. Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

- (a) by mutual written consent of Buyer and Sellers;
- (b) automatically, upon the consummation of a Competing Transaction, or if the Bankruptcy Court approves a Competing Transaction;
- (c) by either Party, upon written notice to the other Party:
 - (i) if there is in effect a final non-appealable Order of a Governmental Entity of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby (it being agreed that the Parties will promptly appeal any adverse determination which is appealable and pursue such appeal in accordance with their respective obligations under Section 5.3(d)(i)(C) unless and until this Agreement is terminated pursuant to this Section 7.1);
 - (ii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or
 - (iii) if Buyer is not selected as a Successful Bidder or a Back-Up Bidder (each as defined in the Bid Procedures) upon entry of the Sale Order.
- (d) by Buyer:
 - (i) upon written notice to Sellers in the event of a breach by Sellers of any representation or warranty or any covenant or agreement contained in this Agreement that (A) would result in any of the conditions set forth in Section 6.1 or Section 6.2 not being satisfied if such breach remained uncured as of the Closing and (B) such breach is incapable of being cured prior to the Termination Date or, if capable of being cured, such breach has not been cured within 30 days after the giving of written notice by Buyer to Sellers of such breach; provided that Buyer is

not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement;

(ii) if, following entry by the Bankruptcy Court of the Sale Order, the Sale Order is materially amended, modified or supplemented without Buyer's prior written consent or is voided, reversed or vacated; or

(iii) if the Closing has not occurred by 5:00 p.m., prevailing Eastern time, on or before ten (10) days after the date of entry of the Sale Order (the "Termination Date"), which date may be extended by mutual written agreement of the Parties;

(e) by Sellers:

(i) upon written notice to Buyer in the event of a breach by Buyer of any representation or warranty or any covenant or agreement contained in this Agreement, if (A) such breach would result in a failure of a condition set forth in Section 6.1 or Section 6.3 to be satisfied if such breach remained uncured as of the Closing and (B) such breach is incapable of being cured prior to the Termination Date or, if capable of being cured, such breach has not been cured within 30 days after the giving of written notice by Sellers to Buyer of such breach; provided that Sellers are not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement; or

(ii) if the Closing has not occurred by 5:00 p.m., prevailing Eastern time, on or before the Termination Date, which date may be extended by mutual written agreement of the Parties.

7.2. Effect of Termination. In the event of termination of this Agreement pursuant to Section 7.1, this Agreement shall become void and of no effect; provided, however, that the provisions set forth in this Section 7.2, Section 7.3, Article VIII and in Section 5.6 shall survive the termination of this Agreement; provided, further, that nothing in this Section 7.2 shall be deemed to release any Party from liability for any willful breach of this Agreement prior to termination.

7.3. Break-Up Fee and Expense Reimbursement Amount. In consideration of Buyer and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Buyer as a stalking-horse bidder in connection with the Auction, should Seller enter into a written binding agreement with respect to a Competing Transaction, then in such event, Buyer shall be entitled to:

- (a) the Expense Reimbursement Amount, not to exceed US \$500,000; and
- (b) an amount equal to 3.0% of the Purchase Price (the "Break-Up Fee").

No bidder other than Buyer shall be entitled to a Break-Up Fee or Expense Reimbursement Amount. For the avoidance of doubt, (x) the Break-Up Fee and Expense Reimbursement Amount

shall be free of any Liens and shall be payable or credited to Buyer only upon closing of the sale of the Transferred Assets (or a material portion of them), (y) except to the extent set forth in the proviso in Section 7.2, the Parties acknowledge and agree that the Break-Up Fee and Expense Reimbursement Amount, on the terms and subject to the conditions to the payment thereof, shall be Buyer's sole recourse in connection with this Agreement and the other Transaction Documents in the event this Agreement is terminated prior to the Closing under Section 7.1, and (z) notwithstanding anything contained herein to the contrary, (i) Buyer shall have the right, but not the obligation, to increase its bid for the Transferred Assets at the Auction, and (ii) the amount of the Break-Up Fee and Expense Reimbursement Amount, once triggered pursuant to the terms of this Agreement, shall act as a credit toward any Closing by Buyer as the high bidder or as the Backup Bidder (as defined in the Bid Procedures).

ARTICLE VIII MISCELLANEOUS

8.1. Notices. Unless otherwise set forth herein, all notices and other communications, including consents and waivers, to be given or made hereunder shall be in writing and shall be deemed to have been duly given or made on the date of delivery to the recipient thereof if received prior to 5:00 p.m. in the place of delivery and such day is a Business Day (or otherwise on the next succeeding Business Day) if (a) served by personal delivery or by recognized overnight courier service upon the Person for whom it is intended, (b) delivered by registered or certified mail, return receipt requested or (c) sent by email, as provided in this Section 8.1; provided that the email is confirmed orally or in writing by the recipient thereof (excluding out-of-office replies or other automatically generated responses):

To Buyer:

CEFF II AppHarvest Holdings, LLC
c/o Controlled Environment Foods Fund, LLC

Attn: Nick Houshower
Email: houshower@eq-cap.com

With copies to:

Buchalter, A Professional Corporation

Attn: Julian Gurule
Email: jgurule@buchalter.com

and

Amis, Patel & Brewer, LLP

Attn: Rusty Brewer
Email: rustybrewer@apbllp.com

To Sellers or Debtors:

AppHarvest Richmond Farm, LLC

Attn: Gary Broadbent, EVP, General Counsel and Corporate Secretary

Email: gary.broadbent@appharvest.com

AppHarvest Morehead Farm, LLC

Attn: Gary Broadbent, EVP, General Counsel and Corporate Secretary

Email: gary.broadbent@appharvest.com

With a copy to:

Sidley Austin LLP

787 Seventh Avenue
New York, NY 10019

Attn: Anthony R. Grossi
Patrick Venter
Ryan Scofield

Email: agrossi@sidley.com
pventer@sidley.com
rscofield@sidley.com

or to such other Person or addressees as may be designated in writing by the Party to receive such notice as provided above; provided, however, that copies to outside counsel are for convenience only and the provision of a copy to outside counsel does not constitute notice or alter the effectiveness of any notice, request, instruction or other communication otherwise made or given in accordance with this Section 8.1.

8.2. Entire Agreement; Amendments and Waivers. This Agreement together with the other agreements referred to herein, including the other Transaction Documents, represent the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed, in the case of an amendment, supplement or change, by each of the Parties, or in the case of a waiver, by the Party against whom enforcement of such waiver is sought. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy

hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

8.3. Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers or Buyer (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents will be void; provided, however, that (a) Buyer may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more Affiliates, including to effect the purchase and transfer of the Transferred Assets to different Affiliates and (b) Sellers may assign some or all of their rights or delegate some or all of their obligations hereunder to successor entities (including any liquidating trust) pursuant to a Chapter 11 plan confirmed by the Bankruptcy Court, in the case of each of clause (a) and (b) above, with notice to the other Party. No assignment or delegation of any obligations hereunder will relieve the Parties of any such obligations. Upon any such permitted assignment, the references in this Agreement to Sellers or Buyer will also apply to any such assignee unless the context otherwise requires.

8.4. Expenses. Except as otherwise expressly provided in this Agreement, including as set forth in Section 7.3, whether or not the transactions contemplated hereby are consummated, each of Sellers, on the one hand, and Buyer, on the other hand, will bear its own expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and all proceedings incident thereto.

8.5. Governing Law. This Agreement will be governed by and construed in accordance with the internal Laws of the State of New York without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of New York, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws.

8.6. Specific Performance.

(a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party will be entitled to injunctive relief to prevent any such breach, and to specifically enforce the terms and provisions of this Agreement without the necessity of posting bond or other security against it or proving damages, including without limitation specific performance of such covenants, promises or agreements (including to cause each Party to consummate the Closing and to make the payments and Transfer contemplated by this Agreement) or an Order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or

agreements contained in this Agreement. The rights set forth in this Section 8.6 will be in addition to any other rights which a Party may have at Law or in equity pursuant to this Agreement.

(b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Buyer or Sellers, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Buyer or Sellers, as applicable, under this Agreement all in accordance with the terms of this Section 8.6.

8.7. Submission to Jurisdiction; Consent to Service of Process; Waiver of Jury Trial.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, in each case, relating to the Bankruptcy Case, the Bankruptcy Court or the Bankruptcy Code, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and attorn to the jurisdiction and venue of the Bankruptcy Court for such purposes and will receive notices at such locations as indicated in Section 8.1. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Action brought in such courts or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any other Party in any Action by delivery of a copy thereof in accordance with the provisions of Section 8.1; provided, however, that such service will not be effective until the actual receipt thereof by the Party being served.

(c) Each Party to this Agreement waives any right to trial by jury in any Action regarding this Agreement or any provision hereof.

8.8. Interpretation; Construction.

(a) The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

(b) Unless otherwise specified in this Agreement or the context otherwise requires: (i) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular and the singular shall include the plural; (iii) all Preamble, Recital, Article, Section, clause, Schedule and Exhibit references used in this Agreement are to the preamble, recitals, articles, sections, clauses, schedules and exhibits to this Agreement; (iv) wherever the word "include," "includes" or "including" is used in this Agreement,

it shall be deemed to be followed by the words “without limitation;” (v) the terms “date hereof” and “date of this Agreement” mean the date first written above; (vi) with respect to the determination of any period of time, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”; (vii) (A) any reference to “days” means calendar days unless Business Days are expressly specified and (B) any reference to “months” or “years” shall mean calendar months or calendar years, respectively, in each case unless otherwise expressly specified; (viii) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply “if”; and (ix) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP.

(c) Unless otherwise specified in this Agreement, any deadline or time period set forth in this Agreement that by its terms ends on a day that is not a Business Day shall be automatically extended to the next succeeding Business Day.

(d) Unless otherwise specified in this Agreement or the context otherwise requires, all references to any (i) statute in this Agreement include the rules and regulations promulgated thereunder and all applicable guidance, guidelines, bulletins or policies issued or made in connection therewith by a Governmental Entity, and (ii) Law in this Agreement shall be a reference to such Law as amended, re-enacted, consolidated or replaced as of the applicable date or during the applicable period of time.

(e) Unless otherwise specified in this Agreement, all references in this Agreement (i) to any Contract, other agreement, document or instrument (excluding this Agreement) mean such Contract, other agreement, document or instrument as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof and, unless otherwise specified therein, include all schedules, annexes, addendums, exhibits and any other documents attached thereto or incorporated therein by reference, and (ii) to this Agreement mean this Agreement (taking into account the provisions of Section 8.2) as amended, supplemented or otherwise modified from time to time in accordance with Section 8.2.

(f) With regard to each and every term and condition of this Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and that if at any time the Parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject thereto, no consideration shall be given to the issue of which Party actually prepared, drafted or requested any term or condition of this Agreement.

(g) All capitalized terms in this Agreement (including the Exhibits and Schedules hereto) shall have the meaning set forth in Exhibit A, except as otherwise specifically provided herein. Each of the other capitalized terms used in this Agreement has the meaning set forth where such term is first used or, if no meaning is set forth, the meaning required by the context in which such term is used.

8.9. Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision, covenant or restriction of this Agreement is held by a

court of competent jurisdiction or other authority of competent jurisdiction to be invalid, illegal, void or unenforceable, or the application of such provision, covenant or restriction to any Person or any circumstance, is held by a court of competent jurisdiction or other authority to be invalid, illegal, void or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid, illegal, void or unenforceable provision, as applicable, and (b) the remainder of this Agreement and the application of such provision, covenant or restriction to other Persons or circumstances shall not be affected by such invalidity, illegality or unenforceability, nor shall such invalidity, illegality or unenforceability affect the validity, legality or enforceability of such provision, or the application of such provision, in any other jurisdiction and the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

8.10. Counterparts and Electronic Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Delivery of an executed signature page to this Agreement by any Party by electronic transmission shall be as effective as delivery of a manually executed copy of this Agreement by such Party.

8.11. No Recourse. All claims, obligations, Liabilities, Actions or causes of action (whether in Contract or in tort, at Law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to, this Agreement or other Transaction Documents, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in connection with, or as an inducement to, this Agreement) or other Transaction Documents, may be made only against (and are expressly limited to) the Persons that are expressly identified as Parties in the preamble to this Agreement or, if applicable, their successors and assigns (“Contracting Parties”). No Person who is not a Contracting Party, including any past, present or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, consultant, attorney, accountants or Representative of, and any financial advisor or lender to, any Contracting Party, or any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, or Representative of, and any financial advisor or lender to, any of the foregoing (“Nonparty Affiliates”), shall have any Liability (whether in Contract or in tort, at law or in equity, or granted by statute) for any claims, causes of action, Actions, obligations, or Liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or their negotiation, execution, performance, or breach; and, to the maximum extent permitted by Law, each Contracting Party hereby waives and releases all such Liabilities, claims, causes of action, Actions, and obligations against any such Nonparty Affiliates. It is expressly agreed that the Nonparty Affiliates to whom this Section 8.11 applies shall be third-party beneficiaries of this Section 8.11.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

APPHARVEST RICHMOND FARM, LLC

By: _____
Name:

APPHARVEST MOREHEAD FARM, LLC

By: _____
Name:

CEFF II APPHARVEST HOLDINGS, LLC

By: EqCEF II, LLC, its Manager

By: _____

Name: Nicholas Houshower

Title: Managing Director

EXHIBIT A
Defined Terms

In this Agreement, the following terms have the meaning specified in this Exhibit A.

“Accounts Payable” means all trade accounts payable and other obligations of payment to any Person by Sellers to the extent attributable to a Transferred Asset or otherwise Related to the Business, in each case, as determined in accordance with GAAP.

“Accounts Receivable” means (a) all trade accounts receivable and other rights to payment to Sellers from any Person and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable of Sellers and the full benefit of all security for accounts or notes, (c) other amounts due to any Seller that such Seller has historically classified as accounts receivable in the balance sheet of such Seller, and (d) any security interest, claim, cause of action, remedy or other right related to any of the foregoing, in each case, net of doubtful accounts which shall include accounts overdue by more than thirty (30) days (“Overdue Accounts”); provided, that if Buyer is able to collect such Overdue Accounts prior to the Final Allocation Statement, such Overdue Accounts shall not be considered doubtful accounts.

“Acquisition” has the meaning set forth in the Recitals.

“Action” means any action, suit, claim (including a counterclaim or cross claim), grievance, summons, mediation, prosecution, hearing, inquiry, examination, right, cause of action, complaint, litigation, investigation, audit, proceeding, arbitration or other similar dispute commenced, brought, conducted or heard by or before any Governmental Entity, including but not limited to any and all such actions related to restitution or remission in criminal proceedings and civil forfeiture and confiscation proceedings under the Law of any jurisdiction.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly through one or more intermediaries controlling, controlled by or under common control with such Person (for purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, 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 the ownership of voting securities, by Contract, as trustee, executor or otherwise).

“Agreement” has the meaning set forth in the Preamble.

“AHMF” has the meaning set forth in the Preamble.

“AHRF” has the meaning set forth in the Preamble.

“Allocation Notice of Objection” has the meaning set forth in Section 5.4(e)(i).

“AppHarvest” means AppHarvest, Inc., a Delaware corporation.

“Asset Taxes” means ad valorem, property, excise, severance, production, sales, use or similar Taxes (excluding, for the avoidance of doubt, any Income Taxes and Transfer Taxes) based upon or measured by the ownership or operation of the Business or the assets thereof.

“Assignment and Assumption Agreements” means one or more assignment and assumption agreements with respect to the Transferred Leases and Assumed Contracts, substantially in the form of Exhibit B attached hereto.

“Assumed Contracts” has the meaning set forth in Section 1.6(a).

“Assumed Liabilities” has the meaning set forth in Section 1.3.

“Auction” means the auction to be conducted for the sale of the Transferred Assets under the Bid Procedures Order.

“Available Contracts” has the meaning set forth in Section 1.6(a).

“Avoidance Action” means any avoidance or recovery claims, right or cause of action of any Seller under Chapter 5 of the Bankruptcy Code, in each case, that relates to the Transferred Assets.

“Bankruptcy Case” has the meaning set forth in the Recitals.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Bankruptcy Orders” means the Sale Order and any other Order of the Bankruptcy Court, issued and entered in the Bankruptcy Case in respect of the transactions contemplated by this Agreement.

“Bid Procedures” means the bid procedures for the sale of Sellers’ assets, as set forth in the Bid Procedures Order and approved by the Bankruptcy Court.

“Bid Procedures Order” means an Order of the Bankruptcy Court approving the Bid Procedures, reasonably satisfactory to Buyer.

“Books and Records” means all books, ledgers, files, reports, plans, records, manuals and other materials (in any form or medium) related to the Transferred Assets or the Business, including all advertising materials, client and customer lists, supplier and vendor lists, purchase orders, sales and purchase invoices, production and operations reports, technical manuals, information and records, photos, drawings and schematics, personnel and employment records, financial and accounting records and all written paper correspondence with or to any Governmental Entity including letters, minutes and official contact reports, but excluding any such items to the extent (a) they are included in or primarily related to any Excluded Assets or Excluded Liabilities, (b) any Law prohibits their transfer, (c) they are subject to legal privilege (other than title opinions) or (d) any transfer thereof otherwise would subject any Seller or any of its Affiliates to any material liability.

“Break-Up Fee” has the meaning set forth in Section 7.3(b).

“Business” has the meaning set forth in the Recitals.

“Business Day” means any day ending at 11:59 p.m., prevailing Eastern time, other than a Saturday, a Sunday, or a day on which banks in New York, New York are authorized or required by Law, executive order or other governmental action to close.

“Buyer” has the meaning set forth in the Preamble.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act of 2020.

“Closing” has the meaning set forth in Section 2.2.

“Closing Date” has the meaning set forth in Section 2.2.

“Code” means the Internal Revenue Code of 1986.

“Competing Transaction” means any transaction (or series of transactions) involving the direct or indirect sale, transfer, or other disposition of all, or a material portion of, the Transferred Assets to a purchaser or purchasers other than Buyer or effecting any other transaction the consummation of which would be substantially inconsistent with or in lieu of the transactions contemplated hereby, including by way of any merger, share purchase or exchange, asset purchase, tender offer, business combination, consolidation, joint venture, license, restructuring, reorganization, recapitalization, spin-off, split-off, or other transaction.

“Confidential Information” means, other than this Agreement, all non-public or proprietary information, written or oral, which has been or is disclosed by a disclosing Party, or which otherwise becomes known to the receiving Party, and which (A) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, data and analysis, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time, or (B) the disclosing Party expressly designates in writing or in connection with such disclosure as confidential. Notwithstanding the foregoing, the following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by the receiving Party or any Person to whom the receiving Party disclosed such information, in either case in violation of this Agreement; (b) information that was already known by or in the possession of the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not known (after reasonable inquiry) to be subject to any prohibition against disclosing the information to the receiving Party; (d) information that the receiving Party develops independently without using or referencing the Confidential Information, and (e) information that the disclosing Party approves for release in writing.

“Contaminant” means any solid, liquid, gas, offensive odor, heat, sound, vibration or radiation that results directly or indirectly from human activities that may cause an adverse environmental effect.

“Continuing Employee” has the meaning set forth in Section 5.5(f).

“Contract” means any contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, loan, instrument, franchise agreement, insurance policy, letter of credit, commitment or other agreement or arrangement that is legally binding upon a Person or its property.

“Contracting Parties” shall have the meaning set forth in Section 8.11.

“Cure Costs” means monetary amounts that must be paid and obligations that otherwise must be satisfied under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code or in connection with the assumption and/or assignment of any Assumed Contract, as agreed upon by the Parties, or determined by the Bankruptcy Court pursuant to the procedures in the Bid Procedures Order.

“Cure Notice” shall have the meaning set forth in Section 1.6(b).

“Dalsem Lien” means the mechanics lien claim arising under the laws of Kentucky or otherwise against property of Sellers arising from any agreement or obligation by or between Dalsem Greenhouse Technology B.V. or any of its Affiliates, on the one hand, and Sellers and any Affiliates of Sellers, on the other hand.

“D&O Insurance Claims” shall have the meaning set forth in Section 1.1(j).

“Debtors” means AHRF, AHMF; AppHarvest Operations, Inc, a Delaware Corporation; AppHarvest Farms, LLC, a Delaware limited liability company; AppHarvest Technology, Inc., a Delaware corporation; AppHarvest; AppHarvest Pulaski Farm, LLC, a Delaware limited liability company; AppHarvest Development, LLC, a Delaware limited liability company; AppHarvest Products, LLC, a Delaware limited liability company; AppHarvest Foundation, LLC, a Delaware limited liability company; Rowan County Development, LLC, a Delaware limited liability company and AppHarvest Berea Farm, LLC, a Delaware limited liability company.

“DIP Financing” means that certain Secured Superpriority Debtor-in-Possession Credit Agreement, by and among AppHarvest and Buyer, to be entered upon the authorization of the Bankruptcy Court pursuant to an order, among other things, authorizing Sellers to obtain post-petition financing.

“Disputed Contract” shall have the meaning set forth in Section 1.6(d).

“Environment” means the ambient air, all layers of the atmosphere, all water including surface water and underground water, all land, all living organisms and the interacting natural systems that include components of air, land, water, living organisms and organic and inorganic matter, and includes indoor spaces.

“Environmental Law” means any applicable Law relating in any way to the protection of the Environment, environmental assessment, Hazardous Substances (including the use, manufacture, handling, transportation, production, disposal, discharge, storage or emission of Hazardous Substances), occupational health and safety, protection of any form of plant or animal life, natural resources or transportation of dangerous goods, including the principles of common law and equity.

“Equitable Exception” has the meaning set forth in Section 3.2(d).

“ERISA” means the Employee Retirement Income Security Act of 1974.

“Excluded Actions” has the meaning set forth in Section 1.2(u).

“Excluded Assets” has the meaning set forth in Section 1.2.

“Excluded Contracts” has the meaning set forth in Section 1.2(r).

“Excluded Insurance Proceeds” has the meaning set forth in Section 1.2(c).

“Excluded Liabilities” has the meaning set forth in Section 1.4.

“Executory Contract Schedule” has the meaning set forth in Section 1.6(a).

“Expense Reimbursement Amount” means the actual aggregate amount of all reasonable, necessary and documented out of pocket costs, expenses and fees incurred by Buyer in connection with evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement and the other Transaction Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by or on behalf of Buyer in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby; *provided*, that Expense Reimbursement Amounts shall not include costs or expenses related to the Bankruptcy Case and other judicial and regulatory proceedings related to such transactions.

“FCPA” has the meaning set forth in Section 3.8(b).

“Final Allocation Statement” has the meaning set forth in Section 5.4(c)(i).

“Final Order” means an Order entered by the Bankruptcy Court or other court of competent jurisdiction (a) as to which no appeal, leave to appeal, notice of appeal, motion to amend or make additional findings of fact, motion for reconsideration, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed (in cases in which there is a date by which such filing is required to occur, or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject Order in all material respects without the possibility for further appeal thereon), (b) in respect of which the time period for instituting or filing an appeal, leave to appeal, notice of appeal, motion to amend or make additional findings of fact, motion for reconsideration, motion to alter or amend judgment, motion for rehearing or

motion for new trial shall have expired (in cases in which such time period is capable of expiring), and (c) as to which no appeal, leave to appeal, notice of appeal, motion to amend or make additional findings of fact, motion for reconsideration, motion to alter or amend judgment, motion for rehearing or motion for new trial has been filed, and no stay pending an appeal is in effect.

“Fixtures and Equipment” means all furniture, furnishings, vehicles, equipment, machinery, tools, fixtures, rolling stock, construction materials, accessions and all other personal and mixed property, operational and nonoperational, wherever located that are Related to the Business or used in the Business including all trade fixtures, supplies, including maintenance and repair supplies and spares (including grease, oils, chemicals and containers in which any of them are stored), desks, chairs, tables, tools, all computer equipment, telephones, other office equipment, motor vehicles, replacement parts, and all other tangible personal property, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person each of which that is Related to the Business.

“GAAP” means United States generally accepted accounting principles applied on a consistent basis.

“Governmental Entity” means any national, federal, state, provincial, territorial, municipal or local government or regulatory authority, agency, commission, body, court, council or other legislative, executive or judicial governmental authority, agency, commission, department, board or entity, or any political subdivision thereof, including the Bankruptcy Court or any person acting under the authority of the Bankruptcy Court (including any arbitrator with the authority to bind the Parties at Law) or any other authority, agency, commission, department, association or board charged with the administration, regulation or enforcement of Laws.

“Hazardous Substance” means any Contaminant, underground or above-ground tanks, pollutant, dangerous or potentially dangerous substance, noxious or toxic substance, hazardous material or substance, waste (including subject waste, liquid industrial waste, other industrial waste, toxic waste, corrosive waste and hazardous waste) and deleterious substance, and includes (without limitation) any flammables, explosives, fuel, micro-organism, radioactive material, lead, asbestos, asbestos containing materials, polychlorinated biphenyls (“PCB”), PCB-containing equipment or materials, pesticides, defoliants, fungi (including mold or spores arising from fungi), chlorofluorocarbons, hydrochlorofluorocarbons, urea formaldehyde foam insulation, radon gas, chemicals, substances and agents known or believed to cause cancer or reproductive toxicity, toxic substances, petroleum and petroleum-based substances, electrical or magnetic fields, and any other solid, liquid, gas, vapor, odor, heat, sound, vibration, radiation, micro waves, substance, organic or inorganic matter, condition or chemical, biological or physical agent of any nature or kind that is now or hereafter prohibited, controlled, monitored or regulated pursuant to Environmental Laws.

“Income Taxes” means (a) all Taxes based upon, measured by , or calculated with respect to gross or net income, gross or net receipts or profits (including franchise Taxes and any capital gains, alternative minimum, and net worth Taxes, but excluding ad valorem, property, excise, severance, production, sales, use, real or personal property transfer or other similar Taxes), (b) Taxes based upon, measured by, or calculated with respect to multiple bases (including corporate franchise, doing business or occupation Taxes) if one or more of the bases upon which such Tax may be based, measured by, or calculated with respect to is included in clause (a) above,

or (c) withholding Taxes measured with reference to or as a substitute for any Tax included in clauses (a) or (b) above.

“Intellectual Property” means all intellectual property rights arising in any jurisdiction of the world, including with respect to any of the following: (a) trademarks, service marks, trade dress, trade names, and other indicia of origin, applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby (collectively, “Trademarks”); (b) patents and patent applications, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, re-examinations, extensions and reissues; (c) industrial designs, integrated circuit topographies, and mask works; (d) trade secrets and proprietary rights in confidential information; (e) copyrights, applications and registrations therefor, and renewals, extensions, restorations and reversions thereof, and the benefit of any waivers of moral rights; and (f) internet domain names.

“Intracompany Payables” means all account, note or loan payables recorded on the books of Sellers or any of its Affiliates for goods or services purchased by or provided to the Business or advances (cash or otherwise), debt or any other extensions of credit to the Business by and/or among Sellers or any of its Affiliates, whether current or non-current or due.

“Intracompany Receivables” means all account, note or loan receivables recorded on the books of Sellers or any of its Affiliates for goods or services sold or provided by the Business to Sellers or any of its Affiliates or advances (cash or otherwise) debt or any other extensions of credit (including the bond) made by the Business to Sellers or any of its Affiliates, whether current or non-current or due.

“Inventory” means all inventory Related to the Business, of the Business, produced in the Business or used in the Business, wherever located, including all crops, finished goods, raw materials, work in progress, packaging, supplies and parts whether held at any location or facility of Sellers or any of their Affiliates or in transit to Sellers or any of their Affiliates, in each case as of the Closing Date.

“Knowledge” means, with respect to each Seller, the actual knowledge of the Persons set forth on Schedule 1.1(a) after reasonable inquiry into the relevant subject matter, and, with respect to Buyer, the actual knowledge of Nick Houshower and Gavin Haladay after reasonable inquiry into the relevant subject matter.

“Law” means any federal, state, provincial, local, municipal, foreign, or international law, bylaw, statute or ordinance, common law, or any rule, regulation, standard, judgment, Order, criteria, protocols, codes of practices, writ, injunction, decree, arbitration award, agency requirement, license, Permit or other lawful requirements enacted, promulgated, issued, enforced or entered by any Governmental Entity or court of competent jurisdiction now or hereafter in force.

“Liabilities” means, as to any Person, any and all judgments, debts, liabilities, commitments, costs, expenses, adverse claims, duties, responsibilities, commitments, losses, expenditures, charges, fees, penalties, fines, contributions, and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not

accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising.

“Lien” or “encumbrance” means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, right of first refusal, pledge, security interest or similar interests, covenants, conditions reservations, restrictions, title defects, hypothecations, easements, rights of way, encroachments, judgments, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

“Material Adverse Effect” means any effect, event, change, occurrence, condition or state of facts which has had, individually or when considered together with any other effects, events, changes, occurrences, conditions or states of facts, a materially adverse effect on (a) the financial condition, properties, assets, business or results of operations of the Business, or (b) the ability of Buyer or its designee to lease the Richmond Facility or the Morehead Facility without incurring material cost or experiencing material delay; provided, however, that in no event shall an effect, event, change, occurrence, condition or state of fact resulting from the following, either alone or in combination, be deemed to constitute or be taken into account in determining whether there has occurred a Material Adverse Effect: (i) any changes in the United States financial markets or political conditions, (ii) any changes in economic conditions that generally affect the industries or markets in which Sellers conduct the Business, (iii) any change arising in connection with acts of God, natural disasters, earthquakes, epidemics, plagues, pandemics, disease outbreaks, illnesses or public health events (including the COVID-19 virus and any non-human epidemic, plague, pandemic or other similar disease outbreak or illness), the declaration of a national emergency, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such epidemics, plagues, pandemics, disease outbreaks, illnesses or public health events or hostilities, acts of war, sabotage or terrorism or military actions, (iv) any change in applicable Laws or accounting rules or the interpretation or enforcement thereof, (v) any actions required or expressly permitted to be taken by Sellers pursuant to this Agreement or any actions taken by Sellers or the other Debtors at Buyer’s written request; (vi) any action not taken by Sellers at Buyer’s written request; (vii) the execution, performance, public announcement, pendency or consummation of this Agreement or the Bankruptcy Case, (viii) the refusal of any, some or all of the Target Employees to accept offers of employment or engagement with Buyer or the resignation of any Target Employees prior to the Closing resulting in the inability of Sellers to operate the Business in the Ordinary Course; (ix) any action by Buyer taken on behalf of Buyer, or (x) (A) any Action approved by, motion made before or Bankruptcy Orders of the Bankruptcy Court or a court of similar jurisdiction or (B) the fact that Sellers and the other Debtors are operating as debtors-in-possession under the Bankruptcy Court or a court of similar jurisdiction; provided, however, that with respect to clauses (i), (ii), (iii) and (iv), such effects, events, changes, occurrences, conditions or states of facts will not be excluded to the extent the same disproportionately adversely affects the Business, taken as a whole, as compared to other similarly situated businesses; provided, that in no event shall any reasonably anticipated effect, event, change, occurrence, condition or state of fact arising from the commencement, pendency, conduct or prosecution of the Bankruptcy Case be deemed to constitute or be taken into account in determining whether there has occurred a Material Adverse Effect.

“Material Contracts” has the meaning set forth in Section 3.7(a).

“Morehead” has the meaning set forth in the Recitals.

“Morehead Business” has the meaning set forth in the Recitals.

“Morehead Facility” has the meaning set forth in Section 6.2(g).

“Necessary Consent” has the meaning set forth in Section 1.7.

“Nonparty Affiliates” has the meaning set forth in Section 8.11.

“Order” means any administrative decision or award, decree, injunction, judgment, assessment, decree, ruling, verdict, stipulation, order, quasi-judicial decision or award, ruling or writ entered, issued, made or rendered by any arbitrator, mediator or Governmental Entity.

“Ordinary Course” means the conduct of the Business, consistent with the normal day-to-day customs, practices and procedures of the Business immediately prior to the Petition Date, but subject, however, to changes arising or resulting from the filing or pendency of the Bankruptcy Case.

“Party” and “Parties” have the meaning set forth in the Preamble.

“PCB” has the meaning set forth in the definition of “Hazardous Substance.”

“Permit” means any consent, license, permit, waiver, approval, authorization, certificate, certification, registration, variance, waiver, clearance, filing or similar right issued by, obtained from or made with any Governmental Entity.

“Permitted Encumbrance” means (a) any Liens that are expressly permitted by the Sale Order to remain attached to the Transferred Assets following the Closing, (b) any Lien on the Transferred Assets that will be expunged, released or discharged at the Closing by operation of the Sale Order (c) undetermined or inchoate liens, charges and privileges (including mechanics’, construction, carriers’, workers’, repairers’, storers’ or similar liens) which, individually or in the aggregate, are not material to the Business, arising or incurred in the Ordinary Course, (d) servitudes, easements, restrictions, encroachments, covenants, rights of way and other similar rights or restrictions in real property, or any interest therein, whether registered or unregistered, which, individually or in the aggregate, are not material to the Business, (e) liens or encumbrances that arise solely by reason of acts of Buyer or its successors and assigns or otherwise consented to by Buyer in accordance with the terms of this Agreement, (f) any Liens securing the DIP Financing, (g) unregistered Liens for Taxes, assessments or similar charges incurred in the Ordinary Course that are not yet due and payable, and (h) applicable zoning, subdivision, building, utility easements, environmental restrictions, and other land use Laws and other land use restrictions that do not impair the present use of the subject Transferred Owned Property or Transferred Leased Property; provided, however, in no event shall the Dalsem Lien be considered or deemed a Permitted Encumbrance.

“Person” means any natural person, corporation, company, partnership (general or limited), limited liability company, trust, unincorporated organization, joint stock company, labor union, estate, Governmental Entity or other entity.

“Personal Information” means, collectively, all relevant data or information constituting the personal information relating to any identifiable natural person, including employees, customers, and other individuals, that has been collected or otherwise obtained by Sellers in the conduct of the Business and that is in Sellers’ possession or custody.

“Petition Date” means July 23, 2023.

“Pre-Closing Tax Period” means any taxable period that ends on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

“Proposed Allocation Statement” has the meaning set forth in Section 5.4(c)(i).

“Purchase Price” has the meaning set forth in Section 2.1

“Related to the Business” means exclusively related to, or exclusively in connection with, the Business as carried on by Sellers prior to the Closing or located on any Transferred Owned Property or Transferred Leased Property.

“Representatives” means with respect to a Person, such Person’s authorized officers, directors, employees, stockholders, partners, members, managers, agents, attorneys, accountants, consultants, advisors, financing sources, including any investment banker, financial advisor, legal counsel, consultant and other representatives retained by or acting on behalf of such Person or its Affiliates.

“Richmond” has the meaning set forth in the Recitals.

“Richmond Business” has the meaning set forth in the Recitals.

“Richmond Facility” has the meaning set forth in Section 6.2(g).

“RSA” has the meaning set forth in Section 5.14(f).

“Sale Hearing” means a sale hearing held pursuant to the Bid Procedures.

“Sale Order” means an Order of the Bankruptcy Court approving this Agreement, satisfactory to Buyer, and including, without limitation, findings based on appropriate evidence, that the transfer of assets hereunder is free and clear of all Liens (other than Permitted Encumbrances), claims, and encumbrances (other than Permitted Encumbrances) to the full extent permitted pursuant to Bankruptcy Code Section 363(f); provided, however, that the transfer may be subject to Permitted Encumbrances. The Sale Order shall find and provide that Buyer is a “good faith” purchaser entitled to all of the protections pursuant to Bankruptcy Code Section 363(m).

“Scheduled Employees” has the meaning set forth in Section 5.5(a).

“Scheduled Employees Schedule” has the meaning set forth in Section 5.5(a).

“Securities Act” means the Securities Act of 1933.

“Seller Contracts” means any Contracts to which any Seller is a party.

“Seller Disclosure Schedule” means the disclosure schedule delivered to Buyer by Sellers prior to the Closing Date, and as modified by Sellers from time to time between the date hereof and the Closing Date, in accordance with Section 5.11.

“Seller Employees” means the current employees and independent contractors (including those on leave from work due to sickness, disability, temporary layoff, leave of absence, disability or other non-active status or any statutory leave) of Sellers or any applicable Seller Affiliate.

“Seller Plan” means any employee benefit or compensation plan, program, policy, practice, agreement, Contract, arrangement or other obligation, in each case, which is sponsored, contributed to or maintained by, or required to be sponsored, contributed to or maintained by, or with respect to which any liability or potential liability is borne by any Seller or Seller Affiliate.

“Sellers” has the meaning set forth in the Preamble.

“Straddle Period” means any Tax period beginning before and ending on or after the Closing Date.

“Subsidiary” means, with respect to any Person, (a) a corporation, a majority of whose capital stock with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by such Person, by a subsidiary of such Person, or by such Person and one or more subsidiaries of such Person, (b) a partnership in which such Person or a subsidiary of such Person is, at the date of determination, a general partner of such partnership, or (c) any other Person (other than a corporation) in which such Person, a subsidiary of such Person or such Person and one or more subsidiaries of such Person, directly or indirectly, at the date of determination thereof, has (i) at least a majority ownership interest thereof or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person..

“Target Employees” means the Scheduled Employees to whom Buyer, in its sole discretion, agrees to make offers of employment or engagement.

“Tax Returns” means any return, report, declaration, election, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“Taxes” means any and all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions, and other charges of any kind imposed by any Governmental Entity, whether direct or indirect, together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, including, without limitation, all income, profits, environmental, stamp, gross receipts, premium, value added, severance, property, production, sales, harmonized sales, goods and services, use, duty, license, excise, franchise, payroll, unemployment, employment, disability, escheat and unclaimed property, transfer, registration, or mortgage tax.

“Tax Consideration” has the meaning set forth in Section 5.4(c).

“Termination Date” has the meaning set forth in Section 7.1(d)(ii).

“Trademarks” has the meaning set forth in the definition of “Intellectual Property.”

“Transaction Documents” means this Agreement and all other ancillary agreements to be entered into by, or documentation delivered by, the Parties pursuant to this Agreement and includes, for greater clarity, the Assignment and Assumption Agreement.

“Transfer” means to sell, assign, transfer, convey and deliver.

“Transfer Taxes” has the meaning set forth in Section 5.4(a).

“Transferred Assets” has the meaning set forth in Section 1.1.

“Transferred Intellectual Property” means the Intellectual Property, owned or entered into prior to the Closing by Sellers.

“Transferred Leased Property” means all real property that is the subject of the Transferred Leases, together with any right, title and interest of Sellers in and to the property described therein and the leasehold estates created thereby and subject to the terms, conditions, covenants and obligations set forth in the applicable instruments.

“Transferred Leases” means the leases and subleases governing real property used or leased by the Business, all of which are set forth on Schedule 1.1(b).

“Transferred Owned Property” means the real property owned by Sellers, all of which is listed on Schedule 1.1(c).

“U.S.” means the United States of America.

“\$” means U.S. dollars or such coin or currency of the U.S. as at the time of payment shall be legal tender for the payment of public and private debts in the U.S.

EXHIBIT B
Form of Assignment and Assumption Agreement

[See attached.]

SCHEDULE 1.1(A)
Seller Knowledge Individuals

1. Tony Martin
2. Loren Eggleton
3. Gary Broadbent

SCHEDULE 1.1(B)
Transferred Leases

1. Equipment Lease Schedule 400-0006804-000, by and between AHRF and HYG Financial.
2. Equipment Lease Schedule 400-0006804-001, by and between AHRF and HYG Financial.
3. Equipment Lease Schedule 400-0006804-002, by and between AHRF and HYG Financial.
4. Equipment Lease Schedule 400-0006804-003, by and between AHRF and HYG Financial.
5. Equipment Lease Schedule 400-0006804-004, by and between AHRF and HYG Financial.
6. Equipment Lease Schedule 400-0006804-005, by and between AHRF and HYG Financial.
7. Equipment Lease Schedule 500-50513288, by and between AHRF and DLL Financial.

SCHEDULE 1.1(C)
Transferred Owned Property

[See attached.]

SCHEDULE 1.1(D)
Fixtures and Equipment

1. Richmond

- a. (i) The 235 km² growing area, controlled environment agriculture facility located on the Transferred Owned Property, including all Fixtures and Equipment located on the Transferred Owned Property or otherwise owned or leased by AHRF, or any Affiliate, that are now or hereafter located in, on, or used in connection with the operations of such facility (including, without limitation, as set forth below in Section 1(b) of this Schedule 1.1(d)), (ii) any ancillary facilities and equipment Related to the Business owned by AHRF, (iii) spare parts and (iv) all replacements, alterations, modifications, improvements to the equipment, systems and assets described in the foregoing clauses (i)-(iii) (the items referenced in clauses (i)-(iv), collectively the “Richmond CEA Facility”).
- b. All Fixtures and Equipment located at the Richmond CEA Facility, including, without limitation, the following:

Richmond Asset List

No.	Description	Acquisition Date	Acquisition Cost
FA001628	UV254 P200 Field Meter	6/26/2023	2,865.00
FA001510	Overflow Pump Rig North GH	11/30/2022	4,214.61
FA001476	Maintenance Tech Tool Kits (Richmond)	3/1/2023	6,390.47
FA001503	High Pressure Mist Irrigation System (4) North GH	11/30/2022	7,771.62
FA001494	Empas Spraying Carts (2) North GH	11/30/2022	8,967.26
FA000834	60" Standard Baler (ARF)	3/21/2022	16,739.00
FA001497	Glass Repair Shuttle North GH	11/30/2022	18,432.69
FA001495	Flue Gas Condensers & Chimneys (4) North GH	11/30/2022	19,927.23
FA001504	Infa Techniek UV Sterilizer (2) North GH	11/30/2022	71,491.44
FA001501	Gutter Dripper Irrigation System North GH	11/30/2022	89,672.55
FA001544	Bumble Bee Box Rack (48) Packhouse	11/30/2022	95,247.43
FA001559	Cucumber Harvest Crates	1/18/2023	81,867.11
FA000796	Beekenkamp Blue Harvest Crates (Qty 8,000)	10/1/2022	99,841.71
FA001500	Grow Gutters (1,359) North GH	11/30/2022	104,119.80
FA001514	Roof Washer System (Overall) North GH	11/30/2022	105,679.10
FA001086	Aquajets - Richmond (Qty 6)	9/1/2022	224,008.16
FA000903	Multivac TX 830 Packaging Machine	2/1/2023	491,975.04
FA001496	GE Arize Element L1000 (14,850) North GH	11/30/2022	629,750.40
FA001001	Back-Up Power & Service Entrance Enhancements - Generator	9/20/2022	807,429.63
FA001505	Insect netting North GH	11/30/2022	1,301,497.45
FA001338	Richmond Data Collection Cabinet	10/1/2022	18,024.13
FA001512	PRIVA Software (Overall) North GH	11/30/2022	66,761.66
FA001552	PRIVA Software (Overall) Packhouse	11/30/2022	14,835.93
FA001151	Motorola SL300 Digital Portable Radio (Qty 24) + Multi-Unit Charger (Qty 5)	4/5/2023	12,354.30

FA001071	Richmond Logitech Conferencing Equipment	6/14/2022	26,665.83
FA001538	PRIVA Software (Overall) South GH	11/30/2022	66,761.66
FA000472	Richmond House Network Infrastructure	7/1/2021	3,849.96
FA000416	Gridless Power Security Camera Housing (Richmond)	5/31/2021	7,014.60
FA000199	Ricoh IM C2500 Copier #1	3/31/2021	5,738.84
FA001037	ARF Ricoh IM C2500 Color MFP System #1 (3/16/22 Order)	8/1/2022	5,293.64
FA001038	ARF Ricoh IM C2500 Color MFP System #2 (3/16/22 Order)	8/1/2022	5,293.64
FA001166	ARF Honeywell CK65 Mobile Scanners (Qty 2)	7/5/2022	5,942.10
FA001444	Eaton Environmnetal Monitoring Probe - Qty 30 (ARF)	10/4/2022	7,186.80
FA001142	Zebra ZT411 Thermal Printer (Qty 6) - ARF	6/20/2022	9,657.66
FA001140	Lenovo ThinkCentre M70s 11DC0034US Desktop Computer (Qty 10) - ARF	6/17/2022	12,996.34
FA000802	Packhouse Indoor Wireless Access Points (10)	12/1/2022	10,462.20
FA000803	Office Indoor Wireless Access Points (10)	12/1/2022	10,462.20
FA000968	Honeywell CK65 Mobile Scanners - Richmond (Qty 8)	3/18/2022	14,354.86
FA000804	Greenhouse Wifi Patch Antennas (30)	12/1/2022	15,492.96
FA001143	Richmond End User Ancillary Computer Equipment	6/16/2022	36,248.66
FA001067	Richmond Samsung TV Displays (Qty 22)	7/1/2022	32,487.52
FA000801	Packhouse Outdoor Wireless Access Points (25)	12/1/2022	49,396.53
FA001141	Lenovo ThinkPad T14 Gen 2 20W000T5US 14" Notebook (Qty 45) - ARF	7/1/2022	71,468.92
FA001177	Richmond Cel-Fi Cellphone Network Boosting Equipment (Office & PH)	11/1/2022	61,386.71
FA000798	GDF Cabinets (4)	3/22/2022	103,628.32
FA001046	Richmond Door Access Controls (19 doors, 7 turnstiles)	6/1/2022	109,055.00
FA000799	MDF Rooms Network Equipment (2)	3/22/2022	156,334.52
FA001024	Business Central Richmond Implementation	7/1/2022	105,954.15
FA000797	IDF Network Cabinets (24)	3/22/2022	148,584.22
FA000800	Greenhouse Wireless Access Points (100)	12/1/2022	197,586.12
FA001045	Richmond Fiber Backbones	6/1/2022	285,385.00
FA001047	Richmond Video Surveillance (23 ext, 29 int)	6/1/2022	322,659.98
FA001060	Richmond Wire Basket Trays	6/1/2022	581,549.99
FA001550	Overflow Pump Rig Packhouse	11/30/2022	936.58
FA001477	Maintenance Tech Tool Boxes (Richmond)	3/1/2023	2,119.29
FA001562	Richmond PH Scales	12/31/2022	2,648.70
FA001090	Uline Utility Cart with Pneumatic Wheels - 45 x 25 x 37", Gray (Qty 10)	9/23/2022	3,213.86
FA001536	Overflow Pump Rig South GH	11/30/2022	4,214.61
FA001488	Drum Truck Dolly ARF	1/1/2023	3,746.92
FA001563	ARF Fruit Sizing Ring Clark	1/11/2023	4,611.00
FA001450	Richmond Pond Safety Equipment	9/30/2022	5,813.57
FA001610	20ft Container PV2722478 8X20X8'6" to store glass spares, Long Term	5/3/2023	4,739.63
FA001483	Richmond Mobile Shelving	11/16/2022	6,729.28
FA001095	Richmond Safety Eyewash Stations	9/1/2022	6,856.00
FA001098	Richmond First Aid Equipment	9/14/2022	7,438.83
FA001529	High Pressure Mist Irrigation System (4) South GH	11/30/2022	7,771.62
FA001446	Plastic Self-Dumping Forklift Hopper (Qty 3)	11/23/2022	7,805.83
FA000833	Gray Tomato Waste Crates (Qty 1,000)	9/1/2022	9,062.16
FA001520	Empas Spraying Carts (2) South GH	11/30/2022	8,967.26
FA000937	Phoenix 24 Floor Scrubber (ARF)	6/1/2022	12,500.19
FA000783	Solar Powered Algae Controller (ARF)	1/3/2022	14,650.00
FA000595	Avix Autonomic Laser system (Pond)	2/1/2022	15,630.00
FA001087	Bulk Container, Gray, 31"H x 48"L x 40"W (Qty 24)	12/1/2022	15,758.89
FA001596	Skyjack Scissor Lift (Qty: 1)	4/12/2023	13,250.00
FA001123	Evaporative Cooling BAF Fans (Qty 8) - ARF	9/6/2022	14,993.07
FA001523	Glass Repair Shuttle South GH	11/30/2022	18,432.69
FA001521	Flue Gas Condensers & Chimneys (4) South GH	11/30/2022	19,927.23
FA001088	ARF General Grower Equipment	7/1/2022	26,169.73
FA000845	FOX Flow Meter (ARF)	9/1/2022	20,260.00
FA001554	Roof Washer System (Overall) Packhouse	11/30/2022	23,484.24
FA001150	PROTO Master Tool Set & Cabinet (Richmond)	1/1/2023	21,640.28

FA001104	Richmond Water Filling Stations	9/6/2022	28,526.72
FA001120	Hydraulic Waste Containers (Qty 3)	1/19/2023	23,791.27
FA000905	VJ 9550 PTI Labeler - Line 1 (ARF)	3/3/2023	24,670.00
FA000906	VJ 9550 PTI Labeler - Line 2 (ARF)	3/3/2023	24,670.00
FA000907	VJ 9550 PTI Labeler - Line 3 (ARF)	3/3/2023	24,670.00
FA000908	VJ 9550 PTI Labeler - Line 4 (ARF)	3/3/2023	24,670.00
FA000909	VJ 9550 PTI Labeler - Line 5 (ARF)	3/3/2023	24,670.00
FA001479	Shadowboards and Tools	12/1/2022	30,658.30
FA001027	Richmond Sole Cleaners - DZW-1000-R (Qty 6)	7/19/2022	48,570.21
FA001535	Nanobubble Generator (4) South GH	11/30/2022	49,818.08
FA001530	Infra Technik UV Sterilizer (2) South GH	11/30/2022	71,491.44
FA001064	K-50 PulsFOG (Qty 4)	7/22/2022	90,000.00
FA000442	Bogaerts Qii-lift Z352 (Qty 8)	12/21/2021	102,015.30
FA001527	Gutter Dripper Irrigation System South GH	11/30/2022	89,672.55
FA001526	Grow Gutters (1,359) South GH	11/30/2022	104,119.80
FA001119	Richmond BioHopper	1/19/2023	82,769.15
FA001540	Roof Washer System (Overall) South GH	11/30/2022	105,679.10
FA001006	Boix Q1530 - Case Erector (#1)	9/26/2022	117,687.13
FA001007	Boix Q1530 - Case Erector (#2)	9/26/2022	117,687.13
FA001008	Boix Q1530 - Case Erector (#3)	9/26/2022	117,687.13
FA001009	Boix Q1530 - Case Erector (#4)	9/26/2022	119,838.87
FA000952	Richmond General Maintenance Tools	6/22/2022	111,170.28
FA000441	Bogaerts Qii-lift H652 (Qty 8)	1/3/2022	168,538.16
FA000678	TAKS Cornerboard Machine	2/11/2022	156,840.65
FA001013	Acculabel - ORB-it G2 FLEX-OVL - PLU Labeler (#1)	9/1/2022	149,449.39
FA001010	Multivac L310 Full Wrap (Top & Bottom) Labeler(#1)	9/15/2022	159,595.34
FA001011	Multivac L310 Full Wrap (Top & Bottom) Labeler(#2)	9/15/2022	159,595.34
FA000677	TAKS Palletlift	2/11/2022	181,279.66
FA000795	Royal Brinkman Greenhouse Tarp	9/1/2022	177,866.48
FA000676	TAKS Cart Disinfection Station	2/11/2022	188,965.25
FA001564	ARF Compressed Air System	2/1/2023	148,120.00
FA000788	Bogaerts Qii-Jet TA-342 Spraying Machine (Qty 8)	2/21/2022	204,692.58
FA001014	Acculabel - ORB-it G2 FLEX-OVL - PLU Labeler (#2)	9/1/2022	184,476.07
FA000959	Richmond Fire Water Supply Tank	5/27/2022	210,321.00
FA000445	Bogaerts General Parts	12/21/2021	285,486.23
FA000353	30K Gal Double Wall Aboveground Diesel Storage Tank	7/1/2021	237,332.57
FA000443	Bogaerts Bo Cart 5 2500x400 Rollertrack (Qty 280)	12/21/2021	336,477.87
FA000444	Bogaerts Power Bee automatic (Qty 14)	1/1/2022	532,283.46
FA000674	TAKS Palletizer Packingline (3-8)	2/11/2022	563,468.67
FA000672	TAKS TOV Palletizing System (1-2)	2/11/2022	580,609.16
FA000429	Bogaerts Qii-lift H352 (Qty 180)	1/3/2022	742,255.47
FA001522	GE Arize Element L1000 (14,850) South GH	11/30/2022	629,750.40
FA000671	TAKS TOV Weighing Lines (1-2)	2/11/2022	955,860.51
FA000839	Packhouse Fire Suppression System (ARF)	2/14/2022	787,851.24
FA001531	Insect netting South GH	11/30/2022	1,301,497.45
FA001057	AWETA Grading & Packing Line	9/5/2022	1,491,961.37
FA000664	TAKS Cart Loading Buffer System	2/11/2022	1,856,536.82
FA000673	TAKS Packing Lines (3-8)	2/11/2022	2,707,003.36
FA000209	Honda GX200 Cold Water Pressure Washer Trailer	6/1/2021	4,026.94
FA000854	Duratek Steel Trench Crossing Mats (Qty 24)	12/31/2021	7,504.80

FA000721	Steel Self-Dumping Forklift Hopper (Qty 6)	1/24/2022	8,000.88
FA000202	AppHarvest Entrance Billboard	4/30/2021	4,425.50
FA001092	Richmond Interior Signage	9/1/2022	2,151.91
FA000200	New Blinds - Richmond House	3/31/2021	3,891.26
FA001560	Welded Cabinet	12/20/2022	2,872.60
FA001189	Richmond Canteen Microwaves (Qty 20)	7/21/2022	4,239.79
FA001561	Workbench ARF	12/20/2022	3,927.30
FA001614	20ft Shipping Container	5/30/2023	4,028.00
FA001588	Richmond Office White Boards (Qty.18)	3/24/2023	7,753.68
FA001570	ARF Column Protectors	1/17/2023	9,068.71
FA001188	Richmond Canteen Refrigerators (Qty 8)	7/21/2022	26,279.52
FA001112	Richmond Conference Room Furniture	6/9/2022	36,966.70
FA001172	Richmond Breakroom Furniture	7/7/2022	52,157.14
FA001054	Richmond Desk Chairs (Qty 48)	7/1/2022	73,420.59
			23,955,496.39

2. Morehead

- a. (i) The 238 km² growing area, controlled environment agriculture facility located on the Transferred Owned Property, including all Fixtures and Equipment located on the Transferred Owned Property or otherwise owned or leased by AHMF, or any Affiliate, that are now or hereafter located in, on, or used in connection with the operations of such facility (including, without limitation, as set forth below in Section 2(b) of this Schedule 1.1(d)), (ii) any ancillary facilities and equipment Related to the Business owned by AHMF, (iii) spare parts and (iv) all replacements, alterations, modifications, improvements to the equipment, systems and assets described in the foregoing clauses (i)-(iii) (the items referenced in clauses (i)-(iv), collectively the “Morehead CEA Facility”).
- b. All Fixtures and Equipment located at the Morehead CEA Facility, including, without limitation, the following:

<u>Morehead Asset List</u>			
No.	Description	Acquisition Date	Acquisition Cost
FA000018	Defender 6x6 2020 (2-Door, Camo)	7/10/2020	21,825.55
FA000782	Can-Am Defender (4-Door, Green)	11/1/2021	21,330.23
FA000827	Baseline 300 Bottom Only Labeler	4/1/2022	55,639.22
FA000843	Qii-Lift Z352 Scout 550 (Qty 4)	6/1/2023	39,748.30
FA001069	Morehead Speaker System Expansion	6/15/2023	8,427.71
FA001056	Insight Works LP Audit Trail Customization	6/1/2022	8,572.65
FA001156	Remote Speaker Microphones (Qty 20)	7/7/2022	2,725.26
FA001192	Morehead Colstorage Thermostat (Honeywell)	8/25/2022	5,842.00
FA000014	svb sub-card xx2554	4/30/2020	11,982.13
FA000015	svb sub-card xx2554	6/30/2020	8,733.86
FA000020	Audio for Greenhouse	8/21/2020	226,361.28
FA000021	Networking Equipment	7/15/2020	456,550.22
FA000022	O365/Gmail Migration	8/31/2020	25,326.00
FA000047	Ricoh Color Copier	10/31/2020	5,527.90

FA000048	East GH Structured Data Cabling	10/31/2020	21,369.60
FA000053	Security Equipment	7/30/2020	405,774.13
FA000054	East GH Fiber Install	8/1/2020	91,236.57
FA000055	Outdoor Access Points East GH	10/5/2020	128,407.40
FA000056	Office/Packhouse Structured Cabling	10/16/2020	18,950.40
FA000057	West Greenhouse Data Cable Trays Installation	10/19/2020	108,670.00
FA000083	FortiSwitch 148F FPOE (QTY 18)	3/1/2021	34,258.14
FA000084	FortiGate-100F (QTY 2)	3/1/2021	19,648.16
FA000085	FortiSwitch 124F FPOE (QTY 2)	3/1/2021	2,490.47
FA000086	FortiSwitch 1048E (Qty 2)	3/1/2021	34,580.38
FA000087	10GE SFP+ Transceiver (QTY 48)	3/1/2021	10,114.94
FA000088	10GE Copper SFP+ (QTY 8)	3/1/2021	4,452.00
FA000104	IDF Cabinet and Fiber Backbone	4/1/2021	17,075.00
FA000106	TV Enclosures LCD Guardian (QTY 9)	2/1/2021	28,296.34
FA000113	LG 24" LED Display Monitors	2/5/2021	3,735.15
FA000116	Morehead Audio Upgrades (CMTA)	4/30/2021	111,373.53
FA000121	Packhouse Door Access Controls	1/1/2021	48,836.65
FA000122	GoSafe Temperature Scanners (Qty 4)	3/1/2021	13,089.26
FA000124	Microsoft Surface Pro 7 (Qty 8)	3/1/2021	9,813.65
FA000129	Tour Guide System	3/4/2021	14,108.21
FA000132	Greenhouse/Packhouse Cell Signal Booster	8/1/2021	49,874.75
FA000133	Priva Readers (Qty 100)	5/17/2021	35,493.20
FA000135	FLIR Infrared Camera	3/3/2021	2,862.00
FA000136	Greenhouse Wifi Expansion	1/1/2021	17,384.00
FA000141	West GH Fiber Install	2/1/2021	93,066.32
FA000142	Iristick.Z1 Premium Smart Glasses (Qty 10)	5/1/2021	24,990.00
FA000156	QA Process Implementation Software	6/1/2021	48,372.50
FA000160	Priva Routers (3) & Concentrator	5/1/2021	2,856.48
FA000161	Verkada D80-HW Indoor/Outdoor Fisheye Camera (Qty 2)	4/12/2021	3,657.84
FA000162	Verkada CB51-30E-HW Outdoor Bullet Camera (Qty 3)	4/12/2021	4,369.26
FA000163	Verkada CD51-30E-HW Outdoor Dome Camera (Qty 4)	4/12/2021	5,253.70
FA000348	Honewell CK65 Scanners & Dock - Morehead (Qty 4)	7/1/2021	7,471.62
FA000356	KIDDE - 3M NOVEC 1230 Clean Agent System & Installation	5/1/2021	22,645.00
FA000375	Motorola SL-300 Digital Portable Radio (Qty 45)	9/1/2021	34,402.00
FA000381	Zebra ZT411 Barcode Printer with Cutter Kit (#2)	5/21/2021	2,792.88
FA000385	Zebra ZT411 Barcode Printer with Cutter Kit (#3 - backup)	7/1/2021	5,611.27
FA000391	Microsoft Surface Pro 7+ - 12.3" (Qty 20)	6/4/2021	37,220.88
FA000412	Packhouse Door Access & Security Controls	6/1/2021	13,422.63
FA000420	Bob's Cabin Wireless Access Point (WAP)	6/30/2021	3,349.00
FA000474	Priva FS Additional Modules	7/1/2021	63,550.70
FA000475	Morehead Additional Data Drops (Qty 8)	7/1/2021	3,595.00
FA000476	Conduit for Utility Cabling	7/1/2021	9,875.00
FA000606	Access Controls Project (Gallagher)	9/8/2021	54,940.00
FA000648	UKG Timeclock Equipment	8/16/2021	2,862.00
FA000688	Motorola SL-300 Portable Radios (Qty 35) & Charging Stations (Qty 6)	1/1/2022	14,723.40
FA000701	Canon imageRUNNER Advance DX C3725i MFP (Maintenance)	1/1/2022	4,234.70
FA000712	Additional Greenhouse WAPs (Qty 11)	12/1/2021	8,775.00
FA000717	Maintenance Office Data Drops	11/1/2021	5,670.00
FA000789	Meraki Backup Wifi AP Equipment	7/1/2022	20,094.63
FA000868	ATI Morehead Greenhouse APs	12/31/2021	54,000.00
FA000870	Zebra ZT411 Barcode Printers (Qty 3 - 01/22 Order)	2/1/2022	6,405.98

FA000882	Ricoh IM C2500 Color MFP System (Winchester Langley)	3/17/2022	5,293.64
FA000965	Cat6A Network Wiring in WGH Bays 25-36 (Qty 6)	4/28/2022	9,059.00
FA000974	Morehead Maintenance Gate Access Controls	4/1/2022	3,370.00
FA001207	Honeywell Phones (ATI) - ATI Transfer	7/1/2022	18,000.00
FA001208	Deployment Ops Equipment - ATI Transfer	7/1/2022	9,370.42
FA000010	GroSens HandHeld Package	5/31/2020	5,700.00
FA000011	Vulcan Greenhouse (Water Softener)	6/25/2020	13,270.41
FA000016	HAILPROTECT 1000	6/30/2020	19,846.36
FA000030	Air Compressor Tank	7/23/2020	132,632.95
FA000032	AWETA Grading Line	4/30/2020	1,214,326.51
FA000033	Beehive Stands	9/3/2020	45,947.27
FA000035	Bogaerts Carts	6/30/2020	1,684,041.23
FA000036	Boix Box Making Machine (Qty 3)	6/3/2020	317,271.13
FA000037	Disinfecting Gates	4/1/2020	121,056.11
FA000038	East GH Waterline	7/1/2020	4,929.00
FA000039	Ecoation OKO Proactive	7/1/2020	60,332.30
FA000041	Mobile Yard Ramp	9/24/2020	14,279.00
FA000042	Nanobubble Generator	9/1/2020	57,911.77
FA000043	Power Clean Scrubber CS7010 48B	7/23/2020	59,433.96
FA000045	Royal Brinkman Tarp	3/31/2020	323,462.94
FA000046	TAKS System	4/21/2020	2,225,055.20
FA000050	Packhouse Storage Racking	9/9/2020	70,708.80
FA000058	Radiometer	10/31/2020	5,926.00
FA000060	CO2 and Drip Hoses	8/14/2020	229,261.56
FA000062	Harvest Crates	6/30/2020	43,633.92
FA000063	Bio Hopper	11/12/2020	460,717.58
FA000064	60" Green Std Cardboard Baler	11/11/2020	13,392.50
FA000073	Packaging Cutting Die and Printing Plate	12/31/2020	52,582.00
FA000077	Tray Washer Sound Proofing	4/1/2021	17,112.34
FA000078	Commercial Steam Cleaner, 1 Phase	2/1/2021	3,935.57
FA000082	Hygiena EnSure Touch Sanitation Tester	1/18/2021	4,565.23
FA000089	Zebra ZT411 Industrial Barcode Printer (#1)	1/1/2021	15,088.04
FA000100	Forklift Hyster J35XN A935N04111U #1	1/1/2021	33,921.39
FA000101	Forklift Hyster J35XN A935N04111U #2	1/1/2021	33,921.39
FA000102	Forklift Hyster J35XN A935N04105U #1	1/1/2021	33,921.39
FA000107	Bearing Guards and Handrail with Safety Gate	3/1/2021	13,142.00
FA000108	Used Bogaerts Lifts (Qty 50)	3/12/2021	230,656.80
FA000112	Honeywell CK65 Scanners - Morehead (Qty 5)	1/19/2021	10,994.22
FA000114	Metazet Crop Cart	4/1/2021	3,325.00
FA000117	Compact Auto Floor Scrubber	2/4/2021	2,756.00
FA000123	Hyster W45ZHD Lift Truck (#1)	6/1/2021	4,300.70
FA000125	Weterings Ground Cover Cleaner	7/2/2021	49,702.09
FA000127	Boegarts Power-Bee Carts (Qty 4)	6/1/2021	77,051.84
FA000131	Empas Sprayers (Qty 4)	5/1/2021	37,756.92
FA000134	Clipping Guns (Qty 3)	7/1/2021	9,433.63
FA000143	Super Air Knife - 72 In. Aluminum	5/1/2021	6,666.51
FA000145	Aqua Jet	7/2/2021	151,575.17
FA000149	Top Seal Top & Bottom Labeler	7/1/2021	644.77
FA000151	PTI Labeler (Videojet 9550) #4	7/1/2021	26,109.71
FA000152	Proseal GT6e Machine	5/1/2021	439,491.62
FA000154	BOIX TOV Tooling Trays	6/1/2021	11,938.40
FA000155	Qji Lift H652 Electric Piperail Trolley (QTY 4)	6/1/2021	47,878.36
FA000158	TAKS Bagline Packing Line	5/1/2021	21,011.09
FA000168	Heat Stress Monitor	5/1/2021	3,821.11
FA000176	Top Seal Conveyor System	5/1/2021	17,031.92
FA000179	Instasheetter 3N System	6/1/2021	17,171.97

FA000368	VideoJet DataFlex 6530 Thermal Transfer Overprinter	5/18/2021	17,284.00
FA000390	Hyster W45ZHD Lift Truck (#2)	10/1/2021	4,695.80
FA000402	Mechanical Supports for Qii-Lifts (Qty 3)	6/23/2021	3,973.27
FA000413	Nutrient Storage Cabinets (Qty 3)	7/1/2021	3,368.68
FA000418	Bishamon EZ X Loader	7/14/2021	2,781.16
FA000421	Irrigation System Pump (qty 3)	1/1/2022	6,957.38
FA000433	Aluminum Skin covers for steps/platform	10/31/2021	6,300.00
FA000440	Fans for Bogaert Carts (qty 100)	8/23/2021	7,902.92
FA000462	Big Ass Fans Sweat Bee (Qty 6)	8/9/2021	17,882.98
FA000477	K-50 PulsFOG (Qty 2)	7/1/2021	47,297.20
FA000569	Portable Scales	10/8/2021	18,102.26
FA000607	TAKS Line Extension	10/21/2021	342,889.36
FA000608	HID Lights	7/1/2021	20,053,964.33
FA000609	Packaging Equipment	7/1/2021	1,768,169.13
FA000610	Watering Systems & Growing gutters	7/1/2021	4,714,619.08
FA000611	Electrical System & Computer, Control & Sulphur Pots	7/1/2021	3,159,032.46
FA000612	Backup Power Generator - Greenhouse	7/1/2021	938,677.68
FA000613	Backup Power Generator - Packhouse	7/1/2021	32,506.20
FA000615	One Roof Washer	7/1/2021	283,818.70
FA000617	Iristick.Z1 Premium Smart Glasses (Qty 10)	7/1/2021	24,990.00
FA000618	Water Treatment	7/1/2021	126,828.90
FA000619	Repair Shuttle	7/1/2021	65,729.50
FA000620	Boiler - Greenhouse	7/1/2021	117,246.39
FA000621	Boiler - Packhouse	7/1/2021	3,022.42
FA000624	Pump Unit	7/1/2021	23,487.81
FA000625	Heat Stress Monitor	7/1/2021	3,821.11
FA000626	Mill Drill and Belt Sander	9/1/2021	5,918.20
FA000629	Safety Shower & Eyewash Station (Qty 4)	7/1/2021	2,917.50
FA000630	5-Step Aluminum Crossover Bridge	8/1/2021	5,193.38
FA000631	6-Step Aluminum Crossover Bridge	8/1/2021	5,578.73
FA000632	Hydraulic Air Press Pump, 25 Tons	7/1/2021	3,632.50
FA000642	Campari Equipment/Packing Line 5 (TAKS)	11/8/2021	586,237.49
FA000662	Scanning & Barcode Labeling Packline Upgrade	9/29/2021	669,345.60
FA000700	Lowaras Pump E-SHE 50-125/40 (Qty 2)	9/1/2021	24,350.48
FA000711	Evaporative Cooler Fans (Qty 8)	12/3/2021	2,374.90
FA000714	Portable DO Water Quality Meter	9/1/2021	4,074.22
FA000792	FOX Flow Meter for Boilers	2/1/2022	20,286.00
FA000815	FLEX-TL Label Machine #1 (BFS Line 1)	11/1/2021	132,576.31
FA000816	PTI Labeler (Videojet 9550) #1 (BFS Line 1)	11/1/2021	22,545.84
FA000817	FLEX-TL Label Machine #2 (TOV Line 3)	11/1/2021	135,846.31
FA000818	FLEX-TL Label Machine #3 (TOV Line 2)	11/1/2021	135,846.31
FA000819	PTI Labeler (Videojet 9550) #2 (TOV Line 2)	11/1/2021	22,545.84
FA000820	PTI Labeler (Videojet 9550) #3 (TOV Line 3)	11/1/2021	22,545.84
FA000872	Morehead Storage Kiosk	2/17/2022	5,830.00
FA000932	Buffer Conveyor Covers (Qty 2)	6/1/2022	4,036.79
FA000942	Ballymore 7-Step Cantilever Rolling Ladder	4/20/2022	3,605.01
FA000995	Hyster E50XN Lift Truck (A268N34756W)	6/1/2022	43,067.10
FA001017	Bogaert Cart Hand Dipper (Disinfection Boxes, Qty: 75)	10/1/2022	28,872.71
FA001020	Morehead Canteen Storage Cubbies (Qty 12)	9/1/2022	7,595.28
FA001085	Additional GH &PH Pumps & Motors	8/1/2022	5,245.76
FA001117	Morehead Aquajets (2 Additional)	11/18/2022	82,420.42
FA001118	GH Storage Kiosks (Qty 15)	12/13/2022	84,206.40
FA001145	Bulk Container, 40"W 31"H, Gray (Qty 15)	7/1/2022	5,824.43
FA001152	Bogaerts Cooling Fan 24V (Qty 30) - 06.2022	9/27/2022	21,170.41

FA001315	Morehead GH Rollup Door Threshold Resurfacing	10/1/2022	6,976.00
FA001322	Mobile Drum Spill Dolly (Qty 16)	9/1/2022	5,352.36
FA001334	Cart Sanitizing Foamer	10/20/2022	2,637.00
FA001336	Morehead Beefsteak Rejection Lane	9/7/2022	10,053.88
FA001348	500G Nurse Spray Tank	12/1/2022	10,857.76
FA001437	2015 Genie GR20	12/1/2022	12,720.00
FA001482	Sunlight Sensors - Horitspares	2/1/2023	3,339.49
FA001576	UV254 Field Meter	3/1/2023	2,618.00
FA001582	Wash / Sanitation Station	3/15/2023	3,366.43
FA001585	DAYTON Lathe: Metal Turning	4/1/2023	3,501.05
FA000374	Phoenix 24 Floor Scrubber	8/1/2021	11,062.65
FA000826	Machining Shear (Dayton)	1/1/2022	3,277.58
FA000966	Genie 30/20NRJ Rotating Jib	6/1/2022	36,994.00
FA001018	Shipping Container 8' x 40' x 8'6"	5/1/2022	5,353.00
FA000019	Thermal Kiosk (Qty 2)	9/22/2020	10,724.69
FA000028	Birch Reception Desk	10/1/2020	3,247.00
FA000029	Canteen Seating	10/19/2020	21,756.00
FA000095	40 ft Shipping Container	2/1/2021	5,298.94
FA000096	20ft Shipping Container #1	1/18/2021	2,120.00
FA000097	20ft Shipping Container #2	2/1/2021	2,120.00
FA000098	20ft Shipping Container #3	2/1/2021	2,120.00
FA000119	Fully Black Desks (Qty 6)	3/1/2021	9,121.30
FA000177	Oasis Touch Free Water Bottle Fountains (Qty 16)	6/2/2021	21,763.97
FA000406	Wire Security Rooms	6/7/2021	15,008.31
FA000451	Heavy Duty Cabinets/Storage	6/30/2021	14,835.66
FA000459	5S Custom Shadowboard (Qty 22)	9/1/2021	35,878.84
FA000471	Conex Storage Containers	9/1/2021	22,350.19
FA000548	Schwinn Tricycle (Qty 3) and Electric Scooter (Qty 1)	7/21/2021	3,211.76
FA000570	Lockers and Changing Stalls	7/1/2021	114,146.01
FA000571	Visitor Entrance Green Wall System	7/1/2021	21,560.91
FA000573	Large Fans - Office	7/1/2021	1,679.05
FA000576	Kitchen Sink	7/1/2021	5,813.52
FA000577	Base Cabinets	7/1/2021	6,536.45
FA000578	Visual Display Boards	7/1/2021	3,804.87
FA000579	Office Equipment	7/1/2021	3,113.59
FA000584	Wall Cabinets	7/1/2021	5,084.58
FA000585	Dedicated Receptacles	7/1/2021	4,029.10
FA000602	Cleaning Caddy with Wet Vac (QTY 2)	2/1/2022	3,177.88
FA000603	Electrostatic Sprayer Backpack (QTY 2)	9/1/2021	3,709.98
FA000614	Backup Power Generator - Office	7/1/2021	4,270.87
FA000622	Boiler - Office	7/1/2021	397.10
FA000875	Magnetic Rolling Dry Erase Board (Qty 3)	1/1/2022	2,846.46
FA001335	Hotsy HWE Permanent Pressure Washer	10/1/2022	19,465.79
FA001350	Morehead Miscellaneous Office Furniture	10/1/2022	4,712.81
			45,615,484

SCHEDULE 1.6
Executory Contract Schedule

SCHEDULE 1.2(u)(i)
Excluded Actions

SCHEDULE 5.5(A)
Scheduled Employee Schedule

[See attached.]

SELLER DISCLOSURE SCHEDULE

[See attached.]

Exhibit 3

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

**NOTICE OF PROPOSED SALE OF DEBTORS' ASSETS,
BID PROCEDURES, AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 26, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) a motion (the “Motion”) seeking, among other things, entry of an order: (i) approving the proposed bid procedures (the “Bid Procedures”) by which the Debtors will solicit and select the highest or otherwise best offer for sale of the Debtors’ Richmond/Morehead Assets, Somerset Assets, and Other Assets through a sales transaction (the “Sale Transaction”); (ii) scheduling an auction of the [Richmond/Morehead / Somerset / Other] Assets and a hearing for the approval of the proposed [Richmond/Morehead / Somerset / Other] Sale Transaction (the “Sale Hearing”); (iii) approving the form and manner of notice for sale of the [Richmond/Morehead / Somerset / Other] Assets, the [Richmond/Morehead or Somerset] Auction, and the Sale Hearing; (iv) approving procedures for the assumption or assumption and assignment of executory contracts or unexpired leases (collectively, the “365 Contracts”), and the Debtors’ calculation of the amount necessary to cure any monetary defaults under such 365 Contracts (the “Cure Amounts”); (v) authorizing the Sale Transaction including, but not limited to, the assumption and assignment of the 365 Contracts; and (vi) granting related relief.

On [●], 2023, the Bankruptcy Court entered the *Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors’ Entry Into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Potential Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-*

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor’s service address is 500 Appalachian Way, Morehead, KY 40351.

Auction Notice; (H) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief [Docket No. [●]] (the “Bid Procedures Order”).²

Description of the Assets

Richmond/Morehead Assets.

The Debtors will offer for sale the Richmond/Morehead Assets in accordance with these Bidding Procedures through the Richmond/Morehead Sale Transaction pursuant to a purchase agreement (the “Richmond/Morehead APA”). For the avoidance of doubt, with respect to the Richmond/Morehead Assets, to the extent the Debtors do not receive Qualified Bids for all of the Richmond/Morehead Assets, the Debtors reserve the right not to consider or otherwise to proceed to an Auction for such bids. For the further avoidance of doubt, with respect to the Richmond/Morehead Assets, (a) a bid solely for the Richmond Assets or solely for the Morehead Assets shall not be a Qualified Bid and (b) the Stalking Horse Bid is deemed to be a Qualified Bid. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions and fund working capital.

Somerset Assets.

The Debtors will offer for sale the Somerset Assets in accordance with these Bidding Procedures through the Somerset Sale pursuant to a purchase agreement (the “Somerset APA”) for all of the Somerset Assets. For the avoidance of doubt, with respect to the Somerset Assets, to the extent the Debtors do not receive Qualified Bids for all of the Somerset Assets, the Debtors reserve the right not to consider or otherwise to proceed to an Auction for such bids. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions, fund working capital, and secure the support of the Equilibrium.

Other Assets.

The Debtors will offer for sale the Other Assets in accordance with these Bidding Procedures through the Other Assets Sale pursuant to an asset purchase agreement (the “Other Assets APA”) of (a) all of the Debtors’ Other Assets; or (b) particular assets representing a portion of the Other Assets (each such bid, an “Other Assets Partial Bid”). For the avoidance of doubt, with respect to Other Assets Partial Bids, to the extent the Debtors do not receive Qualified Bids for all of the Other Assets, the Debtors reserve the right not to consider or otherwise proceed to an Auction or Sub-Auction for such bids. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions, fund working capital, and secure the support of Equilibrium.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

Important Dates and Deadlines:

Bid Deadline:

A Qualified Bidder (as defined in the Bid Procedures) that desires to make a bid shall deliver a written or electronic copy of its conforming bid so as to be received no later than **August 21, 2023 at 4:00 p.m. (prevailing Central Time)** for bids on the Richmond/Morehead Assets, Somerset Assets, and Other Assets (the “Bid Deadline”). The Debtors may extend those deadlines for any reason whatsoever, in consultation with the Consultation Parties (as defined in the Bid Procedures).

Auctions:

If the Debtors receive two or more Qualified Bids with respect to the same Assets by the applicable Bid Deadline, the Debtors may, after consultation with the Consultation Parties, conduct an Auction to determine the Successful Bidder(s) (or Back-Up Bidder, as applicable) with respect to such Assets. In such event, the Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for particular Assets (the “Starting Bid”). When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate and/or relevant to the value of the Qualified Bid to the Debtors’ estates: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder’s ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid. Prior to the start of the Auction, the Debtors shall notify the Stalking Horse Purchaser and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Purchaser and each Qualified Bidder.

If an Auction is held, such Auction shall take place on **August 24, 2023**, at [●] [a./p.]m. (**prevailing Central Time**), via remote video or in person at the Debtors’ election and shall be conducted in a timely fashion according to the procedures set forth below (the “Auction Procedures”).

Assumption and Assignment of 365 Contracts:

The 365 Contracts proposed to be assumed or assumed and assigned to the Successful Bidder(s) or its designee in connection with the Sale Transactions will be identified in the Notice of Desired 365 Contracts.

Sale Objection Deadline:

Objections (the “Sale Objections”) to (i) consummation of a Sale Transaction, if any, (ii) the manner in which an Auction was conducted, (iii) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets, (iv) the assumption and assignment of any applicable Assets, including any Desired 365 Contracts, (v) the Cure Amount (solely to the extent such objection is not subject to the applicable Cure Objection Deadline), and (vi) the ability of

Successful Bidder(s) to provide adequate assurance of future performance to counterparties of Desired 365 Contracts, shall be filed with the Bankruptcy Court not later than **4:00 p.m. (prevailing Central Time) on August 28, 2023**. Any Objections not resolved prior to the Sale Hearing shall be argued at the Sale Hearing or such other time as set by the Bankruptcy Court.

Sale Hearing:

Unless the Debtors file and serve a revised notice, the Sale Hearing to approve the Sale Transaction(s) shall be held electronically via video/telephone before the Bankruptcy Court before the Honorable David R. Jones on **August 31, 2023 at [●] [a.m./p.m.] (prevailing Central Time)**. If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at **1-832-917-1510** and entering conference code **205691**. You may also join by videoconference by use of an internet connection, using the **website www.gotomeeting.com**, or by downloading the free GoToMeeting application. To connect, you should enter the meeting Code "**JudgeJones**" in the GoToMeeting app or click the link Judge Jones' home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting. At such hearing, the Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the sale(s) to the Successful Bidder(s) at the Auction on the terms and conditions of the Successful Bid(s). The Successful Bidder(s) shall appear at the Sale Hearing and be prepared to testify in support of the Successful Bid(s) and the Successful Bidder(s)' ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with the assumption and assignment of executory contracts and unexpired leases.

The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing.

The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid(s) does not constitute the Debtors' acceptance of the Successful Bid(s). The Debtors shall be deemed to have accepted Successful Bid(s) only when the Successful Bid(s) has been approved by order of the Bankruptcy Court.

Nothing herein will be deemed a waiver of any rights of the Debtors or any other parties in interest to contest any rights asserted by any person in such objections, and all such rights of the Debtors are expressly preserved.

Additional Information

Any party wishing to submit a bid should contact the Debtors' proposed investment bankers at the following: Jefferies LLC, 520 Madison Avenue, New York, NY 10022 Attn: Rich Morgner (rmorgner@jefferies.com); Stephen Gavalas (sgavalas@jefferies.com); Derk van der

Erve (dvandererve@jefferies.com); Christopher Hanley (chanley@jefferies.com); and Philip Engel (pengel@jefferies.com).

Copies of the Motion, the Bid Procedures Order, and the Bid Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent, Stretto, Inc., located at <https://cases.stretto.com/appharvest/>.

FAILURE TO ABIDE BY THE BID PROCEDURES, THE BID PROCEDURES ORDER, OR ANY OTHER ORDER OF THE BANKRUPTCY COURT IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID.

ANY PARTY WHO FAILS TO FILE WITH THE BANKRUPTCY COURT A SALE OBJECTION BY THE SALE OBJECTION DEADLINE MAY BE FOREVER BARRED FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY OBJECTION TO THE CONSUMMATION AND PERFORMANCE OF THE APPLICABLE SALE TRANSACTION CONTEMPLATED BY THE APPLICABLE PURCHASE AGREEMENT WITH A SUCCESSFUL BIDDER(S), INCLUDING THE TRANSFER OF THE DEBTORS' ASSETS TO THE SUCCESSFUL BIDDER(S), FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO SECTIONS 363(f), 1123, AND 1129, AS APPLICABLE, OF THE BANKRUPTCY CODE.

Dated: July [•], 2023
Houston, Texas

/s/ *DRAFT*

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*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit 4

Potential Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

**NOTICE OF CURE AMOUNTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES IN CONNECTION WITH SALE TRANSACTION**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 26, 2023 the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) a motion (the “Motion”) seeking, among other things, entry of an order: (i) approving the proposed bid procedures (the “Bid Procedures”) by which the Debtors will solicit and select the highest or otherwise best offer for sale of the Debtors’ Richmond/Morehead Assets, Somerset Assets, and Other Assets through a sales transaction (the “Sale Transaction”); (ii) scheduling an auction of the [Richmond/Morehead / Somerset / Other] Assets and a hearing for the approval of the proposed [Richmond/Morehead / Somerset / Other] Sale Transaction (the “Sale Hearing”); (iii) approving the form and manner of notice for sale of the [Richmond/Morehead / Somerset / Other] Assets, the [Richmond/Morehead / Somerset / Other] Auction, and the Sale Hearing; (iv) approving procedures for the assumption or assumption and assignment of executory contracts or unexpired leases (collectively, the “365 Contracts”), and the Debtors’ calculation of the amount necessary to cure any monetary defaults under such 365 Contracts (the “Cure Amounts”); (v) authorizing the Sale Transaction including, but not limited to, the assumption and assignment of the 365 Contracts; and (vi) granting related relief.

On [●], 2023, the Bankruptcy Court entered the *Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors’ Entry Into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Potential Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-*

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor’s service address is 500 Appalachian Way, Morehead, KY 40351.

Auction Notice; (H) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief [Docket No. [●]] (the “Bid Procedures Order”).

You are receiving this notice (the “Cure Notice”) because you may be a Counterparty to an executory contract or unexpired lease of the Debtors that may be assumed and assigned to the Successful Bidder, or as otherwise contemplated in the Successful Bid (each, a “365 Contract”). Each of the 365 Contracts that may be assumed and assigned in connection with a Sale Transaction with a Successful Bidder and the Debtors’ calculation of the Cure Amounts with respect thereto are set forth on Exhibit A hereto.² The Cure Amounts are the only amounts proposed to be paid upon the assumption and assignment of the 365 Contracts.

The inclusion of any contract or lease on Exhibit A shall not constitute or be deemed a determination or admission by the Debtors that such contract or other document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

Notwithstanding the inclusion of any 365 Contract on Exhibit A, neither the Debtors nor any Successful Bidder(s) are obligated to assume or assume and assign any 365 Contract identified on Exhibit A. This Cure Notice is only advising parties of the Debtors’ proposed Cure Amounts should the 365 Contract be assumed or assumed and assigned. Subsequent notice will be provided if your 365 Contract is proposed to be assumed or assumed and assigned to a Successful Bidder. If you disagree with the proposed Cure Amounts, you must file an objection in accordance with the instructions below.

Objections

A. Cure Objections

Any objection to the potential assumption, assignment, or designation of a 365 Contract identified on Exhibit A, the subject of which objection is the Debtors’ proposed Cure Amounts, if any, must (i) be in writing, (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (iii) state, with specificity, the legal and factual basis thereof, including, what Cure Amounts the objecting party believes are required, (iv) include any appropriate documentation in support thereof, (v) be filed with the Bankruptcy Court by no later than **August 24, 2023 at 4:00 p.m. (prevailing Central Time)**, and (vi) served on (a) AppHarvest Operations Inc., 500 Appalachian Way, Morehead, KY 40351; (Attn: Gary Broadbent (gary.broadbent@appharvest.com)); (b) proposed counsel for the Debtors, Sidley Austin LLP, 787 7th Ave, New York, NY 10019, Attn: Anthony Grossi (agrossi@sidley.com) and Patrick Venter (pventer@sidley.com) and (2) Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn: Matthew Cavanaugh (mcavanaugh@jw.com); (b) advisors to any official committee appointed in these chapter 11 cases; and (c) the United States Trustee for the Southern District of Texas, 515 Rusk, Suite 356, Houston, Texas 77002 (Attn: Jana Smith Whitworth, (Jana.Whitworth@usdoj.gov) (collectively, the “Objection Notice Parties”).

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

IF A COUNTERPARTY FAILS TO FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CURE OBJECTION, THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE AMOUNT TO CURE ANY DEFAULT UNDER THE APPLICABLE 365 CONTRACT. THE CURE AMOUNTS SET FORTH ON EXHIBIT A HERETO SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE APPLICABLE 365 CONTRACT UNDER BANKRUPTCY CODE SECTION 365(B), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE 365 CONTRACT, OR ANY OTHER DOCUMENT, AND THE APPLICABLE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY ADDITIONAL CURE OR OTHER AMOUNTS WITH RESPECT TO SUCH 365 CONTRACT AGAINST THE DEBTORS, ANY SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM.

B. Adequate Assurance Objections

As stated, this notice does not indicate if your 365 Contract will be assumed, rejected ,or assumed and assigned to a Successful Bidder. If your 365 Contract is proposed to be assumed or assumed and assigned, subsequent notice will be provided. **Any objection to adequate assurance are preserved and the procedures for such adequate assurance objections will be set forth in the subsequent notice.**

Sale Hearing

Cure Objections that cannot be resolved by the parties will be heard by the Bankruptcy Court on **August 31, 2023 at [●] [a.m./p.m.] (prevailing Central Time)** or as soon thereafter as counsel may be heard.

Dated: July [•], 2023
Houston, Texas

/s/ *DRAFT*

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)
Vienna Anaya (TX Bar No. 24091225)
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*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit 5

Post-Auction Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

NOTICE OF DESIGNATION OF SUCCESSFUL BID AND BACK-UP BID

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 26, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) a motion (the “Motion”) seeking, among other things, entry of an order: (i) approving the proposed bid procedures (the “Bid Procedures”) by which the Debtors will solicit and select the highest or otherwise best offer for sale of the Debtors’ Richmond/Morehead Assets, Somerset Assets, and Other Assets through a sales transaction (the “Sale Transaction”); (ii) scheduling an auction of the [Richmond/Morehead / Somerset / Other] Assets and a hearing for the approval of the proposed [Richmond/Morehead / Somerset / Other] Sale Transaction (the “Sale Hearing”); (iii) approving the form and manner of notice for sale of the [Richmond/Morehead / Somerset / Other] Assets, the [Richmond/Morehead / Somerset / Other] Auction, and the Sale Hearing; (iv) approving procedures for the assumption or assumption and assignment of executory contracts or unexpired leases (collectively, the “365 Contracts”), and the Debtors’ calculation of the amount necessary to cure any monetary defaults under such 365 Contracts (the “Cure Amounts”); (v) authorizing the Sale Transaction including, but not limited to, the assumption and assignment of the 365 Contracts; and (vi) granting related relief.

On [●], 2023, the United States Bankruptcy Court for the Southern District of Texas (the “Court”) entered the *Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors’ Entry Into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Potential Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-Auction Notice; (H) Approving Assumption*

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor’s service address is 500 Appalachian Way, Morehead, KY 40351.

and Assignment Procedures; and (II) Granting Related Relief [Docket No. [●]] (the “Bid Procedures Order”).²

Pursuant to the Bid Procedures Order, (i) the deadline for submitting a Qualified Bid was August 21, 2023 at 4:00 p.m. (prevailing Central Time) (the “[Richmond/Morehead / Somerset / Other] Bid Deadline”) and (ii) in the event that (x) the Debtors timely received one or more Qualified Bids or (y) Stalking Horse Bidder(s) were selected and the Debtors receive a Qualifying Bid that the Debtors in their business judgment, in consultation with the Consultation Parties, determine to be the Initial Highest Bid, the Debtors would conduct the [Richmond/Morehead / Somerset / Other] Auction to be held on August 24, 2023 at [●][a./p.]m. (prevailing Central Time) (the “[Richmond/Morehead / Somerset / Other] Auction”).

On [August 24], 2023, the Debtors conducted the [Richmond/Morehead / Somerset / Other] Auction in accordance with the Bid Procedures and certain rules distributed to Auction attendees prior to and at the [Richmond/Morehead / Somerset / Other] Auction. At the [Richmond/Morehead / Somerset / Other] Auction, the Debtors determined that the highest or best offer was submitted by [●] (the “Successful Bidder” and the Successful Bidder’s winning bid, the “Successful Bid”) and the second highest or best offer was submitted by [●] (the “Back-up Bidder,” and the Back-up Bidder’s bid, the “Back-up Bid”).

Exhibit A attached hereto is a copy of the final, fully-executed asset purchase agreement (the “APA,” and the transaction contemplated thereby the “[Richmond/Morehead / Somerset / Other] Sale Transaction”) between the Debtors and the Successful Bidder, containing the terms of the Successful Bid.

Important Dates and Deadlines

Sale Objection Deadline:

Objections (the “Objections”) to consummation of the [Richmond/Morehead / Somerset / Other] Sale Transaction, if any, shall be filed with the Bankruptcy Court not later than **4:00 p.m. (prevailing Central Time) on August 28, 2023**. Any Objections not resolved prior to the Sale Hearing shall be argued at the Sale Hearing or such other time as set by the Bankruptcy Court.

Sale Hearing:

The Sale Hearing to approve the [Richmond/Morehead / Somerset / Other] Sale Transaction shall be held electronically via video/telephone before the Bankruptcy Court before the Honorable David R. Jones on **August 31, 2023 at [●] [a.m./p.m.] (prevailing Central Time)**. If you wish to participate telephonically, you must use the Bankruptcy Court’s teleconference system at **1-832-917-1510** and entering conference code **205691**. You may also join by videoconference by use of an internet connection, using the website **www.gotomeeting.com**, or by downloading the free GoToMeeting application. To connect, you should enter the meeting Code “**JudgeJones**” in the GoToMeeting app or click the link Judge Jones’ home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

enter your name under the personal information setting. At such hearing, the Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with the assumption and assignment of 365 Contracts.

The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing.

The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Debtors' acceptance of the Successful Bid. The Debtors shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Court.

If the [Richmond/Morehead / Somerset / Other] Sale Transaction is not consummated with the Successful Bidder pursuant to the Successful Bid, the Debtors may designate the Back-up Bidder as the Successful Bidder and such Back-up Bidder's Back-up Bid as the Successful Bid upon the filing of a notice to such effect with the Court (the "Back-up Bid Implementation Notice"). The Debtors will serve the Back-up Bid Implementation Notice to each of the Sale Notice Parties, if so designated, and the Debtors will seek to consummate the [Richmond/Morehead / Somerset / Other] Sale Transaction pursuant to such Back-up Bid. As soon as practicable after the Debtors file the Back-up Bid Implementation Notice, the Debtors will file a motion with the Court seeking approval of assumption and assignment procedures for 365 Contracts in connection with such Back-up Bid.

Dated: July [•], 2023
Houston, Texas

/s/ *DRAFT*

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)
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*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit 6

Notice of Desired 365 Contracts

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

**NOTICE OF DESIRED
365 CONTRACTS THAT MAY BE ASSUMED
OR ASSUMED AND ASSIGNED IN CONNECTION
WITH [RICHMOND/MOREHEAD / SOMERSET / OTHER] SALE TRANSACTION**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 26, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) a motion (the “Motion”) seeking, among other things, entry of an order: (i) approving the proposed bid procedures (the “Bid Procedures”) by which the Debtors will solicit and select the highest or otherwise best offer for sale of the Debtors’ Richmond/Morehead Assets, Somerset Assets, and Other Assets through a sales transaction (the “Sale Transaction”); (ii) scheduling an auction of the [Richmond/Morehead / Somerset / Other] Assets and a hearing for the approval of the proposed [Richmond/Morehead / Somerset / Other] Sale Transaction (the “Sale Hearing”); (iii) approving the form and manner of notice for sale of the [Richmond/Morehead / Somerset / Other] Assets, the [Richmond/Morehead or Somerset] Auction, and the Sale Hearing; (iv) approving procedures for the assumption or assumption and assignment of executory contracts or unexpired leases (collectively, the “365 Contracts”), and the Debtors’ calculation of the amount necessary to cure any monetary defaults under such 365 Contracts (the “Cure Amounts”); (v) authorizing the Sale Transaction including, but not limited to, the assumption and assignment of the 365 Contracts; and (vi) granting related relief.

On [●], 2023, the Bankruptcy Court entered the *Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors’ Entry Into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Potential Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-*

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor’s service address is 500 Appalachian Way, Morehead, KY 40351.

Auction Notice; (H) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief [Docket No. [●]] (the “Bid Procedures Order”).²

You are receiving this Notice of Desired 365 Contracts because you may be a Counterparty to a 365 Contract of the Debtors that potentially could be assumed or assumed and assigned to a Successful Bidder in connection with a [Richmond/Morehead / Somerset / Other] Sale Transaction (a “Desired 365 Contract”).

In accordance with the Assumption and Assignment Procedures and the Bid Procedures Order, the Debtors may, in connection with any [Richmond/Morehead / Somerset / Other] Sale Transaction with a Successful Bidder (as defined in the Bid Procedures), seek to assume or assume and assign to the Successful Bidder (or its designated affiliate assignee, if applicable) certain 365 Contracts of the Debtors.

Each of the 365 Contracts that may be assumed or assumed and assigned in connection with the [Richmond/Morehead / Somerset / Other] Sale Transaction with a Successful Bidder and the Debtors’ calculation of the Cure Amounts with respect thereto are set forth in **Exhibit A** hereto.

The inclusion of any 365 Contract on **Exhibit A** does not constitute an admission that a particular 365 Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such 365 Contract ultimately will be assumed or assumed and assigned. The assumption or assumption and assignment of a 365 Contract is subject to Bankruptcy Court approval. All rights of the Debtors with respect thereto are reserved.

Any time prior to the Contract Objection Deadline, the Debtors reserve the right, and are authorized but not directed, to: (a) add previously omitted Desired 365 Contracts as contracts to be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for a [Richmond/Morehead / Somerset / Other] Sale Transaction; (b) remove a Desired 365 Contract from the Desired 365 Contract List that a Successful Bidder proposes be assumed and assigned to it in connection with a [Richmond/Morehead / Somerset / Other] Sale Transaction; or (c) modify the previously stated Cure Amount associated with any Desired 365 Contract

Objections

Any objection with respect to the assumption and assignment of a Desired 365 Contract identified on **Exhibit A**, the Cure Amount (solely to the extent such objection is not subject to the Cure Objection Deadline in the Cure Notice), and/or the ability of Successful Bidder(s) to provide adequate assurance of future performance (a “Contract Objection”) must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and Local Rules, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv) be filed with the Bankruptcy Court, via ECF, on or prior to **4:00 p.m. (prevailing Central Time)** on **August 28, 2023** (the “Contract Objection Deadline”).

IF NO CONTRACT OBJECTION IS TIMELY RECEIVED WITH RESPECT TO ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF A 365 CONTRACT: (I) THE

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

COUNTERPARTY TO SUCH 365 CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT TO SUCCESSFUL BIDDER OF THE 365 CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE CURE AMOUNT AND ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE SUCCESSFUL BIDDER); (II) ANY AND ALL DEFAULTS UNDER THE 365 CONTRACT AND ANY AND ALL PECUNIARY LOSSES RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND (B) UPON PAYMENT OF THE CURE AMOUNT SET FORTH IN THE NOTICE OF DESIRED 365 CONTRACTS FOR SUCH 365 CONTRACT; AND (III) THE CURE AMOUNT SET FORTH IN THE NOTICE OF DESIRED 365 CONTRACTS FOR SUCH 365 CONTRACT SHALL BE CONTROLLING, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUCH 365 CONTRACT, OR ANY OTHER RELATED DOCUMENT, AND THE COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE CURE AMOUNT AND SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH 365 CONTRACT AGAINST THE DEBTORS AND THEIR ESTATES OR THE SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING THE CONTRACT OBJECTIONS AND THE ORDER APPROVING THE SALE.

Sale Hearing

The Sale Hearing to approve the [Richmond/Morehead / Somerset / Other] Sale Transaction shall be held electronically via video/telephone before the Bankruptcy Court before the Honorable David R. Jones on **August 31, 2023 at [●] [a.m./p.m.] (prevailing Central Time)**. If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at **1-832-917-1510** and entering conference code **205691**. You may also join by videoconference by use of an internet connection, using the website **www.gotomeeting.com**, or by downloading the free GoToMeeting application. To connect, you should enter the meeting Code "**JudgeJones**" in the GoToMeeting app or click the link Judge Jones' home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting. At such hearing, the Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with the assumption and assignment of 365 Contracts.

The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing.

The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Debtors' acceptance of the Successful Bid. The Debtors shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Court.

Additional Information

Copies of the Motion, the Bid Procedures Order, and the Bid Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent, Stretto, Inc., located at <https://cases.stretto.com/appharvest/>.

Dated: July [•], 2023
Houston, Texas

/s/ *DRAFT*

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)
Vienna Anaya (TX Bar No. 24091225)
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