

**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)

(Joint Administration Requested)
(Emergency Hearing Requested)

**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 FINAL HEARING**

Emergency relief has been requested. Relief is requested not later than 2:00 p.m. (prevailing Central Time) on July 25, 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 July 25, 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 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.

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 Debtors' service address is 500 Appalachian Way, Morehead, KY 40351.

AppHarvest Products, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases, hereby submit this motion (the “Motion”). In support of this Motion, the Debtors submit the (i) *Declaration of Gary Broadbent, Chief Restructuring Officer of the Debtors, in Support of the Debtors’ Chapter 11 Proceedings* (the “Broadbent Declaration”), (ii) the *Declaration of Thomas Studebaker in Support of (I) the Debtors’ Motion to Obtain Postpetition Financing; and (II) Other First Day Pleadings* (the “Studebaker Declaration”), and (iii) the *Declaration of Richard W. Morgner in Support of the Debtors’ Emergency Motion for Entry of Interim and Final Orders Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection and (III) Scheduling Final Hearing* (the “Morgner Declaration”, together with the Broadbent Declaration and Studebaker Declaration, the “First Day Declarations”), filed contemporaneously herewith and incorporated herein by reference.² In further support of this Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. After weeks of hard-fought negotiations, the Debtors commenced these chapter 11 cases to implement a restructuring through the sale of substantially all of their assets. The Debtors have successfully negotiated the terms of a prearranged restructuring with the majority of their key stakeholders—Equilibrium (as defined below), the Debtors’ largest holder of funded debt, and Mastronardi Produce Limited and Mastronardi Berea LLC (collectively, “Mastronardi”), the Debtors’ exclusive marketing and distributing partner,—as embodied in a restructuring support agreement (the “RSA”). The Debtors will be seeking Court approval to

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the First Day Declarations.

appoint Equilibrium to serve as the stalking horse bidder to purchase two of the Debtors' three greenhouse facilities³ and will continue their prepetition marketing efforts on a postpetition basis. As such, the approximately \$29.6 million (inclusive of the Roll-Up Loans and others fees and interest) secured delayed-draw term loan facility (the "DIP Facility") is one of the central pillars of these chapter 11 cases by providing the Debtors sufficient liquidity to continue their postpetition marketing and sale efforts and, importantly, allowing the Debtors to preserve the going concern value of all three of their greenhouse facilities while fulfilling their ongoing commitment to vendors and employees.

2. As a cash flow negative business since inception, the Debtors have required capital raises to continue their operations. Broadbent Decl. ¶ 48. While the Debtors were able to successfully raise capital through certain transactions, including obtaining funded debt and consummation of a sale leaseback in 2022, the Debtors' liquidity would become challenged by July 2023. Broadbent Decl. ¶ 50. Beginning in February 2023 and then again in June 2023, the Debtors, with the assistance of their advisors, canvassed the market for potential capital raise solutions from existing stakeholders and third parties. Broadbent Decl. ¶ 51-52; Morgner Decl. ¶¶ 7-12. In parallel, the Debtors negotiated with potential counterparties regarding a sale leaseback transaction for certain of the Debtors' greenhouse facilities and continued to evaluate other potentially actionable restructuring proposals. Broadbent Decl. ¶¶ 58-61. Ultimately, the Debtors were unable to reach agreement on a sale leaseback transaction or reorganization transaction with any of such parties on acceptable terms and in the necessary timeframe, which required the Debtors to pivot to seeking bridge financing. Broadbent Decl. ¶¶ 62.

³ The Debtors intend to file a motion seeking approval of the bidding procedures and approval of the stalking horse asset purchase agreement in short order, with the goal of closing the transaction by 50 days from the Petition Date.

3. Given the tight timeframe imposed by the upcoming liquidity constraints and because substantially all of the Debtors' assets were encumbered and subject to liens of the Debtors' prepetition lenders, the Debtors believed that their best chance of obtaining bridge financing and debtor-in-possession financing would be from an existing stakeholder. Morgner Dec. ¶¶ 12. The Debtors thus focused their efforts on negotiating with stakeholders and existing creditors who were already familiar with the Debtors' business and in the capital structure, while continuing to pursue discussions with third parties regarding bridge financing and debtor-in-possession financing. *Id.* The Debtors ultimately received two competing bridge financing offers and, on July 19, 2023, obtained an approximately \$2.69 million Prepetition Bridge Loan (defined below) from Equilibrium pursuant to the Bridge Credit Agreement (defined below). Morgner Dec. ¶¶ 13-14.

4. With the temporary breathing room provided by the Prepetition Bridge Loan, the Debtors were able to continue negotiations with Equilibrium, Mastronardi, and GNCU (as defined below) regarding the terms and conditions of the DIP Facility and these chapter 11 cases. Morgner Dec. ¶ 15. The Debtors, after good faith and arms' length negotiations, obtained a commitment from Equilibrium to provide the liquidity support during these chapter 11 cases on the terms reflected in the DIP Credit Agreement and, in parallel, reached consensus on the restructuring transactions reflected in the RSA. *Id.*; Broadbent Decl. ¶ 65. Importantly, no other financing was available to the Debtors on better (or any) terms. Morgner Dec. ¶ 18.

5. As discussed below, the proposed DIP Facility provides for an additional \$24.3 million of liquidity during the pendency of these chapter 11 cases, to be accessed through three draws. Following entry of the Interim Order, the Debtors will have access to (a) an initial \$8 million and (b) upon entry of the Final Order, the Debtors shall have access to two additional

draws, including a first subsequent loan of \$4 million, and (y) a final loan equal to the remaining balance, in accordance with the DIP Credit Agreement.

6. Absent entry into the DIP Facility, the Debtors would not have sufficient liquidity to continue operating in the ordinary course and would be forced to shut down each of their three greenhouse facilities, which would be value destructive, particularly in light of the perishable nature of the Debtors' goods and inventory. Studebaker Dec. ¶ 6. The Debtors have been, and remain, committed to evaluating all value-maximizing paths forward, both with respect to the DIP Facility and with respect to the terms of the overall restructuring transactions. Broadbent Dec. ¶ 68. For these reasons, the Debtors respectfully request that the Court grant this Motion.

RELIEF REQUESTED

7. The Debtors seek entry of an interim order, substantially in the form of the proposed interim order filed with this Motion (the "Interim Order"), and a final order (the "Final Order," and, together with the Interim Order, the "DIP Orders").⁴

- a) authorizing AppHarvest, Inc. ("Borrower") to obtain postpetition secured financing (the "DIP Facility") from CEFF II AppHarvest Holdings, LLC, in its capacity as Lender under the DIP Facility ("DIP Lender") pursuant to the terms set forth in the Senior Secured Super-Priority Debtor-in-Possession Credit Agreement (as subsequently amended, restated, or otherwise modified from time to time, the "DIP Credit Agreement"), attached hereto at **Exhibit A**;
 - i. a delayed draw term loan facility in the initial aggregate principal amount of \$24.3 million (the "DIP Facility Commitment" and the portion thereof drawn by the Debtors, the "New Money Loans"), and including, without limitation, principal, interest, fees, expenses, and other costs of the DIP Lender in these chapter 11 cases, in accordance with the terms and conditions set forth in the DIP Orders and in the DIP Credit Agreement, of which (a) following entry of the Interim Order, the Debtors have access

⁴ To the extent of any conflict between the descriptions and definitions in this Motion and the DIP Orders, DIP Credit Agreement, or DIP Loan Documents, then the DIP Orders, DIP Credit Agreement, or DIP Loan Documents, as applicable, will control.

to an initial \$8 million of new money (the “Interim Advance”) and (y) following entry of the Final Order, (a) a subsequent loan of \$4 million (the “Second Advance”) and (b) a subsequent draw of the balance (the “Final Advance”) subject to certain conditions set forth in the DIP Agreement; and

- ii. upon entry of the Interim Order, a conversion of all of the Prepetition Bridge Loan to loans under the DIP Facility (the “Roll-Up Loans,” and together with the loans made upon the funding of the DIP Facility Commitment, the “DIP Facility Loans”);
- b) authorizing the Debtors to enter into, execute, deliver and perform under the DIP Facility and the DIP Credit Agreement, granting or perfecting liens or security interests by the Debtors in favor of and for the benefit of the DIP Lender on account of the DIP Credit Agreement, as the same now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all agreements and documents currently executed or to be executed in connection therewith or related thereto, by and among the Debtors and the DIP Lender, including related security agreement(s) and guarantees, security documents, and other agreements, instruments and documents required by the DIP Lender (collectively, and together with the DIP Credit Agreement, the “DIP Loan Documents”), the terms of which are referenced and incorporated herein as if fully set forth herein;
- c) approving the terms and conditions of the DIP Facility, including the DIP Credit Agreement and the other DIP Loan Documents;
- d) granting valid, enforceable, non-avoidable, and automatically fully perfected priming liens on, and security interests in, certain collateral to the DIP Lender to secure all obligations under the DIP Facility pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code;
- e) granting allowed superpriority administrative claims to the DIP Lender with respect to all amounts incurred under the DIP Facility Loans pursuant to section 364(c)(1) of the Bankruptcy Code (subject only to the Carve-Out (as defined below));
- f) authorizing the Debtors to grant Adequate Protection (as defined below) to the Prepetition Lenders (as defined below) under or in connection with the following agreements:
 - i. the Bridge Credit Agreement;
 - ii. Richmond Credit Agreement;

- iii. Morehead Credit Agreement;⁵ and
 - iv. Pulaski Credit Agreement.
- g) approving certain stipulations of the Debtors with respect to the Prepetition Loan Documents (defined below), the Prepetition Loan Facilities (defined below), and the liens and security interests granted with respect thereto;
 - h) modifying the automatic stay of section 362 of the Bankruptcy Code (the “Automatic Stay”) to the extent set forth herein and in the DIP Documents, and providing for the immediate effectiveness of the Interim Order; and
 - i) scheduling a final hearing (the “Final Hearing”) to consider entry of the Final Order granting the relief requested in the Motion on a final basis, approving the relief granted herein on a final basis, and authorizing the DIP Borrower to borrow from the DIP Lender under the DIP Documents up to the full amount of the DIP Facility.

JURISDICTION AND VENUE

8. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

9. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The bases for the relief requested herein are sections 102(1), 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

⁵ Equilibrium is the successor-in-interest to the Rabo under the Morehead Credit Agreement.

THE DEBTORS' PREPETITION CAPITAL STRUCTURE

11. As of July 23, 2023 (the "Petition Date"), the Debtors' prepetition funded indebtedness consisted of the following:

Name	Lender	Principal Amount (approx.)	Lien Priority and Collateral
Richmond Loan Facility	Equilibrium	\$64,303,755.00	First priority lien on substantially all assets of AppHarvest Richmond Farm, LLC and 100% of equity interest of AppHarvest Operations, Inc.'s in AppHarvest Richmond Farm, LLC (Primed by DIP Facility)
Morehead Loan Facility	Equilibrium (as successor-in-interest to Rabo)	\$45,941,435.41	First priority lien on substantially all assets of AppHarvest Morehead Farm, LLC (Primed by DIP Facility)
GNCU Loan Facility	GNCU	\$50,000,000.00	First priority lien on substantially all assets of AppHarvest Pulaski Farm, LLC (Primed by DIP Facility up to \$9,900,000 (the "<u>GNCU Priming Cap</u>"))
Bridge Loan Facility	Equilibrium	\$2,690,000.00	First priority lien on substantially all assets of AppHarvest, Inc.; AppHarvest Operations, Inc.; AppHarvest Farms, LLC; AppHarvest Berea Farm, LLC; AppHarvest Development, LLC; AppHarvest Technology, Inc.; AppHarvest Products, LLC; Rowan County Development, LLC
Total		\$162,935,190.41	

a) Richmond Loan Facility

12. AppHarvest Richmond Farm, LLC ("Richmond Borrower"), as borrower, and CEFF II AppHarvest Holdings, LLC ("Equilibrium"), as lender, are parties to that certain *Credit Agreement*, dated as of July 23, 2021 (as amended by that certain First Amendment to Credit Agreement, dated as of July 29, 2021, that certain Second Amendment to Credit Agreement, dated

as of July 29, 2022, that certain Waiver and Third Amendment to Credit Agreement, dated as of December 21, 2022, and as further amended or supplemented from time to time prior to the date hereof, the “Richmond Credit Agreement” and together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, the “Richmond Loan Documents”). The maturity date of the Richmond Credit Agreement is April 1, 2031. The Debtors’ obligations arising under, or in connection with, the Richmond Loan Documents (the “Richmond Loan Facility”) are secured by first-priority liens in substantially all of Richmond Borrower’s property and the proceeds thereof in favor of Equilibrium. As of the Petition Date, the outstanding principal amount under the Richmond Loan Facility is approximately \$64,303,755.00.

b) Morehead Loan Facility

13. AppHarvest Morehead Farm, LLC (“Morehead Borrower”), as borrower, and Rabo AgriFinance, LLC (“Rabo”), as lender, are parties to that certain *Master Credit Agreement*, dated as of June 15, 2021 (as amended by that certain First Amendment to Master Credit Agreement, dated as of March 31, 2023 and as further amended or supplemented from time to time prior to the date hereof, the “Morehead Credit Agreement” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, the “Morehead Loan Documents”). The maturity date of the Morehead Credit Agreement is expected to be July 23, 2024. The Debtors’ obligations arising under, or in connection with, the Morehead Loan Documents (the “Morehead Loan Facility”) are secured by first-priority liens in substantially all of Morehead Borrower’s property

and the proceeds thereof in favor of Equilibrium.⁶ As of the Petition Date, the outstanding principal amount under the Morehead Loan Facility is approximately \$45,941,435.41.

c) GNCU Loan Facility

14. AppHarvest Pulaski Farm, LLC (“AppHarvest Pulaski”), as borrower, AppHarvest Operations, Inc., as guarantor, and Greater Nevada Credit Union (“GNCU,” and collectively with Equilibrium, the “Prepetition Lenders”), as lender, are parties to that certain *Loan Agreement*, dated as of July 29, 2022 (as amended or supplemented prior to the date hereof, the “GNCU Credit Agreement” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, the “GNCU Loan Documents”). The maturity date of the GNCU Credit Agreement is July 29, 2045. The Debtors’ obligations arising under, or in connection with, the GNCU Loan Documents (the “GNCU Loan Facility”) are secured by first-priority liens in substantially all of AppHarvest Pulaski’s property and the proceeds thereof in favor of GNCU. As of the Petition Date, the outstanding principal amount under the GNCU Loan Facility is approximately \$50 million.

d) Bridge Loan Facility

15. Borrower and certain of its subsidiaries are parties to that certain *Secured Promissory Note and Loan Agreement*, dated July 19, 2023 by and between AppHarvest, Inc. and Equilibrium (the “Bridge Credit Agreement,” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, the “Bridge Loan Documents,” and collectively with the Richmond Loan Documents, the Morehead Loan Documents, and GNCU Loan Documents, the

⁶ Equilibrium is the successor-in-interest to Rabo under the Morehead Loan Documents.

“Prepetition Loan Documents”). The maturity date of the Bridge Credit Agreement is July 24, 2023. The Debtors’ obligations arising under, or in connection with, the Bridge Loan Documents (the “Bridge Loan Facility,” and collectively with the Richmond Loan Facility, Morehead Loan Facility, and Pulaski Loan Facility, the “Prepetition Loan Facilities”) are secured by substantially all assets of the following entities in favor of Equilibrium: AppHarvest, Inc.; AppHarvest Operations, Inc.; AppHarvest Farms, LLC; AppHarvest Berea Farm, LLC; AppHarvest Development, LLC; AppHarvest Technology, Inc.; AppHarvest Products, LLC; Rowan County Development, LLC. As of the Petition Date, the outstanding principal amount under the Bridge Loan Facility is approximately \$2,690,000.00.

SUMMARY OF TERMS OF DIP FACILITY AND USE OF CASH COLLATERAL

16. In accordance with Rules 4001(b)-(d) of the Bankruptcy Rules, as incorporated by Rule 1075 of the Local Rules, the chart below summarizes material terms of the Interim Order and the DIP Credit Agreement.

MATERIAL TERMS		Location
Borrower Bankruptcy Rule 4001(c)(1)(B)	<u>Borrower.</u> AppHarvest, Inc. <u>Guarantors.</u> AppHarvest Operations, Inc.; AppHarvest Farms, LLC; AppHarvest Morehead Farm, LLC; AppHarvest Richmond Farm, LLC; AppHarvest Berea Farm, LLC; AppHarvest Pulaski Farm, LLC; AppHarvest Development, LLC; Rowan County Development, LLC; AppHarvest Technology, Inc.; AppHarvest Products, LLC; and AppHarvest Foundation, LLC <u>DIP Lender.</u> CEFF II AppHarvest Holdings, LLC	DIP Credit Agreement Preamble and Recitals
DIP Facility and Borrowing Limits Bankruptcy Rule 4001(c)(1)(B)	The DIP Facility shall be made available in three draws on the terms set forth herein and in the DIP Credit Agreement, of which, following entry of the Interim Order, (a) an initial amount of \$8 million of new money will be available to the Debtors (the “ Interim Advance ”) and (b) upon entry of the Final Order, the	Interim Order ¶ 4; DIP Credit

MATERIAL TERMS		Location
	Debtors shall have access to two additional draws, (x) a first subsequent loan of \$4 million shall be available to the Debtors (the “ Second Advance ”), and (y) a final loan equal to the New Money Loan Commitment, minus the sum of the Interim Advance and the Second Advance shall be made available to the Debtors, in accordance with the DIP Credit Agreement.	Agreement § 2.1.
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	Interest Rate: 12.0% per annum payable in kind Default Rate: 3.0% per annum payable in kind	DIP Credit Agreement; Agreement Definitions
Maturity Date; Duration for Use of DIP Collateral Bankruptcy Rule 4001(c)(1)(B)	“<u>Maturity Date</u>” means the earlier to occur of (a) the date that is seventy-five (75) days after the Petition Date, (b) the Plan Effective Date, and (c) the date of delivery of a Termination Notice. “<u>Termination Date</u>” means, unless extended, with the prior written consent (which may be by e-mail) of the Lender, the earliest to occur of: (a) the Maturity Date, (b) the date of the delivery of a Termination Notice to the Remedies Notice Parties declaring the acceleration of all of the Obligations under this Agreement and the other DIP Loan Documents following the occurrence and continuance of an Event of Default; (c) Discharge Date; and (d) July 28, 2023 if the Closing Date has not occurred on or before such date.	DIP Credit Agreement Definitions
Events of Default Bankruptcy Rule 4001(c)(1)(B)	Events of default (each, an “<u>Event of Default</u>”) under the DIP Credit Agreement include, but are not limited to, the following (subject to certain grace periods): (i) a failure of the Debtors to make any payment when due; (ii) a final judgment in excess of five million dollars or could reasonably be expected to have a Material Adverse Effect; (iii) any representation or warranty that contains any statement of fact that is untrue or misleading as of the date made or fails to state a material fact necessary to make the statement therein not misleading as of the date made; provided, that no Event of	Interim Order ¶ 21(a); DIP Credit Agreement §§ 8.1- 8.9

MATERIAL TERMS		Location
	Default shall occur if such untrue or misleading statement is capable of being cured within 30 days of the date on which the Loan Party obtains knowledge thereof; (iv) default beyond applicable grace period due under an agreement involving the borrowing of money or Indebtedness in excess of \$1,000,000 and payment is not stayed by the Chapter 11 Cases or is otherwise permitted to be paid; (v) borrowings or indebtedness under any agreement to which borrower is a party become due and payable prior to their scheduled maturity date and the outstanding amounts exceeds \$1,000,000 in the aggregate and payment is not stayed by the Chapter 11 Cases or is otherwise permitted to be paid; (vi) A Loan Party or any of its Affiliates shall be in breach of, default under, the Stalking Horse APA and such breach or default shall continue unremedied for the length of any applicable cure period in the Stalking Horse APA; (vii) termination of the Stalking Horse APA; (viii) Breach of covenants; (ix) ERISA Events or Liens; (x) Interim Order or Final Order vacated or not in full force and effect; (xi) non-compliance with Final Order; (xii) any Loan Party shall make any payment or principal or interest other any other prepetition Indebtedness not set forth in the Approved Budget; (xiii) (a) Debtors file motion seeking dismissal or conversion of chapter 11 cases, (b) any superpriority claim shall be pari passu or senior to the DIP Lenders or (c) the filing of any pleading by any Loan Party seeking to consent or support any of the matters in clause (a) and (b) hereof ; (xiv) court grants relief from the automatic stay to any holders of any Liens evidencing Indebtedness other than in connection with a	

MATERIAL TERMS		Location
	363 Sale or any of Prepetition Indebtedness in excess of \$2,000,000 to permit foreclosure; (xv) any Loan Party petitions to obtain additional financing pari passu or senior to the DIP Credit Agreement; (xvi) termination of exclusive period for Debtors to file Plan of Reorganization; (xvii) consummation of a sale of any material portion of the Collateral (other than 363 Sale or sale in ordinary course of business that is contemplated by the Approved Budget); (xviii) the confirmation of a chapter 11 plan of reorganization or liquidation that does not provide for payment in full of cash of the Loans or such other treatment acceptable to the DIP Lender or any Loan Party proposes or supports, or fails to contest in good faith, the entry of such plan of reorganization or liquidation; (xix) any Loan Party engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of the DIP Credit Agreement, the Prepetition Bridge Facility, the Richmond Facility, the Morehead Facility or Liens on security interest of assets securing the foregoing; (xx) the occurrence of a DIP Termination Event (as defined in the Interim Order or Final Order, as applicable); (xxi) allowance of any claim or claims under section 506(c) of the Bankruptcy Code against any of the Collateral; and (xxii) entry of any order by the Bankruptcy Court in favor of any statutory committee appointed by the US Trustee, any ad hoc committee or any other party in interest granting such party standing to pursue claims against the DIP Lender and/or any Prepetition Lender, sustaining an objection to claims of the DIP Lender or Prepetition Lender, avoiding any Liens held by the DIP Lender or avoiding any Liens held by any Prepetition Lender except as otherwise	

MATERIAL TERMS		Location
	agreed by such Prepetition Lender in writing.	
Liens and Priority Granted for New Credit Bankruptcy Rule 4001(c)(1)(B)(i)	(a) entitled to superpriority claim status under section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims and unsecured claims existing as of the Petition Date or arising thereafter under the Bankruptcy Code, including, without limitation, the prepetition claims and adequate protection claims of the Prepetition Lenders (the “<u>DIP Superpriority Claims</u>”). The DIP Superpriority Claims may be repaid from any cash of the Debtors, including without limitation, Cash Collateral (within the meaning of the DIP Order) and, following entry of the Final Order, the proceeds of Avoidance Actions and Avoidance Action Proceeds; (b) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, first priority, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (including, following entry of the Final Order, Avoidance Action Proceeds); (c) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by valid, enforceable, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were subject to valid, perfected and non-avoidable liens and unavoidable liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the “<u>Permitted Prior Liens</u>”), which security interests and liens shall be junior and subordinate only to such Permitted Prior Liens and the Carve-Out; and (d) secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by valid, enforceable, priming	DIP Credit Agreement § 6.11

MATERIAL TERMS	Location
first priority, fully perfected security interests in and liens upon all of the Debtors' rights in property of the Debtors' estates as of the Petition Date, and all of the Debtors' rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising, that secure the Prepetition Obligations in respect of the Prepetition Bridge Facility, the Richmond Facility, the Morehead Facility, and the GNCU Facility (provided, with respect to the GNCU Facility, such priming Liens pursuant to this clause(d) shall not exceed the amount of the GNCU Priming Cap), including, but not limited to, any cash proceeds received by the Loan Parties pursuant to or in connection with the entry of the Final Berea Order. The Collateral shall also include any and all hereafter acquired or arising property, rents, issues, products, offspring, proceeds and profits generated by any item of Collateral and, following entry of the Final Order, liens on proceeds of any Avoidance Actions. The Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of any Debtor and their estates under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of any Debtor, or (iii) any intercompany or affiliate liens of any Debtor. The Collateral will be free and clear of other liens, claims and encumbrances, except valid, perfected, enforceable and unavoidable liens, rights of recoupment enforceable in bankruptcy, and rights of setoff permissible under section 553 of the Bankruptcy Code, in each case except as otherwise agreed by the applicable creditor or lienholder, as applicable, in existence as of the Petition Date and permitted pursuant to Prepetition Credit Agreements, if any, and any other Permitted Prior Liens. The Borrower acknowledges that the Liens shall automatically attach to the Collateral and became valid	

MATERIAL TERMS		Location
	and perfected immediately upon entry of the Interim Order without the requirement of any further action by the Lender; <u>provided</u> that if the Lender determines to file any financing statements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such filings.	
Superpriority Expense Claims for New Credit Bankruptcy Rule 4001(c)(1)(B)(i)	<u>Superpriority Claims</u> . Subject to the Carve-Out, all DIP Obligations now existing or hereafter arising pursuant to the Interim Order, the DIP Loan Documents, or otherwise, the DIP Lender is granted an allowed superpriority administrative expense claim pursuant to Bankruptcy Code section 364(c)(1), having priority in right of payment over any and all other obligations, liabilities, and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia, sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 507(a), 507(b), 546(c), 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof (including, subject to entry of the Final Order, proceeds of Avoidance Actions) (collectively, the “ <u>DIP Superpriority Claims</u> ”).	Interim Order ¶ 11
Parties with an Interest in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	Prepetition Lenders.	Interim Order ¶ 12
Duration/Use of Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(iii)	Notwithstanding anything to the contrary set forth in the Interim Order, none of the DIP Collateral, the Prepetition Richmond Collateral, the Prepetition Morehead Collateral, the Prepetition Bridge Collateral, the GNCU Collateral including cash collateral, or the Carve-Out or proceeds of any of the foregoing may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim,	Interim Order ¶ 26

	MATERIAL TERMS	Location
	action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the DIP Lender or the Prepetition Lenders (in their capacities as such), and each of their respective affiliates, officers, directors, limited partners, investors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called “lender liability” claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Lender or Prepetition Lenders under the DIP Loan Documents, Richmond Loan Documents, Morehead Loan Documents, or Bridge Loan Documents, as applicable, or the Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed (if any) in these Chapter 11 Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the DIP Lender or Prepetition Lenders to recover on their respective collateral, or seeking affirmative relief against any of the DIP Lender or Prepetition Lenders related to the DIP Facility, Prepetition Richmond Indebtedness, or Prepetition Morehead Indebtedness; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the liens or claims of the DIP Lender or Prepetition Lenders, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against any of the DIP Lender or Prepetition Lenders; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests held by or on behalf of each of the DIP Lender and Prepetition Lenders; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to or	

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	in connection with the DIP Facility, Prepetition Richmond Indebtedness, or Prepetition Morehead Indebtedness; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Liens or Prepetition Richmond Liens or Prepetition Morehead Liens or any other rights or interests of any of the DIP Lender or Prepetition Lenders; <i>provided</i> that no more than \$25,000 of the cash collateral may be used solely by any Committee appointed in these Chapter 11 Cases, if any, solely to investigate, within the Challenge Period, the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Lenders solely concerning the legality, validity, priority, perfection, enforceability, or extent of the claims, liens, or interests held by or on behalf of each of the Prepetition Lenders.	
Liens, Cash Payments or Adequate Protection Provided for Use of Cash Collateral Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	Pursuant to Bankruptcy Code sections 105, 361, 362, and 363(e), the Prepetition Lenders and GNCU are entitled to adequate protection of their respective interests in the Prepetition Collateral and GNCU Collateral, respectively, including any cash collateral, to the extent of any diminution in value of their respective interests in the Prepetition Collateral and GNCU Collateral, respectively, resulting from, among other things, the Carve-Out (defined below), the use of cash collateral, the use, sale, or lease of any of the Prepetition Collateral and GNCU Collateral, respectively, the imposition of the automatic stay pursuant to Bankruptcy Code section 362(a), and for any other reason for which adequate protection may be granted under the Bankruptcy Code (“<u>Diminution in Value</u>”). Based on the Motion, the Supporting Declarations, and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of the Prepetition Collateral and GNCU Collateral, respectively, including any cash collateral, are fair and reasonable and reflect the Debtors’ reasonable business judgment <u>Prepetition Lenders’ and GNCU’s Entitlement to Adequate Protection.</u> Pursuant to Bankruptcy Code sections 361, 362, 363(c)(2), and 363(e), the Prepetition Lenders and GNCU are entitled to adequate protection	Interim Order ¶¶ F, 12

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	of their interests in the Prepetition Collateral and the GNCU Collateral, respectively, in an amount equal to the aggregate Diminution in the Value of, (a) the Prepetition Lenders' interests in the Prepetition Collateral (including cash collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution resulting from the sale, lease, or use by the Debtors of the Prepetition Collateral, the subordination of the Prepetition Richmond Liens and Prepetition Morehead Liens to the DIP Liens and the Carve-Out pursuant to this Interim Order, or the imposition of the automatic stay pursuant to Bankruptcy Code section 362 (collectively, the "<u>Prepetition Lenders' Diminution in Value</u>"), and (b) GNCU's interests in the GNCU Collateral (including cash collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution resulting from the sale, lease, or use by the Debtors of the GNCU Collateral, the subordination of the GNCU Liens to the DIP Liens and the Carve-Out pursuant to this Interim Order, or the imposition of the automatic stay pursuant to Bankruptcy Code section 362 (collectively, "<u>GNCU's Diminution in Value</u>").	
Proposed Budget and Variance Report Bankruptcy Rule 4001(c)(1)(B)	<u>Proposed Budget and Variance Report.</u> Use of proceeds of the DIP Credit Agreement are subject to a "<u>Budget</u>," the first of such Budget to be delivered (the "<u>Proposed Budget</u>"), in form and in substance reasonably satisfactory to the DIP Lenders. <u>Budget.</u> Beginning on August 8, 2023 (the "<u>Initial Reporting Date</u>"), the Debtors will provide to the DIP Lender an updated Budget no less than once every other week (each a "<u>Proposed Budget</u>") for the DIP Lender's approval. Such Proposed Budget shall become an Approved Budget and replace the then-operative Approved Budget for all purposes under the DIP Credit Agreement and the DIP Order. <u>Variance Report.</u> Beginning on the Tuesday of every calendar week after the Initial Reporting Date a variance report and reconciliation, in a form reasonably acceptable to the Lender, for the immediately prior week and for net operating cash flow for the immediately prior two week time period covered by the applicable	Interim Order ¶ 5(a); DIP Credit Agreement §§ 6.9(a), (c);

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	Approved Budget on a cumulative basis (the applicable “ <u>Variance Testing Period</u> ”), in each case, showing actual results for the following items: (1) receipts, (2) disbursements, (3) net operating cash flow, (4) liquidity, and (5) loan balances, noting therein variances from values set forth for such periods in the most recent Approved Budget for the immediately prior week or, for net operating cash flow, for the time period covered by the applicable Approved Budget on a cumulative basis and providing an explanation for all material variances, certified by the chief financial officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein (such report, the “ <u>Variance Report</u> ”).	
Conditions to Closing Bankruptcy Rule 4001(c)(1)(B)	Usual and customary for financings of this type, including, among other things: (a) execution and delivery of the DIP Credit Agreement and the other Financing Documents; (b) each representation and warranty is true and correct and No Event of Default; (c) delivery of governing documents, including, charters, resolutions, incumbency certificates and good standings; (d) subject to the DIP Order, payment of required fees to the DIP Lender; (e) delivery of closing date certificate; (f) entry into by Stalking Horse Purchaser into the Stalking Horse APA; (g) receipt of a reasonably satisfactory Initial Approved Budget; (h) entry into the Mastronardi term sheet; (i) no Material Adverse Change; (j) execution of the Berea Lease Termination Acknowledgment; and (k) entry of the Interim Order and First Day Orders (within three business days of the Petition Date) and all necessary governmental consents and approvals have been obtained.	DIP Credit Agreement § 4.1
Covenants Bankruptcy Rule 4001(c)(1)(B)	Usual and customary affirmative and negative covenants for financings of this type.	DIP Credit Agreement

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		Arts. VI, VII
Fees, Expenses and Additional Payments Bankruptcy Rule 4001(c)(1)(B)	Upfront Fee: 3.0% payable in kind Exit Fee: 5.0%	DIP Credit Agreement §§ 2.1(d) and (e)
Prepayments Bankruptcy Rule 4001(c)(1)(B)	<u>Voluntary Prepayments</u> : Permitted at any time, without premium or penalty; provided that any prepayment with the proceeds of an Other DIP Facility shall be subject to the ROFR. <u>Mandatory Prepayments</u> : Required in the amount of 100% of the net insurance proceeds from any Event of Loss to the Richmond CEA Facility, Pulaski CEA Facility or the Morehead CEA Facility in excess of \$1,000,000; provided, that there is no obligation to apply net insurance proceeds received by the Loan Parties solely with respect to the Pulaski CEA Facility in excess of the GNCU Priming Cap.	DIP Credit Agreement § 3.4(a) and (b)
Terms of Use and Purposes for Use of DIP Proceeds Bankruptcy Rule 4001(c)(1)(B) 4001(b)(1)(B)(ii)	Cash Collateral shall be used: (a) post-petition working capital purposes of the Debtors; (b) current interest, fees and expenses under the DIP Credit Agreement; (c) payment of adequate protection expenses for the Prepetition Lenders; (d) the allowed administrative costs and expenses of the Chapter 11 Cases; or (e) as otherwise agreed by the DIP Lender. The proceeds of the Loans shall be used for: (a) working capital and general corporate purposes of the Debtor following the Petition Date; (b) for the payment of current interest, expenses and fees with respect to the Loans and other Obligations under the DIP Credit Agreement; (c) payment of allowed administrative costs and expenses of the Bankruptcy Cases (including professional fees and expenses);	DIP Credit Agreement § 6.10

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	(d) or payment of prepetition claims authorized by the Bankruptcy Court; (e) r any other forecasted cash outlays included in the Approved Budget; and (f) as otherwise agreed by the DIP Lender. <u>Limitations on Use.</u> Proceeds of Loans and Cash Collateral may not be used for purposes outside of the DIP Budget	
Determination Regarding Prepetition Claims Bankruptcy Rule 4001(c)(1)(B)(iii)	The Interim Order contains stipulations of fact by the Debtors, including those related to the validity and enforceability of the Debtors' prepetition secured obligations.	Interim Order ¶ E
Effect of Debtors' Stipulations on Third Parties Bankruptcy Rule 4001(c)(1)(B)(iii), (viii)	Subject to the Challenge Period (defined below), the stipulations, admissions, agreements, waivers, and releases contained in the Interim Order, including without limitation the Debtors' Stipulations, shall be binding upon the Debtors and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (defined below) as of the Petition Date. The stipulations, admissions, agreements, waivers, and releases contained in this Interim Order, including without limitation the Debtors' Stipulations, shall be binding upon the Debtors' estates and any of their respective successors, including without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative and all other parties-in-interest and all of their successors-in-interest and assigns and all other parties-in-interest and all of their successors-in-interest and assigns, including any Committee and any other person acting on behalf of the Debtors' estates, unless and solely to the extent that a party-in-interest with requisite standing (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) granted by order of the Court (or other court of competent jurisdiction), (i) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules seeking to avoid, object to, or otherwise challenge the findings or Debtors' Stipulations regarding (A) the	Interim Order ¶¶ 25(a), (b)

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	validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Lenders or (B) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Richmond Indebtedness or Prepetition Morehead Indebtedness (any such claim, a “<u>Challenge</u>”) before the earlier of (A) except as to any Committee, seventy-five (75) calendar days after entry of the Interim Order, and (B) in the case of any such adversary proceeding or contested matter filed by any Committee, sixty (60) calendar days after the appointment of such Committee, subject to extension by agreement of the Committee, the DIP Lender, and the Debtors or by order of the Court (in each case, a “<u>Challenge Period</u>” and, the date of expiration of each Challenge Period, a “<u>Challenge Period Termination Date</u>”); <i>provided, however</i>, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7 or (y) a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (I) the time remaining under the Challenge Period plus ten (10) days or (II) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); and (ii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter.	
Waiver or Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, the Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of the Interim Order.	Interim Order, ¶ 27

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Waiver or Modification of Authority to File a Plan, Extend Time to File Plan, Request Use of Cash Collateral, or Request Authority to Obtain Credit Bankruptcy Rule 4001(c)(1)(B)(v)	No obligation, payment, transfer, or grant of security hereunder or under the DIP Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable state, federal, or common law (including, without limitation, under chapter 5 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any defense, reduction, setoff, counterclaim, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), cross-claims, or any other challenge under the Bankruptcy Code or any applicable law, rule, or regulation by any person or entity.	Interim Order ¶ 21(e)
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi)	i. The Bankruptcy Court shall have entered the Interim Order by the date that is no later than three (3) business days after the Petition Date. ii. The Bankruptcy Court shall have entered the Interim Brea Order by the date that is no later than five (5) Business Days after the Petition Date. iii. The Debtors shall have filed the motion seeking entry of the Bidding Procedures Order and Sale Order (the “<u>Bidding Procedures Motion</u>”) by no later than three (3) days after the Petition Date. iv. The Bankruptcy Court shall have entered the Bidding Procedures Order by no later than twenty-one (21) days after the filing of the Bidding Procedures Motion. v. The Bankruptcy Court shall have entered the Final Order by the date that is no later than twenty-eight (28) days after the Petition Date. vi. The Bankruptcy Court shall have entered the Final Brea Order by the date that is no later than thirty-five (35) days after the Petition Date. vii. The Bankruptcy Court shall have entered the Sale Order by no later than forty-five (45) days after the Petition Date.	DIP Credit Agreement § 6.12

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	viii. The Debtors shall have closed the Sale Transaction by no later than fifty (50) days after the Petition Date. ix. The Plan Effective Date shall have occurred by no later than sixty (60) days after the Petition Date. See DIP Credit Agreement, § 6.12.	
Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection or Enforcement of a Lien Bankruptcy Rule 4001(c)(1)(B)(vii)	To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by the Interim Order (including the DIP Liens and the Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of this Court; <i>provided, however</i>, that nothing therein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of the Interim Order, to the extent that DIP Lender has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors, such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by the Interim Order without further action by the DIP Lender.	Interim Order, ¶ 10(c)
Release, Waivers or Limitation on any Claim or Cause of Action Bankruptcy Rule 4001(c)(1)(B)(viii)	Each Debtor, on behalf of itself and its successors and assigns (collectively, the “<u>Releasors</u>”), forever releases, discharges and acquits the Prepetition Lenders, Rabo, and each of their current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other	Interim Order, ¶ 36

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attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such person's or entity's respective heirs, executors, estates, and nominees other representatives in their respective capacities as such (collectively, the "<u>Prepetition Releasees</u>") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called "lender liability" claims or defenses, that Releasors had, have, or hereafter can or may have against Prepetition Releasees, or any of them, as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Prepetition Indebtedness, the Prepetition Loan Documents and any other obligations or other financial accommodations made by any Prepetition Releasee to any Debtor; <i>provided that</i> the releases set forth in this section shall not release any claims against the Prepetition Releasees or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Prepetition Releasees. In addition, notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP Obligations owed to the DIP Lender by the Debtors and termination of the rights and obligations arising under the DIP Loan Documents (which payment and termination shall be on terms and conditions acceptable to the DIP Lender), the DIP Lender shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the Debtors, DIP Loan Documents, this Interim Order or the Final Order (including without limitation any obligation or responsibility whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated to pay or otherwise fund the Carve-Out).	

	MATERIAL TERMS	Location
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	<u>Expense Reimbursement.</u> Borrowers will pay to Lender all of its reasonable and documented third-party and out-of-pocket costs and expenses in connection with the preparation, negotiation, closing and costs of administering this Agreement, the DIP Orders, and the documents contemplated hereby or matters pertaining to the Bankruptcy Cases, including the reasonable fees, expenses and disbursements of Lender's attorneys incurred in connection with such matters and the preparation of such documents and any amendments hereof or thereof, or the negotiation, closing or administration of such documents, and the reasonable and documented fees, expenses and disbursements of any bankruptcy, engineering, insurance, environmental and construction consultants of Lender in connection with this Agreement, the Loans, the DIP Orders or any matters pertaining to the Bankruptcy Cases. <u>Indemnification.</u> Subject to any limitations separately agreed in writing by the relevant parties, the Borrower will (i) to pay or reimburse Lender for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under the DIP Credit Agreement, including any workout and/or restructuring of the Loans, and the other Financing Documents, including the fees and disbursements of counsel (including the allocated reasonable fees and expenses of in-house counsel) to the DIP Lender, (ii) to pay, indemnify, and hold the DIP Lender harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other Taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Financing Documents, the DIP Orders or any matters pertaining to the Bankruptcy Cases and any such other documents, and (iii) to pay, indemnify, and hold Lender and its officers, directors, employees, affiliates, agents, advisors and controlling Persons.	DIP Credit Agreement § 10.5 Interim Order ¶ 9

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	All amounts under the DIP Credit Agreement are payable no later than ten (10) days after written demand.	
Section 506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x)	No costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases at any time shall be charged against any of the DIP Lender or Prepetition Lenders, or the DIP Collateral or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise without the prior express written consent of the affected DIP Lender and/or Prepetition Lender, in its sole discretion, and no such consent shall be implied, directly or indirectly, from any other action, inaction, or acquiescence by any such agents or creditors (including, without limitation, consent to the Carve-Out or the approval of any budget hereunder). Notwithstanding the foregoing, the waiver provided in this paragraph as to the Prepetition Lenders is subject to the entry of a Final Order providing such relief.	Interim Order, ¶ 29
Section 552(b) Waiver Bankruptcy Rule 4001(c)(1)(B)	Subject to entry of the Final Order, the (i) Prepetition Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (ii) the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Lenders, including, without limitation, the Prepetition Lenders with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral.	Interim Order, ¶ 30
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi)	Upon entry of the Final Order, the DIP Lender shall be granted liens on any Avoidance Actions.	Interim Order, ¶ 10(a); DIP Credit Agreement § 6.11

STATEMENT REGARDING SIGNIFICANT PROVISIONS

17. The DIP Credit Agreement and/or Interim Order contains provisions identified in section C, paragraph 8 of the *Procedures for Complex Cases in the Southern District of Texas* (the “Complex Case Procedures”) as “Significant Provisions” as summarized below:⁷

DIP Facility Term	Relief Requested
Milestones Complex Case Procedures ¶ 8(a)	Each of the Debtors shall agree to comply with the following deadlines (collectively, the “<u>Chapter 11 Milestones</u>”): x. The Bankruptcy Court shall have entered the Interim Order by the date that is no later than three (3) business days after the Petition Date. xi. The Bankruptcy Court shall have entered the Interim Berea Order by the date that is no later than five (5) Business Days after the Petition Date. xii. The Debtors shall have filed the motion seeking entry of the Bidding Procedures Order and Sale Order (the “<u>Bidding Procedures Motion</u>”) by no later than three (3) days after the Petition Date. xiii. The Bankruptcy Court shall have entered the Bidding Procedures Order by no later than twenty-one (21) days after the filing of the Bidding Procedures Motion. xiv. The Bankruptcy Court shall have entered the Final Order by the date that is no later than twenty-eight (28) days after the Petition Date. xv. The Bankruptcy Court shall have entered the Final Berea Order by the date that is no later than thirty-five (35) days after the Petition Date. xvi. The Bankruptcy Court shall have entered the Sale Order by no later than forty-five (45) days after the Petition Date.

⁷ The following summary of the terms of the DIP Facility is qualified entirely by the express terms of the referenced documents, including the DIP Credit Agreement and Interim Order. If there are any inconsistencies between the summary below and such documents, the terms of such documents shall control. Capitalized terms used but not otherwise defined in this summary chart shall have the meanings ascribed to them in the DIP Credit Agreement or the Interim Order, as applicable.

DIP Facility Term	Relief Requested
	vii. The Debtors shall have closed the Sale Transaction by no later than fifty (50) days after the Petition Date. viii. The Plan Effective Date shall have occurred by no later than sixty (60) days after the Petition Date. See DIP Credit Agreement, § 6.12.
Cross-Collateralization Complex Case Procedures ¶ 8(b)	The DIP Credit Agreement does not authorize, and the DIP Facility does not provide for, any cross-collateralization of the Debtors' funded debt.
Roll-Up Loans Complex Case Procedures ¶ 8(c)	Subject to the terms and conditions of the Interim Order, simultaneously with the Interim Advance, the Prepetition Bridge Term Loans and any other Prepetition Bridge Obligations, including accrued and unpaid interest thereon shall be deemed Loans advanced under this Agreement (the " <u>Roll-Up Loans</u> ") and, subject to the terms and conditions set forth herein and without any further action by any party to this Agreement, shall be administered hereunder. Roll-Up Loans under this <u>Section 2.2</u> may be prepaid or repaid but may not be reborrowed. See DIP Credit Agreement, § 2.2.
Liens on Avoidance Actions or Proceeds of Avoidance Actions Complex Case Procedures ¶ 8(d)	As set forth in the DIP Credit Agreement, upon entry of the Final Order, the DIP Lender shall be granted liens on claims and causes of action arising under chapter 5 of the Bankruptcy Code (the " <u>Avoidance Action Proceeds</u> "). See DIP Credit Agreement, § 6.11.
Default Provisions and Remedies Complex Case Procedures ¶ 8(e)	The DIP Credit Agreement provides for customary events of default and remedies available to the DIP Lender. See DIP Credit Agreement, §§ 8.1-8.12.
Releases of Claim Against Lender or Others Complex Case Procedures ¶ 8(f)	Each Debtor, on behalf of itself and its successors and assigns (collectively, the " <u>Releasors</u> "), hereby forever releases, discharges and acquits the Prepetition Lenders, Rabo, and each of their current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals,

DIP Facility Term	Relief Requested
	members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such person's or entity's respective heirs, executors, estates, and nominees other representatives in their respective capacities as such (collectively, the "<u>Prepetition Releasees</u>") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called "lender liability" claims or defenses, that Releasors had, have, or hereafter can or may have against Prepetition Releasees, or any of them, as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Prepetition Indebtedness, the Prepetition Loan Documents and any other obligations or other financial accommodations made by any Prepetition Releasee to any Debtor; <i>provided that</i> the releases set forth in this section shall not release any claims against the Prepetition Releasees or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Prepetition Releasees. In addition, notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP Obligations owed to the DIP Lender by the Debtors and termination of the rights and obligations arising under the DIP Loan Documents (which payment and termination shall be on terms and conditions acceptable to the DIP Lender), the DIP Lender shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the Debtors, DIP Loan Documents, this Interim Order or the Final Order (including without limitation any obligation or responsibility whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated to pay or otherwise fund the Carve-Out). <i>See</i> Interim Order, ¶ 36.
Limitations on the Use of DIP Proceeds and Cash Collateral (Other than General "Carve-Outs") To Pay	The DIP Credit Agreement and DIP Orders set forth the allowed uses for the DIP Facility Loans and cash collateral. The Debtors shall be entitled to use Cash Collateral and the DIP Facility Loans in accordance with the Approved Budget (subject to the Permitted

DIP Facility Term	Relief Requested
Approved Fees and Expenses of Advisors to Official Committees or Future Trustees Complex Case Procedures ¶ 8(g)	Variances) and DIP Credit Agreement. <i>See</i> DIP Credit Agreement, § 7.15. The proceeds of the New Money Loans hereunder shall be used solely and in each case in accordance with the DIP Budget and subject to any limitations therein: (i) for working capital of the Loan Parties following the Petition Date, (ii) for the payment of current interest, expenses and fees with respect to the Loans and other Obligations hereunder, (iii) for payment of allowed administrative costs and expenses of the Bankruptcy Cases (including professional fees and expenses), (iv) for payment of prepetition claims authorized by the Bankruptcy Court, (v) for any other forecasted cash outlays included in the Approved Budget and (vi) as otherwise agreed by the Lender and the Borrower. The Interim Order provides that no more than \$25,000 of the cash collateral may be used solely by any Committee appointed (if any) in these Chapter 11 Cases, if any, solely to investigate, within the Challenge Period, the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Lenders solely concerning the legality, validity, priority, perfection, enforceability, or extent of the claims, liens, or interests (including, without limitation, the Prepetition Liens) held by or on behalf of each of the Prepetition Lenders. <i>See</i> Interim Order, ¶ 26.
Non-consensual Priming Liens Complex Case Procedures ¶ 8(h)	The Prepetition Lenders have consensually agreed to priming liens over the collateral securing (i) the Richmond Loan Facility, (ii) the Morehead Loan Facility, and (iii) Bridge Loan Facility, respectively. GNCU does not oppose the priming by the DIP Liens of the Pulaski Collateral up to GNCU Priming Cap, as described in the <i>Side Letter</i> by and between the Debtors and GNCU, date July 23, 2023 (the “GNCU Side Letter”), attached hereto as Exhibit B hereto.
Limitation on the Ability of Estate Fiduciaries to Fulfill Their Duties Complex Case Procedures ¶ 8(i)	The DIP Facility and DIP Orders do not limit the ability of the Debtors and estate fiduciaries to fulfill their duties.

18. Inclusion of these Significant Provisions in the DIP Facility is appropriate and necessary to permit the Debtors' access to the DIP Facility. The terms and conditions of each of the Significant Provisions included in the DIP Credit Agreement are the result of arm's-length negotiations between the Debtors and the DIP Lender. Morgner Decl. ¶ 16. The DIP Lender is unwilling to provide a DIP Facility absent the inclusion of these provisions and no other existing stakeholder or third party has presented an alternative debtor-in-possession financing proposal. Morgner Decl. ¶ 16. The Debtors have the ability to continue a marketing process to obtain better financing during the period between entry of the Interim Order and Final Order, provided that the DIP Lender shall have a right of first refusal on any alternative debtor-in-possession financing proposal. Morgner Decl. ¶ 18; *see* DIP Credit Agreement §2.4(c). Certain of the Significant Provisions, such as the liens on proceeds of Avoidance Actions, do not take effect until entry of a Final Order. Granting the relief requested pursuant to the Interim Order is critical to the continued operations of the Debtors' businesses and maintaining their going concern value. Studebaker Decl. ¶ 6.

19. The Significant Provisions of the DIP Orders are appropriate and necessary under the facts and circumstances of these Chapter 11 Cases and should be approved.

THE DEBTORS' IMMEDIATE NEED FOR POSTPETITION FINANCING

20. The Debtors have an immediate and critical need to obtain the financing pursuant to the DIP Facility and to continue to use the Prepetition Collateral in order to, among other things, (i) pay the fees, costs and expenses incurred in connection with these Chapter 11 Cases, (ii) fund any obligations benefitting from the Carve-Out, (iii) permit the orderly continuation of the operation of their businesses, (iv) maintain business relationships with customers, vendors and suppliers, (v) make payroll, and (vi) satisfy other working capital and operational needs. Studebaker Decl. ¶ 8. The incurrence of new debt under the DIP Credit Agreement and use of cash collateral is necessary and vital to the preservation and maintenance of the going concern value of the Debtors. *Id.* Immediate and irreparable harm will be caused to the Debtors and their estates if immediate financing is not obtained and permission to use cash collateral is not granted. Studebaker Decl. ¶ 6. The DIP Facility is the only financing option available for funding as of the Petition Date, and, therefore the terms of the proposed financing are in the best interest of the Debtors' estates and are supported by reasonably equivalent value and fair consideration. Morgner Decl. ¶ 18.

APPROVED BUDGET

21. The Debtors and DIP Lender have agreed upon a 9-week budget approved by the DIP Lender (the "Approved Budget"), which is attached to the Interim Order as **Exhibit 2**. The budget shall not be updated less than every other week (each, a "Proposed Budget"). Compliance with the Approved Budget shall be measured every other week after the date that is two weeks after the Petition Date, as further described in the DIP Credit Agreement. *See* DIP Credit Agreement, § 6.9. If such updated budget is in form and substance satisfactory to the DIP

Lender, it shall become the “Approved Budget” for purposes of the Interim Order once approved by the DIP Lender. *See* Interim Order, ¶ M; DIP Credit Agreement § 6.9.

BASIS FOR RELIEF

A. Entering into the DIP Facility Is a Sound Exercise of Business Judgment.

22. If an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts give debtors considerable deference in acting in accordance with their sound business judgment in obtaining such credit. *See, e.g., In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors’ business judgment).

23. Bankruptcy courts generally will not second-guess a debtor’s business decisions when those decisions involve a minimum level of care in arriving at the decision on an informed basis, in good faith, and in the honest belief that the action was taken in the best interest of the debtor. *See In re Los Angeles Dodgers LLC*, 457 B.R. at 313. To determine whether the business judgment test is met, “the court ‘is required to examine whether a reasonable business person would make a similar decision under similar circumstances.’” *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). In considering whether the terms of postpetition financings are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003).

24. The Debtors believe, in the exercise of their business judgment, that the terms of the DIP Facility taken as a whole—including the “roll up” of the Prepetition Bridge Loan into a postpetition administrative claim upon entry of the Interim Order—are fair and reasonable and are the most favorable terms the Debtors could obtain under the circumstances. Morgner Decl. ¶ 18. Put simply, the DIP Lender was not willing to provide the DIP Facility on any better

terms, and no other existing stakeholder or third-party has presented a comparable financing proposal. Morgner Decl. ¶ 18.

25. Marketing Process. For weeks leading up to the Petition Date, the Debtors conducted an extensive and robust marketing process, reaching out to approximately (43) potential investors to seek proposals for bridge and postpetition financing. Morgner Decl. ¶ 11. The Debtors held fifteen (15) introductory calls and signed nondisclosure agreements with eleven (11) parties and such parties were granted access to a data room. *Id.* Ultimately, twenty-five (25) parties declined, primarily citing (i) the opportunity being outside of investment scope and (ii) current risk profile. *Id.* As noted above, the Debtors also recognized that, in light of the tight timeframe imposed by the liquidity constraints, the most likely source of financing would come from an existing stakeholder familiar with the Debtors' business and could move quickly towards definitive documentation. Morgner Decl. ¶ 11. This financing process, as noted above, was a continuation of an already extensive capital raise marketing process conducted by the Debtors' prior investment banker. *See* Broadbent Decl. ¶¶ 51-52.

26. Preservation of Going Concern Value. Given the Debtors' cash on hand, the DIP Facility is necessary for the Debtors to continue to operate all three greenhouse facilities and preserve their value as a going concern in connection with the ongoing sale process. Studebaker Decl. ¶ 7. Absent additional financing, the Debtors will not have sufficient liquidity for these chapter 11 proceedings and would be forced to cease operations and liquidate their assets in piecemeal fashion, likely through a chapter 7 proceeding. *Id.* Moreover, keeping the greenhouse facilities operational allows the Debtors to maximize value of such assets to the benefit of all key stakeholders and creditors. Morgner Decl. ¶ 8.

27. Roll-Up Loans. As noted, the Debtors are seeking to have the Roll-Up Loans paid off by the DIP Facility upon entry of the Interim Order, effectively converting that prepetition claim into a postpetition administrative claim. Such payments, known as a “roll-up,” are “routinely made” in the context of debtor-in-possession financing. *In re Energy Fut. Hold. Corp.*, 2015 WL 729666, *7 (D. Del. Feb. 19, 2015).

28. The Roll Up Loans—including authorization upon entry of the Interim Order—is a material component of the structure of the DIP Facility required by the DIP Lender as a condition to their commitment to provide postpetition financing and their consent to the Debtors’ use of Cash Collateral. Morgner Decl. ¶ 14; *see also* Bridge Credit Agreement, § 7. In the days leading up to the Petition Date, the Debtors were at risk of conversion to a chapter 7 absent additional liquidity. Studebaker Decl. ¶ 7. While the Debtors received a competing offer for bridge financing, the Debtors ultimately executed the Bridge Credit Agreement with Equilibrium given the significantly better economic terms and other concessions that Equilibrium was willing to provide. Morgner Decl. ¶ 13. Moreover, Equilibrium was willing to provide the bridge financing in furtherance of debtor-in-possession financing. *Id.* In exchange for such terms, however, the Debtors agreed to use commercially reasonable best efforts to obtain a roll up of the Roll Up Loans upon the entry of the Interim Order. *See* Bridge Credit Agreement, §7. As a result of the Prepetition Bridge Loan, the Debtors were afforded the breathing room necessary to negotiate these highly consensual chapter 11 cases. Morgner Decl. ¶ 15; Broadbent Dec. ¶¶ 65-68.

29. Milestones. The DIP Credit Agreement also contains certain milestones that the Debtors must meet throughout these chapter 11 cases. The milestones were negotiated by the Debtors and the DIP Lender as a condition to providing the DIP Facility and are the result of extensive good faith and arm’s length negotiations between the Debtors and the DIP Lender.

Morgner Decl. ¶ 16. The milestones provide the Debtors with sufficient time to market their assets while balancing the need for an expeditious exit from these cases. Morgner Decl. ¶ 17. The milestones will permit the Debtors to implement a value maximizing sale process. Morgner Decl. ¶ 19.

30. For the foregoing reasons, the Debtors believe that obtaining the DIP Facility is a sound and reasonable exercise of the Debtors' business judgment and should be approved.

B. The Debtors Should Be Authorized to Obtain DIP Facility on a Secured and Superpriority Basis.

31. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business and (c) obtaining credit with specialized priority or with security. *See* 11 U.S.C. § 364. If a debtor in possession cannot obtain postpetition credit on an unsecured basis, pursuant to section 364(b) of the Bankruptcy Code, a court may authorize a debtor to obtain credit or to incur debt, the repayment of which is entitled to superpriority administrative expense status, or is secured by a senior lien on unencumbered property, or a junior lien on encumbered property, or a combination of the foregoing. *See* 11 U.S.C. § 364. In addition, pursuant to section 364(d) of the Bankruptcy Code, a court may authorize a debtor to obtain postpetition credit secured by a lien that is equal or senior in priority to existing liens on encumbered property (*i.e.*, a "priming" lien) when a debtor is unable to obtain credit on other terms and the interests of existing lienholders are adequately protected, or if the existing lienholders consent to such priming.

32. The Debtors proposed to obtain financing that will "prime" the Debtors' Prepetition Lenders on a consensual or uncontested basis. Therefore, the approval of the DIP Facility is governed by both sections 364(c) and 364(d) of the Bankruptcy Code.

i. The Debtors Satisfy the Condition Under Section 364(c) to Obtain Financing on a Senior Secured and Superpriority Basis.

33. The Debtors propose to obtain financing under the DIP Facility, in part, by providing superpriority claims and liens pursuant to section 364(c) of the Bankruptcy Code, subject only to the Carve-Out (as defined in the Interim Order). Specifically, the Debtors propose to provide as follows:

- i. pursuant to section 364(c)(1) of the Bankruptcy Code, first priority liens (the “DIP Superpriority Claims”) on the prepetition claims and adequate protection claims of the Prepetition Lenders, subject only to the Carve-Out, on a consensual basis;
- ii. pursuant to section 364(c)(2) of the Bankruptcy Code, first priority, fully perfected security interests in and liens on the proceeds of all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (including, following entry of the Final Order, Avoidance Action Proceeds) (such liens, subject only to the Carve-Out); and
- iii. pursuant to section 364(c)(3) of the Bankruptcy Code, junior and subordinate liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were subject to valid, perfected and non-avoidable liens and unavoidable liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the “Permitted Prior Liens”), which security interests and liens shall be junior and subordinate only to such Permitted Prior Liens and the Carve-Out.

See DIP Credit Agreement, § 6.11.

34. In the event that a debtor demonstrates that it is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court:

may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on

property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

See 11 U.S.C. § 364(c); *see also In re Crouse Grps., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

35. To satisfy the requirements of section 364(c) of the Bankruptcy Code, Courts will consider whether (a) the debtor made reasonable effort, but failed, to obtain unsecured credit under sections 364(a) and 364(b) of the Bankruptcy Code, (b) the credit transaction benefits the debtor as necessary to preserve estate assets, and (c) the terms of the credit transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender. *In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016); *In re Los Angeles Dodgers LLC*, 457 B.R. at 312–13; *In re Ames Dep’t Stores, Inc.*, 115 B.R. at 40. Section 364 “imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986).

36. *First*, to show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986). In circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *Sky Valley, Inc.*, 100 B.R. at 113; *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986). The Debtors have not been able to obtain unsecured credit or an alternative debtor-in-possession financing on better terms than those reflected in the DIP Credit Agreement, and there are no better offers available to the Debtors or before the Court at this time. Morgner Decl. ¶ 16.

37. *Second*, the DIP Facility is necessary to preserve the Debtors' estates. As noted, the Debtors do not currently have sufficient cash flow or liquidity to fund their operations absent approval of the DIP Facility. Studebaker Decl. ¶ 7. In particular, the DIP Facility enables the Debtors to preserve the going concern value of each of their three greenhouse facilities, which maximizes value for all stakeholders. Studebaker Decl. ¶ 7. Absent approval of the DIP Facility, the Debtors would be forced to cease operations and liquidate their assets in piecemeal fashion, likely through a chapter 7 proceeding. Studebaker Decl. ¶ 7.

38. *Third*, the terms of the DIP Facility are fair, reasonable, and adequate under the circumstances. As stated, the DIP Facility represents the most favorable source of postpetition financing available and is designed to provide the Debtors with sufficient liquidity to undertake the transactions contemplated by the RSA. Morgner Decl. ¶ 8. The DIP Facility was negotiated at arms' length and in good faith. Morgner Decl. ¶ 16.

39. In light of the foregoing, the Court should authorize the Debtors to provide the DIP Lender with superpriority administrative expense status in accordance with the DIP Credit Agreement, as provided for in section 364(c)(1) of the Bankruptcy Code.

ii. The Debtors Should Be Authorized to Obtain Priming Liens Under Section 364(d) of the Bankruptcy Code.

40. Section 364(d) provides that debtors may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). The Debtors may incur "priming" liens under the DIP Facility if it is unable to obtain unsecured or junior secured credit and either (a) the affected secured lenders consent, or (b) adequate protection exists for such priming lien.

41. The Debtors are seeking “priming” liens, pursuant to section 364(d)(1) of the Bankruptcy Code, upon all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date, and all of the Debtors’ rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising, that secure the prepetition obligations of the Debtors in respect of the Bridge Loan Facility, the Richmond Loan Facility and/or the Morehead Loan Facility, which liens shall be subject to the Carve-Out. As noted, as of the Petition Date, the Debtors are unable to obtain other better financing and have proposed adequate protection liens for the Prepetition Loans in favor of the DIP Lender, to the extent of any diminution in value resulting from the sale, lease, or use by the Debtors of the Prepetition Collateral and Prepetition GNCU Collateral, respectively, the subordination of the Prepetition Richmond Liens, Prepetition Morehead Liens, and GNCU Liens to the DIP Liens and the Carve-Out, or the imposition of the automatic stay pursuant to Bankruptcy Code section 362. *See* Interim Order, ¶¶12-13. Furthermore, Equilibrium, as the DIP Lender, has consented to the priming of its prepetition liens in respect of the Bridge Loan Facility, the Richmond Loan Facility and the Morehead Loan Facility. As noted above and as set forth in the GNCU Letter, GNCU is not objecting to the priming of GNCU Collateral by the DIP Lender up to the GNCU Priming Cap, which is to cover costs associated with keeping the Pulaski Collateral operational during the Chapter 11 Cases, thus preserving jobs and maximizing the going concern value of the greenhouse facility.

C. The Debtors Should Be Authorized to Continue to Use Cash Collateral.

42. For the reasons set forth herein, the Debtors require the use of Cash Collateral (as well as the proceeds of the DIP Facility) for working capital and to fund the sale and marketing process. Section 363(c) of the Bankruptcy Code governs a debtor’s use of a secured creditor’s Cash Collateral. Section 363(c) provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Furthermore, section 363(e) provides that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

43. The Debtors have satisfied the requirements of sections 363(c)(2) and (e), and should be authorized to use cash collateral. Equilibrium, as provider of the Prepetition Bridge Loan, has consented to the Debtors’ use of cash collateral in accordance with the terms and conditions of the Interim Order, the DIP Facility, and the Approved Budget. Subject to Court approval, the Debtors are also providing adequate protection (as discussed above) to Equilibrium. The Debtors therefore submit that the proposed adequate protection is (a) fair and reasonable, (b) necessary to satisfy the requirements of sections 363(c)(2) and 363(e) of the Bankruptcy Code, and (c) in the best interests of the Debtors and their estates.

D. The Debtors Should Be Authorized to Pay Fees Required by DIP Loan Documents.

44. As described above, and subject to Court approval, the Debtors have agreed to pay certain fees of the DIP Lender in exchange for its agreement to provide the DIP Facility and consent to the use of Cash Collateral, as applicable. The contemplated fees and other economic terms of the DIP Facility were all negotiated at arm’s length. Morgner Decl. ¶16. Under the circumstances, the terms of the DIP Facility, which include the fees payable in connection therewith, are the best actually available to the Debtors. Morgner Decl. ¶ 16. Furthermore, the Debtors submit that the interest payments and fees required by the DIP Facility are reasonable,

comparable to other debtor in possession financings, and generally consistent with market terms for companies facing similar circumstances as the Debtors. *Id.* The Debtors believe that under these circumstances, authorization to pay the fees is warranted.

E. The Carve-Out Is Appropriate.

45. The DIP Facility subjects the DIP Lenders' security interests, superpriority administrative expense claims, and the adequate protection claims and liens to the Carve-Out. Without the Carve-Out, the Debtors' estates or other parties in interest could be deprived of possible rights and powers because the services professionals might otherwise provide in these chapter 11 cases could be restricted. *See In re Ames Dep't Stores*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties in interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the pendency of the chapter 11 cases by ensuring that assets are available to pay the U.S. Trustee's fees and professional fees, notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility and the DIP Orders. Accordingly, the Debtors submit that the Carve-Out is appropriate.

F. The DIP Lender Should Be Afforded Good-Faith Protection under Section 364(e) of the Bankruptcy Code.

46. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith,

whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

47. The DIP Facility is the result of the Debtors' reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain vital postpetition financing, extensive arm's-length, good-faith negotiations between the Debtors and the DIP Lender, and several proposals and counterproposals. Morgner Decl. ¶¶ 18-20. The terms and conditions of the DIP Facility are appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code in accordance with the DIP Credit Agreement. The Court should find that the obligations arising under the DIP Facility and other financial accommodations made to the Debtors have been extended by the DIP Lender in "good faith" within the meaning of section 364(e) of the Bankruptcy Code, and therefore the DIP Lender is entitled to all of the protections afforded thereby.

G. Modification of the Automatic Stay Is Warranted.

48. The relief requested herein contemplates a modification of the automatic stay to (a) permit the Debtors to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens, (b) permit the DIP Lender to exercise rights and remedies under certain circumstances, and (c) as otherwise, and to the extent, necessary to effectuate the terms of the Interim Order. These provisions were part of the quid pro quo for the Debtors' ability to obtain the DIP Facility and use cash collateral as provided in the DIP Credit Agreement and in the Interim Order. Notably, the exercise of remedies (including remedies with respect to prepetition claims and collateral) will be subject to four business days' notice to allow the Debtors to cure or seek other relief. *See* Interim Order ¶20(d). Under these circumstances, the Debtors believe that the

extent of the modifications to the automatic stay under the Interim Order is reasonable and should be approved.

H. Immediate Access to Cash Collateral and DIP Facility Should Be Approved.

49. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code if, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2), (c)(2). In examining requests for interim relief under this rule, courts generally apply the same business judgment standard applicable to other business decisions. *See In re Ames Dep’t Stores*, 115 B.R. at 36.

50. Here, the Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein is not granted promptly. The Debtors have an immediate need for continued access to cash collateral and the Interim Advance, and any disruption in the use of cash collateral or ability to obtain the Interim Advance would cause a severe decrease in the value of the Debtors’ estates by preventing the Debtors from making necessary disbursements necessary and otherwise operating in the ordinary course. Studebaker Dec. ¶ 10. As set forth in the Approved Budget, the Debtors expect that they will need approximately \$8 million during the interim period and approximately \$24 million through the course of these cases. *Id.* Given the approximately \$8 million that the Debtors are expected to need during the interim period, the proposed draw structure and Interim Advance is necessary and appropriately tailored to the Debtors’ funding needs. *Id.* Absent interim relief, the Debtors will be unable to, among other things, fund payroll for employees, satisfy their other working capital and general corporate requirements, and continue operating their greenhouse facilities. Studebaker Dec. ¶ 11. As noted, particularly given the perishable nature of the Debtors’ goods, even a momentary shut down of the Debtors’ greenhouse facilities could result in a significant deterioration in the value of the Debtors’

businesses to the detriment of all stakeholders. *Id.* Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avoid the value destruction that would otherwise result in immediate and irreparable harm to the Debtors' estates.

REQUEST FOR FINAL HEARING

51. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for consideration of entry of the Final Order. The Debtors request that they be authorized to serve a copy of the signed Interim Order, which fixes the time and date for the filing of any objections by first class mail upon the notice parties listed below. The Debtors further request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001(c)(2).

EMERGENCY CONSIDERATION

52. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations and significantly impact the Debtors' ability to swiftly and efficiently move forward with a value-maximizing transaction. Accordingly, the Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

53. The Debtors request a waiver of any applicable notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). The relief requested herein is necessary to avoid immediate and

irreparable harm to the Debtors' ongoing operations and value-maximization process. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

RESERVATION OF RIGHTS

54. 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

55. 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 USA, 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 Attorney's Office for the Southern District of Texas; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) all parties known by the Debtors to hold or assert a valid, perfected, and enforceable lien on any asset of the Debtors; (l) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (m) any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request entry of an order, substantially in the form attached hereto, granting the relief requested herein and granting such other relief as is just and proper.

Dated: July 25, 2023
Houston, Texas

/s/ Matthew D. Cavanaugh

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)
Vienna Anaya (TX Bar No. 24091225)
Emily Meraia (TX Bar No. 24129307)
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200
Facsimile: (713) 752-4221
Email: vanaya@jw.com
emeraia@jw.com

SIDLEY AUSTIN LLP

Stephen E. Hessler (*pro hac vice* pending)
Anthony Grossi (*pro hac vice* pending)
Patrick Venter (*pro hac vice* pending)
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
Email: shessler@sidley.com
agrossi@sidley.com
pventer@sidley.com

Duston McFaul (TX Bar No. 24003309)
Jeri Leigh Miller (TX Bar No. 24102176)
1000 Louisiana Street, Suite 5900
Houston, Texas 77002
Telephone: (713) 495-4500
Facsimile: (713) 495-7799
Email: dmcfaul@sidley.com
jeri.miller@sidley.com

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

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 25, 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

DIP Credit Agreement

SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION
CREDIT AGREEMENT

Dated as of July [___], 2023

between

CEFF II APPHARVEST HOLDINGS, LLC,

as Lender,

APPHARVEST, INC, as Borrower

and

CERTAIN SUBSIDIARIES OF BORROWER PARTY HERETO AS GUARANTORS

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CREDIT AGREEMENT

This CREDIT AGREEMENT (this “Agreement”), dated as of July [___], 2023, is entered into by and between AppHarvest, Inc., a Delaware corporation (“AppHarvest” or the “Borrower”), certain subsidiaries of the Borrower party hereto as Guarantors and CEFF II AppHarvest Holdings, LLC, a Delaware limited liability company, as Lender (“Equilibrium” or the “Lender”).

RECITALS

WHEREAS, on July [___], 2023 (the “Petition Date”), the Borrower and the Guarantors (as defined below) (in such capacity, each a “Debtor” and collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, the Borrower has requested that the Lender provide the Borrower with a debtor-in-possession, senior secured credit facility (the “DIP Facility”), which shall consist of (x) a new money delayed draw term loan (“New Money Facility”) in the initial aggregate principal amount of up to \$24,323,197 and (y) a loan in an amount equal to the Roll-Up Loan Amount to reflect the roll-up of outstanding Prepetition Bridge Term Loans made by the Lender under the Prepetition Bridge Credit Agreement and any other Prepetition Bridge Obligations, including accrued and unpaid interest thereon, in each case to be afforded the liens and priority set forth in the DIP Orders and as set forth in the other DIP Loan Documents and to be used during the Bankruptcy Cases for the purposes set forth in Section 6.10;

WHEREAS, the New Money Facility shall be made available in an amount not to exceed the Interim Advance on the Closing Date pursuant to the Interim Order and shall be further available for borrowings after the Closing Date, subject in all respects to the terms, conditions and limitations set forth herein and in the other DIP Loan Documents;

NOW, THEREFORE, to induce Lender to provide the DIP Facility hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. Except as otherwise expressly provided, capitalized terms used in this Agreement (including in the preamble hereto) and its exhibits shall have the meanings given in this Section 1.1.

“363 Sale” shall mean the sale or sales conducted pursuant to Section 363 of the Bankruptcy Code pursuant to one or more Bankruptcy Orders.

“Accounting Changes” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement, or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person.

“Agreement” has the meaning given to such term in the preamble hereto.

“Approved Budget” means the most recent Budget that has been approved by Lender in its sole discretion pursuant to Section 4.1(h) or Section 6.9, as applicable.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” means any federal laws of the United States or Canada relating to terrorism or money laundering, including but not limited to, Executive Order 13224, the Patriot Act and the regulations administered by OFAC, the Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.), the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 et seq.), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. §§ 1 et seq.).

“Automatic Stay” means the automatic stay provided under Section 362 of the Bankruptcy Code.

“Avoidance Action Proceeds” means any and all proceeds of any Avoidance Actions.

“Avoidance Actions” has the meaning specified in the DIP Orders.

“Bankruptcy Cases” means the cases of the Debtors filed under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court from and after the Petition Date.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

“Bankruptcy Orders” means the DIP Orders and any other judgments, decisions, rulings or orders by the Bankruptcy Court, whether interim or final.

“Berea Lease” means that certain Lease Agreement dated December 27, 2022 by and between Mastronardi Berea LLC and AppHarvest Berea Farm, LLC (“AppHarvest Berea”), including all amendments, supplements, and modifications thereto.

“Berea Term Sheet” means that certain Term Sheet attached as Annex B to the Restructuring Term Sheet.

“Bidding Procedures Orders” means an order of the Bankruptcy Court, in form and substance acceptable to Lender, approving the Stalking Horse APA and bidding and sale procedures acceptable to Lender. The Bidding Procedures Order shall require that any qualified

bid for the Richmond CEA Facility and the Morehead CEA Facility shall provide for the purchase of both facilities.

“Bidding Procedures Motion” has the meaning given to such term in Section 6.12(iii).

“Borrower” has the meaning given to such term in the preamble hereto.

“Borrower’s Knowledge” means the knowledge, after reasonable inquiry, diligence and investigation, of any manager, officer, director or any other Responsible Officer of Borrower or a Guarantor.

“Borrowing” means a borrowing of a Loan under this Agreement.

“Borrowing Date” means the day on which a Borrowing is made.

“Budget” means a 13-week detailed rolling cash projection in substantially the same form as the Initial Approved Budget.

“Business Day” means a day other than a Saturday, Sunday, or other day on which commercial banks in New York, New York, are authorized or required by law to close.

“Capital Lease Obligations” means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Carve-Out” shall have the meaning assigned to such term in the DIP Orders.

“Chapter 11 Milestones” shall have the meaning set forth in Section 6.12.

“Closing Date” means the date on which the conditions specified in Section 4.1 are satisfied (or waived in writing by Lender in accordance with Section 10.3).

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all property which Lender is granted a security interest in or Lien on pursuant to Section 6.11.

“Committee” has the meaning given to it in Section 8.8(m).

“Construction Completion Plan” means a plan which will describe in detail all work that remains to be performed in order to complete the construction of the Richmond CEA Facility in accordance with Prudent Industry Practices, Legal Requirements, and the construction contracts and plans and specifications for the Richmond CEA Facility, including any work which must be undertaken to repair, correct, reinstall, replace, or retest any previously completed work,

underground cabling, and any other previously installed equipment, and the actions to be taken to complete such work and a schedule for completing all such work.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument, or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means (a) the power, directly or indirectly, to vote more than fifty percent (50%) of the securities having ordinary voting power for the election of directors (or Persons performing similar functions) of a Person or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and “Controlling” and “Controlled” shall have meanings correlative thereto.

“Default” means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time, the giving of notice or both, would constitute an Event of Default.

“Default Rate” means a rate *per annum* equal to the Interest Rate *plus* three percent (3.0%).

“DIP Facility” has the meaning as defined in the preamble hereto.

“DIP Facility Loans” means the Loans hereunder.

“DIP Loan Documents” means the Financing Documents.

“DIP Order” or “DIP Orders” means the Interim Order and/or the Final Order, as applicable.

“Discharge Date” means the date on which this Agreement shall have terminated (other than those provisions that expressly survive such termination), the New Money Loan Commitment shall have been terminated or fully utilized and the principal of and interest on each Loan and all fees and all other expenses or amounts payable under this Agreement (other than unasserted contingent obligations that by their nature expressly survive termination of this Agreement) shall have been paid in full.

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

“Environmental Claim” means any and all binding obligations, liabilities (contingent or known), losses, administrative, regulatory, judicial or, as applicable, contractual actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, orders for removal or remedial actions, damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, or out-of-pocket costs, expenses, disbursements, attorneys’ or consultants’ fees, arising under any Environmental Law or any Permit issued under any such Environmental Law, including any and all claims (a) for enforcement, cleanup, removal, response, remedial or other actions, costs or damages pursuant to any applicable Environmental Law, (b) arising from actual or potential injury

to or noncompliance with standards for protection or preservation of health and safety (including occupational health and safety), the environment, natural, cultural, archeological or biological resources or wildlife or regarding the investigation, characterization, remediation, Release or potential Release of, or human exposure to, any Hazardous Substances, (c) nonconformance with land use or zoning requirements related to siting, construction or operation of the Project at the Project Site, or health, safety or the environment, and (d) arising from the direct or indirect taking of any organism that is protected under any Environmental Law.

“Environmental Law” means any Governmental Rule concerning (a) protection of natural, cultural, tribal, archaeological or biological resources, wildlife or the environment, including surface soils and subsurface strata, ambient air, surface water and groundwater, (b) the Release, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of, or exposure to Hazardous Substances, (c) the protection of human health and safety, including occupational health and safety, (d) water rights or water supply, (e) land use or zoning requirements related to siting, construction, or operation of the Properties of the Loan Parties, or (f) agricultural practices or food safety, each as now or may at any time hereafter be in effect.

“Equity Interest” means any and all shares, interests, participations, or other equivalents (however designated) in a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights, or options to purchase any of the foregoing.

“Equilibrium” has the meaning set forth in the preamble hereto.

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

“ERISA Affiliate” means any Person, trade, or business (whether or not incorporated) that, together with Borrower, is treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) any Reportable Event, (b) the existence with respect to any ERISA Plan of a non-exempt Prohibited Transaction, (c) any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 and 430 of the Code or Section 302 and 303 of ERISA) whether or not waived, (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, (e) the failure to make by its due date a required installment under Section 412 or 430 of the Code with respect to any Pension Plan, (f) the failure by Borrower or any of their respective ERISA Affiliates to make any required contribution to a Multiemployer Plan, (g) the incurrence by Borrower or any of its respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, including the imposition of any Lien in favor of the PBGC or any Pension Plan, (h) a determination that any Pension Plan is, or is expected to be, in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (i) the receipt by Borrower or any of its respective ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA, or the occurrence of any event or condition that could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (j) the incurrence by Borrower or any of its respective ERISA Affiliates of any

liability with respect to the complete or partial withdrawal from any Pension Plan that is a multiple employer plan or Multiemployer Plan, (k) any event under Section 4062(e) of ERISA with respect to a Pension Plan, (l) the receipt by Borrower or any of its respective ERISA Affiliates of any notice that a Multiemployer Plan is, or is expected to be, insolvent under ERISA Section 4245, or in “endangered” or “critical status”, within the meaning of Section 432 of the Code or Section 305 of ERISA, (m) the institution of any action brought against Borrower or any ERISA Affiliate under Section 502 of ERISA with respect to its failure to comply with Section 515 of ERISA, (n) the receipt from the Internal Revenue Service of notice of disqualification of any ERISA Plan intended to qualify under Section 401(a) of the Code, or the disqualification of any trust forming part of any ERISA Plan intended to qualify for exemption from taxation under Section 501(a) of the Code, (o) the assertion of a material claim (other than routine claims for benefits) against any ERISA Plan or the assets thereof, or against any Borrower or any of its respective ERISA Affiliates in connection with any ERISA Plan, and (p) with respect to any Foreign Plan, (i) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by Governmental Rules or by the terms of such Foreign Plan, (ii) the failure to register or loss of good standing with applicable regulatory authorities of any such Foreign Plan required to be registered, or (iii) the failure of any Foreign Plan to comply with any material provisions of Governmental Rules and regulations or with the material terms of such Foreign Plan.

“ERISA Plan” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA (including a Pension Plan but excluding a Multiemployer Plan), sponsored, maintained, or contributed by, or required to be contributed by, Borrower or any ERISA Affiliate.

“Event of Default” has the meaning given to such term in Article VIII.

“Event of Loss” means, a single event or a related series of events causing any loss of, destruction of, or damage to, or any condemnation or other taking of (including by eminent domain), all or any portion of the Property of any Loan Party.

“Exit Fee” has the meaning assigned to such term in Section 2.1(e).

“Final Advance” has the meaning assigned to such term in Section 2.1(c).

“Final Berea Order” means an order of the Bankruptcy Court entered in the Bankruptcy Cases, on a final basis, approving the Berea Term Sheet including the release of claims therein.

“Final Order” means an order of the Bankruptcy Court entered in the Bankruptcy Cases, on a final basis, in form and substance acceptable to Lender approving the DIP Facility and the Debtors’ entry into the same.

“Financing Documents” means this Agreement, the RSA, any Security Documents, and all other certificates, documents, agreements, or instruments entered into in connection with any of the foregoing.

“First Day Orders” means such orders entered by the Bankruptcy Court in respect of first day motions and applications on an interim or final basis, each of which shall be in form and substance acceptable to the Lender.

“Foreign Plan” means any employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to U.S. law and is maintained or contributed to by Borrower.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time. In the event that any Accounting Change shall occur and such change results in a change in the method of calculation of financial covenants, ratios, standards or terms in this Agreement, then Borrower and Lender agree to enter into negotiations in order to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Loan Parties’ financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by Borrower and Lender, all financial covenants, ratios, standards, and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred.

“Governmental Authority” means any United States federal or foreign government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity, including any company, business, enterprise or other entity owned in whole or in part, by any government (including any zoning authority) exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange, and any self-regulatory organization, which has jurisdiction over the Loan Parties or their respective Properties.

“Governmental Rule” means any statute, law (including common law), rule, regulation, ordinance, order, binding code interpretation, judgment, decree, treaty, directive, or similar form of decision of any Governmental Authority.

“GNCU Facility” means any Indebtedness under, or documents or obligations relating to that certain *Credit Agreement*, dated as of July 29, 2022, by and among Greater Nevada Credit Union (“GNCU”), AppHarvest Operations, Inc., and AppHarvest Pulaski Farm, LLC (as amended or supplemented prior to the date hereof).

“GNCU Priming Cap” means \$9,900,000.

“Guarantee” as to any Person (the “guaranteeing person”) means any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing Person that guarantees or in effect guarantees, or that is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless

the owner of any such primary obligation against loss in respect thereof; provided, that the term Guarantee shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee of any guaranteeing person shall be deemed to be the lower of (A) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (B) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by Borrower in good faith.

"Guarantors" means the Debtors (other than the Borrower) signatory hereto and any other Person who provides a Guarantee of the Obligations, and the term "Guarantor" means each or any one of them individually.

"Hazardous Substances" means any and all pollutants, contaminants, wastes, materials, substances, chemicals, explosive, or radioactive substances in any form which are subject to regulation or which can give rise to liability under any Environmental Law, including petroleum or petroleum products, distillates and constituents, asbestos or asbestos-containing materials, polychlorinated biphenyls, chlorinated solvents, radon gas, per- or polyfluoroalkyl substances, polycyclic aromatic hydrocarbons, or any invasive species or pathogen in the indoor environment.

"Indebtedness" of any Person at any date, means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) the liquidation value of all redeemable preferred Equity Interests of such Person, (h) all Guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, and (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

"Indemnified Liabilities" has the meaning given to such term in Section 10.5.

"Indemnitee" has the meaning given to such term in Section 10.5.

“Initial Approved Budget” has the meaning given to such term in Section 4.1(h).

“Interest Payment Date” means the last Business Day of each calendar month and the Termination Date.

“Interest Rate” means a rate *per annum* equal to twelve percent (12.0%).

“Interim Advance” means the loans advanced to the Borrower in the amount of \$8,000,000 authorized in accordance with the Interim Order.

“Interim Borea Order” means an order of the Bankruptcy Court, on an interim basis, entered in the Bankruptcy Cases, approving the Borea Term Sheet.

“Interim Order” means an order of the Bankruptcy Court entered in the Bankruptcy Cases, in form and substance acceptable to Lender, approving the DIP Facility and the Debtors’ entry into the same.

“Legal Requirements” means, as to any Person, the certificate of incorporation and by-laws, limited liability company agreement, partnership agreement or other organizational or governing documents, any Governmental Rule, any determination of an arbitrator or a court or other Governmental Authority or any requirement under a Permit or Governmental Rule, in each case applicable to or binding upon such Person or any of its Properties or to which such Person or any of its property is subject. For the avoidance of doubt, the Bankruptcy Orders are Legal Requirements.

“Lender” has the meaning given to such term in the preamble hereto.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), environmental lien, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing), whether or not filed, recorded or otherwise perfected or effective under Governmental Rules.

“Loan” means New Money Loans or Roll-Up Loans, as applicable.

“Loan Parties” means, collectively, the Borrower, the Guarantors and their respective successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Mastronardi” means Mastronardi Produce Limited or its affiliates.

“Material Adverse Change” means a material adverse effect on (a) the validity or enforceability of the DIP Loan Documents or the validity, priority, perfection, or enforceability of the claims, Liens, or security interests granted thereby or the rights or remedies intended or purported to be granted to the Lender pursuant thereto, or (b) the ability of any Loan Party to perform any material obligation under the DIP Loan Documents or carry out the transactions contemplated by the DIP Loan Documents.

“Material Adverse Effect” means a Material Adverse Change or a material adverse effect on the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of a Loan Party; provided that none of the events existing on the Petition Date or relating to the Bankruptcy Cases shall be deemed to have a Material Adverse Effect

“Maturity Date” means the earlier to occur of (a) the date that is seventy-five (75) days after the Petition Date, (b) the Plan Effective Date, and (c) the date of delivery of a Termination Notice.

“Mechanic’s Lien Obligations” shall mean the mechanic’s lien claims arising under the laws of Kentucky or otherwise against property of the Loan Parties arising from any agreement or obligation by or between Dalsem Greenhouse Technology B.V. or any of its affiliates, on the one hand, and any of the Loans Parties or their subsidiaries, on the other hand.

“Morehead CEA Facility” means an approximately sixty (60)-acre greenhouse facility located in the City of Morehead, Kentucky which produces fresh produce, including tomatoes, and including all structures, buildings, improvements, fixtures, furnishings, equipment, and all other personal property associated with such greenhouse facility which is owned by a Loan Party or an Affiliate of a Loan Party.

“Morehead Facility” means any Indebtedness under, or documents or obligations relating to that certain *Credit Agreement*, dated as of June 15, 2021, by and between AppHarvest Morehead Farm, LLC, and CEFF II US Holdings, LLC (as successor to Rabo), (as amended by that certain First Amendment to Master Credit Agreement, dated as of March 31, 2023 and as further amended or supplemented from time to time prior to the date hereof).

“Multiemployer Plan” means any “multiemployer plan” (as defined in Section 3(37) and 4001(a)(3) of ERISA) to which Borrower or any of its respective ERISA Affiliates is making, or has any obligation to make, contributions, or has made, or has been obligated to make, contributions within the six (6)-year period immediately preceding the Closing Date.

“New Money Facility” has the meaning as defined in the preamble hereto.

“New Money Loan Commitment” means the commitment of the Lender to make or otherwise fund the New Money Loans on and after the Closing Date. The aggregate amount of the New Money Loan Commitment as of the Closing Date is \$24,323,197.

“New Money Loans” means the Interim Advance and the other Loans made pursuant to Section 2.1(c).

“Obligations” means the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy) the Loans and all other obligations and liabilities of any Loan Party to Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with this Agreement or any other Financing Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to Lender that are required to be paid by any Loan Party pursuant hereto)

or otherwise (whether or not evidenced by any note or instrument and whether or not for the payment of money).

“Offer Notice” has the meaning given to such term in Section 2.4(c).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Pension Plan” means any “pension plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Borrower or any of its respective ERISA Affiliates is (or, if such ERISA Plan were terminated, would under Section 4062 or 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA, and is sponsored, maintained, or contributed to, or required to be contributed to, by Borrower or any of its respective ERISA Affiliates.

“Permit” means any and all franchises, licenses, leases, permits, clearances, determinations, reviews, consultations, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, rights of way, easements, Liens and other rights, privileges and approvals required to be obtained from, or any notifications or filings made with, a Governmental Authority under any Governmental Rule.

“Permitted Indebtedness” means (a) current Indebtedness incurred in the ordinary course of business for inventory, supplies, equipment, services, taxes or labor, in each case, to the extent incurred in accordance with and subject to the limitations in the Approved Budget; (b) Indebtedness arising under this Agreement and the other DIP Loan Documents; (c) the obligations under the Prepetition Credit Facilities or in respect of the Mechanic’s Lien Obligations, each as in effect as of the date hereof and any interest accrued or accruing thereon; (d) [reserved]; (e) any Indebtedness existing on the date hereof that, to the extent in excess of \$1,000,000 is disclosed on Schedule 1 (other than Indebtedness under clause (c)) and (f) any other Indebtedness approved in writing by the Lender in its sole discretion (including by approval of an Approved Budget that contemplates such).

“Permitted Liens” means the following if not otherwise prohibited under the Financing Documents: (a) Liens in favor of Lender or any of its Affiliates; (b) Liens for taxes not yet due, or for Taxes contested in accordance with Section 6.3; (c) pledges or deposits to secure obligations under workers’ compensation or unemployment laws, social security or public liability laws or similar legislation (excluding Liens under ERISA); (d) Liens for materialmen’s, mechanics’, carriers’, workmen’s, repairmen’s, builders, contractors, suppliers of material or architects or other similar construction and other similar Liens incidental to construction, maintenance or operations, in each case arising in a manner consistent with market practice, which secure obligations that (i) (A) are not overdue, and (B) individually or together with all other Permitted Liens outstanding on any date of determination, would not reasonably be expected to result in a Material Adverse Effect, or (ii) are contested in good faith, by appropriate proceedings, which has the effect of suspending collection and enforcement thereof, and the Borrower’s aggregate unrestricted cash reserves (taken as a whole) are adequate are established with respect to such contested taxes in accordance with GAAP; (h) easements and rights-of-way in favor of utility companies and government authorities

required in the ordinary course that would not reasonably be expected to result in a Material Adverse Effect, (i) any other Liens approved in writing by the Lender in its sole discretion; (j) Liens existing on the date hereof (other than the Liens described in clause (k)) and (k) Liens securing the obligations under the Prepetition Credit Facilities.

“Permitted Variance” shall have the meaning provided in Section 7.15.

“Person” means any natural person, corporation, limited liability company, partnership, series, firm, association, Governmental Authority, or any other entity whether acting in an individual, fiduciary, or other capacity.

“Petition Date” has the meaning assigned to such term in the recitals hereto.

“Plan Effective Date” means the effective date of a chapter 11 plan, in form and substance acceptable to Lender, confirmed by the Bankruptcy Court.

“Prepetition Bridge Credit Agreement” means that certain Secured Promissory Note and Loan Agreement between the Borrower and Equilibrium, dated as of July 19, 2023.

“Prepetition Bridge Facility” means any Indebtedness under, or documents or obligations relating to that Prepetition Bridge Credit Agreement and the Prepetition Bridge Obligations.

“Prepetition Bridge Obligations” means the “Obligations” as defined in the Prepetition Bridge Credit Agreement.

“Prepetition Bridge Term Loan” means the “Loan” as defined in and made pursuant to the Prepetition Bridge Credit Agreement.

“Prepetition Credit Facilities” means, individually or collectively as the context requires, (i) the Prepetition Bridge Facility, (ii) the Richmond Facility, (iii) the Morehead Facility, and (iv) the GNCU Facility.

“Prepetition Lender” means any lender party to the Prepetition Credit Facilities and their successors and assigns (other than any lender under GNCU Facility) on the Closing Date.

“Prepetition Obligations” means the “Obligations” (or any similar term) as defined in the applicable Prepetition Credit Agreement.

“Proceeding” means any claims, litigation, investigation, action, suit, arbitration or administrative, judicial or regulatory action or proceeding in any jurisdiction.

“Prohibited Transaction” has the meaning given to such term in Section 406 of ERISA and Section 4975(c) of the Code.

“Property” means any right or interest of a Loan Party in or to property of any kind whatsoever, whether real, personal, or mixed and whether tangible or intangible.

“Proposed Budget” has the meaning assigned to such term in Section 6.9.

“Prudent Industry Practices” means those practices, methods and standards of inquiry and investigation that are, as of the date being determined, commonly used by developers or operators, as applicable, of controlled environment agriculture facilities in United States which are of similar size, type, and location to the Property at issue. “Prudent Industry Practice” does not necessarily mean the best practice, method, or standard of inquiry and investigation in all cases, but is instead intended to encompass a range of acceptable practices, methods, and standards.

“Pulaski CEA Facility” means an approximately thirty (30)-acre greenhouse facility located in the City of Somerset, Kentucky which produces fresh produce, including berries, and including all structures, buildings, improvements, fixtures, furnishings, equipment, and all other personal property associated with such greenhouse facility which is owned by a Loan Party or an Affiliate of a Loan Party.

“Rabo” means Rabo AgriFinance LLC.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing, and migrating.

“Remedies Notice Parties” has the meaning given to such term in Section 8.9(a).

“Reportable Event” means any “reportable event,” as set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty (30)-day notice period has been waived.

“Required Insurance” has the meaning given to such term in Section 6.5.

“Responsible Officer” means, as to any Person, its president, chief executive officer, treasurer, chief financial officer, or secretary (or assistant secretary), any of its vice presidents, any chief restructuring officer, chief strategy officer, or any managing general partner, managing member of such Person that is a natural person or authorized signatory (or any of the preceding with regard to any managing general partner, managing member or sole member of such Person that is not a natural person).

“Richmond CEA Facility” means an approximately sixty (60)-acre greenhouse facility located in the City of Richmond, Kentucky which produces fresh produce, including tomatoes, and including all structures, buildings, improvements, fixtures, furnishings, equipment, and personal property associated with such greenhouse facility which is owned by a Loan Party or an Affiliate of a Loan Party.

“Richmond Facility” means any Indebtedness under, or documents or obligations relating to that certain *Credit Agreement*, dated as of July 23, 2021 by and between AppHarvest Richmond Farm, LLC and Equilibrium (as amended by that certain First Amendment to Credit Agreement, dated as of July 29, 2021, that certain Second Amendment to Credit Agreement, dated as of July 29, 2022, that certain Waiver and Third Amendment to Credit Agreement, dated as of December 21, 2022, and as further amended or supplemented from time to time prior to the date hereof).

“Roll-Up Loan” shall have the meaning provided in Section 2.2.

“Roll-Up Loan Amount” means the amount set forth on Schedule 2.2 as the “Total Roll-Up Loan Amount.”

“RSA” shall mean that certain Restructuring Support Agreement amongst Equilibrium, the Debtors, Mastronardi, and the other parties party thereto, dated as of the Petition Date.

“Restructuring Term Sheet” shall mean that certain Restructuring Term Sheet attached to the RSA and any Exhibits and Annexes thereto.

“Sale Order” means an order of the Bankruptcy Court, in form and substance reasonably acceptable to the Lender, approving pursuant to Section 363 of the Bankruptcy Code one or more sales of, collectively, all or substantially all of the assets of the Debtors to one or more purchasers.

“Sale Transaction” means the sale of all or substantially all of the assets contemplated by the Stalking Horse APA.

“Sanctioned Country” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region, the so-called “Donetsk People’s Republic” and the so-called “Luhansk People’s Republic” regions of Ukraine).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Second Advance” has the meaning assigned to such term in Section 2.1(c).

“Security Documents” means any security documents and any financing statements and other instruments filed or recorded in connection with the Liens granted to the Lender pursuant to the DIP Orders.

“Stalking Horse APA” means that certain binding Asset Purchase Agreement by and among the Stalking Horse Purchaser, AppHarvest Richmond Farm, LLC, and AppHarvest Morehead Farm, LLC dated prior to the Petition Date pursuant to which the Stalking Horse Purchaser has a right to purchase from the applicable Debtors certain assets related to or associated with the Morehead CEA Facility and the Richmond CEA Facility on the terms and conditions set forth therein.

“Stalking Horse Purchaser” means Equilibrium or its designees.

“Subsequent Loan” has the meaning assigned to such term in Section 2.1(c).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, mortgage recording taxes, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax, penalties, or other similar items applicable thereto.

“Termination Date” means, unless extended, with the prior written consent (which may be by e-mail) of the Lender, the earliest to occur of:

(a) the Maturity Date;

(b) the date of the delivery of a Termination Notice to the Remedies Notice Parties declaring the acceleration of all of the Obligations under this Agreement and the other DIP Loan Documents following the occurrence and continuance of an Event of Default;

(c) Discharge Date; and

(d) July 28, 2023, if the Closing Date has not occurred on or before such date.

“Termination Notice” shall mean a Default Notice (as defined in the Interim Order or Final Order, as applicable).

“Total Loan Commitment” means, as of the Closing Date, the amount of the New Money Loan Commitment, plus the Roll-Up Loan Amount.

“U.S. Person” means a person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided, that, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“Upfront Fee” has the meaning assigned to such term in Section 2.1(d).

“Variance Report” shall have the meaning provided in Section 6.9(c).

“Variance Reporting Date” shall have the meaning provided in Section 6.9(c).

“Variance Testing Period” shall have the meaning provided in Section 6.9(c).

1.2 Rules of Interpretation. Except as otherwise expressly provided, the following rules of interpretation shall apply to this Agreement and the other Financing Documents:

(a) The singular includes the plural, and the plural includes the singular.

(b) Except where otherwise specified, the word “or” is not exclusive. Thus, if a party “may do (a) or (b),” then the party may do either or both. The party is not limited to a mutually exclusive choice between the two alternatives.

(c) A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

(d) A reference to a Person includes its successors and permitted assigns.

(e) Accounting terms have the meanings given to them by GAAP, as applied by the accounting entity to which they refer. For purposes of determining compliance with the financial covenants contained in this Agreement, any election by Borrower to measure any financial liability using fair value (as permitted by Accounting Standard Codification Topic No. 825-10-25 – Fair Value Option or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

(f) The words “include,” “includes” and “including” are not limiting.

(g) A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.

(h) References to any document, instrument, or agreement (i) shall include all exhibits, schedules, and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof to the extent permitted under the Financing Documents, and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified, and supplemented from time to time to the extent permitted under the Financing Documents and in effect at any given time.

(i) The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

(j) References to “days” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified. If the Borrower or any Affiliate of the Borrower is required to perform an action, deliver a document, or take such other action by a calendar day and such day is not a Business Day, then the Borrower or such Affiliate shall take such action by the next succeeding “Business Day.”

(k) The Financing Documents are the result of negotiations between, and have been reviewed by, each of Borrower, the other Loan Parties, Lender, and their respective counsel. Accordingly, the Financing Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any such party.

(l) The words “will” and “shall” shall be construed to have the same meaning and effect.

1.3 Orders. This Agreement and the other DIP Loan Documents are subject in all respects (including with respect to all obligations (including, without limitation, the Obligations) and agreements of the Loan Parties provided for hereunder and thereunder) to the terms of any Bankruptcy Orders, and such Bankruptcy Orders shall control for all purposes. In furtherance of the foregoing, and notwithstanding anything else to the contrary set forth herein or in the other DIP Loan Documents, any action taken or omitted to be taken by any Loan Party pursuant to the express terms of the Bankruptcy Orders shall not constitute a Default or Event of Default, and the Loan Parties shall not be required to undertake any obligation (including, without limitation, any Obligation), make any agreement or take any action that is expressly prohibited by the terms of the Bankruptcy Orders.

DIP FACILITY

2.1 New Money Loans.

(a) New Money Loan Commitment. Subject to the terms and conditions hereof, the Lender agrees to make term loans in Dollars to the Borrower in three (3) installments in an aggregate amount up to but not exceeding the Lender’s New Money Loan Commitment. The aggregate amount of the New Money Loan Commitment shall be automatically and permanently reduced by the amounts of any draws thereof and shall be automatically and permanently reduced to zero on the Termination Date. Amounts borrowed pursuant to this Section 2.1 may be prepaid or repaid but may not be reborrowed.

(b) Interim Advance. Subject to the terms and conditions of the Interim Order and this Agreement including the satisfaction of the conditions set forth in Section 4.1, the Lender shall make New Money Loans in Dollars to the Borrower on or after the Closing Date in the amount and as set forth in the definition of Interim Advance.

(c) Subsequent Draws. Subject to the terms and conditions of the applicable DIP Order and this Agreement including this Section 2.1(c) and the satisfaction of the conditions set forth in Section 4.2, the Lender shall make New Money Loans in Dollars to the Borrower after making the Interim Advance in two (2) draws (each a “Subsequent Loan”), in an aggregate amount not to exceed an amount of the New Money Loan Commitment, minus the Interim Advance. The amount of the first Subsequent Loan to be made following the Borrowing of the Interim Advance (the “Second Advance”), will equal \$4,000,000 and the amount of the final Subsequent Loan (the “Final Advance”) shall equal the New Money Loan Commitment, minus the sum of the Interim Advance and the Second Advance.

(d) Upfront Fee. Subject to the terms and conditions of the Interim Order, the Borrower shall pay to the Lender a fee (the “Upfront Fee”) equal to 3.00% of the Total Loan Commitment. The Upfront Fee shall be due and payable on the date of the funding of the Interim Advance, shall be payable in kind and from and after the making of the Interim Advance shall be considered Loans advanced hereunder for all purposes of this Agreement.

(e) Exit Fee. Subject to the terms and conditions of the Final Order, the Borrower agrees to pay to the Lender a fee (the “Exit Fee”) equal to 5.00% of the Total Loan Commitment. The Exit Fee shall be due and payable on the Maturity Date, shall be payable in kind and from and after the Maturity Date shall be considered Loans advanced hereunder for all purposes of this Agreement.

2.2 Roll-Up Loans. Subject to the terms and conditions of the Interim Order, simultaneously with the Interim Advance, the Prepetition Bridge Term Loans and any other Prepetition Bridge Obligations, including accrued and unpaid interest thereon shall be deemed Loans advanced under this Agreement (the “Roll-Up Loans”) and, subject to the terms and conditions set forth herein and without any further action by any party to this Agreement, shall be administered hereunder. Roll-Up Loans under this Section 2.2 may be prepaid or repaid but may not be reborrowed.

2.3 Borrowing Procedures.

(a) To request a Subsequent Loan, the Borrower shall notify the Lender of such request in writing (which may be by email) not later than 12:00 p.m., New York City time, at least five (5) Business Day prior to the date of the proposed Borrowing. Each such notice shall specify the following information:

(i) the date of such Borrowing, which shall be a Business Day; and

(ii) The Final Order approving such draw has been (or will be) entered and all of the conditions to such draw set forth in Section 4.2 have been (or will be) satisfied on or prior to the date of such Borrowing.

2.4 Termination of New Money Loan Commitments.

(a) The New Money Loan Commitment shall terminate on the earlier of the date that it is fully drawn or reduced to zero and the Termination Date.

(b) The Borrower may at any time terminate or reduce (including to zero) any undrawn amount of the New Money Loan Commitment upon prior notice to the Lender.

(c) The Borrower shall notify the Lender of any election to reduce (including to zero) the New Money Loan Commitment under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such reduction, specifying such election and the effective date thereof; provided, further, that any reduction resulting from the Borrower or any Loan Party entering into a new debtor in possession facility or other debtor in possession financing (an “Other DIP Facility”) shall be subject to the following terms (the “ROFR”); prior to incurring any Other DIP Facility, Lender shall be offered the opportunity to amend the terms of this Agreement to match the terms of any bona fide offer to provide such Other DIP Facility (including as to quantum, budget flexibility, operational flexibility, economics, duration and exit), if Lender affirmatively commits to making such amendment within three (3) Business Days of receiving written notice from Borrower with all relevant terms of such offer (the “Offer Notice”), Lender shall have an additional five (5) Business Days after receipt of the Offer Notice to negotiate and execute an amendment satisfactory to all parties reflecting such terms but if Lender fails to

affirmatively commit to such an amendment or fails to execute such amendment within the time frames specified, Borrower shall have the right following the Discharge Date under this Agreement to enter into the Other DIP Facility for a period of eight (8) Business Days thereafter; provided, that, the terms and conditions of such Other DIP Facility are the same or better for Borrower than the terms in the Offer Notice. If the Borrower fails to enter into an Other DIP Facility within such eight (8) Business Day period, then Lender shall have a ROFR on the terms and conditions set forth in this Section 2.4.

(d) The New Money Loan Commitment shall be automatically reduced on a dollar-for-dollar basis by the first One Million Dollars (\$1,000,000) of any cash proceeds received by the Loan Parties pursuant to and in connection with the entry of the Final Berea Order.

ARTICLE III PRINCIPAL AND INTEREST PAYMENT

3.1 Repayment of Principal and Outstanding Obligations. The Company hereby unconditionally promises to pay the Lender, all amounts owed hereunder with respect to the New Money Loans and the Roll-Up Loans (including, for the avoidance of doubt, any PIK Amounts) on the Termination Date. Each repayment of a New Money Loan and/or Roll-Up Loan shall be applied ratably to the Loans. Repayments of Loans shall be accompanied by accrued interest on the amounts repaid. Any reference in this Agreement or the DIP Loan Documents to the Loans or the outstanding principal balance of the Loans shall include the PIK Amounts.

3.2 Interest Rates and Payment Dates.

(a) Each Loan (including any PIK Amounts) shall bear interest at a rate per annum equal to the Interest Rate. Upon the occurrence and during the continuance of an Event of Default, all outstanding Obligations (whether or not overdue) shall bear interest at a rate per annum equal to the Default Rate. All unpaid interest on each Loan shall be payable in arrears on each Interest Payment Date.

(b) Accrued interest on each New Money Loan and Roll-Up Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that such interest shall be added (on each Interest Payment Date) to the outstanding principal amount of such Loans (and thereafter bear interest at the Interest Rate or the Default Rate, as applicable) (the “PIK Interest Amounts”, and together with the Upfront Fee and the Exit Fee, collectively, the “PIK Amounts”).

(c) Interest and fees payable pursuant to this Agreement shall be calculated on the basis of a three hundred sixty (360)-day year for the actual days elapsed (including the first day but excluding the last day). Any change in the interest rate on a Loan resulting from a change in interest being charged at the Interest Rate or Default Rate shall become effective as of the opening of business on the day on which such change becomes effective.

3.3 Repayment Procedures. All payments (including prepayments) to be made by Borrowers hereunder, whether on account of principal, interest, fees or otherwise, shall be made without set-off or counterclaim and shall be made prior to 12:00 noon (New York time), on the due date thereof to Lender at its account specified in Annex I (as such account information may be updated by Lender in writing from time to time), in Dollars and in immediately available funds.

Any amounts received after such time on any date shall be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day.

3.4 Prepayments.

(a) Voluntary Prepayments. The Borrower may, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty; provided, that any prepayment with the proceeds of an Other DIP Facility shall be subject to the ROFR.

(b) Mandatory Prepayments.

(i) The Borrower shall repay or pay, as the case may be, to the Lender all Loans and other Obligations outstanding under the DIP Facility on or before the Maturity Date.

(ii) In the event of any Event of Loss to the Richmond CEA Facility, Pulaski CEA Facility, or the Morehead CEA Facility in excess of \$1,000,000, Borrower shall apply all net insurance proceeds received by the Loan Parties to prepay the Obligations in accordance with the applicable Bankruptcy Orders; provided, that, Borrower shall not be obligated to apply net insurance proceeds received by the Loan Parties solely with respect to the Pulaski CEA Facility in excess of the GNCU Priming Cap towards the prepayment of the Obligations. In the case of all other Events of Loss with respect to the Richmond CEA Facility, Morehead CEA Facility, and Pulaski CEA Facility and all Events of Loss with respect to the Properties of Loan Parties other than the Richmond CEA Facility, Morehead CEA Facility, and Pulaski CEA Facility, Borrower shall, and shall cause the other Loan Parties to, apply all net insurance proceeds from the insurance policies required hereunder to restore the Properties which are affected by the applicable Event of Loss.

3.5 Terms of Prepayments. Upon the prepayment of any Loan (whether such prepayment is an optional prepayment or any mandatory prepayment which may be required hereunder), Borrower shall pay to Lender (a) all accrued interest to the date of such prepayment owed pursuant to the terms of this Agreement on the amount prepaid, and (b) all accrued fees to the date of such prepayment owed pursuant to the terms of this Agreement corresponding to the amount being prepaid. Any remaining amounts shall be used to pay principal.

3.6 Taxes. Any and all payments by or on account of any obligation of a Loan Party under any Financing Document shall be made without deduction or withholding for any Taxes, except as required by Governmental Rules. If any Governmental Rule requires the deduction or withholding of any Tax from any such payment, then the applicable Person shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Governmental Rules, and then the sum payable by the applicable Loan Party shall be increased as may be necessary so that after such deduction or withholding has been made Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

ARTICLE IV
CONDITIONS

4.1 Closing Date. The occurrence of the Closing Date and the obligation of the Lender to make the Interim Advance is subject to the prior satisfaction by the Loan Parties of each of the following conditions as determined in the sole and absolute discretion of Lender:

(a) Financing Documents. Lender shall have received each Financing Document in form and substance satisfactory to Lender duly executed and entered into by each party thereto.

(b) Representations and Warranties; No Event of Default. Each representation and warranty set forth in the Financing Documents is true and correct on the Closing Date (or, if any representation or warranty is stated to have been made as of a specific date, as of such specific date). No Event of Default shall have occurred and be continuing or could reasonably be expected to result from the occurrence of the Closing Date.

(c) Governing Documents. Lender shall have received:

(i) a copy of the certificate of formation, certificate of limited partnership, certificate of registration or other formation documents, including all amendments thereto, of each Loan Party, each certified as of a recent date by the Secretary of State of Delaware or such other relevant jurisdiction (provided that it is acknowledged and agreed that such certified documents delivered in connection with the Prepetition Bridge Credit Agreement are of a recent date);

(ii) a copy of resolutions of the board of directors, sole member, general partner(s), managing member(s) or similar governing body of each Loan Party, approving and authorizing the execution, delivery, and performance of the Financing Documents to which such Person is a party; and

(iii) a certificate from Borrower signed by a Responsible Officer of Borrower as to the incumbency of the natural persons authorized to execute and deliver this Agreement on behalf of Borrower and each other Loan Party.

(d) Good Standing Certificates. Lender shall have received certificates issued by the jurisdiction of organization of each Loan Party that is a party to the Prepetition Bridge Facility (and shall use commercially reasonable efforts with respect to each other Loan Party), certifying that each such Person is in good standing and active status and is authorized to transact business in such jurisdiction (provided that it is acknowledged and agreed that any such certificates delivered in connection with the Prepetition Bridge Credit Agreement are of a recent date).

(e) Transaction Costs. Subject to the DIP Order, Borrower shall have paid all reasonable and documented out-of-pocket fees, costs and other expenses, and all other amounts, then due and payable by Borrower pursuant to this Agreement. All such amounts may be paid with proceeds of Loans made on the Closing Date and will be reflected in the funding instructions given by the Borrower to the Lender on or before the Closing Date.

(f) Closing Certificate. Lender shall have received a closing certificate, dated the Closing Date, signed by a Responsible Officer of Borrower, in form and substance reasonably acceptable to Lender, certifying, among other things, that the conditions set forth in this Section 4.1 have been satisfied.

(g) Stalking Horse APA. Stalking Horse Purchaser shall have entered into the Stalking Horse APA (which shall be in full force and effect and no material breach, event of default or termination event by any Loan Party or its Affiliate or other event which, with notice or lapse of time or both, could reasonably be expected to become a material breach, event of default, or termination event by any Loan Party or its Affiliate has occurred and is continuing under the Stalking Horse APA).

(h) Initial Approved Budget. The Borrower shall have delivered to the Lender a Budget in form and substance acceptable to the Lender (such Budget as approved by the Lender, the "Initial Approved Budget").

(i) Mastronardi Term Sheet. The Stalking Horse Purchaser shall have entered into a term sheet, on terms and conditions acceptable to the Stalking Horse Purchaser, with Mastronardi providing for the go-forward lease and operation of the Richmond CEA Facility and the Morehead CEA Facility in the event that the Stalking Horse Purchaser is the successful bidder for such assets in the applicable 363 Sale on terms and conditions acceptable to the Stalking Horse Purchaser.

(j) Material Adverse Change. Since the Petition Date, no Material Adverse Change shall have occurred.

(k) Berea Lease. The Berea Term Sheet shall have been executed by all parties thereto.

(l) Bankruptcy Cases.

(i) (1) No later than three (3) business days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order granting the super-priority claim status and the Liens and security interests contemplated hereby and authorizing the DIP Facility in an amount not less than the Interim Advance, which order (x) shall be in full force and effect and shall not have been, in whole or in part, vacated, reversed, stayed, or set aside, and (y) shall not have been modified or amended in a manner adverse to the Lender without the consent of Lender and (2) the Debtors shall be in compliance with the terms of the Interim Order in all respects;

(ii) No later than three (3) business days after the Petition Date, the Bankruptcy Court shall have entered the Bankruptcy Orders constituting First Day Orders;

(iii) All governmental consents and approvals necessary in connection with the transactions referred to herein shall have been obtained and be effective and no unstayed order or injunctions challenging the DIP Facility shall have been entered.

4.2 Subsequent Loan. The obligation of the Lender to make a Subsequent Loan, is subject to the satisfaction of the conditions set forth in Section 4.1 plus each of the following conditions (except as otherwise expressly specified below):

(a) Borrowing Request. The Lender shall have received notice requesting such Subsequent Loan in accordance with Section 2.3. If the Subsequent Loan requested is the Second Advance, the amount requested shall equal the amount of Second Advance as set forth in Section 2.1(c).

(b) Bankruptcy Cases. (i) The Bankruptcy Court shall have entered the Final Order which (a) shall be in full force and effect and shall not have been, in whole or in part, vacated, reversed, stayed, or set aside and (b) shall not have been modified or amended in a manner adverse to the Lender without the consent of the Lender and (ii) the Debtors shall be in compliance with the Final Order in all respects.

(c) Representations and Warranties; No Event of Default. Each representation and warranty set forth in the Financing Documents is true and correct in all material respects (except if such representation is already qualified by reference to materiality, Material Adverse Effect, or a similar materiality qualifier (including a dollar threshold), in which case such representation and warranty shall be true and correct without regard to materiality), as of such date (or, if any representation or warranty is stated to have been made as of a specific date, as of such specific date). Each of the Loan Parties shall have performed and complied with all agreements and conditions in the Financing Documents required to be performed or complied with by it prior to or at the time of the making of such Subsequent Loan and no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to occur as a result of the making of such Subsequent Loan.

(d) Chapter 11 Milestones. The Borrower and the Loan Parties shall have satisfied all Chapter 11 Milestones in accordance with and subject to the deadlines set forth in Section 6.12 or such Chapter 11 Milestones shall have otherwise been extended, waived or otherwise modified by the Lender (in its sole and absolute discretion).

(e) Budget. The Borrower shall have delivered to the Lender a Budget in form and substance acceptable to the Lender (which may be the Initial Approved Budget if the Subsequent Loan is to be made prior to the date that is four weeks after the Petition Date).

(f) [reserved.]

(g) Richmond and Morehead Leases. The Stalking Horse Purchaser shall have entered into a lease agreement with Mastronardi providing for the go-forward lease and operation of the Richmond CEA Facility and the Morehead CEA Facility in the event that the Stalking Horse Purchaser is the successful bidder for such assets in the applicable 363 Sale on terms and conditions acceptable to the Stalking Horse Purchaser and such lease shall not have been terminated.

(h) Transaction Costs. Subject to the DIP Orders, Borrower shall have paid on, or concurrently with, the date on which such Subsequent Loan is to be made, all fees, costs and

other expenses, and all other amounts, then due and payable by Borrower pursuant to this Agreement.

(i) Subsequent Loan Certificate. Lender shall have received a certificate, dated the date on which such Subsequent Loan will be made, signed by a Responsible Officer of Borrower, in form and substance reasonably acceptable to Lender, certifying that the conditions set forth in this Section 4.2 have been satisfied.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each Loan Party hereby makes each of the following representations and warranties to and in favor of Lender on the Closing Date and on the date of each Borrowing:

5.1 No Change. As of the Closing Date, and as of each date that this representation is made after the Closing Date, no Material Adverse Effect has occurred and is continuing.

5.2 Existence; Compliance with Legal Requirements. Each Loan Party (a) is a corporation, limited liability company, or limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, and (d) is in compliance with all Legal Requirements except if such non-compliance would not reasonably be expected to have a Material Adverse Effect.

5.3 Power; Authorization; Enforceable Obligations; Perfected Liens. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Financing Documents to which it is a party and to obtain extensions of credit and grant liens hereunder and thereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery, and performance of the Financing Documents to which it is a party, including the granting of Liens pursuant to the Financing Documents and the extensions of credit on the terms and conditions set forth herein. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery and performance of any Financing Document by each Loan Party that is a party thereto, except (a) consents, authorizations, filings and notices which have been obtained or made and are in full force and effect, and (b) consents, authorizations, filings and notices which, if not obtained or made, could not reasonably be expected to result in a Material Adverse Effect. Each Financing Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. Each Financing Document constitutes a legal, valid, and binding obligation of each Loan Party that is a party thereto, as applicable, enforceable against the Loan Parties in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general equitable

principles (whether enforcement is sought by proceedings in equity or at law). The execution, delivery, and performance by each Loan Party of each Financing Document to which it is a party does not require the approval or consent of any holder or trustee of any Indebtedness or other obligations of the Loan Parties which has not been obtained. As of the Closing Date, the Interim Order is (and the Final Order will be) effective to create in favor of Lender, a legal, valid and enforceable fully perfected security interest in, and Lien on, the Collateral and the proceeds and products thereof as security for the Obligations without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or any other documents nor the making of any recordings, filings, or registrations, the giving of notice, or taking of any other actions.

5.4 No Legal Bar. The execution, delivery and performance of this Agreement and the other Financing Documents, the Borrowings and the use of the proceeds thereof (a) will not conflict with or result in a violation or breach of any terms of any (i) Legal Requirements except for any such violation of a Legal Requirement that could not reasonably be expected to have a Material Adverse Effect, (ii) certificate of formation, partnership certificate, articles of incorporation, bylaws, limited liability company agreement or limited partnership agreement of any Loan Party or (iii) Contractual Obligation of any Loan Party, except in each case of this clause (iii), any such conflict, violation or breach that could not reasonably be expected to have a Material Adverse Effect, and (b) will not result in, or require, the creation or imposition of any Lien on any Collateral (other than Permitted Liens).

5.5 Compliance with Legal Requirements. Each Loan Party is in compliance in all material respects with the requirements of all Legal Requirements (including Environmental Laws and Permits) and all orders, writs, injunctions, and decrees applicable to it or its Properties, except in such instances in which such requirement is being contested in good faith by appropriate proceedings diligently conducted or such non-compliance would not reasonably be expected to result in a Material Adverse Effect.

5.6 Litigation. Except for the Bankruptcy Cases and as set forth on Schedule 5.6, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to Borrower's Knowledge, threatened by or against the Loan Parties or against any of their respective properties or revenues, involving more than, individually or in the aggregate, One Million Dollars (\$1,000,000).

5.7 Financial Statements. Any financial statements delivered to the Lender, present(s) fairly in all material respects the financial position of the Loan Parties as at the date of such financial statements and their results of operations and cash flows for the period then ended, and have been prepared in conformity with GAAP, applied on a consistent basis (in the case of unaudited financial statements, subject to normal year-end adjustments), as applicable.

5.8 Taxes.

(a) The Loan Parties have filed or caused to be filed all Tax returns that they are required to file, and all such Tax returns are accurate and complete in all material respects. No written claim has been made by a Governmental Authority in a jurisdiction where a Loan Party does not file Tax returns that such Person is or may be subject to taxation by the jurisdiction. Each

Loan Party has paid, or caused to be paid, all Taxes payable by or with respect to such Person or upon its respective properties, assets, income, businesses, and franchises, other than any such Taxes the non-payment of which is permitted under Section 6.3.

(b) There are no Liens for Taxes against any assets or properties of the Loan Parties other than inchoate Liens for Taxes not yet due and payable.

(c) [Reserved].

(d) Other than as previously disclosed in writing to Lender, neither the Borrower nor any Affiliate of the Borrower or any other Person acting on behalf of any of the foregoing has applied to the IRS for a private letter ruling, closing agreement or any similar item or agreement with respect to the Loan Parties, including any application or request for such item that has been withdrawn.

(e) Other than as previously disclosed in writing to Lender, no Loan Parties have made any material elections with respect to Taxes.

5.9 Employee and ERISA Matters. Neither the Loan Parties nor their respective employees or any of their respective former employees has engaged in any unfair labor practice that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Loan Parties do not sponsor, maintain, participate in, contribute to, or have any liability in respect of any ERISA Plan. Without limiting the generality of the foregoing, there are no ERISA Plans, Multiemployer Plans or Foreign Plans for which a Loan Party is reasonably likely to incur any material liability. No ERISA Event has occurred or is reasonably expected to occur. All payments due from a Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid except to the extent any such failure to pay would not reasonably be expected to result in a Material Adverse Effect.

5.10 Investment Company Act. Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940. Borrower is not a “covered fund” under the Volcker Rule (Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act).

5.11 Use of Proceeds. The proceeds of the Loans have been and will be applied in accordance with the uses described in Section 6.10.

5.12 Title. Each Loan Party has good and marketable title to, or valid leasehold interests, in all of its material properties and assets, including all material Collateral. None of the properties and assets of a Loan Party are subject to any Liens other than the Permitted Liens.

5.13 Accuracy of Information. No statement or information contained in this Agreement, any other Financing Document or any other report, document, certificate or written statement furnished by or on behalf of the Borrower or any of its respective Affiliates to Lender, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Financing Documents or pursuant to the terms of the Financing Documents, taken as a whole, when furnished, contains as of the date such statement, information, report, document or certificate was so furnished (taking into account any updated or supplemental information), any untrue

statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances in which such statements were made, where such untrue material fact or omission could reasonably be expected to have a Material Adverse Effect.

ARTICLE VI AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees with Lender that, until the Discharge Date, it shall abide by the following affirmative covenants:

6.1 Operational Reports. Upon Lender's request, furnish to the Lender not more frequently than every other calendar week, operational reports with respect to each of the Richmond CEA Facility, Pulaski CEA Facility, and the Morehead CEA Facility containing such operational data as reasonably requested by Lender.

6.2 Certificates; Other Information. Furnish to Lender:

(a) concurrently with the delivery of any operational reports pursuant to Section 6.1, a certificate of a Responsible Officer of the Borrower stating that no Default or Event of Default has occurred and is continuing, except as specified in such certificate; and

(b) promptly, such additional financial and other information as Lender may from time-to-time reasonably request.

6.3 Taxes and Other Government Charges.

(a) File all federal, state and local Tax returns and reports that are required to be filed by it under Governmental Rules and pay, or cause to be paid, as and when due and prior to delinquency, all Taxes, assessments and governmental charges of any kind that may at any time be assessed or levied against or with respect to the Loan Parties or their respective Properties and to the extent not stayed by the Bankruptcy Court, all utility and similar charges incurred in the ownership, construction, operation, maintenance, use, occupancy and upkeep of their respective Properties to the extent non-payment will result in a termination of the applicable services; provided, that the Loan Parties may contest in good faith any such Taxes, assessments and other charges and, in such event, may if permitted by Governmental Rules, permit the Taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when such Loan Party is in good faith contesting the same by appropriate proceedings, so long as (i) adequate cash reserves reasonably satisfactory to Lender have been established on the applicable Loan Party's books to pay any such Taxes, assessments or other charges, accrued interest thereon and any potential penalties or other costs relating thereto, or other adequate provision for the payment thereof which shall be reasonably satisfactory to Lender shall have been made, (ii) enforcement of the contested Tax, assessment or other charge is effectively stayed for the entire duration of such proceedings and (iii) any Tax, assessment or other charge determined to be due, together with any interest or penalties thereon, will be promptly paid in full when due after resolution of such contest.

6.4 Maintenance of Existence; Compliance.

(a) Except as contemplated by any Bankruptcy Order, (i) preserve, renew, and keep in full force and effect its existence as a limited liability company, partnership or corporation, as applicable, in its jurisdiction of organization and (ii) take reasonable actions to maintain all rights, privileges, and franchises necessary or desirable in the normal conduct of its business, except to the extent that a failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Comply with all Contractual Obligations of such Loan Party and Legal Requirements applicable to such Loan Party, except to the extent that failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.5 Insurance. Maintain, through either an individual policy or as part of a group policy maintained by or for the Loan Parties, with financially sound and reputable insurance companies, insurance in the coverages, insured amounts and deductible levels as are commercially reasonable in light of Prudent Industry Practices (the “Required Insurance”). If a Loan Party fails to take out or maintain the full insurance coverage required by this Section 6.5, Lender, upon ten (10) Business Days’ prior written notice (unless the aforementioned insurance would lapse within such period or has already lapsed, in which event notice shall not be required) to Borrower of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same at the sole cost and expense of Borrower. On or before the date on which the Second Advance is to be made, cause all casualty insurance policies required to be maintained pursuant to this Agreement to name Lender as a loss payee thereunder as its interests may appear and designate that all proceeds be payable to Lender as its interests may appear and maintain such designations thereafter until the Discharge Date.

6.6 Inspection of Property; Books and Records; Discussion. Maintain all financial records in accordance with GAAP and permit any Persons designated by Lender, to visit and inspect the Loan Parties’ financial records and the Loan Parties’ properties at reasonable times, upon reasonable (but in no event less than forty-eight (48) hours’) prior notice to the Borrower, and as often as reasonably requested and to make extracts from and copies of such financial records and, permit any Persons designated by Lender upon reasonable prior notice to the Borrower to discuss the affairs, finances, operations, and condition of the Richmond CEA Facility, Morehead CEA Facility, and the other Properties of the Loan Parties and the Loan Parties themselves with the officers thereof and other third party advisors (including independent accountants) therefor (subject to reasonable requirements of confidentiality, safety requirements and other requirements imposed by law or by contract).

6.7 Notices. Promptly upon receiving written notice or giving written notice, or upon obtaining knowledge, of the applicable event, give notice to Lender of the following (it being understood that delivery of such notice shall be deemed to cure any Default or Event of Default arising solely from failure to deliver such notice):

(a) the occurrence of any Default or Event of Default, followed by, as soon as practicable (and, in any event, within five (5) Business Days following delivery of such notice), a

statement of a Responsible Officer of Borrower setting forth details of such occurrence and stating what action Borrower or other relevant Person proposes to take with respect thereto;

(b) any pending or known threatened litigation, action or proceeding involving a Loan Party or its Property, to the extent any such litigation or proceeding (i) involves claims which exceed One Million Dollars (\$1,000,000), individually or in the aggregate, with respect to a Loan Party or its Property, or at the time public disclosure is required by applicable law, (ii) seeks injunctive, declaratory or similar relief with respect to a Loan Party, a Loan Party's Property, or Financing Documents, or (iii) relates to any Financing Document and involves a claim that such Financing Document, or any condition or term thereof, is not valid, binding or enforceable or a claim against or of Lender and, in the case of this clause (iii), would reasonably be expected to have a Material Adverse Effect if determined adversely to Lender;

(c) any dispute or disputes which may exist between a Loan Party and any Governmental Authority, and which involve (i) claims against a Loan Party or its Property; (ii) injunctive, declaratory, or similar relief with respect to a Loan Party, its Property, or Financing Documents; or (iii) any Liens for Taxes due but not paid;

(d) the occurrence of any material Event of Loss, whether or not insured;

(e) any cancellation or material change in the terms, coverages or amount in any insurance comprising the Required Insurance;

(f) the occurrence of any ERISA Event that could reasonably be expected to result in a Loan Party incurring liability;

(g) the occurrence of any event or condition that has had or could reasonably be expected to have a Material Adverse Effect;

(h) any written notice from any Governmental Authority initiating or threatening the commencement of an investigation or proceedings against a Loan Party or its Property, in each case, that could reasonably be expected to have a Material Adverse Effect;

(i) any notice or request for information from the Occupational Health and Safety Administration (or similar Governmental Authority investigating occupational or workplace safety) with respect to a Property owned or operated by a Loan Party;

(j) prior to filing with the Bankruptcy Court, for Lender's review and approval, as soon as reasonably practical, drafts of all material pleadings, motions, and other documents (provided that any of the foregoing relating to the DIP Facility, the Financing Documents, the Stalking Horse APA, the Berea Lease, and the second day motions and orders shall be deemed material) to be filed by the Debtors with the Bankruptcy Court, each of which shall be in form and substance acceptable to the Lender; and

(k) such other information respecting the business, condition (financial or otherwise), operations, performance, or properties of any Loan Party or that relates to the ability of any Loan Party to perform its obligations under the Financing Documents to which it is a party, in each case as Lender may from time to time reasonably request.

6.8 Further Assurances. From time to time as necessary or reasonably requested by Lender, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, fixture filing, certificate of title, subordination agreement or estoppel certificate) relating to the Loans and other Obligations stating the interest and charges then due and any known defaults, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all Governmental Rules the rights, Liens and priorities of Lender with respect to all Collateral (if applicable) and other security from time to time furnished under this Agreement and the other Financing Documents or intended to be so furnished (if applicable), in each case, in such form and at such times as shall be necessary or reasonably requested by Lender, and pay all reasonable fees and expenses (including attorneys' fees) incident to compliance with this Section 6.8.

6.9 Budget. Deliver to Lender:

(a) Beginning on August 8, 2023 (the "Initial Reporting Date"), an updated Budget on Tuesday of every other week (each, a "Proposed Budget") for Lender's approval. Upon receipt of the Lender's approval (in its sole and exclusive discretion), such Proposed Budget shall become an Approved Budget and shall replace the then-operative Approved Budget for all purposes herein or in the DIP Order. Any updates to the Initial Approved Budget (including each Proposed Budget and any updates, amendments, supplements, or other modifications to an Approved Budget) shall be subject to the prior written approval of Lender in its sole discretion and, until Lender provides such approval, the Approved Budget, which was most recently approved by Lender, shall remain in effect for all purposes, including variance testing and reporting. It being understood that no changes shall be made to any Approved Budget with respect to any periods that were included in an Approved Budget, which was previously approved by Lender, without the prior written consent of Lender.

(b) The Loan Parties shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget (subject to the Permitted Variances); and

(c) Beginning on Tuesday of the calendar week after the Initial Reporting Date, and on the Tuesday of every calendar week thereafter (each such date, a "Variance Reporting Date"), a variance report and reconciliation, in a form reasonably acceptable to the Lender, for the immediately prior week and for net operating cash flow for the immediately prior two (2) week time period covered by the applicable Approved Budget on a cumulative basis (the applicable "Variance Testing Period"), in each case, showing actual results for the following items: (1) receipts, (2) disbursements, (3) net operating cash flow, (4) liquidity, and (5) loan balances, noting therein variances from values set forth for such periods in the most recent Approved Budget for the immediately prior week or, for net operating cash flow, for the time period covered by the applicable Approved Budget on a cumulative basis and providing an explanation for all material variances, certified by the chief financial officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein (such report, the "Variance Report").

6.10 Use of Proceeds.

(a) The proceeds of the New Money Loans hereunder shall be used solely and in each case in accordance with the DIP Budget and subject to any limitations therein: (i) for working capital of the Loan Parties following the Petition Date, (ii) for the payment of current interest, expenses and fees with respect to the Loans and other Obligations hereunder, (iii) for payment of allowed administrative costs and expenses of the Bankruptcy Cases (including professional fees and expenses), (iv) for payment of prepetition claims authorized by the Bankruptcy Court, (v) for any other forecasted cash outlays included in the Approved Budget and (vi) as otherwise agreed by the Lender and the Borrower.

(b) The Borrower will not request any Borrowing, and the Loan Parties shall not use, and shall cause that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

6.11 Collateral Matters. Subject to the Carve-Out and the DIP Order, all Obligations of the Loan Parties hereunder shall be:

(a) entitled to superpriority claim status under section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims and unsecured claims existing as of the Petition Date or arising thereafter under the Bankruptcy Code, including, without limitation, the prepetition claims and adequate protection claims of the Prepetition Lenders (the “DIP Superpriority Claims”). The DIP Superpriority Claims may be repaid from any cash of the Debtors, including without limitation, Cash Collateral (within the meaning of the DIP Order) and, following entry of the Final Order, the proceeds of Avoidance Actions and Avoidance Action Proceeds;

(b) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, first priority, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (including, following entry of the Final Order, Avoidance Action Proceeds);

(c) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by valid, enforceable, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were subject to valid, perfected and non-avoidable liens and unavoidable liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the “Permitted Prior Liens”), which security interests and liens shall be junior and subordinate only to such Permitted Prior Liens and the Carve-Out; and

(d) secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by valid, enforceable, priming first priority, fully perfected security interests in and liens upon all of the Debtors' rights in property of the Debtors' estates as of the Petition Date, and all of the Debtors' rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising, that secure the Prepetition Obligations in respect of the Prepetition Bridge Facility, the Richmond Facility, the Morehead Facility, and the GNCU Facility (provided, with respect to the GNCU Facility, such priming Liens pursuant to this clause(d) shall not exceed the amount of the GNCU Priming Cap), including, but not limited to, any cash proceeds received by the Loan Parties pursuant to or in connection with the entry of the Final Berea Order.

The Collateral shall also include any and all hereafter acquired or arising property, rents, issues, products, offspring, proceeds and profits generated by any item of Collateral and, following entry of the Final Order, liens on proceeds of any Avoidance Actions.

The Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of any Debtor and their estates under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of any Debtor, or (iii) any intercompany or affiliate liens of any Debtor.

The Collateral will be free and clear of other liens, claims and encumbrances, except valid, perfected, enforceable and unavoidable liens, rights of recoupment enforceable in bankruptcy, and rights of setoff permissible under section 553 of the Bankruptcy Code, in each case except as otherwise agreed by the applicable creditor or lienholder, as applicable, in existence as of the Petition Date and permitted pursuant to Prepetition Credit Agreements, if any, and any other Permitted Prior Liens.

The Borrower acknowledges that the Liens shall automatically attach to the Collateral and become valid and perfected immediately upon entry of the Interim Order without the requirement of any further action by the Lender; provided that if the Lender determines to file any financing statements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such filings.

6.12 Chapter 11 Milestones. The Loan Parties shall comply with and meet the following milestones as the same may be extended, waived or otherwise modified with the prior written consent of Lender in its sole discretion (which may be by email) without further order by the Bankruptcy Court (collectively, the "Chapter 11 Milestones" and each a "Chapter 11 Milestone"):

(i) the Bankruptcy Court shall have entered the Interim Order by the date that is no later than three (3) Business Days after the Petition Date;

(ii) the Bankruptcy Court shall have entered the Interim Berea Order by the date that is no later than five (5) Business Days after the Petition Date;

(iii) the Debtors shall have filed the motion seeking entry of the Bidding Procedures Order and Sale Order (the "Bidding Procedures Motion") by no later than three (3) days after the Petition Date;

(iv) the Bankruptcy Court shall have entered the Bidding Procedures Order by no later than twenty-one (21) days after the filing of the Bidding Procedures Motion;

(v) the Bankruptcy Court shall have entered the Final Order by the date that is no later than twenty-eight (28) days after the Petition Date;

(vi) the Bankruptcy Court shall have entered the Final Berea Order by the date that is no later than thirty-five (35) days after the Petition Date;

(vii) the Bankruptcy Court shall have entered the Sale Order by no later than forty-five (45) days after the Petition Date;

(viii) the Debtors shall have closed the Sale Transaction by no later than fifty (50) days after the Petition Date; and

(ix) the Plan Effective Date shall have occurred by no later than sixty (60) days after the Petition Date.

6.13 Business Operations. Except as authorized by the Bankruptcy Orders, each Loan Party shall (a) operate, keep, and maintain the Richmond CEA Facility and the Morehead CEA Facility in good condition, repair, and working order in accordance with Prudent Industry Practices and the Approved Budget and (b) (i) use best efforts to conduct business in the ordinary course and (ii) use best efforts to operate, keep, and maintain its Properties (other than the Richmond CEA Facility and Morehead CEA Facility) which are necessary or useful in its business and complete construction of the Richmond CEA Facility, in each case, in all material respects in accordance with Prudent Industry Practices, Legal Requirements, and any contracts or agreements related thereto, except to the extent not consistent with the Approved Budget.

6.14 Richmond Construction Completion Plan. Within ten (10) days of the Closing Date, deliver a Construction Completion Plan which is satisfactory to Lender in its reasonable discretion. Without limiting the Loan Parties' obligations under Section 6.13, and subject to any applicable limitations in the Approved Budget, complete the construction of the Richmond CEA Facility in accordance with the Construction Completion Plan.

6.15 Berea Lease. (i) No later than five (5) days following the Petition Date, the Bankruptcy Court shall have issued the Interim Berea Order; (ii) no later than the earlier of the date on which the Second Advance is to be made and twenty-three (23) days following the Petition Date, the Bankruptcy Court shall have issued the Final Berea Order; and (iii) no later than the earlier of the date on which the Final Advance is to be made and forty-five (45) days after the Petition Date, AppHarvest Berea and its Affiliates shall have transferred to Mastronardi the "Transferred Assets" (as defined in the Berea Term Sheet) pursuant to and in accordance with the requirements set forth in the Berea Term Sheet.

ARTICLE VII NEGATIVE COVENANTS

Each Loan Party covenants and agrees with Lender that, until the Discharge Date, each Loan Party shall abide by the following negative covenants:

7.1 Contingent Liabilities. Except as provided in this Agreement, not become liable as a surety, guarantor, accommodation endorser or otherwise, for or upon the obligation of any other Person (other than a Loan Party) or otherwise create, incur, assume, or suffer to exist any contingent obligation as defined by GAAP exceeding One Million Dollars (\$1,000,000); provided that this Section 7.1 shall not be deemed to prohibit a Loan Party from (a) the acquisition of goods, supplies or merchandise in the normal course of operating its business on normal trade credit, (b) the endorsement of negotiable instruments received in the normal course of operating its business, (c) contingent obligations under or in respect of performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees, indemnification obligations, obligations to pay insurance premiums, take or pay obligations and similar obligations, or private warrant liabilities, in each case incurred in the ordinary course of business and not in connection with Indebtedness for borrowed money, or (d) incurring Permitted Indebtedness.

7.2 Liens; Negative Pledges. Not create, assume, or suffer to exist any Lien on any of the Collateral except for Permitted Liens.

7.3 Indebtedness. Not incur, create, assume, or permit to exist any Indebtedness except the Obligations, any Permitted Indebtedness and any Indebtedness between or among the Loan Parties.

7.4 Asset Dispositions. No Loan Party shall convey, sell, lease, transfer or otherwise dispose of any Borrower's Property, engage in any "sale-leaseback" or similar transaction (, or merge or consolidate with or into any other Person, or change legal form, or implement any material disposition, other than replacements of personal property and equipment in the ordinary course with replacement items of equal or greater value, except in each case, as contemplated, by the Approved Budget, in connection with the 363 Sale or pursuant to a Bankruptcy Order.

7.5 Nature of Business; Permitted Activities. No Loan Party shall (a) directly conduct, transact, or otherwise engage in, or commit to conduct, transact, or otherwise engage in, any business or operations or other activity other than those related to its current business nor (b) organize, form, or acquire any subsidiaries.

7.6 Distributions. No Loan Party shall (a) directly or indirectly make or declare any distribution (in cash, property or obligation) on, or other payment on account of, any equity interest in any Loan Party, or redeem, purchase or otherwise acquire any equity interest in any Loan Party or permit any holder of any equity interest in any Loan Party to withdraw capital from Borrower, in each case, other than to another Loan Party or (b) except as set forth in the applicable Approved Budget, (i) make any payment of any existing bonus or other non-ordinary course executive or other employee compensation or (ii) modify the terms of employment with senior management of any Loan Party relating to compensation or other benefits.

7.7 Use of Proceeds. Not use, pay, transfer, distribute or dispose of any Loan proceeds in any manner or for any purposes except as provided in Section 6.10.

7.8 Other Changes and Transactions.

(a) Not liquidate, wind-up or dissolve the Borrower.

(b) Not allow Borrower to create or acquire any new direct or indirect subsidiaries.

(c) Not directly or indirectly enter into any transaction or series of transactions with or for the benefit of an Affiliate, other than intercompany debt amongst the Loan Parties.

7.9 Organizational Changes. Not cause, consent to, or permit any termination, suspension, amendment, modification, assignment, variance, or waiver of timely compliance with any terms or conditions of the certificate of formation (or similar document) or bylaws of any Loan Party (other than ministerial amendments or corrections of scrivener's errors thereto). Not change (a) a Loan Party's name, its status as a corporation or limited liability company or its jurisdiction of organization without written notice to Lender at least ten (10) days prior to such change, (b) the Borrower's fiscal year without the prior written consent of Lender (such consent not to be unreasonably withheld) or (c) the location of any Loan Party's chief executive office, principal place of business or federal identification number without written notice to Lender within thirty (30) days after such change.

7.10 Hazardous Substances. Not Release into the environment any Hazardous Substances in violation of any Environmental Laws or Permits by which a Loan Party or its Property is bound or in a manner, quantity or location that could reasonably be expected to have a Material Adverse Effect.

7.11 Super-Priority Claims. No Loan Party will create or permit to exist any "claim" that shall be granted in any of the Bankruptcy Cases that is *pari passu* with or senior to the Obligations, other than as provided herein.

7.12 Bankruptcy Orders. No Loan Party will (a) obtain or seek to obtain any stay from the Bankruptcy Court on the exercise of the Lender's remedies hereunder or under any other DIP Loan Document, except as specifically provided in the DIP Orders, or (b) seek to change or otherwise modify any DIP Order or other order in the Bankruptcy Court with respect to the DIP Facility without the prior written approval of the Lender.

7.13 New Accounts. No Loan Party will open or otherwise establish, or deposit, credit or otherwise transfer any cash, cash receipts, securities, financial assets or any other property into a deposit account or securities account other than any deposit account or securities account established with the prior consent of the Lender and in which the Lender has been granted a first-priority perfected Lien pursuant to the applicable DIP Order.

7.14 Prepetition Claims. No Loan Party shall make any payments of any kind on account of any Prepetition Credit Facilities (except as expressly provided for herein, in an Approved Budget or pursuant to Bankruptcy Orders) or assert any right of subrogation or contribution against any Loan Party until the Discharge Date.

7.15 Variance Covenant. As of any Variance Reporting Date, the Loan Parties shall not allow:

(a) with respect to the applicable Variance Testing Period, cash collections on a combined basis to be less than 85% of the estimated amounts in the applicable Approved Budget;

(b) with respect to the applicable Variance Testing Period, methodology disbursements, including payroll and related expenses, to be greater than 110% of the applicable estimated disbursement for such line items in the Approved Budget;

(c) with respect to the applicable Variance Testing Period, total non-methodology disbursements to be greater than 110% of the applicable estimated disbursements for such line items in the Approved Budget;

(d) with respect to the applicable Variance Testing Period, non-operating disbursements to be greater than 115% of the estimated aggregate disbursement for all such items in the Approved Budget; and

(e) with respect to the applicable Variance Testing Period, net operating cash flow to be less than 90% of the estimated amounts for such line items in the applicable Approved Budget at any given time;

the Budget variances permitted by clauses (a) through (e) above, collectively, the “Permitted Variances”).

The Loan Parties may not carry forward favorable variances on a line-item basis or otherwise from the immediately preceding Variance Testing Period when calculating the Permitted Variances. Notwithstanding anything to the contrary set forth in this Agreement, the Loan Parties shall be deemed to be in compliance with the Approved Budget for all purposes under this Agreement or the DIP Order unless, as of any Variance Reporting Date, the Loan Parties’ actual cash receipts or disbursements vary from the Approved Budget by more than the applicable Permitted Variance as measured on any Variance Reporting Date.

ARTICLE VIII EVENTS OF DEFAULT; REMEDIES

Events of Default

The occurrence of any of the events described in Sections 8.1 through 8.8 shall constitute an event of default (an “Event of Default”) hereunder:

8.1 **Failure to Make Payments.** The Borrower shall fail to pay, in accordance with the terms of the relevant Financing Document, (i) any principal on any of the DIP Facility (including any mandatory prepayments payable hereunder) on the date that such sum is due, (ii) any interest or fee on any of the DIP Facility within five (5) days after the date that such sum is due or (iii) any other cost, charge or other sum due under such Financing Document within ten (10) days after the date Borrower receives written notice that such sum is due.

8.2 **Judgments.** A final judgment or judgments shall be entered against any Loan Party (a) that in the aggregate exceeds five million Dollars (\$5,000,000) (other than (i) a judgment that is fully covered by insurance, bond or other security or satisfied in full or (ii) a judgment, the execution of which is effectively stayed) or (b) that could reasonably be expected to have a Material Adverse Effect.

8.3 Misstatements. Any (a) representation or warranty made by a Loan Party in the Financing Documents, or (b) certificate, Budget or any financial statement made or prepared by, under the control of or on behalf of any Loan Party and furnished to Lender pursuant to any Financing Document or the DIP Order (i) shall contain any statement of fact that is untrue or misleading as of the date made or (ii) shall fail to state a material fact necessary to make the statements therein not misleading as of the date made; provided, that no Event of Default shall occur pursuant to this Section 8.3 if the facts or circumstances underlying any such untrue or misleading statement are capable of being cured and, within thirty (30) days of the date on which any Loan Party obtains knowledge that such untrue or misleading statement has occurred, such Loan Party has eliminated, corrected or otherwise cured such facts or circumstances.

8.4 [Reserved].

8.5 Cross-Default.

(a) A Loan Party shall default for a period beyond any applicable grace period in the payment of principal, interest, or other amount due under any agreement (other than the Financing Documents) involving the borrowing of money or Indebtedness in excess of One Million Dollars (\$1,000,000), which is not stayed by filing of the voluntary petition to commence the Bankruptcy Cases or is otherwise permitted to be paid under this Agreement.

(b) The borrowings or Indebtedness under any agreement to which Borrower is a party (other than Financing Documents) become due and payable prior to their scheduled maturity date, and the outstanding amount of amounts payable under all such agreements exceeds One Million Dollars (\$1,000,000) in the aggregate, and payment of such amounts is not stayed by filing of the voluntary petition to commence the Bankruptcy Cases or is otherwise permitted to be paid under this Agreement.

(c) A Loan Party or any of its Affiliates shall be in breach of, or default under, the Stalking Horse APA and such breach or default shall continue unremedied for the length of any applicable cure period in the Stalking Horse APA.

(d) After its execution and effectiveness, the Stalking Horse APA shall cease for any reason to be in full force and effect unless terminated in accordance with its terms and not as a result of a default by a Loan Party or its Affiliates thereunder.

8.6 Breach of Covenants.

(a) Immediate. Borrower shall fail to perform or observe any of the covenants set forth in Sections 6.4(a), 6.10, or 6.12 or any Loan Party shall fail to perform or observe any of the covenants set forth in Article VII.

(b) Ten (10)-Day Cure Period. Borrower shall fail to perform or observe any of the covenants set forth in Sections 6.5 and 6.7(a), and such failure shall continue for a period of ten (10) days.

(c) Extended Cure Period. Any Loan Party shall fail to perform or observe any other covenant to be performed or observed by it hereunder or under any Financing Document to

which it is a party and not otherwise specifically provided for elsewhere in this Article VIII, and such failure shall continue unremedied for a period of thirty (30) days; provided, that upon notice from Borrower to Lender, such cure period shall be extended to such longer period of time as is reasonably necessary to effect a cure so long as (x) such default could reasonably be expected to be susceptible of a cure after the already expired thirty (30)-day cure period and (y) such Loan Party is diligently and continuously proceeding to cure, or cause the cure of, such default and so certifies in such notice; provided, further, that such extended cure period shall not exceed ninety (90) days in the aggregate.

8.7 ERISA. (a) One or more ERISA Events that would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect shall have occurred or (b) any fact or circumstance shall exist that could reasonably be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Code against Borrower.

8.8 Bankruptcy Cases.

(a) the Interim Order or Final Order, as applicable, (i) at any time ceases to be in full force and effect or (ii) shall be vacated, reversed, stayed, modified or amended without the prior written consent of the Lender;

(b) any Loan Party shall fail to observe or comply in any material respect with the terms of the Final Order;

(c) other than payments authorized by the Bankruptcy Court and which are set forth in the Approved Budget to the extent authorized by one or more First Day Orders or other orders reasonably satisfactory to the Lender, any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition Indebtedness or payables;

(d) (i) any of the Bankruptcy Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a Chapter 11 trustee or an examiner (other than a fee examiner) with enlarged powers relating to the operation of the business of any Loan Party (powers beyond those expressly set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed, (b) any other superpriority claim or grant of any other Lien (including any adequate protection Lien) other than as provided for herein which *is pari passu* with or senior to the claims and Liens of the Lender provided by the DIP Loan Documents shall be granted in any of the Bankruptcy Cases, or (c) the filing of any pleading by any Loan Party seeking or otherwise consenting to or supporting any of the matters set forth in clause (a) or clause (b) of this clause (d);

(e) the Bankruptcy Court shall enter one or more orders during the pendency of the Bankruptcy Cases granting relief from the automatic stay to the holder or holders of any Lien evidencing Indebtedness other than in connection with the 363 Sales or any of the Prepetition Facilities in excess of \$2,000,000 to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on assets of any Loan Party;

(f) the Loan Parties petition the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility;

(g) the Loan Parties' "exclusive period" under section 1121 of the Bankruptcy Code for the filing of a chapter 11 plan terminates;

(h) the consummation of a sale of any material portion of the Collateral (other than through the contemplated 363 Sale or a sale in the ordinary course of business that is contemplated by the Approved Budget);

(i) the confirmation of a chapter 11 plan of reorganization or liquidation that does not provide for payment in full in cash of the Loans or such other treatment acceptable to Lender, or any Loan Party proposes or supports, or fails to contest in good faith, the entry of such a plan of reorganization or liquidation;

(j) any Loan Party (A) engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of this Agreement, the DIP Facility, the Prepetition Bridge Facility, the Richmond Facility, the Morehead Facility, or the Liens on or security interest in the assets of the Loan Parties securing the foregoing, including without limitation seeking to equitably subordinate or avoid the Liens securing such Indebtedness or (B) engages in or supports any investigation or asserts any claims or causes of action (or directly or indirectly support assertion of the same) against the Lender or its Affiliates;

(k) the occurrence of a DIP Termination Event as defined in the Interim Order or Final Order, as applicable;

(l) allowance of any claim or claims under section 506(c) of the Bankruptcy Code against any of the Collateral; and

(m) entry of an order by the Bankruptcy Court in favor of any statutory committee appointed in the Bankruptcy Cases by the U.S. Trustee (each, a "Committee"), any ad hoc committee, or any other party in interest, (i) granting such party standing to pursue any claims against the Lender and/or any Prepetition Lender (ii) sustaining an objection to claims of the Lender and/or any Prepetition Lender, (iii) avoiding any Liens held by the Lender, or (iv) avoiding any Liens held by any Prepetition Lender except as otherwise agreed by such Prepetition Lender in writing (provided, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or Liens in respect of the Prepetition Obligations).

8.9 Remedies.

Upon the occurrence and during the continuation of an Event of Default, and without further application to the Bankruptcy Court, pursuant to the DIP Order, the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Lender to take any of the following actions, at the same or different times:

(a) issue a written notice (which may be by email) to the Loan Parties and their counsel, counsel for any Committee, and the U.S. Trustee (collectively, the "Remedies Notice Parties") declaring the occurrence of the Termination Date and the suspension or termination of any New Money Loan Commitment, liability or obligation of the Lender hereunder and the acceleration of all of the Obligations under this Agreement and the other DIP Loan Documents, but without affecting the Liens on the Collateral or Obligations;

- (b) issue a Carve-Out Notice (as defined in the DIP Order);
- (c) declare all the Obligations to be immediately due and payable without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Loan Parties;
- (d) declare that all the Loans and other Obligations shall bear interest at the Default Rate; or
- (e) exercise all other rights and remedies available to it under the other Financing Documents and applicable law, including the UCC and DIP Orders.

provided that the Lender shall not exercise remedies against the Collateral pursuant to clause (e) above or any other Financing Document other than in accordance with the applicable DIP Order.

ARTICLE IX GUARANTY

9.1 Guaranty. Each Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and not as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, the Obligations, owing by the Borrower or any other Loan Party to the Lender arising under, pursuant to, or in connection with this Agreement or under any other DIP Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and, as provided in the DIP Loan Documents, all costs, fees, reasonable attorneys' fees, and documented expenses incurred by the Lender in connection with the collection or enforcement thereof). The Lender's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor and conclusive, absent manifest error, for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of any Guarantor under this Guaranty other than the indefeasible payment in full of the Obligations, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing. Anything contained herein to the contrary notwithstanding, the obligations of each Guarantor hereunder at any time shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code (or any comparable provisions of any similar federal or state law) after giving effect to the value of any rights of subrogation, contribution, reimbursement or indemnity of such Guarantor pursuant to applicable law or agreement, including Section 9.2 hereof.

9.2 Subrogation.

(a) No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this

Guaranty until the Discharge Date. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Lender and shall forthwith be paid to the Lender to reduce the amount of the Obligations, whether matured or unmatured.

(b) The Guarantors hereby agree, as among themselves, that if any Guarantor or any other guarantor of the Obligations shall become an Excess Funding Guarantor (as defined below) (but subject to the succeeding provisions of this Section 9.2(b)), to pay to such Excess Funding Guarantor an amount equal to such Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, assets, liabilities and debts of such Excess Funding Guarantor) of such Excess Payment (as defined below). The payment obligation of any Guarantor to any Excess Funding Guarantor under this Section 9.2(b) shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of this Guaranty, and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess except as provided in Section 9.2(a) above or in any similar provision of any other guaranty of the Obligations. For purposes hereof, (i) "Excess Funding Guarantor" shall mean, in respect of any obligations arising under the other provisions of this Guaranty and any similar provisions of any other guaranty of the Obligations (hereafter, the "Guaranteed Obligations"), a Guarantor or any other guarantor of the Obligations that has paid an amount in excess of its Pro Rata Share of the Guaranteed Obligations; (ii) "Excess Payment" shall mean, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations; and (iii) "Pro Rata Share", for purposes of this Section 9.2(b), shall mean, for any Guarantor or any other guarantor of the Obligations, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all of its assets and properties exceeds the amount of all debts and liabilities of such guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such guarantor under this Guaranty or the other applicable guaranty) to (y) the amount by which the aggregate present fair saleable value of all assets and other properties of the Borrower, all of the Guarantors and all of the other guarantors of the Obligations exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Borrower under the Loan Agreement, the Guarantors hereunder and any other guarantors of the Obligations under the applicable guaranties) of the Borrower, all of the Guarantors and all of the other guarantors of the Obligations, all as of the Closing Date (if any Guarantor becomes a party hereto (or any other guarantor of the Obligations becomes a party to the applicable guaranty) subsequent to the Closing Date, then for purposes of this Section 9.2(b) such subsequent guarantor shall be deemed to have been a guarantor of the Obligations as of the Closing Date and the information pertaining to, and only pertaining to, such guarantor as of the date such guarantor became a guarantor of the Obligations shall be deemed true as of the Closing Date).

ARTICLE X
MISCELLANEOUS

10.1 Amendments. Neither this Agreement or any other Financing Document, nor any terms hereof or thereof, may be amended or modified except by written consent of the parties hereto.

10.2 Addresses. Any communications between the parties hereto or regular notices provided herein to be given shall be given to the following addresses:

To Lender: CEFF II AppHarvest Holdings, LLC
c/o Controlled Environment Foods Fund, LLC
411 NW Park Ave, Suite 401
Portland, Oregon 97209
Attn: General Counsel
Email: campbell@eq-cap.com

Copy to: Amis, Patel & Brewer, LLP
1050 K Street, NW, Fifth Floor
Washington, DC 20001
Attn: Rusty Brewer
Email: rustybrewer@apbllp.com

To Borrower: AppHarvest, Inc.
500 Appalachian Way
Morehead, KY 40351
Attn: Gary Broadbent
Email: info@appharvest.com

Copy to: Sidley Austin LLP
787 Seventh Avenue
New York, New York
Attn: Anthony R. Grossi; Patrick Venter
Email: agrossi@sidley.com; pventer@sidley.com

Any notice that is personally served shall be effective upon the date of service; any notice given by U.S. Mail shall be deemed effectively given, if deposited in the United States Mail, registered or certified with return receipt requested, postage prepaid and addressed as provided above, on the date of receipt, refusal or non-delivery indicated on the return receipt. In addition, either party hereto may send notices by electronic mail, or by a nationally recognized overnight courier service which provides written proof of delivery (such as U.P.S. or Federal Express). Any notice sent by electronic mail shall be effective upon confirmation of receipt in legible form, and any notice sent by a nationally recognized overnight courier shall be effective on the date of delivery (or rejected delivery) to the applicable party at its address specified above as set forth in the courier's delivery receipt. Either party may, by notice to the other from time to time in the manner herein provided, specify a different address for notice purposes.

10.3 No Waiver; Cumulative Remedies.

(a) No failure or delay of Lender in exercising any right or power hereunder or under any other Financing Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce any such right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

(b) The rights and remedies of Lender hereunder and under the other Financing Documents are cumulative and are not exclusive of any rights or remedies that it would otherwise have.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Financing Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5 Payment of Expenses, Indemnities and Taxes.

(a) Borrowers will pay to Lender all of its reasonable and documented third-party and out-of-pocket costs and expenses in connection with the preparation, negotiation, closing and costs of administering this Agreement, the DIP Orders, and the documents contemplated hereby or matters pertaining to the Bankruptcy Cases, including the reasonable fees, expenses and disbursements of Lender's attorneys incurred in connection with such matters and the preparation of such documents and any amendments hereof or thereof, or the negotiation, closing or administration of such documents, and the reasonable and documented fees, expenses and disbursements of any bankruptcy, engineering, insurance, environmental and construction consultants of Lender in connection with this Agreement, the Loans, the DIP Orders or any matters pertaining to the Bankruptcy Cases.

(b) Subject to any limitations separately agreed in writing by the relevant parties, Borrower agrees (i) to pay or reimburse Lender for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, including any workout and/or restructuring of the Loans, and the other Financing Documents, including the fees and disbursements of counsel (including the allocated reasonable fees and expenses of in-house counsel) to Lender, (ii) to pay, indemnify, and hold Lender harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other Taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Financing Documents, the DIP Orders or any matters pertaining to the Bankruptcy Cases and any such other documents, and (iii) to pay, indemnify, and hold Lender and its officers, directors, employees, affiliates, agents, advisors and controlling Persons (each, an "Indemnitee") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses (including reasonable attorneys' fees and expenses) or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration

of (or the non-compliance by any party with the terms of) this Agreement and the other Financing Documents, the use of proceeds of the Loans, any of the transactions contemplated by the Financing Documents, the Property of the Loan Parties, or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Loan Parties and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any Indemnitee against the Borrower under any Financing Document, the DIP Orders or any matters pertaining to the Bankruptcy Cases (all the foregoing in this clause (b), the “Indemnified Liabilities”); provided, that the Borrower shall not have any obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the foregoing, and to the extent permitted by Governmental Rules, Borrower agrees not to assert, and hereby waives, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that it might have by statute or otherwise against any Indemnitee. All amounts due under this Section 10.5 shall be payable not later than ten (10) days after written demand therefor. The agreements in this Section 10.5 shall survive the Discharge Date. Each Indemnitee that is not party to this Agreement shall be a third-party beneficiary of, and entitled to enforce, the provisions of this Section 10.5 as if party hereto.

10.6 Successors and Assigns. This Agreement shall be binding upon each of the parties hereto and each of their permitted successors and assigns, if any. Neither party may assign any of its or their rights or obligations under this Agreement, in whole or in part, to any other Person without obtaining the written consent or approval of the other party; provided, that Lender shall be entitled to assign this Agreement (a) to any of its Affiliates, or (b) in connection with a merger or acquisition of Lender or its Affiliates, in each case, so long as the assignee shall agree to be bound by the terms and conditions of this Agreement.

10.7 [Reserved].

10.8 Entire Agreement. This Agreement, together with other agreements attached hereto or referred to herein and the other Financing Documents constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Financing Documents.

10.9 GOVERNING LAW. EXCEPT TO THE EXTENT GOVERNED BY THE BANKRUPTCY CODE, THIS AGREEMENT AND ANY CLAIM OR CONTROVERSY ARISING HEREUNDER OR RELATED HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

10.10 Submission to Jurisdiction; Waivers.

(a) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER, OR ANY AFFILIATE OF THE LENDER ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE BANKRUPTCY COURT AND IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURTS. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER DIP LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any New York state or federal court. Each Loan Party hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

10.11 Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

10.12 Interpretation. The Section headings in this Agreement are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

10.13 Acknowledgements. Each Loan Party hereby acknowledges that: (a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Financing Documents; (b) Lender has no fiduciary relationship with or duty to a Loan Party arising out of or in connection with this Agreement or any of the other Financing Documents, and the relationship between Lender, on the one hand, and the Loan Parties, on the other hand, in

connection with the Financing Documents is solely that of debtor and creditor; and (c) no joint venture is created hereby or by the other Financing Documents or otherwise exists by virtue of the transactions contemplated hereby or thereby among Lender, the Borrower, or any other Loan Party.

10.14 [Reserved].

10.15 Limitation on Liability. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NO CLAIM SHALL BE MADE BY ANY PARTY HERETO, OR ANY OF SUCH PARTY'S AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS AGAINST ANY OTHER PARTY HERETO OR ANY OF ITS AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT, DUTY IMPOSED BY LAW OR OTHERWISE), IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH; AND EACH PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

10.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY GOVERNMENTAL RULES, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

10.17 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective when executed and delivered by each Person intended to be a party hereto. Delivery of an executed counterpart to this Agreement by facsimile transmission or "pdf" electronic format shall be as effective as delivery of a manually signed original.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives as of the day and year first above written.

LENDER:

CEFF II APPHARVEST HOLDINGS, LLC

By: EqCEF II, LLC, its manager

By: _____

Name:

Title:

BORROWER:

APPHARVEST, INC.

By: _____

Name:

Title:

GUARANTORS:

[]

Exhibit B

GNCU Side Letter

AppHARVEST PULASKI FARM, LLC

July 23, 2023

VIA EMAIL DELIVERY

Greater Nevada Credit Union
c/o Maynard Nexsen
4141 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
Attn: Lisa P. Summer
Email: LSummer@maynardnexsen.com

Re: Greater Nevada Credit Union Agreement and Acknowledgments of Consensual Priming and Go-Forward Reimbursements

Dear Jeremy Gilpin,

As you know, AppHarvest Pulaski Farm, LLC ("AppHarvest Pulaski"), as borrower, AppHarvest Operations, Inc., as guarantor (collectively with their other affiliates, the "Company"), and Greater Nevada Credit Union ("GNCU"), as lender, are parties to that certain *Loan Agreement*, dated as of July 29, 2022. Pursuant to the *Security Agreement*, dated as of July 29, 2022, by and between GNCU and AppHarvest Pulaski, GNCU has a security interest in certain collateral, including the real property located in the County of Pulaski, Kentucky as identified therein (the "Somerset Facility," and such other collateral, the "GNCU Collateral"). Pursuant to the *Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing* by and from AppHarvest Pulaski to GNCU, dated July 2, 2022, AppHarvest Pulaski has granted a mortgage in favor of GNCU over the Somerset Facility.

Furthermore, in the course of dealings, the Company has been reimbursed for certain expenses related to capital expenditures at the Somerset Facility. The Company understands that, and GNCU hereby represents that, as of the date hereof, there is approximately \$1.57 million held by GNCU in a construction reimbursement account (the "Construction Reimbursement Account"), scheduled to be disbursed to the Company in the ordinary course.

In furtherance of discussions between the Company, GNCU, and CEFF II AppHarvest Holdings, LLC ("Equilibrium") regarding a potential filing by the Company under Chapter 11 of the Bankruptcy Code and Equilibrium's diligence efforts in providing potential debtor-in-possession financing ("DIP Financing"), GNCU hereby agrees and acknowledges as follows:

1. In the event Equilibrium provides incremental debtor-in-possession financing to cover costs associated with keeping the Somerset Facility operational during the chapter 11 cases, GNCU will not object to consensual priming liens at any point in the chapter 11 cases in favor of Equilibrium on GNCU Collateral in an amount of up to \$9.9 million.
2. GNCU will provide any scheduled reimbursements during the pendency of any chapter 11 cases, consistent with past practices and applicable agreements, including, for the avoidance of doubt, the Construction Reimbursement Account.

3. GNCU shall consent to the filing of this side letter with the Bankruptcy Court (as defined below) and GNCU, by and through its counsel or otherwise, shall convey to the Bankruptcy Court, via a court filing or court appearance, that GNCU has no objection to any of the terms of this side letter.

Each party hereto represents and warrants to the other parties that it has all necessary authority to enter into, and to perform and observe the terms and conditions of, and has taken all necessary corporate, limited liability company or other action to authorize the entry into, performance and delivery of, this side letter and the agreement and the actions contemplated by this side letter and the agreement.

Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this this side letter and the agreement in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), and solely in connection with claims arising under this side letter and the agreement: (a) irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court; (b) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court; and (c) waives any objection that the Bankruptcy Court is an inconvenient forum or does not have jurisdiction over any party hereto.

This side letter and the agreement shall become effective and binding as to each of the parties hereto upon each of the parties’ execution, delivery, and release of the counterparty signature pages hereto to each of the other parties. It is understood and agreed that this side letter may be executed in identical counterparts and may be transmitted by email or facsimile, each of which shall be deemed an original for all purposes

The parties hereto agree that breaches of this side letter and the agreement will cause irreparable damage to the other parties for which recovery of damages would be inadequate, and that the parties will be entitled to obtain timely injunctive relief under this side letter and the agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

[Remainder of page intentionally left blank.]

Please confirm receipt of this side letter and the agreement and acknowledgement set forth herein by countersigning below.

APPHARVEST OPERATIONS, INC.

By: _____
Name: Gary Broadbent
Title: Chief Restructuring Officer

APPHARVEST PULASKI FARM, LLC

By: AppHarvest Operations, Inc., its Sole
Member

By: _____
Name: Gary Broadbent
Title: Chief Restructuring Officer

ACKNOWLEDGE AND AGREED TO:

Greater Nevada Credit Union

By: _____
Name: Jeremy Gilpin
Title: President GCL
Date: 7/23/2023

**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)

(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING POST-PETITION FINANCING SECURED BY
SENIOR LIENS, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL;
(III) GRANTING ADEQUATE PROTECTION, (IV) SCHEDULING A FINAL
HEARING, AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) moved this Court on an emergency basis for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to incur priming senior secured post-petition financing on a superpriority basis; (b) authorizing the Debtors to use cash collateral; (c) granting adequate protection, and (d) scheduling a final hearing to consider approval of the Motion on a final basis (the “Motion”).² The Court set a hearing on the Motion for July 25, 2023 at 2:00 p.m. prevailing Central Time (the “Interim Hearing”), at which counsel for the parties appeared and presented evidence and oral argument. The Motion was presented to the Court as a “first day” motion and complies with the requirements of Bankruptcy Rule 4001(d). Notice of the Motion and the Interim Hearing is proper and sufficient under the exigent circumstances of the Motion and the relief

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 Debtors’ service address is 500 Appalachian Way, Morehead, KY 40351.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in that certain Credit Agreement, dated as of July 24, 2023, attached hereto as Exhibit 1 (the “DIP Credit Agreement”).

granted in this Interim Order has been granted in accordance with Bankruptcy Code §§ 102(1), 105, 361, 362, 363, 364, 503, and 507, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1. The Court having considered the interim relief requested in the Motion, the (i) *Declaration of Gary Broadbent, Chief Restructuring Officer of the Debtors, in Support of the Debtors' Chapter 11 Proceedings* (the "Broadbent Declaration"), (ii) the *Declaration of Thomas Studebaker in Support of (I) the Debtors' Motion to Obtain Postpetition Financing; and (II) Other First Day Pleadings* (the "Studebaker Declaration"), and (iii) the *Declaration of Richard W. Morgner in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection and (III) Scheduling Final Hearing* (the "Morgner Declaration," and collectively with the Broadbent Declaration and Studebaker Declaration, the "Supporting Declarations"), the Approved Budget (defined below), offers of proof, evidence, and the statements of counsel at the Interim Hearing, and it appearing to the Court that granting the relief sought in the Motion on the terms and conditions contained herein is necessary and essential to enable the Debtors to preserve the value of their businesses and assets, and that such relief is fair and reasonable and that entry of this Interim Order is in the best interests of the Debtors and their respective estates and creditors, and due deliberation and good cause having been shown to grant the relief sought in the Motion,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. Petition Date. On July 23, 2023 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court

³ Pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

for the Southern District of Texas (the “Court”) commencing these chapter 11 cases (the “Chapter 11 Cases”).

B. Debtors in Possession. Each Debtor has continued with the management and operation of its business and properties as a debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been appointed in these Chapter 11 Cases.

C. Jurisdiction and Venue. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b). The Court has the authority to enter a final order in this matter. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee. As of the date hereof, no official committee of unsecured creditors has been appointed in the Chapter 11 Cases pursuant to Bankruptcy Code section 1102 (any such committee, the “Committee”).

E. Debtors’ Stipulations. Subject solely to the rights of parties in interest specifically set forth in paragraph 25 of this Interim Order (and subject to the limitations thereon contained in such paragraph), the Debtors admit, stipulate, and agree that (collectively, paragraphs E.1 through E.4 below are referred to herein as the “Debtors’ Stipulations”):

1. Richmond Loan Facility.

- i. Under that certain Credit Agreement (Richmond Facility), dated as of July 23, 2021 (as amended, restated, supplemented, or otherwise modified from time to time, the “Richmond Credit Agreement,” and together with all other documents executed in connection therewith, including without limitation, the Mortgage, the Security Agreement, the Security Documents, the Pledge Agreement, the Financing Documents (each as defined in the Richmond

Credit Agreement), the “Richmond Loan Documents”), between CEFF II AppHarvest Holdings, LLC, as Lender, and AppHarvest Richmond Farm, LLC (the “Richmond Borrower”), as Borrower, and the lenders from time to time party thereto (together with the Lender (as defined in the Richmond Credit Agreement)) (the “Prepetition Richmond Lender”), the Richmond Borrower was provided with a first-lien, senior secured loan facility (the loans borrowed thereunder, the “Prepetition Richmond Loans”). As used herein, the term “Prepetition Richmond Loan Parties” shall mean, collectively, the Richmond Borrower, AppHarvest, Inc. (“Parent”), AppHarvest Operations, Inc. (“Operations”), and such other Debtors party to any of the Richmond Loan Documents.

- ii. As of the Petition Date, the Richmond Borrower and Parent were indebted to the Prepetition Richmond Lender pursuant to the Richmond Loan Documents, without objection, defense, counterclaim, or offset of any kind, (x) in the aggregate principal amount of not less than \$64,303,755.00 on account of the Prepetition Richmond Loans, plus (y) accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accountants’, consultants’, financial advisors’, appraisers’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations and other charges of whatever nature, whether or not contingent whenever arising, due or owing, and all other Obligations (as defined in the Richmond Credit Agreement) owing

under or in connection with the Richmond Loan Documents (clauses (x) and (y), collectively, the “Prepetition Richmond Indebtedness”).

- iii. Prepetition Richmond Loan Collateral. In connection with the Richmond Credit Agreement, certain of the Debtors entered into the Security Documents (as defined in the Richmond Credit Agreement and referred to herein as the “Richmond Security Documents”). Pursuant to the Richmond Security Documents and the other Richmond Loan Documents, the Prepetition Richmond Indebtedness is secured by valid, binding, perfected, and enforceable first-priority security interests in and liens on (such security interests and liens, the “Prepetition Richmond Liens”) the “Collateral” (as defined in the Richmond Credit Agreement, including, without limitation, the Property (as defined in the Mortgage (as defined in the Richmond Credit Agreement))), the “Pledged Collateral” (as defined in the Pledge Agreement (as defined in the Richmond Credit Agreement)) and together with any other property of any of the Debtors granted or pledged pursuant to any of the Richmond Security Documents or otherwise to secure the Prepetition Richmond Indebtedness, the “Prepetition Richmond Collateral”) consisting of substantially all of the assets of the Richmond Borrower and the Pledged Collateral with respect to Operations.
- iv. Validity, Perfection, and Priority of Prepetition Richmond Liens and Prepetition Richmond Indebtedness. Each of the Debtors acknowledges and agrees that, in each case, as of the Petition Date, (a) the Prepetition Richmond Liens encumber all of the Prepetition Richmond Collateral,

(b) the Prepetition Richmond Liens are valid, binding, enforceable, first-priority, senior, non-avoidable, and properly perfected liens on and security interests in the Prepetition Richmond Collateral granted to or for the benefit of the Prepetition Richmond Lender, (c) the Prepetition Richmond Liens were granted to or for the benefit of the Prepetition Richmond Lender for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and commitments and other financial accommodations secured thereby, (d) the Prepetition Richmond Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Richmond Borrower and the Parent, (e) no offsets, challenges, objections, defenses, claims, causes of action, or counterclaims of any kind or nature to any of the Prepetition Richmond Liens or Prepetition Richmond Indebtedness exist, and no portion of the Prepetition Richmond Liens or Prepetition Richmond Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (f) the Debtors and their estates have no claims, objections, challenges, causes of action, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including

“lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disallowance, recovery, disgorgement, or other claims arising under or pursuant to Bankruptcy Code sections 105, 510, or 542 through 553), against the Prepetition Richmond Lender or any of its affiliates, agents, representatives, attorneys, advisors, professionals, financial advisors, officers, directors, employees, limited partners, equity holders, or managers arising out of, based upon, or related to the Prepetition Richmond Loans, Prepetition Richmond Indebtedness, or Prepetition Richmond Liens.

2. Morehead Loan Facility.

- i. Under that certain Master Credit Agreement, dated as of June 15, 2021 (as amended, restated, supplemented, or otherwise modified from time to time, the “Morehead Credit Agreement,” and together with all other documents executed in connection therewith, including without limitation, the Note, the Mortgage, the Security Agreement, the Security Instruments, and the Facility Sheet (each as defined in the Morehead Credit Agreement), the “Morehead Loan Documents”), between Rabo Agrifinance, LLC, as Lender (“Rabo”), and AppHarvest Morehead Farm, LLC (the “Morehead Borrower”), as Borrower, the Morehead Borrower was provided with a first-lien, senior secured loan facility (the loans borrowed thereunder, the “Prepetition Morehead Loans”). CEFF II US Holdings, LLC is the successor-in-interest to Rabo under the Morehead Loan Documents and is

hereinafter referred to as the “Prepetition Morehead Lender”). As used herein, the term “Prepetition Morehead Loan Parties” shall mean, collectively, the Morehead Borrower, and such other Debtors party to any of the Morehead Loan Documents.

- ii. As of the Petition Date, the Morehead Borrower was indebted to the Prepetition Morehead Lender pursuant to the Morehead Loan Documents, without objection, defense, counterclaim, or offset of any kind, (x) in the aggregate principal amount of not less than \$45,941,435.41 on account of the Prepetition Morehead Loans, plus (y) accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accountants’, consultants’, financial advisors’, appraisers’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations and other charges of whatever nature, whether or not contingent whenever arising, due or owing, and all other Obligations (as defined in the Morehead Credit Agreement) owing under or in connection with the Morehead Loan Documents (clauses (x) and (y), collectively, the “Prepetition Morehead Indebtedness”).
- iii. Prepetition Morehead Loan Collateral. In connection with the Morehead Credit Agreement, the Morehead Borrower entered into the Security Instruments (as defined in the Morehead Credit Agreement and referred to herein as the “Morehead Security Documents”). Pursuant to the Morehead Security Documents and the other Morehead Loan Documents, the

Prepetition Morehead Indebtedness is secured by valid, binding, perfected, and enforceable first-priority security interests in and liens on (such security interests and liens, the “Prepetition Morehead Liens”) the “Collateral” (as defined in the Morehead Credit Agreement, including, without limitation, the Property (as defined in the Mortgage (as defined in the Morehead Credit Agreement))) and together with any other property of any of the Debtors granted or pledged pursuant to any of the Morehead Security Documents or otherwise to secure the Prepetition Morehead Indebtedness, the “Prepetition Morehead Collateral”) consisting of substantially all of the assets of the Morehead Borrower.

- iv. Validity, Perfection, and Priority of Prepetition Morehead Liens and Prepetition Morehead Indebtedness. Each of the Debtors acknowledges and agrees that, in each case, as of the Petition Date, (a) the Prepetition Morehead Liens encumber all of the Prepetition Morehead Collateral, (b) the Prepetition Morehead Liens are valid, binding, enforceable, first-priority, senior, non-avoidable, and properly perfected liens on and security interests in the Prepetition Morehead Collateral granted to or for the benefit of the Prepetition Morehead Lender, (c) the Prepetition Morehead Liens were granted to or for the benefit of the Prepetition Morehead Lender for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and commitments and other financial accommodations secured thereby, (d) the Prepetition Morehead

Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Morehead Borrower, (e) no offsets, challenges, objections, defenses, claims, causes of action, or counterclaims of any kind or nature to any of the Prepetition Morehead Liens or Prepetition Morehead Indebtedness exist, and no portion of the Prepetition Morehead Liens or Prepetition Morehead Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (f) the Debtors and their estates have no claims, objections, challenges, causes of action, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disallowance, recovery, disgorgement, or other claims arising under or pursuant to Bankruptcy Code sections 105, 510, or 542 through 553), against Rabo or the Prepetition Morehead Lender or any of their affiliates, agents, representatives, attorneys, advisors, professionals, financial advisors, officers, directors, employees, limited partners, equity holders, or managers arising out of, based upon, or related to the Prepetition Morehead

Loans, Prepetition Morehead Indebtedness, or Prepetition Morehead Liens.

3. Bridge Loan Facility.

- i. Under that certain Secured Promissory Note and Loan Agreement, dated as of July 19, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, the “Bridge Credit Agreement,” and together with all other documents executed in connection therewith, including without limitation, the Note, the Collateral Documents, and the Guaranty (each as defined in the Bridge Credit Agreement), the “Bridge Loan Documents”),⁴ between CEFF II AppHarvest Holdings, LLC, as Lender (the “Prepetition Bridge Lender”),⁵ and Parent, as Borrower, Parent was provided with a first-lien, senior secured loan facility (the loan borrowed thereunder, the “Prepetition Bridge Loan”). As used herein, the term “Prepetition Bridge Loan Parties” shall mean, collectively, Parent, Operations, AppHarvest Farms, LLC, AppHarvest Berea Farm, LLC, AppHarvest Development, LLC, AppHarvest Technology, Inc., AppHarvest Products, LLC, Rowan County Development, LLC (“Rowan”), and such other Debtors party to any of the Bridge Loan Documents.
- ii. As of the Petition Date, Parent was indebted to the Prepetition Bridge Lender pursuant to the Bridge Loan Documents, without objection, defense, counterclaim, or offset of any kind, (x) in the aggregate principal amount of

⁴ The Richmond Loan Documents, the Morehead Loan Documents, and the Bridge Loan Documents are hereinafter referred to collectively as the “Prepetition Loan Documents.”

⁵ The Prepetition Richmond Lender, the Prepetition Morehead Lender, and Prepetition Bridge Lender are hereinafter referred to collectively as the “Prepetition Lenders.”

not less than \$2,690,000 on account of the Prepetition Bridge Loan, plus (y) accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys', accountants', consultants', financial advisors', appraisers', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations and other charges of whatever nature, whether or not contingent whenever arising, due or owing, and all other Obligations (as defined in the Bridge Credit Agreement) owing under or in connection with the Bridge Loan Documents (clauses (x) and (y), collectively, the "Prepetition Bridge Indebtedness").⁶

- iii. Prepetition Bridge Loan Collateral. In connection with the Bridge Credit Agreement, certain of the Debtors entered into the Collateral Documents (as defined in the Bridge Credit Agreement and referred to herein as the "Bridge Security Documents"). Pursuant to the Bridge Security Documents and the other Bridge Loan Documents, the Prepetition Bridge Indebtedness is secured by valid, binding, perfected, and enforceable first-priority security interests in and liens on (such security interests and liens, the "Prepetition Bridge Liens") the "Collateral" (as defined in the Bridge Credit Agreement, including, without limitation, the Property (as defined in the Commercial Mortgage and Assignment of Leases and Rents dated July 19, 2023 executed in favor of the Prepetition Bridge Lender by Rowan, as

⁶ The Prepetition Richmond Indebtedness, the Prepetition Morehead Indebtedness, and Prepetition Bridge Indebtedness are hereinafter referred to collectively as the "Prepetition Indebtedness."

Mortgagor), the “Collateral” (as defined in the Security Agreement (as defined in the Bridge Credit Agreement)), the “Patent Collateral” (as defined in the Patent Security Agreement (as defined in the Bridge Credit Agreement)), the “Trademark Collateral” (as defined in the Trademark Security Agreement (as defined in the Bridge Credit Agreement)), and together with any other property of any of the Debtors granted or pledged pursuant to any of the Bridge Security Documents or otherwise to secure the Prepetition Bridge Indebtedness, the “Prepetition Bridge Collateral”⁷ consisting of substantially all of the assets of the Bridge Loan Parties.

- iv. Validity, Perfection, and Priority of Prepetition Bridge Liens and Prepetition Bridge Indebtedness. Each of the Debtors acknowledges and agrees that, in each case, as of the Petition Date, (a) the Prepetition Bridge Liens encumber all of the Prepetition Bridge Collateral, (b) the Prepetition Bridge Liens are valid, binding, enforceable, first-priority, senior, non-avoidable, and properly perfected liens on and security interests in the Prepetition Bridge Collateral granted to or for the benefit of the Prepetition Bridge Lender, (c) the Prepetition Bridge Liens were granted to or for the benefit of the Prepetition Bridge Lender for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and commitments and other financial accommodations secured thereby, (d)

⁷ The Prepetition Richmond Collateral, the Prepetition Morehead Collateral, and Prepetition Bridge Collateral are hereinafter referred to collectively as the “Prepetition Collateral.”

the Prepetition Bridge Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Parent, (e) no offsets, challenges, objections, defenses, claims, causes of action, or counterclaims of any kind or nature to any of the Prepetition Bridge Liens or Prepetition Bridge Indebtedness exist, and no portion of the Prepetition Bridge Liens or Prepetition Bridge Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (f) the Debtors and their estates have no claims, objections, challenges, causes of action, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disallowance, recovery, disgorgement, or other claims arising under or pursuant to Bankruptcy Code sections 105, 510, or 542 through 553), against the Prepetition Bridge Lender or any of its affiliates, agents, representatives, attorneys, advisors, professionals, financial advisors, officers, directors, employees, limited partners, equity holders, or managers arising out of, based upon, or related to the Prepetition Bridge Loan, Prepetition Bridge Indebtedness, or

Prepetition Bridge Liens.

4. GNCU Loan Facility

- i. Under that certain Loan Agreement by and among AppHarvest Pulaski Farm, LLC (“AppHarvest Pulaski”), Operations and Greater Nevada Credit Union (“GNCU”), dated as of July 29, 2022 (as amended or supplemented prior to the date hereof) (as amended, restated, supplemented, or otherwise modified from time to time, the “GNCU Credit Agreement,” and together with all other documents executed in connection therewith, including without limitation, the Notes, the Collateral Documents, and the Guaranty (each as defined in the GNCU Credit Agreement), the “GNCU Loan Documents”).
- ii. As of the Petition Date, AppHarvest Pulaski was indebted to GNCU pursuant to the GNCU Loan Documents, without objection, defense, counterclaim, or offset of any kind, (x) in the aggregate principal amount of not less than \$50,000,000 on account of the Loans under the GNCU Credit Agreement, plus (y) accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accountants’, consultants’, financial advisors’, appraisers’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations and other charges of whatever nature, whether or not contingent whenever arising, due or owing, and all other Obligations (as defined in the GNCU Credit Agreement) owing under or in connection with the GNCU

Loan Documents (clauses (x) and (y), collectively, the “Prepetition GNCU Indebtedness”).

- iii. GNCU Loan Collateral. In connection with the GNCU Credit Agreement, certain of the Debtors entered into the Collateral Documents (as defined in the GNCU Credit Agreement and referred to herein as the “GNCU Security Documents”). Pursuant to the GNCU Security Documents and the other GNCU Loan Documents, the Prepetition GNCU Indebtedness is secured by valid, binding, perfected, and enforceable first-priority security interests in and liens on (such security interests and liens, the “Prepetition GNCU Liens”) the “Collateral” (as defined in the GNCU Credit Agreement, including, without limitation, and together with any other property of any of the Debtors granted or pledged pursuant to any of the GNCU Security Documents or otherwise to secure the Prepetition GNCU Indebtedness, the “GNCU Collateral”) consisting of substantially all of the assets of AppHarvest Pulaski.
- iv. Validity, Perfection, and Priority of Prepetition GNCU Liens and Prepetition GNCU Indebtedness. Each of the Debtors acknowledges and agrees that, in each case, as of the Petition Date (a) the GNCU Liens encumber all of the GNCU Collateral, (b) the GNCU are valid, binding, enforceable, first-priority, senior, non-avoidable, and properly perfected liens on and security interests in the GNCU Collateral granted to or for the benefit of GNCU, (c) the GNCU Liens were granted to or for the benefit of GNCU for fair consideration and reasonably equivalent value and were

granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and commitments and other financial accommodations secured thereby, (d) the Prepetition GNCU Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of AppHarvest Pulaski, (e) no offsets, challenges, objections, defenses, claims, causes of action, or counterclaims of any kind or nature to any of the GNCU Liens or Prepetition GNCU Indebtedness exist, and no portion of the GNCU Liens or Prepetition GNCU Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (f) the Debtors and their estates have no claims, objections, challenges, causes of action, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disallowance, recovery, disgorgement, or other claims arising under or pursuant to Bankruptcy Code sections 105, 510, or 542 through 553), against GNCU or any of its affiliates, agents, representatives, attorneys, advisors, professionals, financial advisors, officers, directors, employees,

limited partners, equity holders, or managers arising out of, based upon, or related to the GNCU Loan, Prepetition GNCU Indebtedness, or GNCU Liens.

F. Adequate Protection. Pursuant to Bankruptcy Code sections 105, 361, 362, and 363(e), the Prepetition Lenders and GNCU are entitled to adequate protection of their respective interests in the Prepetition Collateral and GNCU Collateral, respectively, including any cash collateral, to the extent of any diminution in value of their respective interests in the Prepetition Collateral and GNCU Collateral, respectively, resulting from, among other things, the Carve-Out (defined below), the use of cash collateral, the use, sale, or lease of any of the Prepetition Collateral and GNCU Collateral, respectively, the imposition of the automatic stay pursuant to Bankruptcy Code section 362(a), and for any other reason for which adequate protection may be granted under the Bankruptcy Code (“Diminution in Value”). Based on the Motion, the Supporting Declarations, and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of the Prepetition Collateral and GNCU Collateral, respectively, including any cash collateral, are fair and reasonable and reflect the Debtors’ reasonable business judgment.

G. Best Available Financing. The Debtors are unable to procure financing in the form of unsecured credit allowable as an administrative expense under sections 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code or in exchange solely for the grant of a super-priority administrative expense, or liens on property of the estates not subject to a lien pursuant to sections 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code. The Debtors assert in the Motion and the Supporting Declarations that the post-petition financing required by the Debtors is not available on terms more favorable, taken as a whole, than the financing offered by CEFF II AppHarvest

Holdings, LLC (the “DIP Lender”) pursuant to the DIP Loan Documents.⁸ In light of the foregoing, the Debtors have reasonably and properly concluded, in the exercise of their business judgment, that the DIP Facility (as defined in the DIP Credit Agreement) represents the best financing available to the Debtors at this time, and is in the best interests of the Debtors, their estates, and all of their stakeholders.

H. Good Faith of Prepetition Lenders. The terms of the use of the Prepetition Collateral pursuant to this Order have been the subject of extensive negotiations conducted in good faith and at arm’s length among the Debtors and the Prepetition Lenders and, pursuant to sections 105, 361, and 363 of the Bankruptcy Code, the Prepetition Lenders are hereby found to be entities that have acted in “good faith” in connection with the negotiation and entry of this Order, and each is entitled to the protections provided under section 363(m) of the Bankruptcy Code.

I. Good Faith of DIP Lender. The terms of the DIP Facility have been the subject of extensive negotiations conducted in good faith and at arm’s length among the Debtors and the DIP Lender and, pursuant to sections 105 and 364 of the Bankruptcy Code, the DIP Lender is hereby found to be an entity that has acted in “good faith” in connection with the negotiation of the DIP Loan Documents and the entry of this Order, and is entitled to the protections provided under section 364(e) of the Bankruptcy Code.

J. Roll Up of Prepetition Bridge Indebtedness. The conversion of the Prepetition Bridge Indebtedness into DIP Obligations (as defined below) is an exercise of the Debtors’ business judgment consistent with their fiduciary duties. The DIP Lender would not have been willing to provide the DIP Facility or extend credit to the Debtors thereunder without the “roll up”

⁸ “DIP Loan Documents” means the DIP Loan Documents and Loan Documents as such terms are defined in the DIP Credit Agreement.

of the Prepetition Bridge Indebtedness. The Roll-Up Loans (as defined in the DIP Credit Agreement) benefitted the Debtors and their estates because it enabled the Debtors to obtain urgently needed financing critical to administering these Chapter 11 Cases and funding their operations.

K. GNCU Collateral Priming. The Court finds and concludes based on the record submitted in advance or at the Hearing that GNCU has not objected to the priming DIP Liens to the extent set forth in this Interim Order.

L. Notice. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and Local Rules 2002-1, 4001-1, and 9013-1, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, and the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and Local Rules 2002-1, 4001-1, and 9013.

M. Use of Proceeds of DIP Facility and Cash Collateral. The Debtors have prepared and delivered to the DIP Lender an initial budget (the “Initial Approved Budget”), a copy of which is attached hereto Exhibit 2. The Initial Approved Budget reflects the Debtors’ anticipated cash receipts and disbursements for the 9-week period following the Petition Date (the Initial Approved Budget and each subsequent budget approved by the DIP Lender in accordance with the DIP Credit Agreement, an “Approved Budget”). The Debtors believe that the Initial Approved Budget is reasonable under the facts and circumstances of these Chapter 11 Cases. The DIP Lender is relying upon the Debtors’ agreement to comply with the terms set forth in the DIP Loan Documents, the Approved Budget (subject to Permitted Variances), and this Interim Order in determining to enter

into the postpetition financing arrangements provided for herein and to consent to the Debtors' use of cash collateral.

N. Good Cause. The Debtors have a critical need to obtain credit pursuant to the DIP Facility and to use the Prepetition Collateral and GNCU Collateral (including cash collateral) in order to, among other things, make payroll, satisfy other working capital and operational needs and fund the Chapter 11 Cases, in each such case in accordance with the terms of this Interim Order, including in accordance with the Approved Budget. The Debtors' access to sufficient working capital and liquidity, including through access to the DIP Facility and the use of cash collateral and other Prepetition Collateral and GNCU Collateral, is necessary to preserve and maintain the value of the Debtors' estates. Without the credit available under the DIP Facility and use of cash collateral, the Debtors would likely not have sufficient liquidity to continue to operate their businesses. Entry of this Interim Order will preserve the assets of each Debtor's estate and their value and is in the best interests of the Debtors, their creditors, and their estates. The relief requested in the Motion is necessary, essential, and appropriate, is in the best interests of and will benefit the Debtors, their creditors, and their estates, and, good cause exists for granting the relief requested in the Motion, as set forth herein.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Motion Granted. The interim relief sought in the Motion is granted as set forth herein.
2. The Debtors are hereby authorized to enter into and perform under the DIP Facility with the DIP Lender on the terms reflected in the DIP Credit Agreement attached hereto as Exhibit 1 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms and conditions set forth herein), which is hereby approved and incorporated herein in its

entirety, and to perform all obligations under the DIP Credit Agreement, which upon being entered into shall constitute valid, binding, and non-avoidable obligations of the Debtors that are enforceable against the Debtors in accordance with the terms of the DIP Credit Agreement and this Interim Order.

3. In furtherance of the foregoing and without further order of this Court, the Debtors are authorized and directed to, (a) perform all acts to negotiate, make, enter into, and perform under the DIP Loan Documents; and (b) perform all acts to make, execute and deliver all instruments and documents, including, without limitation, the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Credit Agreement and other DIP Loan Documents (collectively, the “Ancillary Documents”), in each of (a) and (b), in such form as the Debtors and the DIP Lender may agree, *provided* that such DIP Credit Agreement, other DIP Loan Documents, and Ancillary Documents are consistent in all material respects with the DIP Credit Agreement, and *provided further* that no further approval of the Court shall be required for the Debtors to pay any fees and other expenses (including any attorneys’, accountants’, appraisers’, and financial advisors’ fees), amounts, charges, costs, indemnities, and other obligations paid in connection therewith that do not shorten the maturity of the extensions of credit under the DIP Credit Agreement or DIP Loan Documents or increase the aggregate commitments or the rate of interest payable thereunder.

4. The Debtors may draw the Interim Advance (as defined in the DIP Credit Agreement) under the DIP Facility subject to the terms and conditions of the DIP Credit Agreement.

5. Authorization of DIP Facility.

- a. The Debtors are hereby authorized to use the loans under DIP Facility (the “DIP Facility Loans”), (i) in accordance with, and for the purposes permitted by, the DIP Loan Documents, this Interim Order, and the Approved Budget (subject to Permitted Variances), and (ii) to pay all interest, costs, fees, and other amounts and obligations accrued or accruing under the DIP Credit Agreement and other DIP Loan Documents, all pursuant to the terms and conditions of this Interim Order, the DIP Credit Agreement, and the other DIP Loan Documents. The Initial Approved Budget is hereby approved in all respects. The Debtors shall use the proceeds of the DIP Facility solely in a manner consistent with the Approved Budget (subject to Permitted Variances and other exclusions set forth in the DIP Loan Documents) and the terms and conditions of the DIP Loan Documents and this Interim Order.
- b. The Debtors are hereby authorized to enter into, execute, deliver, and perform all obligations under the DIP Loan Documents. No obligation, payment, transfer, or grant of security hereunder or under the DIP Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable state, federal, or common law (including, without limitation, under chapter 5 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any defense, reduction, setoff, counterclaim,

recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), cross-claims, or any other challenge under the Bankruptcy Code or any applicable law, rule, or regulation by any person or entity.

6. Approval; Evidence of Borrowing Arrangements. All terms, conditions, and covenants set forth in the DIP Loan Documents (including, without limitation, the DIP Credit Agreement) are approved. All such terms, conditions, and covenants shall be sufficient and conclusive evidence of, (i) the borrowing arrangements by and among the Debtors and the DIP Lender, and (ii) each Debtor's assumption and adoption of, and agreement to comply with, all the terms, conditions, and covenants of the DIP Credit Agreement and the other DIP Loan Documents for all purposes, including, without limitation, to the extent applicable, the payment of all DIP Obligations (defined below) arising thereunder, including, without limitation, all principal, interest, fees, and other expenses, including, without limitation, all of the DIP Lender's closing, arranger, and administrative fees, professional fees, attorney's fees and legal expenses, as more fully set forth in the DIP Loan Documents. Upon effectiveness thereof, the DIP Loan Documents shall evidence the DIP Obligations, which DIP Loan Documents and DIP Obligations shall be valid, binding, and enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee appointed in any of these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Chapter 11 Cases (collectively, the "Successor Cases"), and their creditors and other parties-in-interest, in each case, in accordance with the terms of this Interim Order and the DIP Loan Documents.

7. Payment of DIP Fees and Expenses. In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to pay all fees and expenses

in connection with or that may be reasonably required, necessary, or desirable for the Debtors' performance of the DIP Obligations, including, without limitation the non-refundable payment to the DIP Lender of all fees, including amendment fees, servicing fees, audit fees, upfront fees, closing fees, exit fees, closing date fees, prepayment fees or agency fees, and professional fees which fees shall be irrevocable whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise and any amounts due (or that may become due) in respect of the indemnification and expense reimbursement obligations, in each case referred to in and payable pursuant to the DIP Credit Agreement or other DIP Loan Documents and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained by, or on behalf of, any of the DIP Lender in each case, as provided for in and payable pursuant to the DIP Loan Documents, without the need to file retention motions or fee applications.

8. Conversion of Prepetition Bridge Indebtedness. Upon the entry of this Interim Order and the satisfaction or waiver of all other closing conditions in the DIP Credit Agreement, without any further action by the Debtors or any other party, the Debtors shall be, (i) authorized, directed, and deemed to immediately borrow under the DIP Facility the full amount necessary to fully and immediately pay off all Prepetition Bridge Indebtedness, and (ii) deemed to have contemporaneously fully and indefeasibly repaid all Prepetition Bridge Indebtedness. Upon entry of this Interim Order, all obligations under or in connection with the Prepetition Bridge

Indebtedness shall be subject to the DIP Loan Documents and shall constitute Obligations (as defined in the DIP Credit Agreement and referred to herein as the “DIP Obligations”).

9. Indemnification. The Debtors are authorized to indemnify and hold harmless the DIP Lender, and, solely in its capacity as such, each of their respective affiliates, and each such person’s representatives, agents, attorneys, officers, directors, and employees, in accordance with, and subject to, the DIP Loan Documents, which indemnification is hereby authorized and approved.

10. The DIP Liens.

- a. To secure performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of any and all DIP Obligations of the Debtors to the DIP Lender of whatever kind, nature, or description, whether absolute or contingent, now existing or hereafter arising, the DIP Lender shall have and is hereby granted, effective as of the Petition Date, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the “DIP Liens”) in and upon all Collateral (as defined in the DIP Credit Agreement and referred to herein as “DIP Collateral”). Any proceeds received in connection with the Transferred Assets (as defined in the Annex B to the Restructuring Term Sheet, dated as of July 24, 2023) (the “Berea Proceeds”) shall be DIP Collateral, with any DIP Liens on the Berea Proceeds released upon payment in full in cash, or satisfaction in full through use of a credit bid, of the DIP Facility; provided, that, the first \$1 million of any Berea Proceeds shall reduce, dollar for dollar, the aggregate DIP Facility

availability. For the avoidance of doubt, any accounts receivable due from Mastronardi Produce Limited to the Debtors shall not constitute DIP Collateral. The DIP Liens on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or security interests granted in favor of third parties in conjunction with sections 363, 364, or any other section of the Bankruptcy Code or other applicable law; *provided, however*, that (A) the DIP Liens shall be subject to the Carve-Out, (B) the DIP Liens on the GNCU Collateral (whether in existence on the Petition Date or hereafter arising) shall consensually prime as first-priority, senior liens and security interests on the GNCU Collateral in the amount of \$9,900,000 (the “GNCU Collateral Cap”), after which the DIP Liens on the GNCU Collateral (whether in existence on the Petition Date or hereafter arising) shall be junior and subordinate solely to the GNCU Liens and the GNCU Adequate Protection Liens (defined below), (C) for the avoidance of doubt, the DIP Liens on the Prepetition Collateral (whether in existence on the Petition Date or hereafter arising) shall consensually prime, as first-priority, senior liens and security interests, the Prepetition Richmond Liens and the Prepetition Morehead Liens, and (D) the DIP Liens on proceeds of any Avoidance Actions (defined below) shall be subject to entry of a Final Order.

- b. Post-petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens, the Adequate Protection Liens (defined below), and the other security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien, including, without limitation, control agreements with any financial institution(s) party to a control agreement or other depository account consisting of DIP Collateral, or requirement to register liens on any certificates of title (a “Perfection Act”). Notwithstanding the foregoing, if the DIP Lender shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, then the DIP Lender is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Loan Documents, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and, in such event, the subject filing or recording office is authorized to accept, file, or record any document in regard to such act in accordance with applicable law. The DIP Lender may choose to file, record, or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized

to accept, file, or record such certified copy of this Interim Order in accordance with applicable law. Should the DIP Lender so choose and attempt to file, record, or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the post-petition liens and security interests granted herein by virtue of the entry of this Interim Order.

- c. To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by this Interim Order (including the DIP Liens and the Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of this Court; *provided, however*, that nothing herein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of this Interim Order, to the extent that DIP Lender has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors, such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by this Interim Order without further action by the DIP Lender.

- d. Subject to the Carve-Out, the DIP Liens, the DIP Superpriority Claims (defined below), and the Adequate Protection Liens, (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of these Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against the Debtors, their estates, any trustee, or any other estate representative appointed or elected in these Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of these Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to Bankruptcy Code sections 510, 549, 550, or 551.

11. Superpriority Administrative Expenses. Subject to the Carve-Out, all DIP Obligations now existing or hereafter arising pursuant to this Interim Order, the DIP Loan Documents, or otherwise, the DIP Lender is granted an allowed superpriority administrative expense claim pursuant to Bankruptcy Code section 364(c)(1), having priority in right of payment over any and all other obligations, liabilities, and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 507(a), 507(b), 546(c), 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all

proceeds thereof (including, subject to entry of the Final Order, proceeds of Avoidance Actions) (collectively, the “DIP Superpriority Claims”).

12. Prepetition Lenders’ and GNCU’s Entitlement to Adequate Protection. Pursuant to Bankruptcy Code sections 361, 362, 363(c)(2), and 363(e), the Prepetition Lenders and GNCU are entitled to adequate protection of their interests in the Prepetition Collateral and the GNCU Collateral, respectively, in an amount equal to the aggregate Diminution in the Value of, (a) the Prepetition Lenders’ interests in the Prepetition Collateral (including cash collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution resulting from the sale, lease, or use by the Debtors of the Prepetition Collateral, the subordination of the Prepetition Richmond Liens and Prepetition Morehead Liens to the DIP Liens and the Carve-Out pursuant to this Interim Order, or the imposition of the automatic stay pursuant to Bankruptcy Code section 362 (collectively, the “Prepetition Lenders’ Diminution in Value”), and (b) GNCU’s interests in the GNCU Collateral (including cash collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution resulting from the sale, lease, or use by the Debtors of the GNCU Collateral, the subordination of the GNCU Liens to the DIP Liens and the Carve-Out pursuant to this Interim Order, or the imposition of the automatic stay pursuant to Bankruptcy Code section 362 (collectively, “GNCU’s Diminution in Value”).

13. Adequate Protection Claims and Liens. The Prepetition Lenders and GNCU, respectively, are hereby granted the following (collectively, the “Adequate Protection Claims”), to the extent of any Prepetition Lenders’ Diminution in Value or GNCU’s Diminution in Value, as applicable; *provided* that the collateral set forth in this paragraph 13 shall not include assets or property (other than assets or property that constitute Prepetition Collateral or GNCU Collateral,

as applicable) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Interim Order is not allowed by applicable non-bankruptcy law, but shall include the proceeds thereof:

a. Prepetition Lenders' Adequate Protection Superpriority Claims and Liens.

Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), valid, binding, continuing, enforceable, fully-perfected non-voidable liens on, and security interests in, all tangible and intangible assets, including without limitation, all prepetition and post-petition property of the Debtors' estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that constitute DIP Collateral, including, without limitation, proceeds of the claims and causes of action of the Debtors (but not on the actual claims and causes of action) arising under Bankruptcy Code sections 544, 545, 547, 548, 549, and 550 and any other avoidance or similar actions under the Bankruptcy Code or similar state law (collectively, "Avoidance Actions") and, such liens, the "Prepetition Lenders' Adequate Protection Liens"; *provided that*, the Prepetition Lenders' Adequate Protection Liens shall be subject to and solely subordinate to, (i) the Carve-Out, and (ii) solely with respect to the GNCU Collateral in excess of the GNCU Collateral Cap, the DIP Liens, the GNCU Liens, and the GNCU Adequate Protection Liens. As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), the Debtors are authorized to grant, and hereby are deemed to have granted effective as of the Petition Date, to the Prepetition Lenders allowed superpriority administrative expense claims in

each of the Chapter 11 Cases ahead of and senior to any and all other administrative expense claims in the Chapter 11 Cases solely to the extent of any Prepetition Lender's Diminution in Value (the "Prepetition Lenders' Adequate Protection Superpriority Claims"), junior only to the Carve-Out and the DIP Liens; *provided that*, following entry of the Final Order, the Prepetition Lenders' Adequate Protection Superpriority Claims may be collected out of any proceeds of the Avoidance Actions. Subject to the Carve-Out, the Prepetition Lenders' Adequate Protection Superpriority Claims shall not be junior or *pari passu* to any claims and shall have priority over all administrative expense claims and other claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113, and 1114.

- b. GNCU's Adequate Protection Superpriority Claims and Liens. Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), valid, binding, continuing, enforceable, fully-perfected non-voidable liens on, and security interests in, all tangible and intangible assets, including without limitation, all prepetition and post-petition property of the estate of AppHarvest Pulaski, and all products and proceeds thereof, whether now existing or hereafter acquired (the "GNCU Adequate Protection Liens") and together with the Prepetition Lenders' Adequate Protection Liens, the "Adequate Protection

Liens”); *provided that*, the GNCU Adequate Protection Liens shall be subject to and solely subordinate to, (i) the Carve-Out, and (ii) the DIP Liens up to the GNCU Collateral Cap. As further adequate protection, and to the extent provided by Bankruptcy Code sections 503(b) and 507(b), AppHarvest Pulaski is authorized to grant, and hereby is deemed to have granted effective as of the Petition Date, to GNCU allowed superpriority administrative expense claims in its Chapter 11 Case ahead of and senior to any and all other administrative expense claims in such Chapter 11 Case solely to the extent of any Diminution in Value (the “GNCU Adequate Protection Superpriority Claims” and together with the Prepetition Lenders’ Adequate Protection Superpriority Claims, the “Adequate Protection Superpriority Claims”), junior only to the Carve-Out and the DIP Liens. Subject to the Carve-Out and the DIP Liens, the GNCU Adequate Protection Superpriority Claims shall not be junior or *pari passu* to any claims and shall have priority over all administrative expense claims and other claims against AppHarvest Pulaski, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 726, 1113, and 1114.

14. Reporting. The Debtors shall timely provide the Prepetition Richmond Lender, Prepetition Morehead Lender and GNCU with (x) reasonable access to the Richmond CEA Facility and the Morehead CEA Facility (each as defined in the DIP Credit Agreement) (and with respect

to GNCU, the greenhouse facility located in Pulaski, Kentucky), management, books, and records required under the Richmond Loan Documents, Morehead Loan Documents, or GNCU Loan Documents, as applicable, and (y) copies of all financial reporting provided to the DIP Lender pursuant to the DIP Loan Documents substantially simultaneously with such delivery to the DIP Lender.

15. Carve-Out. The DIP Liens, the Prepetition Richmond Liens, the Prepetition Morehead Liens, the GNCU Liens, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, shall be subject to the payment, without duplication, of the following fees and expenses from any proceeds resulting from liquidation of assets of the Debtors' estates (the amounts set forth in the clauses (i)-(iv) defined herein as the "Carve-Out"): (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee for the Southern District of Texas, Houston Division (the "U.S. Trustee") under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under sections 726(b) and 1183(a) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and any Committee pursuant to sections 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Notice (defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Notice; provided, that, the Allowed Professional Fees of

the Committee Professionals shall not at any time exceed the aggregate amount of the fees and expenses identified in the Approved Budget for such Committee Professionals covering the period of time commencing on the date of the Committee's retention of such Committee Professional and the date of delivery of the Carve-Out Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$1,500,000 after delivery of the Carve-Out Notice until the case is converted to chapter 7 or dismissed incurred after the first business day following delivery by the DIP Lender of the Carve-Out Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve-Out Notice Cap"). "Carve-Out Notice" means a written notice (which may be by email) by the DIP Lender to the Debtors, Debtors' counsel, the U.S. Trustee, and counsel to any Committee (collectively, the "Remedies Notice Parties") stating that the Post Carve-Out Notice Cap has been invoked, which notice may be delivered following the occurrence and during the continuation of a DIP Termination Event (defined below).

16. Any payment or reimbursement made on or after the day on which a Carve-Out Notice is given by the DIP Lender to the Remedies Notice Parties (the "Termination Date") in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the Final Order, the DIP Loan Documents, the Bankruptcy Code, and applicable law.

17. Carve-Out Reserve. On the Termination Date, the Carve-Out Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for the DIP Facility Loan under the DIP Credit Agreement, in an amount equal to the then unpaid amounts of the Allowed

Professional Fees (any such amounts actually advanced shall constitute DIP Facility Loans) and (ii) also constitute a demand to the Debtors to utilize all cash on hand, as of such date and any available cash thereafter held by any Debtor, to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then-unpaid Allowed Professional Fees (the “Pre-Carve-Out Reserve”), prior to any and all other claims. On the Termination Date, the Carve-Out Notice shall also (i) be deemed a request by the Debtors for DIP Facility Loans under the DIP Credit Agreement, in an amount equal to the Post-Carve-Out Notice Cap (any such amounts actually advanced shall constitute DIP Facility Loans) and (ii) constitute a demand to the Debtors to utilize all cash on hand, as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve-Out Reserve, to fund a reserve in an amount equal to the Post-Carve-Out Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees benefiting from the Post-Carve-Out Notice Cap (the “Post-Carve-Out Reserve”) and, together with the Pre-Carve-Out Reserve, the “Carve-Out Reserves”) prior to any and all other claims. On the first business day after the Carve-Out Notice, notwithstanding anything in the DIP Loan Documents to the contrary, including with respect to the existence of an Event of Default (as defined in the DIP Credit Agreement), the failure of the Debtors to satisfy any or all of the conditions precedent for the DIP Facility Loan under the DIP Facility, any termination of the DIP Obligations following an Event of Default, or the occurrence of the Maturity Date (as defined in the DIP Credit Agreement), the DIP Lender shall make available such DIP Loans under the DIP Credit Agreement. All funds in the Pre-Carve-Out Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth above (the “Pre-Carve-Out Amounts”), but not, for the avoidance of doubt,

the Post-Carve-Out Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Reserve has not been reduced to zero, to pay the DIP Lender, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Obligations have been terminated, in which case any such excess shall be paid to the Prepetition Lenders and GNCU in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve-Out Reserve shall be used first to pay the Post-Carve-Out Notice Cap amounts, and then, to the extent the Post-Carve-Out Reserve has not be reduced to zero, to pay the DIP Lender, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Obligations have been terminated, in which case any such excess shall be paid to the Prepetition Lenders and GNCU in accordance with their rights and priorities as of the Petition Date.

18. Notwithstanding anything to the contrary in the DIP Loan Documents, this Interim Order, or the Final Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph, then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph, prior to making any payments to the DIP Lender or the Prepetition Lenders and GNCU, as applicable. Notwithstanding anything to the contrary in the DIP Loan Documents, this Interim Order, or the Final Order, following the Carve-Out Notice, the DIP Lender, the Prepetition Lenders and GNCU shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Lender for application in accordance with the DIP Loan Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors

from the Carve-Out Reserves shall not constitute DIP Loans (as defined in the DIP Loan Documents) or increase or reduce the DIP Obligations, (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Approved Budget, Carve-Out, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. Notwithstanding anything to the contrary in this Interim Order, the Final Order, the DIP Facility, or with respect to any Prepetition Obligations, the Carve-Out shall be senior to all other liens and claims securing the DIP Facility, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Obligations. Notwithstanding anything to the contrary contained herein, in no event shall the DIP Lender be obligated to fund DIP Facility Loans pursuant to this clause (b) in excess of the remaining available commitments to be borrowed under the DIP Credit Agreement.

19. The DIP Lender reserves its rights to object to the allowance of any fees and expenses, including without limitation any fees and expenses of any Professional Person. The payment of any fees or expenses of any Professional Person pursuant to the Carve-Out shall not, and shall not be deemed to, (a) reduce any Debtor's obligations owed to any of the DIP Lender or the Prepetition Lenders, or (b) modify, alter or otherwise affect any of the liens and security interests of such parties in the DIP Collateral or Prepetition Collateral (or their respective claims against any Debtor).

20. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender in any way, to pay compensation to, or to reimburse expenses of, any professionals or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

21. Default; Waivers; Rights and Remedies; Relief from Stay.

- a. Events of Default. The occurrence of (i) any “Event of Default” as that term is defined in the DIP Credit Agreement; (ii) any failure to meet or satisfy any Chapter 11 Milestones (as defined in the DIP Credit Agreement) in accordance with the DIP Credit Agreement; (iii) the Maturity Date (as defined in the DIP Credit Agreement); or (iv) any material violation, breach, or default by any Debtor with respect to any of its obligations under this Interim Order, shall constitute a “DIP Termination Event” hereunder unless waived in writing by the DIP Lender (in its sole and absolute discretion) and in accordance with the applicable DIP Loan Documents.
- b. Debtors’ Waivers. Prior to the payment in full of all DIP Obligations, all Prepetition Richmond Indebtedness, and Prepetition Morehead Indebtedness, any of the following actions by the Debtors shall also constitute a DIP Termination Event: (i) the filing of a motion to obtain post-petition loans or other financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code that does not provide for the repayment in full of the Prepetition Richmond Indebtedness, Prepetition Morehead Indebtedness, and DIP Obligations, other than as provided in this Interim Order or as may be otherwise permitted pursuant to the DIP Loan Documents or by agreement; (ii) any request to challenge the application of any payments authorized by this Interim Order pursuant to section 506(b) of the Bankruptcy Code; (iii) except by agreement, the filing of a motion seeking approval of any sale or restructuring transaction other than (x) a 363

Sale to the Stalking Horse Purchaser (as each is defined in the DIP Credit Agreement) and (y) the restructuring transactions contemplated by the Restructuring Support Agreement, dated July 24, 2023, by and between the Debtors, CEFF II AppHarvest Holdings, LLC, Mastronardi Produce Limited, and Mastronardi Berea LLC; (iv) to propose or support any challenge by any party in interest to seek to limit or prevent the DIP Lender, the Prepetition Lenders, or the Stalking Horse Purchaser (as defined in the DIP Credit Agreement) from exercising its credit bid rights in connection with the sale of any assets of the Debtors; or (v) to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would restrict or impair (A) the rights and remedies of the DIP Lender against the Debtors as provided in this Interim Order or any of the DIP Loan Documents or (B) the exercise of such rights or remedies by the DIP Lender against the Debtors in accordance with the DIP Credit Agreement or this Interim Order.

- c. It shall also be a DIP Termination Event under the DIP Facility if, prior to the payment in full of the Prepetition Richmond Indebtedness, Prepetition Morehead Indebtedness, and the DIP Obligations the Debtors propose or support any sale of all or substantially all of the Debtors' assets, or an order is entered approving such sale, that is not conditioned upon the payment of the Prepetition Richmond Indebtedness, Prepetition Morehead Indebtedness, and the DIP Obligations (other than indemnities then due and payable) in full in cash and the payment of the Debtors' obligations with

respect to the adequate protection hereunder, in full in cash, within a commercially reasonable period of time, and in any event no later than the effective date of such sale, without the written consent of the DIP Lender.

- d. Rights and Remedies Upon a DIP Termination Event. During the period covered by this Interim Order, after four (4) business days following the delivery of a written notice (a “Default Notice”) (which may be by email) to counsel to the Debtors, counsel to the Committee, and the U.S. Trustee by the DIP Lender of the occurrence of and during the continuance of a DIP Termination Event (the “DIP Remedies Notice Period”), (a) the DIP Lender shall be entitled to take any act or exercise any right or remedy as provided in this Interim Order or any DIP Loan Document, as applicable, including, without limitation, (i) declare all DIP Obligations owing under the DIP Loan Documents to be immediately due and payable; (ii) terminate, reduce, or restrict any commitment to extend additional credit to the Debtors to the extent any such commitment remains; (iii) terminate the DIP Facility and any DIP Loan Document as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; (iv) invoke the right to charge interest at the default rate under the DIP Loan Documents; and/or (v) stop lending; (b) except as stated in this paragraph below, the Debtors’ right to use cash collateral immediately ceases; and (c) upon notice and hearing, which hearing can be on an emergency basis, the DIP Lender and Prepetition Lenders can request a Court order permitting immediate relief from the

automatic stay with respect to the DIP Collateral and Prepetition Collateral, and shall be entitled to exercise all rights and remedies available under the DIP Loan Documents, Prepetition Loan Documents and this Interim Order (as applicable) and applicable non-bankruptcy law, and, upon further Court order, the Debtors shall surrender the DIP Collateral and Prepetition Collateral and otherwise cooperate with the DIP Lender and Prepetition Lenders in the exercise of their rights and remedies. No junior lien creditor shall in any way interfere with or impair the rights of the DIP Lender or Prepetition Lenders, as applicable, with respect to any such exercise of rights and remedies, except with the prior written consent of such senior lien creditor. Upon the delivery of a Default Notice, the Debtors and the Committee consent to a hearing on an expedited basis to consider whether, (a) a DIP Termination Event has occurred, and (b) any other appropriate relief (including, without limitation, the Debtors' non-consensual use of cash collateral). The Committee shall have the right to appear and be heard at any such hearing. During the DIP Remedies Notice Period, the Debtors shall be entitled to continue to use the cash collateral, solely to make payroll and pay expenses necessary to the survival of the Debtors' business, in accordance with the terms of the Approved Budget and this Interim Order. Notwithstanding anything to the contrary herein, upon a DIP Termination Event, the delivery of a Default Notice, the expiration of the DIP Remedies Notice Period, or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the DIP Lender and

Prepetition Lenders under this Interim Order shall survive. Except as otherwise provided herein or ordered by the Court, neither Bankruptcy Code section 105 nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the exercise, enjoyment and enforcement of any rights, benefits, privileges and remedies set forth in this paragraph.

- e. At all times during the Chapter 11 Cases, and whether or not an DIP Termination Event has occurred, the Debtors irrevocably waive any right that they may have to seek further authority, (a) to use cash collateral of the DIP Lender or the Prepetition Lender under section 363 of the Bankruptcy Code, other than as provided in this Interim Order or as may be otherwise expressly permitted pursuant to the DIP Loan Documents or other agreement with or consent of the DIP Lender or the Prepetition Lender, as applicable; (b) to obtain any post-petition loan or other financial accommodation pursuant to section 364(c) or 364(d) of the Bankruptcy Code that does not provide for the indefeasible repayment in full of all Prepetition Richmond Indebtedness, Prepetition Morehead Indebtedness, and the DIP Obligations in cash at the time any such post-petition loan or financial accommodation is provided, extended or otherwise made available to Debtors; (c) to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the DIP Lender's post-petition liens and claims; (d) to challenge the application of any payments authorized by this Interim Order as pursuant to section 506(b) of the

Bankruptcy Code, or to assert that the value of the Prepetition Collateral is less than the Prepetition Indebtedness; (e) to propose, support or have a plan of reorganization or liquidation that does not provide for the indefeasible payment in cash in full and satisfaction of all Prepetition Richmond Indebtedness, Prepetition Morehead Indebtedness, and the DIP Obligations (other than unmatured indemnity obligations for which claims (i) have not been asserted and (ii) are not reasonably expected to be asserted at any time in the future) on the effective date of such plan in accordance with the terms and conditions set forth in the DIP Credit Agreement; (f) to surcharge the DIP Collateral or the Prepetition Collateral pursuant to 506(c) of the Bankruptcy Code; or (g) to seek relief under the Bankruptcy Code, including without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would in any way restrict or impair the rights and remedies of the DIP Lender as provided in this Interim Order and the DIP Loan Documents or the DIP Lender's exercise of such rights or remedies; *provided* that the DIP Lender may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender; *provided further* that nothing herein shall prohibit the Debtors from obtaining post-petition loans or other financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code if the proceeds of such financing are used to indefeasibly pay (i) all Prepetition Richmond Indebtedness and Prepetition Morehead Indebtedness are satisfied in full in accordance with the terms of the

Richmond Loan Documents and Morehead Loan Documents, respectively, and (ii) all DIP Obligations are satisfied in full in accordance with the terms of the DIP Credit Agreement and the other DIP Loan Documents.

22. Until all DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the terms of the DIP Credit Agreement and the other DIP Loan Documents, upon and after the declaration of the occurrence of a DIP Termination Event, and subject to the expiration of the DIP Remedies Notice Period, in connection with a liquidation of any of the DIP Collateral or the DIP Lender's exercise of remedies in respect of the DIP Collateral, the DIP Lender (or any of its employees, agents, consultants, contractors or other professionals) shall have the right, at the sole cost and expense of the Debtors, to (i) enter upon, occupy and use any real or personal property, fixtures, equipment, leasehold interests or warehouse arrangements owned or leased by Debtors and (ii) use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in their businesses. The DIP Lender will be responsible for the payment of any applicable fees, rentals, royalties or other amounts due such lessor, licensor, or owner of such property for the period of time that the DIP Lender actually uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals or other amounts due for any period prior to the date that the DIP Lender actually occupies or uses such assets or properties or for any fees, rentals or other amounts that may become due following the end of the DIP Lender's occupation or use).

23. Binding Effect. The terms of this Interim Order shall be valid and binding upon the Debtors, all creditors of the Debtors, and all other parties in interest from and after the entry of this Interim Order by this Court.

24. Reversal, Stay, Modification, or Vacatur. In the event the provisions of this Interim Order are reversed, stayed, modified, or vacated by court order following notice and any further hearing, such reversals, modifications, stays, or vacatur shall not affect the rights and priorities of the DIP Lender or Prepetition Lenders granted pursuant to this Interim Order. Notwithstanding any such reversal, stay, modification, or vacatur by court order, any indebtedness, obligation, or liability incurred by the Debtors pursuant to this Interim Order arising prior to the DIP Lender's receipt of notice of the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and Prepetition Lenders shall continue to be entitled to all of the rights (including, without limitation, relating to the termination of this Interim Order), remedies, privileges, and benefits, including any payments authorized herein and the security interests and liens granted herein, with respect to all such indebtedness, obligation, or liability, and the validity of any payments made or obligations owed or credit extended or lien or security interest granted pursuant to this Interim Order is and shall remain subject to the protection afforded under the Bankruptcy Code.

25. Reservation of Certain Third-Party Rights and Bar of Challenge and Claims.

- a. Subject to the Challenge Period (defined below), the stipulations, admissions, agreements, waivers, and releases contained in this Interim Order, including without limitation the Debtors' Stipulations, shall be binding upon the Debtors and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (defined below) as of the Petition Date. The stipulations, admissions, agreements, waivers, and releases contained in this Interim Order, including without limitation the Debtors' Stipulations, shall be binding upon the Debtors' estates and any of their

respective successors, including without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative and all other parties-in-interest and all of their successors-in-interest and assigns and all other parties-in-interest and all of their successors-in-interest and assigns, including any Committee and any other person acting on behalf of the Debtors' estates, unless and solely to the extent that a party-in-interest with requisite standing (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) granted by order of the Court (or other court of competent jurisdiction), (i) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules seeking to avoid, object to, or otherwise challenge the findings or Debtors' Stipulations regarding (A) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Lenders or (B) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Richmond Indebtedness or Prepetition Morehead Indebtedness (any such claim, a "Challenge") before the earlier of (A) except as to any Committee, seventy-five (75) calendar days after entry of the Interim Order, and (B) in the case of any such adversary proceeding or contested matter filed by any Committee, sixty (60) calendar days after the appointment of such Committee, subject to extension by agreement of the Committee, the DIP Lender, and the Debtors or by order of the Court (in each case, a "Challenge Period" and, the date of expiration of each

Challenge Period, a “Challenge Period Termination Date”); *provided*, *however*, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7 or (y) a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (I) the time remaining under the Challenge Period plus ten (10) days or (II) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); and (ii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter.

- b. Upon the expiration of the Challenge Period Termination Date without the filing of a Challenge (or if any such Challenge is filed and overruled):
 - (i) any and all such Challenges by any party (including, without limitation, the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Cases) shall be deemed to be forever barred; (ii) the Prepetition Richmond Indebtedness, Prepetition Morehead Indebtedness, Prepetition Bridge Indebtedness, and Prepetition GNCU Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Chapter 11 Cases and any Successor Cases; (iii) the Prepetition Richmond Liens, Prepetition Morehead Liens, Prepetition Bridge Liens,

and Prepetition GNCU Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (iv) all of the Debtors' stipulations and admissions contained in this Interim Order, including without limitation the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Lenders' claims, liens, and interests contained in this Interim Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any Successor Cases.

- c. If any Challenge is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including without limitation the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such timely and properly filed Challenge prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, and a separate order of the Court conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the

prosecution of a Challenge by such Committee or such other party-in-interest.

26. Limitation on Use of DIP Proceeds and Cash Collateral. Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Collateral, the Prepetition Richmond Collateral, the Prepetition Morehead Collateral, the Prepetition Bridge Collateral, the GNCU Collateral including cash collateral, or the Carve-Out or proceeds of any of the foregoing may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the DIP Lender or the Prepetition Lenders (in their capacities as such), and each of their respective affiliates, officers, directors, limited partners, investors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called “lender liability” claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Lender or Prepetition Lenders under the DIP Loan Documents, Richmond Loan Documents, Morehead Loan Documents, or Bridge Loan Documents, as applicable, or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed (if any) in these Chapter 11 Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that

would impair the ability of any of the DIP Lender or Prepetition Lenders to recover on their respective collateral, or seeking affirmative relief against any of the DIP Lender or Prepetition Lenders related to the DIP Facility, Prepetition Richmond Indebtedness, or Prepetition Morehead Indebtedness; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the liens or claims of the DIP Lender or Prepetition Lenders, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against any of the DIP Lender or Prepetition Lenders; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests held by or on behalf of each of the DIP Lender and Prepetition Lenders; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to or in connection with the DIP Facility, Prepetition Richmond Indebtedness, or Prepetition Morehead Indebtedness; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Liens or Prepetition Richmond Liens or Prepetition Morehead Liens or any other rights or interests of any of the DIP Lender or Prepetition Lenders; *provided* that no more than \$25,000 of the cash collateral may be used solely by any Committee appointed in these Chapter 11 Cases, if any, solely to investigate, within the Challenge Period, the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Lenders solely concerning the legality, validity, priority, perfection, enforceability, or extent of the claims, liens, or interests held by or on behalf of each of the Prepetition Lenders.

27. Enforceability; Waiver of Any Applicable Stay. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d),

7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

28. Proofs of Claim. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under Bankruptcy Code section 503(b), the DIP Lender and the Prepetition Lenders shall not be required to file any proofs of claim or request for payment of administrative expenses with respect to any of the DIP Obligations, Prepetition Richmond Indebtedness, Prepetition Morehead Indebtedness, or Prepetition Bridge Indebtedness; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Loan Documents, Richmond Loan Documents or Morehead Loan Documents or of any other indebtedness, liabilities, or obligations arising at any time thereunder or under this Interim Order or prejudice or otherwise adversely affect the DIP Lender or Prepetition Lenders' rights, remedies, powers, or privileges under any of the DIP Loan Documents, Richmond Loan Documents, or Morehead Loan Documents, or applicable law. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

29. Section 506(c) Waiver. No costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases at any time shall be charged against any of the DIP Lender or Prepetition Lenders, or the DIP Collateral or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise without the prior express written consent of the affected DIP Lender and/or Prepetition Lender, in its sole discretion, and no such

consent shall be implied, directly or indirectly, from any other action, inaction, or acquiescence by any such agents or creditors (including, without limitation, consent to the Carve-Out or the approval of any budget hereunder). Notwithstanding the foregoing, the waiver provided in this paragraph as to the Prepetition Lenders is subject to the entry of a Final Order providing such relief.

30. Section 552(b) of the Bankruptcy Code. Subject to entry of the Final Order, the (i) Prepetition Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (ii) the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Lenders, including, without limitation, the Prepetition Lenders with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral.

31. No Marshaling. Subject to entry of the Final Order, the Prepetition Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the Adequate Protection Collateral.

32. Credit Bidding and Sale Provisions. Subject to the provisions of Bankruptcy Code section 363(k), the DIP Lender and the Prepetition Lenders shall have the right to credit bid (either directly or through one or more acquisition vehicles), up to the full amount of the Prepetition Lenders’ respective claims, including, for the avoidance of doubt, the Prepetition Lenders’ Adequate Protection Superpriority Claims, if any, in any sale of all or any portion of the DIP Collateral, Prepetition Collateral, or Adequate Protection Collateral, as applicable, including, without limitation, sales occurring pursuant to Bankruptcy Code section 363 or included as part of any chapter 11 plan. All relevant provisions of any intercreditor agreement shall apply and be binding with respect to any and all rights set forth in this paragraph.

33. Notwithstanding anything to the contrary in any other order of this Court, the financial institutions where the Debtors' bank accounts are located, (a) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH transfers should be honored or dishonored, consistent with any order of this Court and governing law; and (b) have no duty to independently inquire as to whether such payments are authorized by an order of this Court.

34. The financial institution where the Debtors' bank accounts are located shall implement reasonable handling procedures in coordination with the Debtors designed to effectuate the terms of this Interim Order. No financial institution that implements such handling procedures and then honors a prepetition check or other item drawn on any bank account that is the subject of this Interim Order either, (a) in good faith belief that the Court has authorized such prepetition check or item to be honored; or (b) as a result of an innocent mistake made despite implementation of such handling procedures, shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Interim Order.

35. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any order confirming a plan, converting the Chapter 11 Cases, or dismissing the Chapter 11 Cases or any successor case, and the terms and provisions of this Interim Order shall continue in full force notwithstanding any such order. In the event of a conflict between this Interim Order and any order confirming a chapter 11 plan, the order confirming the chapter 11 plan shall control.

36. Each Debtor, on behalf of itself and its successors and assigns (collectively, the "Releasors"), hereby forever releases, discharges and acquits the Prepetition Lenders, Rabo, and each of their current and former directors, managers, officers, committee members, members of

any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such person's or entity's respective heirs, executors, estates, and nominees other representatives in their respective capacities as such (collectively, the "Prepetition Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called "lender liability" claims or defenses, that Releasors had, have, or hereafter can or may have against Prepetition Releasees, or any of them, as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Prepetition Indebtedness, the Prepetition Loan Documents and any other obligations or other financial accommodations made by any Prepetition Releasee to any Debtor; *provided that* the releases set forth in this section shall not release any claims against the Prepetition Releasees or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Prepetition Releasees. In addition, notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP Obligations owed to the DIP Lender by the Debtors and termination of the rights and obligations arising under the DIP Loan Documents (which payment and termination shall be on terms and conditions acceptable to the DIP Lender), the DIP Lender shall be released from any and all

obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the Debtors, DIP Loan Documents, this Interim Order or the Final Order (including without limitation any obligation or responsibility whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated to pay or otherwise fund the Carve-Out).

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

38. Final Hearing. A final hearing on the relief requested in the Motion shall be held on _____, 2023, at __:00 __.m. (prevailing Central time). Any party in interest objecting to the relief sought at the Final Hearing shall file written objections no later than _____, 2023, at 5:00 p.m. (prevailing Central time). If no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the final hearing.

Dated: _____, 2023

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

DIP Credit Agreement

Execution Version

SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION
CREDIT AGREEMENT

Dated as of July [___], 2023

between

CEFF II APPHARVEST HOLDINGS, LLC,

as Lender,

APPHARVEST, INC, as Borrower

and

CERTAIN SUBSIDIARIES OF BORROWER PARTY HERETO AS GUARANTORS

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CREDIT AGREEMENT

This CREDIT AGREEMENT (this “Agreement”), dated as of July [___], 2023, is entered into by and between AppHarvest, Inc., a Delaware corporation (“AppHarvest” or the “Borrower”), certain subsidiaries of the Borrower party hereto as Guarantors and CEFF II AppHarvest Holdings, LLC, a Delaware limited liability company, as Lender (“Equilibrium” or the “Lender”).

RECITALS

WHEREAS, on July [___], 2023 (the “Petition Date”), the Borrower and the Guarantors (as defined below) (in such capacity, each a “Debtor” and collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, the Borrower has requested that the Lender provide the Borrower with a debtor-in-possession, senior secured credit facility (the “DIP Facility”), which shall consist of (x) a new money delayed draw term loan (“New Money Facility”) in the initial aggregate principal amount of up to \$24,323,197 and (y) a loan in an amount equal to the Roll-Up Loan Amount to reflect the roll-up of outstanding Prepetition Bridge Term Loans made by the Lender under the Prepetition Bridge Credit Agreement and any other Prepetition Bridge Obligations, including accrued and unpaid interest thereon, in each case to be afforded the liens and priority set forth in the DIP Orders and as set forth in the other DIP Loan Documents and to be used during the Bankruptcy Cases for the purposes set forth in Section 6.10;

WHEREAS, the New Money Facility shall be made available in an amount not to exceed the Interim Advance on the Closing Date pursuant to the Interim Order and shall be further available for borrowings after the Closing Date, subject in all respects to the terms, conditions and limitations set forth herein and in the other DIP Loan Documents;

NOW, THEREFORE, to induce Lender to provide the DIP Facility hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. Except as otherwise expressly provided, capitalized terms used in this Agreement (including in the preamble hereto) and its exhibits shall have the meanings given in this Section 1.1.

“363 Sale” shall mean the sale or sales conducted pursuant to Section 363 of the Bankruptcy Code pursuant to one or more Bankruptcy Orders.

“Accounting Changes” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement, or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person.

“Agreement” has the meaning given to such term in the preamble hereto.

“Approved Budget” means the most recent Budget that has been approved by Lender in its sole discretion pursuant to Section 4.1(h) or Section 6.9, as applicable.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” means any federal laws of the United States or Canada relating to terrorism or money laundering, including but not limited to, Executive Order 13224, the Patriot Act and the regulations administered by OFAC, the Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.), the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 et seq.), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. §§ 1 et seq.).

“Automatic Stay” means the automatic stay provided under Section 362 of the Bankruptcy Code.

“Avoidance Action Proceeds” means any and all proceeds of any Avoidance Actions.

“Avoidance Actions” has the meaning specified in the DIP Orders.

“Bankruptcy Cases” means the cases of the Debtors filed under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court from and after the Petition Date.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

“Bankruptcy Orders” means the DIP Orders and any other judgments, decisions, rulings or orders by the Bankruptcy Court, whether interim or final.

“Berea Lease” means that certain Lease Agreement dated December 27, 2022 by and between Mastronardi Berea LLC and AppHarvest Berea Farm, LLC (“AppHarvest Berea”), including all amendments, supplements, and modifications thereto.

“Berea Term Sheet” means that certain Term Sheet attached as Annex B to the Restructuring Term Sheet.

“Bidding Procedures Orders” means an order of the Bankruptcy Court, in form and substance acceptable to Lender, approving the Stalking Horse APA and bidding and sale procedures acceptable to Lender. The Bidding Procedures Order shall require that any qualified

bid for the Richmond CEA Facility and the Morehead CEA Facility shall provide for the purchase of both facilities.

“Bidding Procedures Motion” has the meaning given to such term in Section 6.12(iii).

“Borrower” has the meaning given to such term in the preamble hereto.

“Borrower’s Knowledge” means the knowledge, after reasonable inquiry, diligence and investigation, of any manager, officer, director or any other Responsible Officer of Borrower or a Guarantor.

“Borrowing” means a borrowing of a Loan under this Agreement.

“Borrowing Date” means the day on which a Borrowing is made.

“Budget” means a 13-week detailed rolling cash projection in substantially the same form as the Initial Approved Budget.

“Business Day” means a day other than a Saturday, Sunday, or other day on which commercial banks in New York, New York, are authorized or required by law to close.

“Capital Lease Obligations” means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Carve-Out” shall have the meaning assigned to such term in the DIP Orders.

“Chapter 11 Milestones” shall have the meaning set forth in Section 6.12.

“Closing Date” means the date on which the conditions specified in Section 4.1 are satisfied (or waived in writing by Lender in accordance with Section 10.3).

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all property which Lender is granted a security interest in or Lien on pursuant to Section 6.11.

“Committee” has the meaning given to it in Section 8.8(m).

“Construction Completion Plan” means a plan which will describe in detail all work that remains to be performed in order to complete the construction of the Richmond CEA Facility in accordance with Prudent Industry Practices, Legal Requirements, and the construction contracts and plans and specifications for the Richmond CEA Facility, including any work which must be undertaken to repair, correct, reinstall, replace, or retest any previously completed work,

underground cabling, and any other previously installed equipment, and the actions to be taken to complete such work and a schedule for completing all such work.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument, or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means (a) the power, directly or indirectly, to vote more than fifty percent (50%) of the securities having ordinary voting power for the election of directors (or Persons performing similar functions) of a Person or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and “Controlling” and “Controlled” shall have meanings correlative thereto.

“Default” means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time, the giving of notice or both, would constitute an Event of Default.

“Default Rate” means a rate *per annum* equal to the Interest Rate *plus* three percent (3.0%).

“DIP Facility” has the meaning as defined in the preamble hereto.

“DIP Facility Loans” means the Loans hereunder.

“DIP Loan Documents” means the Financing Documents.

“DIP Order” or “DIP Orders” means the Interim Order and/or the Final Order, as applicable.

“Discharge Date” means the date on which this Agreement shall have terminated (other than those provisions that expressly survive such termination), the New Money Loan Commitment shall have been terminated or fully utilized and the principal of and interest on each Loan and all fees and all other expenses or amounts payable under this Agreement (other than unasserted contingent obligations that by their nature expressly survive termination of this Agreement) shall have been paid in full.

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

“Environmental Claim” means any and all binding obligations, liabilities (contingent or known), losses, administrative, regulatory, judicial or, as applicable, contractual actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, orders for removal or remedial actions, damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, or out-of-pocket costs, expenses, disbursements, attorneys’ or consultants’ fees, arising under any Environmental Law or any Permit issued under any such Environmental Law, including any and all claims (a) for enforcement, cleanup, removal, response, remedial or other actions, costs or damages pursuant to any applicable Environmental Law, (b) arising from actual or potential injury

to or noncompliance with standards for protection or preservation of health and safety (including occupational health and safety), the environment, natural, cultural, archeological or biological resources or wildlife or regarding the investigation, characterization, remediation, Release or potential Release of, or human exposure to, any Hazardous Substances, (c) nonconformance with land use or zoning requirements related to siting, construction or operation of the Project at the Project Site, or health, safety or the environment, and (d) arising from the direct or indirect taking of any organism that is protected under any Environmental Law.

“Environmental Law” means any Governmental Rule concerning (a) protection of natural, cultural, tribal, archaeological or biological resources, wildlife or the environment, including surface soils and subsurface strata, ambient air, surface water and groundwater, (b) the Release, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of, or exposure to Hazardous Substances, (c) the protection of human health and safety, including occupational health and safety, (d) water rights or water supply, (e) land use or zoning requirements related to siting, construction, or operation of the Properties of the Loan Parties, or (f) agricultural practices or food safety, each as now or may at any time hereafter be in effect.

“Equity Interest” means any and all shares, interests, participations, or other equivalents (however designated) in a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights, or options to purchase any of the foregoing.

“Equilibrium” has the meaning set forth in the preamble hereto.

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

“ERISA Affiliate” means any Person, trade, or business (whether or not incorporated) that, together with Borrower, is treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) any Reportable Event, (b) the existence with respect to any ERISA Plan of a non-exempt Prohibited Transaction, (c) any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 and 430 of the Code or Section 302 and 303 of ERISA) whether or not waived, (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, (e) the failure to make by its due date a required installment under Section 412 or 430 of the Code with respect to any Pension Plan, (f) the failure by Borrower or any of their respective ERISA Affiliates to make any required contribution to a Multiemployer Plan, (g) the incurrence by Borrower or any of its respective ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, including the imposition of any Lien in favor of the PBGC or any Pension Plan, (h) a determination that any Pension Plan is, or is expected to be, in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (i) the receipt by Borrower or any of its respective ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA, or the occurrence of any event or condition that could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (j) the incurrence by Borrower or any of its respective ERISA Affiliates of any

liability with respect to the complete or partial withdrawal from any Pension Plan that is a multiple employer plan or Multiemployer Plan, (k) any event under Section 4062(e) of ERISA with respect to a Pension Plan, (l) the receipt by Borrower or any of its respective ERISA Affiliates of any notice that a Multiemployer Plan is, or is expected to be, insolvent under ERISA Section 4245, or in “endangered” or “critical status”, within the meaning of Section 432 of the Code or Section 305 of ERISA, (m) the institution of any action brought against Borrower or any ERISA Affiliate under Section 502 of ERISA with respect to its failure to comply with Section 515 of ERISA, (n) the receipt from the Internal Revenue Service of notice of disqualification of any ERISA Plan intended to qualify under Section 401(a) of the Code, or the disqualification of any trust forming part of any ERISA Plan intended to qualify for exemption from taxation under Section 501(a) of the Code, (o) the assertion of a material claim (other than routine claims for benefits) against any ERISA Plan or the assets thereof, or against any Borrower or any of its respective ERISA Affiliates in connection with any ERISA Plan, and (p) with respect to any Foreign Plan, (i) the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by Governmental Rules or by the terms of such Foreign Plan, (ii) the failure to register or loss of good standing with applicable regulatory authorities of any such Foreign Plan required to be registered, or (iii) the failure of any Foreign Plan to comply with any material provisions of Governmental Rules and regulations or with the material terms of such Foreign Plan.

“ERISA Plan” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA (including a Pension Plan but excluding a Multiemployer Plan), sponsored, maintained, or contributed by, or required to be contributed by, Borrower or any ERISA Affiliate.

“Event of Default” has the meaning given to such term in Article VIII.

“Event of Loss” means, a single event or a related series of events causing any loss of, destruction of, or damage to, or any condemnation or other taking of (including by eminent domain), all or any portion of the Property of any Loan Party.

“Exit Fee” has the meaning assigned to such term in Section 2.1(e).

“Final Advance” has the meaning assigned to such term in Section 2.1(c).

“Final Berea Order” means an order of the Bankruptcy Court entered in the Bankruptcy Cases, on a final basis, approving the Berea Term Sheet including the release of claims therein.

“Final Order” means an order of the Bankruptcy Court entered in the Bankruptcy Cases, on a final basis, in form and substance acceptable to Lender approving the DIP Facility and the Debtors’ entry into the same.

“Financing Documents” means this Agreement, the RSA, any Security Documents, and all other certificates, documents, agreements, or instruments entered into in connection with any of the foregoing.

“First Day Orders” means such orders entered by the Bankruptcy Court in respect of first day motions and applications on an interim or final basis, each of which shall be in form and substance acceptable to the Lender.

“Foreign Plan” means any employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to U.S. law and is maintained or contributed to by Borrower.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time. In the event that any Accounting Change shall occur and such change results in a change in the method of calculation of financial covenants, ratios, standards or terms in this Agreement, then Borrower and Lender agree to enter into negotiations in order to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Loan Parties’ financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by Borrower and Lender, all financial covenants, ratios, standards, and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred.

“Governmental Authority” means any United States federal or foreign government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity, including any company, business, enterprise or other entity owned in whole or in part, by any government (including any zoning authority) exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange, and any self-regulatory organization, which has jurisdiction over the Loan Parties or their respective Properties.

“Governmental Rule” means any statute, law (including common law), rule, regulation, ordinance, order, binding code interpretation, judgment, decree, treaty, directive, or similar form of decision of any Governmental Authority.

“GNCU Facility” means any Indebtedness under, or documents or obligations relating to that certain *Credit Agreement*, dated as of July 29, 2022, by and among Greater Nevada Credit Union (“GNCU”), AppHarvest Operations, Inc., and AppHarvest Pulaski Farm, LLC (as amended or supplemented prior to the date hereof).

“GNCU Priming Cap” means \$9,900,000.

“Guarantee” as to any Person (the “guaranteeing person”) means any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing Person that guarantees or in effect guarantees, or that is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless

the owner of any such primary obligation against loss in respect thereof; provided, that the term Guarantee shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee of any guaranteeing person shall be deemed to be the lower of (A) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (B) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by Borrower in good faith.

"Guarantors" means the Debtors (other than the Borrower) signatory hereto and any other Person who provides a Guarantee of the Obligations, and the term "Guarantor" means each or any one of them individually.

"Hazardous Substances" means any and all pollutants, contaminants, wastes, materials, substances, chemicals, explosive, or radioactive substances in any form which are subject to regulation or which can give rise to liability under any Environmental Law, including petroleum or petroleum products, distillates and constituents, asbestos or asbestos-containing materials, polychlorinated biphenyls, chlorinated solvents, radon gas, per- or polyfluoroalkyl substances, polycyclic aromatic hydrocarbons, or any invasive species or pathogen in the indoor environment.

"Indebtedness" of any Person at any date, means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) the liquidation value of all redeemable preferred Equity Interests of such Person, (h) all Guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, and (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

"Indemnified Liabilities" has the meaning given to such term in Section 10.5.

"Indemnitee" has the meaning given to such term in Section 10.5.

“Initial Approved Budget” has the meaning given to such term in Section 4.1(h).

“Interest Payment Date” means the last Business Day of each calendar month and the Termination Date.

“Interest Rate” means a rate *per annum* equal to twelve percent (12.0%).

“Interim Advance” means the loans advanced to the Borrower in the amount of \$8,000,000 authorized in accordance with the Interim Order.

“Interim Borea Order” means an order of the Bankruptcy Court, on an interim basis, entered in the Bankruptcy Cases, approving the Borea Term Sheet.

“Interim Order” means an order of the Bankruptcy Court entered in the Bankruptcy Cases, in form and substance acceptable to Lender, approving the DIP Facility and the Debtors’ entry into the same.

“Legal Requirements” means, as to any Person, the certificate of incorporation and by-laws, limited liability company agreement, partnership agreement or other organizational or governing documents, any Governmental Rule, any determination of an arbitrator or a court or other Governmental Authority or any requirement under a Permit or Governmental Rule, in each case applicable to or binding upon such Person or any of its Properties or to which such Person or any of its property is subject. For the avoidance of doubt, the Bankruptcy Orders are Legal Requirements.

“Lender” has the meaning given to such term in the preamble hereto.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), environmental lien, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing), whether or not filed, recorded or otherwise perfected or effective under Governmental Rules.

“Loan” means New Money Loans or Roll-Up Loans, as applicable.

“Loan Parties” means, collectively, the Borrower, the Guarantors and their respective successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Mastronardi” means Mastronardi Produce Limited or its affiliates.

“Material Adverse Change” means a material adverse effect on (a) the validity or enforceability of the DIP Loan Documents or the validity, priority, perfection, or enforceability of the claims, Liens, or security interests granted thereby or the rights or remedies intended or purported to be granted to the Lender pursuant thereto, or (b) the ability of any Loan Party to perform any material obligation under the DIP Loan Documents or carry out the transactions contemplated by the DIP Loan Documents.

“Material Adverse Effect” means a Material Adverse Change or a material adverse effect on the business, operations, results of operations, assets, liabilities or condition (financial or otherwise) of a Loan Party; provided that none of the events existing on the Petition Date or relating to the Bankruptcy Cases shall be deemed to have a Material Adverse Effect

“Maturity Date” means the earlier to occur of (a) the date that is seventy-five (75) days after the Petition Date, (b) the Plan Effective Date, and (c) the date of delivery of a Termination Notice.

“Mechanic’s Lien Obligations” shall mean the mechanic’s lien claims arising under the laws of Kentucky or otherwise against property of the Loan Parties arising from any agreement or obligation by or between Dalsem Greenhouse Technology B.V. or any of its affiliates, on the one hand, and any of the Loans Parties or their subsidiaries, on the other hand.

“Morehead CEA Facility” means an approximately sixty (60)-acre greenhouse facility located in the City of Morehead, Kentucky which produces fresh produce, including tomatoes, and including all structures, buildings, improvements, fixtures, furnishings, equipment, and all other personal property associated with such greenhouse facility which is owned by a Loan Party or an Affiliate of a Loan Party.

“Morehead Facility” means any Indebtedness under, or documents or obligations relating to that certain *Credit Agreement*, dated as of June 15, 2021, by and between AppHarvest Morehead Farm, LLC, and CEFF II US Holdings, LLC (as successor to Rabo), (as amended by that certain First Amendment to Master Credit Agreement, dated as of March 31, 2023 and as further amended or supplemented from time to time prior to the date hereof).

“Multiemployer Plan” means any “multiemployer plan” (as defined in Section 3(37) and 4001(a)(3) of ERISA) to which Borrower or any of its respective ERISA Affiliates is making, or has any obligation to make, contributions, or has made, or has been obligated to make, contributions within the six (6)-year period immediately preceding the Closing Date.

“New Money Facility” has the meaning as defined in the preamble hereto.

“New Money Loan Commitment” means the commitment of the Lender to make or otherwise fund the New Money Loans on and after the Closing Date. The aggregate amount of the New Money Loan Commitment as of the Closing Date is \$24,323,197.

“New Money Loans” means the Interim Advance and the other Loans made pursuant to Section 2.1(c).

“Obligations” means the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy) the Loans and all other obligations and liabilities of any Loan Party to Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with this Agreement or any other Financing Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to Lender that are required to be paid by any Loan Party pursuant hereto)

or otherwise (whether or not evidenced by any note or instrument and whether or not for the payment of money).

“Offer Notice” has the meaning given to such term in Section 2.4(c).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Pension Plan” means any “pension plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Borrower or any of its respective ERISA Affiliates is (or, if such ERISA Plan were terminated, would under Section 4062 or 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA, and is sponsored, maintained, or contributed to, or required to be contributed to, by Borrower or any of its respective ERISA Affiliates.

“Permit” means any and all franchises, licenses, leases, permits, clearances, determinations, reviews, consultations, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, rights of way, easements, Liens and other rights, privileges and approvals required to be obtained from, or any notifications or filings made with, a Governmental Authority under any Governmental Rule.

“Permitted Indebtedness” means (a) current Indebtedness incurred in the ordinary course of business for inventory, supplies, equipment, services, taxes or labor, in each case, to the extent incurred in accordance with and subject to the limitations in the Approved Budget; (b) Indebtedness arising under this Agreement and the other DIP Loan Documents; (c) the obligations under the Prepetition Credit Facilities or in respect of the Mechanic’s Lien Obligations, each as in effect as of the date hereof and any interest accrued or accruing thereon; (d) [reserved]; (e) any Indebtedness existing on the date hereof that, to the extent in excess of \$1,000,000 is disclosed on Schedule 1 (other than Indebtedness under clause (c)) and (f) any other Indebtedness approved in writing by the Lender in its sole discretion (including by approval of an Approved Budget that contemplates such).

“Permitted Liens” means the following if not otherwise prohibited under the Financing Documents: (a) Liens in favor of Lender or any of its Affiliates; (b) Liens for taxes not yet due, or for Taxes contested in accordance with Section 6.3; (c) pledges or deposits to secure obligations under workers’ compensation or unemployment laws, social security or public liability laws or similar legislation (excluding Liens under ERISA); (d) Liens for materialmen’s, mechanics’, carriers’, workmen’s, repairmen’s, builders, contractors, suppliers of material or architects or other similar construction and other similar Liens incidental to construction, maintenance or operations, in each case arising in a manner consistent with market practice, which secure obligations that (i) (A) are not overdue, and (B) individually or together with all other Permitted Liens outstanding on any date of determination, would not reasonably be expected to result in a Material Adverse Effect, or (ii) are contested in good faith, by appropriate proceedings, which has the effect of suspending collection and enforcement thereof, and the Borrower’s aggregate unrestricted cash reserves (taken as a whole) are adequate are established with respect to such contested taxes in accordance with GAAP; (h) easements and rights-of-way in favor of utility companies and government authorities

required in the ordinary course that would not reasonably be expected to result in a Material Adverse Effect, (i) any other Liens approved in writing by the Lender in its sole discretion; (j) Liens existing on the date hereof (other than the Liens described in clause (k)) and (k) Liens securing the obligations under the Prepetition Credit Facilities.

“Permitted Variance” shall have the meaning provided in Section 7.15.

“Person” means any natural person, corporation, limited liability company, partnership, series, firm, association, Governmental Authority, or any other entity whether acting in an individual, fiduciary, or other capacity.

“Petition Date” has the meaning assigned to such term in the recitals hereto.

“Plan Effective Date” means the effective date of a chapter 11 plan, in form and substance acceptable to Lender, confirmed by the Bankruptcy Court.

“Prepetition Bridge Credit Agreement” means that certain Secured Promissory Note and Loan Agreement between the Borrower and Equilibrium, dated as of July 19, 2023.

“Prepetition Bridge Facility” means any Indebtedness under, or documents or obligations relating to that Prepetition Bridge Credit Agreement and the Prepetition Bridge Obligations.

“Prepetition Bridge Obligations” means the “Obligations” as defined in the Prepetition Bridge Credit Agreement.

“Prepetition Bridge Term Loan” means the “Loan” as defined in and made pursuant to the Prepetition Bridge Credit Agreement.

“Prepetition Credit Facilities” means, individually or collectively as the context requires, (i) the Prepetition Bridge Facility, (ii) the Richmond Facility, (iii) the Morehead Facility, and (iv) the GNCU Facility.

“Prepetition Lender” means any lender party to the Prepetition Credit Facilities and their successors and assigns (other than any lender under GNCU Facility) on the Closing Date.

“Prepetition Obligations” means the “Obligations” (or any similar term) as defined in the applicable Prepetition Credit Agreement.

“Proceeding” means any claims, litigation, investigation, action, suit, arbitration or administrative, judicial or regulatory action or proceeding in any jurisdiction.

“Prohibited Transaction” has the meaning given to such term in Section 406 of ERISA and Section 4975(c) of the Code.

“Property” means any right or interest of a Loan Party in or to property of any kind whatsoever, whether real, personal, or mixed and whether tangible or intangible.

“Proposed Budget” has the meaning assigned to such term in Section 6.9.

“Prudent Industry Practices” means those practices, methods and standards of inquiry and investigation that are, as of the date being determined, commonly used by developers or operators, as applicable, of controlled environment agriculture facilities in United States which are of similar size, type, and location to the Property at issue. “Prudent Industry Practice” does not necessarily mean the best practice, method, or standard of inquiry and investigation in all cases, but is instead intended to encompass a range of acceptable practices, methods, and standards.

“Pulaski CEA Facility” means an approximately thirty (30)-acre greenhouse facility located in the City of Somerset, Kentucky which produces fresh produce, including berries, and including all structures, buildings, improvements, fixtures, furnishings, equipment, and all other personal property associated with such greenhouse facility which is owned by a Loan Party or an Affiliate of a Loan Party.

“Rabo” means Rabo AgriFinance LLC.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing, and migrating.

“Remedies Notice Parties” has the meaning given to such term in Section 8.9(a).

“Reportable Event” means any “reportable event,” as set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty (30)-day notice period has been waived.

“Required Insurance” has the meaning given to such term in Section 6.5.

“Responsible Officer” means, as to any Person, its president, chief executive officer, treasurer, chief financial officer, or secretary (or assistant secretary), any of its vice presidents, any chief restructuring officer, chief strategy officer, or any managing general partner, managing member of such Person that is a natural person or authorized signatory (or any of the preceding with regard to any managing general partner, managing member or sole member of such Person that is not a natural person).

“Richmond CEA Facility” means an approximately sixty (60)-acre greenhouse facility located in the City of Richmond, Kentucky which produces fresh produce, including tomatoes, and including all structures, buildings, improvements, fixtures, furnishings, equipment, and personal property associated with such greenhouse facility which is owned by a Loan Party or an Affiliate of a Loan Party.

“Richmond Facility” means any Indebtedness under, or documents or obligations relating to that certain *Credit Agreement*, dated as of July 23, 2021 by and between AppHarvest Richmond Farm, LLC and Equilibrium (as amended by that certain First Amendment to Credit Agreement, dated as of July 29, 2021, that certain Second Amendment to Credit Agreement, dated as of July 29, 2022, that certain Waiver and Third Amendment to Credit Agreement, dated as of December 21, 2022, and as further amended or supplemented from time to time prior to the date hereof).

“Roll-Up Loan” shall have the meaning provided in Section 2.2.

“Roll-Up Loan Amount” means the amount set forth on Schedule 2.2 as the “Total Roll-Up Loan Amount.”

“RSA” shall mean that certain Restructuring Support Agreement amongst Equilibrium, the Debtors, Mastronardi, and the other parties party thereto, dated as of the Petition Date.

“Restructuring Term Sheet” shall mean that certain Restructuring Term Sheet attached to the RSA and any Exhibits and Annexes thereto.

“Sale Order” means an order of the Bankruptcy Court, in form and substance reasonably acceptable to the Lender, approving pursuant to Section 363 of the Bankruptcy Code one or more sales of, collectively, all or substantially all of the assets of the Debtors to one or more purchasers.

“Sale Transaction” means the sale of all or substantially all of the assets contemplated by the Stalking Horse APA.

“Sanctioned Country” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region, the so-called “Donetsk People’s Republic” and the so-called “Luhansk People’s Republic” regions of Ukraine).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Second Advance” has the meaning assigned to such term in Section 2.1(c).

“Security Documents” means any security documents and any financing statements and other instruments filed or recorded in connection with the Liens granted to the Lender pursuant to the DIP Orders.

“Stalking Horse APA” means that certain binding Asset Purchase Agreement by and among the Stalking Horse Purchaser, AppHarvest Richmond Farm, LLC, and AppHarvest Morehead Farm, LLC dated prior to the Petition Date pursuant to which the Stalking Horse Purchaser has a right to purchase from the applicable Debtors certain assets related to or associated with the Morehead CEA Facility and the Richmond CEA Facility on the terms and conditions set forth therein.

“Stalking Horse Purchaser” means Equilibrium or its designees.

“Subsequent Loan” has the meaning assigned to such term in Section 2.1(c).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, mortgage recording taxes, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax, penalties, or other similar items applicable thereto.

“Termination Date” means, unless extended, with the prior written consent (which may be by e-mail) of the Lender, the earliest to occur of:

(a) the Maturity Date;

(b) the date of the delivery of a Termination Notice to the Remedies Notice Parties declaring the acceleration of all of the Obligations under this Agreement and the other DIP Loan Documents following the occurrence and continuance of an Event of Default;

(c) Discharge Date; and

(d) July 28, 2023, if the Closing Date has not occurred on or before such date.

“Termination Notice” shall mean a Default Notice (as defined in the Interim Order or Final Order, as applicable).

“Total Loan Commitment” means, as of the Closing Date, the amount of the New Money Loan Commitment, plus the Roll-Up Loan Amount.

“U.S. Person” means a person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided, that, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“Upfront Fee” has the meaning assigned to such term in Section 2.1(d).

“Variance Report” shall have the meaning provided in Section 6.9(c).

“Variance Reporting Date” shall have the meaning provided in Section 6.9(c).

“Variance Testing Period” shall have the meaning provided in Section 6.9(c).

1.2 Rules of Interpretation. Except as otherwise expressly provided, the following rules of interpretation shall apply to this Agreement and the other Financing Documents:

(a) The singular includes the plural, and the plural includes the singular.

(b) Except where otherwise specified, the word “or” is not exclusive. Thus, if a party “may do (a) or (b),” then the party may do either or both. The party is not limited to a mutually exclusive choice between the two alternatives.

(c) A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

(d) A reference to a Person includes its successors and permitted assigns.

(e) Accounting terms have the meanings given to them by GAAP, as applied by the accounting entity to which they refer. For purposes of determining compliance with the financial covenants contained in this Agreement, any election by Borrower to measure any financial liability using fair value (as permitted by Accounting Standard Codification Topic No. 825-10-25 – Fair Value Option or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

(f) The words “include,” “includes” and “including” are not limiting.

(g) A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.

(h) References to any document, instrument, or agreement (i) shall include all exhibits, schedules, and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof to the extent permitted under the Financing Documents, and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified, and supplemented from time to time to the extent permitted under the Financing Documents and in effect at any given time.

(i) The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

(j) References to “days” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified. If the Borrower or any Affiliate of the Borrower is required to perform an action, deliver a document, or take such other action by a calendar day and such day is not a Business Day, then the Borrower or such Affiliate shall take such action by the next succeeding “Business Day.”

(k) The Financing Documents are the result of negotiations between, and have been reviewed by, each of Borrower, the other Loan Parties, Lender, and their respective counsel. Accordingly, the Financing Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any such party.

(l) The words “will” and “shall” shall be construed to have the same meaning and effect.

1.3 Orders. This Agreement and the other DIP Loan Documents are subject in all respects (including with respect to all obligations (including, without limitation, the Obligations) and agreements of the Loan Parties provided for hereunder and thereunder) to the terms of any Bankruptcy Orders, and such Bankruptcy Orders shall control for all purposes. In furtherance of the foregoing, and notwithstanding anything else to the contrary set forth herein or in the other DIP Loan Documents, any action taken or omitted to be taken by any Loan Party pursuant to the express terms of the Bankruptcy Orders shall not constitute a Default or Event of Default, and the Loan Parties shall not be required to undertake any obligation (including, without limitation, any Obligation), make any agreement or take any action that is expressly prohibited by the terms of the Bankruptcy Orders.

DIP FACILITY

2.1 New Money Loans.

(a) New Money Loan Commitment. Subject to the terms and conditions hereof, the Lender agrees to make term loans in Dollars to the Borrower in three (3) installments in an aggregate amount up to but not exceeding the Lender’s New Money Loan Commitment. The aggregate amount of the New Money Loan Commitment shall be automatically and permanently reduced by the amounts of any draws thereof and shall be automatically and permanently reduced to zero on the Termination Date. Amounts borrowed pursuant to this Section 2.1 may be prepaid or repaid but may not be reborrowed.

(b) Interim Advance. Subject to the terms and conditions of the Interim Order and this Agreement including the satisfaction of the conditions set forth in Section 4.1, the Lender shall make New Money Loans in Dollars to the Borrower on or after the Closing Date in the amount and as set forth in the definition of Interim Advance.

(c) Subsequent Draws. Subject to the terms and conditions of the applicable DIP Order and this Agreement including this Section 2.1(c) and the satisfaction of the conditions set forth in Section 4.2, the Lender shall make New Money Loans in Dollars to the Borrower after making the Interim Advance in two (2) draws (each a “Subsequent Loan”), in an aggregate amount not to exceed an amount of the New Money Loan Commitment, minus the Interim Advance. The amount of the first Subsequent Loan to be made following the Borrowing of the Interim Advance (the “Second Advance”), will equal \$4,000,000 and the amount of the final Subsequent Loan (the “Final Advance”) shall equal the New Money Loan Commitment, minus the sum of the Interim Advance and the Second Advance.

(d) Upfront Fee. Subject to the terms and conditions of the Interim Order, the Borrower shall pay to the Lender a fee (the “Upfront Fee”) equal to 3.00% of the Total Loan Commitment. The Upfront Fee shall be due and payable on the date of the funding of the Interim Advance, shall be payable in kind and from and after the making of the Interim Advance shall be considered Loans advanced hereunder for all purposes of this Agreement.

(e) Exit Fee. Subject to the terms and conditions of the Final Order, the Borrower agrees to pay to the Lender a fee (the “Exit Fee”) equal to 5.00% of the Total Loan Commitment. The Exit Fee shall be due and payable on the Maturity Date, shall be payable in kind and from and after the Maturity Date shall be considered Loans advanced hereunder for all purposes of this Agreement.

2.2 Roll-Up Loans. Subject to the terms and conditions of the Interim Order, simultaneously with the Interim Advance, the Prepetition Bridge Term Loans and any other Prepetition Bridge Obligations, including accrued and unpaid interest thereon shall be deemed Loans advanced under this Agreement (the “Roll-Up Loans”) and, subject to the terms and conditions set forth herein and without any further action by any party to this Agreement, shall be administered hereunder. Roll-Up Loans under this Section 2.2 may be prepaid or repaid but may not be reborrowed.

2.3 Borrowing Procedures.

(a) To request a Subsequent Loan, the Borrower shall notify the Lender of such request in writing (which may be by email) not later than 12:00 p.m., New York City time, at least five (5) Business Day prior to the date of the proposed Borrowing. Each such notice shall specify the following information:

(i) the date of such Borrowing, which shall be a Business Day; and

(ii) The Final Order approving such draw has been (or will be) entered and all of the conditions to such draw set forth in Section 4.2 have been (or will be) satisfied on or prior to the date of such Borrowing.

2.4 Termination of New Money Loan Commitments.

(a) The New Money Loan Commitment shall terminate on the earlier of the date that it is fully drawn or reduced to zero and the Termination Date.

(b) The Borrower may at any time terminate or reduce (including to zero) any undrawn amount of the New Money Loan Commitment upon prior notice to the Lender.

(c) The Borrower shall notify the Lender of any election to reduce (including to zero) the New Money Loan Commitment under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such reduction, specifying such election and the effective date thereof; provided, further, that any reduction resulting from the Borrower or any Loan Party entering into a new debtor in possession facility or other debtor in possession financing (an “Other DIP Facility”) shall be subject to the following terms (the “ROFR”); prior to incurring any Other DIP Facility, Lender shall be offered the opportunity to amend the terms of this Agreement to match the terms of any bona fide offer to provide such Other DIP Facility (including as to quantum, budget flexibility, operational flexibility, economics, duration and exit), if Lender affirmatively commits to making such amendment within three (3) Business Days of receiving written notice from Borrower with all relevant terms of such offer (the “Offer Notice”), Lender shall have an additional five (5) Business Days after receipt of the Offer Notice to negotiate and execute an amendment satisfactory to all parties reflecting such terms but if Lender fails to

affirmatively commit to such an amendment or fails to execute such amendment within the time frames specified, Borrower shall have the right following the Discharge Date under this Agreement to enter into the Other DIP Facility for a period of eight (8) Business Days thereafter; provided, that, the terms and conditions of such Other DIP Facility are the same or better for Borrower than the terms in the Offer Notice. If the Borrower fails to enter into an Other DIP Facility within such eight (8) Business Day period, then Lender shall have a ROFR on the terms and conditions set forth in this Section 2.4.

(d) The New Money Loan Commitment shall be automatically reduced on a dollar-for-dollar basis by the first One Million Dollars (\$1,000,000) of any cash proceeds received by the Loan Parties pursuant to and in connection with the entry of the Final Berea Order.

ARTICLE III PRINCIPAL AND INTEREST PAYMENT

3.1 Repayment of Principal and Outstanding Obligations. The Company hereby unconditionally promises to pay the Lender, all amounts owed hereunder with respect to the New Money Loans and the Roll-Up Loans (including, for the avoidance of doubt, any PIK Amounts) on the Termination Date. Each repayment of a New Money Loan and/or Roll-Up Loan shall be applied ratably to the Loans. Repayments of Loans shall be accompanied by accrued interest on the amounts repaid. Any reference in this Agreement or the DIP Loan Documents to the Loans or the outstanding principal balance of the Loans shall include the PIK Amounts.

3.2 Interest Rates and Payment Dates.

(a) Each Loan (including any PIK Amounts) shall bear interest at a rate per annum equal to the Interest Rate. Upon the occurrence and during the continuance of an Event of Default, all outstanding Obligations (whether or not overdue) shall bear interest at a rate per annum equal to the Default Rate. All unpaid interest on each Loan shall be payable in arrears on each Interest Payment Date.

(b) Accrued interest on each New Money Loan and Roll-Up Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that such interest shall be added (on each Interest Payment Date) to the outstanding principal amount of such Loans (and thereafter bear interest at the Interest Rate or the Default Rate, as applicable) (the “PIK Interest Amounts”, and together with the Upfront Fee and the Exit Fee, collectively, the “PIK Amounts”).

(c) Interest and fees payable pursuant to this Agreement shall be calculated on the basis of a three hundred sixty (360)-day year for the actual days elapsed (including the first day but excluding the last day). Any change in the interest rate on a Loan resulting from a change in interest being charged at the Interest Rate or Default Rate shall become effective as of the opening of business on the day on which such change becomes effective.

3.3 Repayment Procedures. All payments (including prepayments) to be made by Borrowers hereunder, whether on account of principal, interest, fees or otherwise, shall be made without set-off or counterclaim and shall be made prior to 12:00 noon (New York time), on the due date thereof to Lender at its account specified in Annex I (as such account information may be updated by Lender in writing from time to time), in Dollars and in immediately available funds.

Any amounts received after such time on any date shall be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day.

3.4 Prepayments.

(a) Voluntary Prepayments. The Borrower may, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty; provided, that any prepayment with the proceeds of an Other DIP Facility shall be subject to the ROFR.

(b) Mandatory Prepayments.

(i) The Borrower shall repay or pay, as the case may be, to the Lender all Loans and other Obligations outstanding under the DIP Facility on or before the Maturity Date.

(ii) In the event of any Event of Loss to the Richmond CEA Facility, Pulaski CEA Facility, or the Morehead CEA Facility in excess of \$1,000,000, Borrower shall apply all net insurance proceeds received by the Loan Parties to prepay the Obligations in accordance with the applicable Bankruptcy Orders; provided, that, Borrower shall not be obligated to apply net insurance proceeds received by the Loan Parties solely with respect to the Pulaski CEA Facility in excess of the GNCU Priming Cap towards the prepayment of the Obligations. In the case of all other Events of Loss with respect to the Richmond CEA Facility, Morehead CEA Facility, and Pulaski CEA Facility and all Events of Loss with respect to the Properties of Loan Parties other than the Richmond CEA Facility, Morehead CEA Facility, and Pulaski CEA Facility, Borrower shall, and shall cause the other Loan Parties to, apply all net insurance proceeds from the insurance policies required hereunder to restore the Properties which are affected by the applicable Event of Loss.

3.5 Terms of Prepayments. Upon the prepayment of any Loan (whether such prepayment is an optional prepayment or any mandatory prepayment which may be required hereunder), Borrower shall pay to Lender (a) all accrued interest to the date of such prepayment owed pursuant to the terms of this Agreement on the amount prepaid, and (b) all accrued fees to the date of such prepayment owed pursuant to the terms of this Agreement corresponding to the amount being prepaid. Any remaining amounts shall be used to pay principal.

3.6 Taxes. Any and all payments by or on account of any obligation of a Loan Party under any Financing Document shall be made without deduction or withholding for any Taxes, except as required by Governmental Rules. If any Governmental Rule requires the deduction or withholding of any Tax from any such payment, then the applicable Person shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Governmental Rules, and then the sum payable by the applicable Loan Party shall be increased as may be necessary so that after such deduction or withholding has been made Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

ARTICLE IV
CONDITIONS

4.1 Closing Date. The occurrence of the Closing Date and the obligation of the Lender to make the Interim Advance is subject to the prior satisfaction by the Loan Parties of each of the following conditions as determined in the sole and absolute discretion of Lender:

(a) Financing Documents. Lender shall have received each Financing Document in form and substance satisfactory to Lender duly executed and entered into by each party thereto.

(b) Representations and Warranties; No Event of Default. Each representation and warranty set forth in the Financing Documents is true and correct on the Closing Date (or, if any representation or warranty is stated to have been made as of a specific date, as of such specific date). No Event of Default shall have occurred and be continuing or could reasonably be expected to result from the occurrence of the Closing Date.

(c) Governing Documents. Lender shall have received:

(i) a copy of the certificate of formation, certificate of limited partnership, certificate of registration or other formation documents, including all amendments thereto, of each Loan Party, each certified as of a recent date by the Secretary of State of Delaware or such other relevant jurisdiction (provided that it is acknowledged and agreed that such certified documents delivered in connection with the Prepetition Bridge Credit Agreement are of a recent date);

(ii) a copy of resolutions of the board of directors, sole member, general partner(s), managing member(s) or similar governing body of each Loan Party, approving and authorizing the execution, delivery, and performance of the Financing Documents to which such Person is a party; and

(iii) a certificate from Borrower signed by a Responsible Officer of Borrower as to the incumbency of the natural persons authorized to execute and deliver this Agreement on behalf of Borrower and each other Loan Party.

(d) Good Standing Certificates. Lender shall have received certificates issued by the jurisdiction of organization of each Loan Party that is a party to the Prepetition Bridge Facility (and shall use commercially reasonable efforts with respect to each other Loan Party), certifying that each such Person is in good standing and active status and is authorized to transact business in such jurisdiction (provided that it is acknowledged and agreed that any such certificates delivered in connection with the Prepetition Bridge Credit Agreement are of a recent date).

(e) Transaction Costs. Subject to the DIP Order, Borrower shall have paid all reasonable and documented out-of-pocket fees, costs and other expenses, and all other amounts, then due and payable by Borrower pursuant to this Agreement. All such amounts may be paid with proceeds of Loans made on the Closing Date and will be reflected in the funding instructions given by the Borrower to the Lender on or before the Closing Date.

(f) Closing Certificate. Lender shall have received a closing certificate, dated the Closing Date, signed by a Responsible Officer of Borrower, in form and substance reasonably acceptable to Lender, certifying, among other things, that the conditions set forth in this Section 4.1 have been satisfied.

(g) Stalking Horse APA. Stalking Horse Purchaser shall have entered into the Stalking Horse APA (which shall be in full force and effect and no material breach, event of default or termination event by any Loan Party or its Affiliate or other event which, with notice or lapse of time or both, could reasonably be expected to become a material breach, event of default, or termination event by any Loan Party or its Affiliate has occurred and is continuing under the Stalking Horse APA).

(h) Initial Approved Budget. The Borrower shall have delivered to the Lender a Budget in form and substance acceptable to the Lender (such Budget as approved by the Lender, the "Initial Approved Budget").

(i) Mastronardi Term Sheet. The Stalking Horse Purchaser shall have entered into a term sheet, on terms and conditions acceptable to the Stalking Horse Purchaser, with Mastronardi providing for the go-forward lease and operation of the Richmond CEA Facility and the Morehead CEA Facility in the event that the Stalking Horse Purchaser is the successful bidder for such assets in the applicable 363 Sale on terms and conditions acceptable to the Stalking Horse Purchaser.

(j) Material Adverse Change. Since the Petition Date, no Material Adverse Change shall have occurred.

(k) Berea Lease. The Berea Term Sheet shall have been executed by all parties thereto.

(l) Bankruptcy Cases.

(i) (1) No later than three (3) business days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order granting the super-priority claim status and the Liens and security interests contemplated hereby and authorizing the DIP Facility in an amount not less than the Interim Advance, which order (x) shall be in full force and effect and shall not have been, in whole or in part, vacated, reversed, stayed, or set aside, and (y) shall not have been modified or amended in a manner adverse to the Lender without the consent of Lender and (2) the Debtors shall be in compliance with the terms of the Interim Order in all respects;

(ii) No later than three (3) business days after the Petition Date, the Bankruptcy Court shall have entered the Bankruptcy Orders constituting First Day Orders;

(iii) All governmental consents and approvals necessary in connection with the transactions referred to herein shall have been obtained and be effective and no unstayed order or injunctions challenging the DIP Facility shall have been entered.

4.2 Subsequent Loan. The obligation of the Lender to make a Subsequent Loan, is subject to the satisfaction of the conditions set forth in Section 4.1 plus each of the following conditions (except as otherwise expressly specified below):

(a) Borrowing Request. The Lender shall have received notice requesting such Subsequent Loan in accordance with Section 2.3. If the Subsequent Loan requested is the Second Advance, the amount requested shall equal the amount of Second Advance as set forth in Section 2.1(c).

(b) Bankruptcy Cases. (i) The Bankruptcy Court shall have entered the Final Order which (a) shall be in full force and effect and shall not have been, in whole or in part, vacated, reversed, stayed, or set aside and (b) shall not have been modified or amended in a manner adverse to the Lender without the consent of the Lender and (ii) the Debtors shall be in compliance with the Final Order in all respects.

(c) Representations and Warranties; No Event of Default. Each representation and warranty set forth in the Financing Documents is true and correct in all material respects (except if such representation is already qualified by reference to materiality, Material Adverse Effect, or a similar materiality qualifier (including a dollar threshold), in which case such representation and warranty shall be true and correct without regard to materiality), as of such date (or, if any representation or warranty is stated to have been made as of a specific date, as of such specific date). Each of the Loan Parties shall have performed and complied with all agreements and conditions in the Financing Documents required to be performed or complied with by it prior to or at the time of the making of such Subsequent Loan and no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to occur as a result of the making of such Subsequent Loan.

(d) Chapter 11 Milestones. The Borrower and the Loan Parties shall have satisfied all Chapter 11 Milestones in accordance with and subject to the deadlines set forth in Section 6.12 or such Chapter 11 Milestones shall have otherwise been extended, waived or otherwise modified by the Lender (in its sole and absolute discretion).

(e) Budget. The Borrower shall have delivered to the Lender a Budget in form and substance acceptable to the Lender (which may be the Initial Approved Budget if the Subsequent Loan is to be made prior to the date that is four weeks after the Petition Date).

(f) [reserved.]

(g) Richmond and Morehead Leases. The Stalking Horse Purchaser shall have entered into a lease agreement with Mastronardi providing for the go-forward lease and operation of the Richmond CEA Facility and the Morehead CEA Facility in the event that the Stalking Horse Purchaser is the successful bidder for such assets in the applicable 363 Sale on terms and conditions acceptable to the Stalking Horse Purchaser and such lease shall not have been terminated.

(h) Transaction Costs. Subject to the DIP Orders, Borrower shall have paid on, or concurrently with, the date on which such Subsequent Loan is to be made, all fees, costs and

other expenses, and all other amounts, then due and payable by Borrower pursuant to this Agreement.

(i) Subsequent Loan Certificate. Lender shall have received a certificate, dated the date on which such Subsequent Loan will be made, signed by a Responsible Officer of Borrower, in form and substance reasonably acceptable to Lender, certifying that the conditions set forth in this Section 4.2 have been satisfied.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each Loan Party hereby makes each of the following representations and warranties to and in favor of Lender on the Closing Date and on the date of each Borrowing:

5.1 No Change. As of the Closing Date, and as of each date that this representation is made after the Closing Date, no Material Adverse Effect has occurred and is continuing.

5.2 Existence; Compliance with Legal Requirements. Each Loan Party (a) is a corporation, limited liability company, or limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, and (d) is in compliance with all Legal Requirements except if such non-compliance would not reasonably be expected to have a Material Adverse Effect.

5.3 Power; Authorization; Enforceable Obligations; Perfected Liens. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Financing Documents to which it is a party and to obtain extensions of credit and grant liens hereunder and thereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery, and performance of the Financing Documents to which it is a party, including the granting of Liens pursuant to the Financing Documents and the extensions of credit on the terms and conditions set forth herein. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery and performance of any Financing Document by each Loan Party that is a party thereto, except (a) consents, authorizations, filings and notices which have been obtained or made and are in full force and effect, and (b) consents, authorizations, filings and notices which, if not obtained or made, could not reasonably be expected to result in a Material Adverse Effect. Each Financing Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. Each Financing Document constitutes a legal, valid, and binding obligation of each Loan Party that is a party thereto, as applicable, enforceable against the Loan Parties in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by general equitable

principles (whether enforcement is sought by proceedings in equity or at law). The execution, delivery, and performance by each Loan Party of each Financing Document to which it is a party does not require the approval or consent of any holder or trustee of any Indebtedness or other obligations of the Loan Parties which has not been obtained. As of the Closing Date, the Interim Order is (and the Final Order will be) effective to create in favor of Lender, a legal, valid and enforceable fully perfected security interest in, and Lien on, the Collateral and the proceeds and products thereof as security for the Obligations without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or any other documents nor the making of any recordings, filings, or registrations, the giving of notice, or taking of any other actions.

5.4 No Legal Bar. The execution, delivery and performance of this Agreement and the other Financing Documents, the Borrowings and the use of the proceeds thereof (a) will not conflict with or result in a violation or breach of any terms of any (i) Legal Requirements except for any such violation of a Legal Requirement that could not reasonably be expected to have a Material Adverse Effect, (ii) certificate of formation, partnership certificate, articles of incorporation, bylaws, limited liability company agreement or limited partnership agreement of any Loan Party or (iii) Contractual Obligation of any Loan Party, except in each case of this clause (iii), any such conflict, violation or breach that could not reasonably be expected to have a Material Adverse Effect, and (b) will not result in, or require, the creation or imposition of any Lien on any Collateral (other than Permitted Liens).

5.5 Compliance with Legal Requirements. Each Loan Party is in compliance in all material respects with the requirements of all Legal Requirements (including Environmental Laws and Permits) and all orders, writs, injunctions, and decrees applicable to it or its Properties, except in such instances in which such requirement is being contested in good faith by appropriate proceedings diligently conducted or such non-compliance would not reasonably be expected to result in a Material Adverse Effect.

5.6 Litigation. Except for the Bankruptcy Cases and as set forth on Schedule 5.6, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to Borrower's Knowledge, threatened by or against the Loan Parties or against any of their respective properties or revenues, involving more than, individually or in the aggregate, One Million Dollars (\$1,000,000).

5.7 Financial Statements. Any financial statements delivered to the Lender, present(s) fairly in all material respects the financial position of the Loan Parties as at the date of such financial statements and their results of operations and cash flows for the period then ended, and have been prepared in conformity with GAAP, applied on a consistent basis (in the case of unaudited financial statements, subject to normal year-end adjustments), as applicable.

5.8 Taxes.

(a) The Loan Parties have filed or caused to be filed all Tax returns that they are required to file, and all such Tax returns are accurate and complete in all material respects. No written claim has been made by a Governmental Authority in a jurisdiction where a Loan Party does not file Tax returns that such Person is or may be subject to taxation by the jurisdiction. Each

Loan Party has paid, or caused to be paid, all Taxes payable by or with respect to such Person or upon its respective properties, assets, income, businesses, and franchises, other than any such Taxes the non-payment of which is permitted under Section 6.3.

(b) There are no Liens for Taxes against any assets or properties of the Loan Parties other than inchoate Liens for Taxes not yet due and payable.

(c) [Reserved].

(d) Other than as previously disclosed in writing to Lender, neither the Borrower nor any Affiliate of the Borrower or any other Person acting on behalf of any of the foregoing has applied to the IRS for a private letter ruling, closing agreement or any similar item or agreement with respect to the Loan Parties, including any application or request for such item that has been withdrawn.

(e) Other than as previously disclosed in writing to Lender, no Loan Parties have made any material elections with respect to Taxes.

5.9 Employee and ERISA Matters. Neither the Loan Parties nor their respective employees or any of their respective former employees has engaged in any unfair labor practice that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Loan Parties do not sponsor, maintain, participate in, contribute to, or have any liability in respect of any ERISA Plan. Without limiting the generality of the foregoing, there are no ERISA Plans, Multiemployer Plans or Foreign Plans for which a Loan Party is reasonably likely to incur any material liability. No ERISA Event has occurred or is reasonably expected to occur. All payments due from a Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid except to the extent any such failure to pay would not reasonably be expected to result in a Material Adverse Effect.

5.10 Investment Company Act. Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940. Borrower is not a “covered fund” under the Volcker Rule (Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act).

5.11 Use of Proceeds. The proceeds of the Loans have been and will be applied in accordance with the uses described in Section 6.10.

5.12 Title. Each Loan Party has good and marketable title to, or valid leasehold interests, in all of its material properties and assets, including all material Collateral. None of the properties and assets of a Loan Party are subject to any Liens other than the Permitted Liens.

5.13 Accuracy of Information. No statement or information contained in this Agreement, any other Financing Document or any other report, document, certificate or written statement furnished by or on behalf of the Borrower or any of its respective Affiliates to Lender, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Financing Documents or pursuant to the terms of the Financing Documents, taken as a whole, when furnished, contains as of the date such statement, information, report, document or certificate was so furnished (taking into account any updated or supplemental information), any untrue

statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances in which such statements were made, where such untrue material fact or omission could reasonably be expected to have a Material Adverse Effect.

ARTICLE VI AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees with Lender that, until the Discharge Date, it shall abide by the following affirmative covenants:

6.1 Operational Reports. Upon Lender's request, furnish to the Lender not more frequently than every other calendar week, operational reports with respect to each of the Richmond CEA Facility, Pulaski CEA Facility, and the Morehead CEA Facility containing such operational data as reasonably requested by Lender.

6.2 Certificates; Other Information. Furnish to Lender:

(a) concurrently with the delivery of any operational reports pursuant to Section 6.1, a certificate of a Responsible Officer of the Borrower stating that no Default or Event of Default has occurred and is continuing, except as specified in such certificate; and

(b) promptly, such additional financial and other information as Lender may from time-to-time reasonably request.

6.3 Taxes and Other Government Charges.

(a) File all federal, state and local Tax returns and reports that are required to be filed by it under Governmental Rules and pay, or cause to be paid, as and when due and prior to delinquency, all Taxes, assessments and governmental charges of any kind that may at any time be assessed or levied against or with respect to the Loan Parties or their respective Properties and to the extent not stayed by the Bankruptcy Court, all utility and similar charges incurred in the ownership, construction, operation, maintenance, use, occupancy and upkeep of their respective Properties to the extent non-payment will result in a termination of the applicable services; provided, that the Loan Parties may contest in good faith any such Taxes, assessments and other charges and, in such event, may if permitted by Governmental Rules, permit the Taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when such Loan Party is in good faith contesting the same by appropriate proceedings, so long as (i) adequate cash reserves reasonably satisfactory to Lender have been established on the applicable Loan Party's books to pay any such Taxes, assessments or other charges, accrued interest thereon and any potential penalties or other costs relating thereto, or other adequate provision for the payment thereof which shall be reasonably satisfactory to Lender shall have been made, (ii) enforcement of the contested Tax, assessment or other charge is effectively stayed for the entire duration of such proceedings and (iii) any Tax, assessment or other charge determined to be due, together with any interest or penalties thereon, will be promptly paid in full when due after resolution of such contest.

6.4 Maintenance of Existence; Compliance.

(a) Except as contemplated by any Bankruptcy Order, (i) preserve, renew, and keep in full force and effect its existence as a limited liability company, partnership or corporation, as applicable, in its jurisdiction of organization and (ii) take reasonable actions to maintain all rights, privileges, and franchises necessary or desirable in the normal conduct of its business, except to the extent that a failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Comply with all Contractual Obligations of such Loan Party and Legal Requirements applicable to such Loan Party, except to the extent that failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.5 Insurance. Maintain, through either an individual policy or as part of a group policy maintained by or for the Loan Parties, with financially sound and reputable insurance companies, insurance in the coverages, insured amounts and deductible levels as are commercially reasonable in light of Prudent Industry Practices (the “Required Insurance”). If a Loan Party fails to take out or maintain the full insurance coverage required by this Section 6.5, Lender, upon ten (10) Business Days’ prior written notice (unless the aforementioned insurance would lapse within such period or has already lapsed, in which event notice shall not be required) to Borrower of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same at the sole cost and expense of Borrower. On or before the date on which the Second Advance is to be made, cause all casualty insurance policies required to be maintained pursuant to this Agreement to name Lender as a loss payee thereunder as its interests may appear and designate that all proceeds be payable to Lender as its interests may appear and maintain such designations thereafter until the Discharge Date.

6.6 Inspection of Property; Books and Records; Discussion. Maintain all financial records in accordance with GAAP and permit any Persons designated by Lender, to visit and inspect the Loan Parties’ financial records and the Loan Parties’ properties at reasonable times, upon reasonable (but in no event less than forty-eight (48) hours’) prior notice to the Borrower, and as often as reasonably requested and to make extracts from and copies of such financial records and, permit any Persons designated by Lender upon reasonable prior notice to the Borrower to discuss the affairs, finances, operations, and condition of the Richmond CEA Facility, Morehead CEA Facility, and the other Properties of the Loan Parties and the Loan Parties themselves with the officers thereof and other third party advisors (including independent accountants) therefor (subject to reasonable requirements of confidentiality, safety requirements and other requirements imposed by law or by contract).

6.7 Notices. Promptly upon receiving written notice or giving written notice, or upon obtaining knowledge, of the applicable event, give notice to Lender of the following (it being understood that delivery of such notice shall be deemed to cure any Default or Event of Default arising solely from failure to deliver such notice):

(a) the occurrence of any Default or Event of Default, followed by, as soon as practicable (and, in any event, within five (5) Business Days following delivery of such notice), a

statement of a Responsible Officer of Borrower setting forth details of such occurrence and stating what action Borrower or other relevant Person proposes to take with respect thereto;

(b) any pending or known threatened litigation, action or proceeding involving a Loan Party or its Property, to the extent any such litigation or proceeding (i) involves claims which exceed One Million Dollars (\$1,000,000), individually or in the aggregate, with respect to a Loan Party or its Property, or at the time public disclosure is required by applicable law, (ii) seeks injunctive, declaratory or similar relief with respect to a Loan Party, a Loan Party's Property, or Financing Documents, or (iii) relates to any Financing Document and involves a claim that such Financing Document, or any condition or term thereof, is not valid, binding or enforceable or a claim against or of Lender and, in the case of this clause (iii), would reasonably be expected to have a Material Adverse Effect if determined adversely to Lender;

(c) any dispute or disputes which may exist between a Loan Party and any Governmental Authority, and which involve (i) claims against a Loan Party or its Property; (ii) injunctive, declaratory, or similar relief with respect to a Loan Party, its Property, or Financing Documents; or (iii) any Liens for Taxes due but not paid;

(d) the occurrence of any material Event of Loss, whether or not insured;

(e) any cancellation or material change in the terms, coverages or amount in any insurance comprising the Required Insurance;

(f) the occurrence of any ERISA Event that could reasonably be expected to result in a Loan Party incurring liability;

(g) the occurrence of any event or condition that has had or could reasonably be expected to have a Material Adverse Effect;

(h) any written notice from any Governmental Authority initiating or threatening the commencement of an investigation or proceedings against a Loan Party or its Property, in each case, that could reasonably be expected to have a Material Adverse Effect;

(i) any notice or request for information from the Occupational Health and Safety Administration (or similar Governmental Authority investigating occupational or workplace safety) with respect to a Property owned or operated by a Loan Party;

(j) prior to filing with the Bankruptcy Court, for Lender's review and approval, as soon as reasonably practical, drafts of all material pleadings, motions, and other documents (provided that any of the foregoing relating to the DIP Facility, the Financing Documents, the Stalking Horse APA, the Berea Lease, and the second day motions and orders shall be deemed material) to be filed by the Debtors with the Bankruptcy Court, each of which shall be in form and substance acceptable to the Lender; and

(k) such other information respecting the business, condition (financial or otherwise), operations, performance, or properties of any Loan Party or that relates to the ability of any Loan Party to perform its obligations under the Financing Documents to which it is a party, in each case as Lender may from time to time reasonably request.

6.8 Further Assurances. From time to time as necessary or reasonably requested by Lender, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, fixture filing, certificate of title, subordination agreement or estoppel certificate) relating to the Loans and other Obligations stating the interest and charges then due and any known defaults, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all Governmental Rules the rights, Liens and priorities of Lender with respect to all Collateral (if applicable) and other security from time to time furnished under this Agreement and the other Financing Documents or intended to be so furnished (if applicable), in each case, in such form and at such times as shall be necessary or reasonably requested by Lender, and pay all reasonable fees and expenses (including attorneys' fees) incident to compliance with this Section 6.8.

6.9 Budget. Deliver to Lender:

(a) Beginning on August 8, 2023 (the "Initial Reporting Date"), an updated Budget on Tuesday of every other week (each, a "Proposed Budget") for Lender's approval. Upon receipt of the Lender's approval (in its sole and exclusive discretion), such Proposed Budget shall become an Approved Budget and shall replace the then-operative Approved Budget for all purposes herein or in the DIP Order. Any updates to the Initial Approved Budget (including each Proposed Budget and any updates, amendments, supplements, or other modifications to an Approved Budget) shall be subject to the prior written approval of Lender in its sole discretion and, until Lender provides such approval, the Approved Budget, which was most recently approved by Lender, shall remain in effect for all purposes, including variance testing and reporting. It being understood that no changes shall be made to any Approved Budget with respect to any periods that were included in an Approved Budget, which was previously approved by Lender, without the prior written consent of Lender.

(b) The Loan Parties shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget (subject to the Permitted Variances); and

(c) Beginning on Tuesday of the calendar week after the Initial Reporting Date, and on the Tuesday of every calendar week thereafter (each such date, a "Variance Reporting Date"), a variance report and reconciliation, in a form reasonably acceptable to the Lender, for the immediately prior week and for net operating cash flow for the immediately prior two (2) week time period covered by the applicable Approved Budget on a cumulative basis (the applicable "Variance Testing Period"), in each case, showing actual results for the following items: (1) receipts, (2) disbursements, (3) net operating cash flow, (4) liquidity, and (5) loan balances, noting therein variances from values set forth for such periods in the most recent Approved Budget for the immediately prior week or, for net operating cash flow, for the time period covered by the applicable Approved Budget on a cumulative basis and providing an explanation for all material variances, certified by the chief financial officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein (such report, the "Variance Report").

6.10 Use of Proceeds.

(a) The proceeds of the New Money Loans hereunder shall be used solely and in each case in accordance with the DIP Budget and subject to any limitations therein: (i) for working capital of the Loan Parties following the Petition Date, (ii) for the payment of current interest, expenses and fees with respect to the Loans and other Obligations hereunder, (iii) for payment of allowed administrative costs and expenses of the Bankruptcy Cases (including professional fees and expenses), (iv) for payment of prepetition claims authorized by the Bankruptcy Court, (v) for any other forecasted cash outlays included in the Approved Budget and (vi) as otherwise agreed by the Lender and the Borrower.

(b) The Borrower will not request any Borrowing, and the Loan Parties shall not use, and shall cause that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

6.11 Collateral Matters. Subject to the Carve-Out and the DIP Order, all Obligations of the Loan Parties hereunder shall be:

(a) entitled to superpriority claim status under section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims and unsecured claims existing as of the Petition Date or arising thereafter under the Bankruptcy Code, including, without limitation, the prepetition claims and adequate protection claims of the Prepetition Lenders (the “DIP Superpriority Claims”). The DIP Superpriority Claims may be repaid from any cash of the Debtors, including without limitation, Cash Collateral (within the meaning of the DIP Order) and, following entry of the Final Order, the proceeds of Avoidance Actions and Avoidance Action Proceeds;

(b) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, first priority, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (including, following entry of the Final Order, Avoidance Action Proceeds);

(c) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by valid, enforceable, fully perfected security interests in and liens on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were subject to valid, perfected and non-avoidable liens and unavoidable liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the “Permitted Prior Liens”), which security interests and liens shall be junior and subordinate only to such Permitted Prior Liens and the Carve-Out; and

(d) secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by valid, enforceable, priming first priority, fully perfected security interests in and liens upon all of the Debtors' rights in property of the Debtors' estates as of the Petition Date, and all of the Debtors' rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising, that secure the Prepetition Obligations in respect of the Prepetition Bridge Facility, the Richmond Facility, the Morehead Facility, and the GNCU Facility (provided, with respect to the GNCU Facility, such priming Liens pursuant to this clause(d) shall not exceed the amount of the GNCU Priming Cap), including, but not limited to, any cash proceeds received by the Loan Parties pursuant to or in connection with the entry of the Final Berea Order.

The Collateral shall also include any and all hereafter acquired or arising property, rents, issues, products, offspring, proceeds and profits generated by any item of Collateral and, following entry of the Final Order, liens on proceeds of any Avoidance Actions.

The Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of any Debtor and their estates under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of any Debtor, or (iii) any intercompany or affiliate liens of any Debtor.

The Collateral will be free and clear of other liens, claims and encumbrances, except valid, perfected, enforceable and unavoidable liens, rights of recoupment enforceable in bankruptcy, and rights of setoff permissible under section 553 of the Bankruptcy Code, in each case except as otherwise agreed by the applicable creditor or lienholder, as applicable, in existence as of the Petition Date and permitted pursuant to Prepetition Credit Agreements, if any, and any other Permitted Prior Liens.

The Borrower acknowledges that the Liens shall automatically attach to the Collateral and become valid and perfected immediately upon entry of the Interim Order without the requirement of any further action by the Lender; provided that if the Lender determines to file any financing statements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such filings.

6.12 Chapter 11 Milestones. The Loan Parties shall comply with and meet the following milestones as the same may be extended, waived or otherwise modified with the prior written consent of Lender in its sole discretion (which may be by email) without further order by the Bankruptcy Court (collectively, the "Chapter 11 Milestones" and each a "Chapter 11 Milestone"):

(i) the Bankruptcy Court shall have entered the Interim Order by the date that is no later than three (3) Business Days after the Petition Date;

(ii) the Bankruptcy Court shall have entered the Interim Berea Order by the date that is no later than five (5) Business Days after the Petition Date;

(iii) the Debtors shall have filed the motion seeking entry of the Bidding Procedures Order and Sale Order (the "Bidding Procedures Motion") by no later than three (3) days after the Petition Date;

(iv) the Bankruptcy Court shall have entered the Bidding Procedures Order by no later than twenty-one (21) days after the filing of the Bidding Procedures Motion;

(v) the Bankruptcy Court shall have entered the Final Order by the date that is no later than twenty-eight (28) days after the Petition Date;

(vi) the Bankruptcy Court shall have entered the Final Berea Order by the date that is no later than thirty-five (35) days after the Petition Date;

(vii) the Bankruptcy Court shall have entered the Sale Order by no later than forty-five (45) days after the Petition Date;

(viii) the Debtors shall have closed the Sale Transaction by no later than fifty (50) days after the Petition Date; and

(ix) the Plan Effective Date shall have occurred by no later than sixty (60) days after the Petition Date.

6.13 Business Operations. Except as authorized by the Bankruptcy Orders, each Loan Party shall (a) operate, keep, and maintain the Richmond CEA Facility and the Morehead CEA Facility in good condition, repair, and working order in accordance with Prudent Industry Practices and the Approved Budget and (b) (i) use best efforts to conduct business in the ordinary course and (ii) use best efforts to operate, keep, and maintain its Properties (other than the Richmond CEA Facility and Morehead CEA Facility) which are necessary or useful in its business and complete construction of the Richmond CEA Facility, in each case, in all material respects in accordance with Prudent Industry Practices, Legal Requirements, and any contracts or agreements related thereto, except to the extent not consistent with the Approved Budget.

6.14 Richmond Construction Completion Plan. Within ten (10) days of the Closing Date, deliver a Construction Completion Plan which is satisfactory to Lender in its reasonable discretion. Without limiting the Loan Parties' obligations under Section 6.13, and subject to any applicable limitations in the Approved Budget, complete the construction of the Richmond CEA Facility in accordance with the Construction Completion Plan.

6.15 Berea Lease. (i) No later than five (5) days following the Petition Date, the Bankruptcy Court shall have issued the Interim Berea Order; (ii) no later than the earlier of the date on which the Second Advance is to be made and twenty-three (23) days following the Petition Date, the Bankruptcy Court shall have issued the Final Berea Order; and (iii) no later than the earlier of the date on which the Final Advance is to be made and forty-five (45) days after the Petition Date, AppHarvest Berea and its Affiliates shall have transferred to Mastronardi the "Transferred Assets" (as defined in the Berea Term Sheet) pursuant to and in accordance with the requirements set forth in the Berea Term Sheet.

ARTICLE VII NEGATIVE COVENANTS

Each Loan Party covenants and agrees with Lender that, until the Discharge Date, each Loan Party shall abide by the following negative covenants:

7.1 Contingent Liabilities. Except as provided in this Agreement, not become liable as a surety, guarantor, accommodation endorser or otherwise, for or upon the obligation of any other Person (other than a Loan Party) or otherwise create, incur, assume, or suffer to exist any contingent obligation as defined by GAAP exceeding One Million Dollars (\$1,000,000); provided that this Section 7.1 shall not be deemed to prohibit a Loan Party from (a) the acquisition of goods, supplies or merchandise in the normal course of operating its business on normal trade credit, (b) the endorsement of negotiable instruments received in the normal course of operating its business, (c) contingent obligations under or in respect of performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees, indemnification obligations, obligations to pay insurance premiums, take or pay obligations and similar obligations, or private warrant liabilities, in each case incurred in the ordinary course of business and not in connection with Indebtedness for borrowed money, or (d) incurring Permitted Indebtedness.

7.2 Liens; Negative Pledges. Not create, assume, or suffer to exist any Lien on any of the Collateral except for Permitted Liens.

7.3 Indebtedness. Not incur, create, assume, or permit to exist any Indebtedness except the Obligations, any Permitted Indebtedness and any Indebtedness between or among the Loan Parties.

7.4 Asset Dispositions. No Loan Party shall convey, sell, lease, transfer or otherwise dispose of any Borrower's Property, engage in any "sale-leaseback" or similar transaction (, or merge or consolidate with or into any other Person, or change legal form, or implement any material disposition, other than replacements of personal property and equipment in the ordinary course with replacement items of equal or greater value, except in each case, as contemplated, by the Approved Budget, in connection with the 363 Sale or pursuant to a Bankruptcy Order.

7.5 Nature of Business; Permitted Activities. No Loan Party shall (a) directly conduct, transact, or otherwise engage in, or commit to conduct, transact, or otherwise engage in, any business or operations or other activity other than those related to its current business nor (b) organize, form, or acquire any subsidiaries.

7.6 Distributions. No Loan Party shall (a) directly or indirectly make or declare any distribution (in cash, property or obligation) on, or other payment on account of, any equity interest in any Loan Party, or redeem, purchase or otherwise acquire any equity interest in any Loan Party or permit any holder of any equity interest in any Loan Party to withdraw capital from Borrower, in each case, other than to another Loan Party or (b) except as set forth in the applicable Approved Budget, (i) make any payment of any existing bonus or other non-ordinary course executive or other employee compensation or (ii) modify the terms of employment with senior management of any Loan Party relating to compensation or other benefits.

7.7 Use of Proceeds. Not use, pay, transfer, distribute or dispose of any Loan proceeds in any manner or for any purposes except as provided in Section 6.10.

7.8 Other Changes and Transactions.

(a) Not liquidate, wind-up or dissolve the Borrower.

(b) Not allow Borrower to create or acquire any new direct or indirect subsidiaries.

(c) Not directly or indirectly enter into any transaction or series of transactions with or for the benefit of an Affiliate, other than intercompany debt amongst the Loan Parties.

7.9 Organizational Changes. Not cause, consent to, or permit any termination, suspension, amendment, modification, assignment, variance, or waiver of timely compliance with any terms or conditions of the certificate of formation (or similar document) or bylaws of any Loan Party (other than ministerial amendments or corrections of scrivener's errors thereto). Not change (a) a Loan Party's name, its status as a corporation or limited liability company or its jurisdiction of organization without written notice to Lender at least ten (10) days prior to such change, (b) the Borrower's fiscal year without the prior written consent of Lender (such consent not to be unreasonably withheld) or (c) the location of any Loan Party's chief executive office, principal place of business or federal identification number without written notice to Lender within thirty (30) days after such change.

7.10 Hazardous Substances. Not Release into the environment any Hazardous Substances in violation of any Environmental Laws or Permits by which a Loan Party or its Property is bound or in a manner, quantity or location that could reasonably be expected to have a Material Adverse Effect.

7.11 Super-Priority Claims. No Loan Party will create or permit to exist any "claim" that shall be granted in any of the Bankruptcy Cases that is *pari passu* with or senior to the Obligations, other than as provided herein.

7.12 Bankruptcy Orders. No Loan Party will (a) obtain or seek to obtain any stay from the Bankruptcy Court on the exercise of the Lender's remedies hereunder or under any other DIP Loan Document, except as specifically provided in the DIP Orders, or (b) seek to change or otherwise modify any DIP Order or other order in the Bankruptcy Court with respect to the DIP Facility without the prior written approval of the Lender.

7.13 New Accounts. No Loan Party will open or otherwise establish, or deposit, credit or otherwise transfer any cash, cash receipts, securities, financial assets or any other property into a deposit account or securities account other than any deposit account or securities account established with the prior consent of the Lender and in which the Lender has been granted a first-priority perfected Lien pursuant to the applicable DIP Order.

7.14 Prepetition Claims. No Loan Party shall make any payments of any kind on account of any Prepetition Credit Facilities (except as expressly provided for herein, in an Approved Budget or pursuant to Bankruptcy Orders) or assert any right of subrogation or contribution against any Loan Party until the Discharge Date.

7.15 Variance Covenant. As of any Variance Reporting Date, the Loan Parties shall not allow:

(a) with respect to the applicable Variance Testing Period, cash collections on a combined basis to be less than 85% of the estimated amounts in the applicable Approved Budget;

(b) with respect to the applicable Variance Testing Period, methodology disbursements, including payroll and related expenses, to be greater than 110% of the applicable estimated disbursement for such line items in the Approved Budget;

(c) with respect to the applicable Variance Testing Period, total non-methodology disbursements to be greater than 110% of the applicable estimated disbursements for such line items in the Approved Budget;

(d) with respect to the applicable Variance Testing Period, non-operating disbursements to be greater than 115% of the estimated aggregate disbursement for all such items in the Approved Budget; and

(e) with respect to the applicable Variance Testing Period, net operating cash flow to be less than 90% of the estimated amounts for such line items in the applicable Approved Budget at any given time;

the Budget variances permitted by clauses (a) through (e) above, collectively, the “Permitted Variances”).

The Loan Parties may not carry forward favorable variances on a line-item basis or otherwise from the immediately preceding Variance Testing Period when calculating the Permitted Variances. Notwithstanding anything to the contrary set forth in this Agreement, the Loan Parties shall be deemed to be in compliance with the Approved Budget for all purposes under this Agreement or the DIP Order unless, as of any Variance Reporting Date, the Loan Parties’ actual cash receipts or disbursements vary from the Approved Budget by more than the applicable Permitted Variance as measured on any Variance Reporting Date.

ARTICLE VIII EVENTS OF DEFAULT; REMEDIES

Events of Default

The occurrence of any of the events described in Sections 8.1 through 8.8 shall constitute an event of default (an “Event of Default”) hereunder:

8.1 **Failure to Make Payments.** The Borrower shall fail to pay, in accordance with the terms of the relevant Financing Document, (i) any principal on any of the DIP Facility (including any mandatory prepayments payable hereunder) on the date that such sum is due, (ii) any interest or fee on any of the DIP Facility within five (5) days after the date that such sum is due or (iii) any other cost, charge or other sum due under such Financing Document within ten (10) days after the date Borrower receives written notice that such sum is due.

8.2 **Judgments.** A final judgment or judgments shall be entered against any Loan Party (a) that in the aggregate exceeds five million Dollars (\$5,000,000) (other than (i) a judgment that is fully covered by insurance, bond or other security or satisfied in full or (ii) a judgment, the execution of which is effectively stayed) or (b) that could reasonably be expected to have a Material Adverse Effect.

8.3 Misstatements. Any (a) representation or warranty made by a Loan Party in the Financing Documents, or (b) certificate, Budget or any financial statement made or prepared by, under the control of or on behalf of any Loan Party and furnished to Lender pursuant to any Financing Document or the DIP Order (i) shall contain any statement of fact that is untrue or misleading as of the date made or (ii) shall fail to state a material fact necessary to make the statements therein not misleading as of the date made; provided, that no Event of Default shall occur pursuant to this Section 8.3 if the facts or circumstances underlying any such untrue or misleading statement are capable of being cured and, within thirty (30) days of the date on which any Loan Party obtains knowledge that such untrue or misleading statement has occurred, such Loan Party has eliminated, corrected or otherwise cured such facts or circumstances.

8.4 [Reserved].

8.5 Cross-Default.

(a) A Loan Party shall default for a period beyond any applicable grace period in the payment of principal, interest, or other amount due under any agreement (other than the Financing Documents) involving the borrowing of money or Indebtedness in excess of One Million Dollars (\$1,000,000), which is not stayed by filing of the voluntary petition to commence the Bankruptcy Cases or is otherwise permitted to be paid under this Agreement.

(b) The borrowings or Indebtedness under any agreement to which Borrower is a party (other than Financing Documents) become due and payable prior to their scheduled maturity date, and the outstanding amount of amounts payable under all such agreements exceeds One Million Dollars (\$1,000,000) in the aggregate, and payment of such amounts is not stayed by filing of the voluntary petition to commence the Bankruptcy Cases or is otherwise permitted to be paid under this Agreement.

(c) A Loan Party or any of its Affiliates shall be in breach of, or default under, the Stalking Horse APA and such breach or default shall continue unremedied for the length of any applicable cure period in the Stalking Horse APA.

(d) After its execution and effectiveness, the Stalking Horse APA shall cease for any reason to be in full force and effect unless terminated in accordance with its terms and not as a result of a default by a Loan Party or its Affiliates thereunder.

8.6 Breach of Covenants.

(a) Immediate. Borrower shall fail to perform or observe any of the covenants set forth in Sections 6.4(a), 6.10, or 6.12 or any Loan Party shall fail to perform or observe any of the covenants set forth in Article VII.

(b) Ten (10)-Day Cure Period. Borrower shall fail to perform or observe any of the covenants set forth in Sections 6.5 and 6.7(a), and such failure shall continue for a period of ten (10) days.

(c) Extended Cure Period. Any Loan Party shall fail to perform or observe any other covenant to be performed or observed by it hereunder or under any Financing Document to

which it is a party and not otherwise specifically provided for elsewhere in this Article VIII, and such failure shall continue unremedied for a period of thirty (30) days; provided, that upon notice from Borrower to Lender, such cure period shall be extended to such longer period of time as is reasonably necessary to effect a cure so long as (x) such default could reasonably be expected to be susceptible of a cure after the already expired thirty (30)-day cure period and (y) such Loan Party is diligently and continuously proceeding to cure, or cause the cure of, such default and so certifies in such notice; provided, further, that such extended cure period shall not exceed ninety (90) days in the aggregate.

8.7 ERISA. (a) One or more ERISA Events that would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect shall have occurred or (b) any fact or circumstance shall exist that could reasonably be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Code against Borrower.

8.8 Bankruptcy Cases.

(a) the Interim Order or Final Order, as applicable, (i) at any time ceases to be in full force and effect or (ii) shall be vacated, reversed, stayed, modified or amended without the prior written consent of the Lender;

(b) any Loan Party shall fail to observe or comply in any material respect with the terms of the Final Order;

(c) other than payments authorized by the Bankruptcy Court and which are set forth in the Approved Budget to the extent authorized by one or more First Day Orders or other orders reasonably satisfactory to the Lender, any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition Indebtedness or payables;

(d) (i) any of the Bankruptcy Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a Chapter 11 trustee or an examiner (other than a fee examiner) with enlarged powers relating to the operation of the business of any Loan Party (powers beyond those expressly set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed, (b) any other superpriority claim or grant of any other Lien (including any adequate protection Lien) other than as provided for herein which *is pari passu* with or senior to the claims and Liens of the Lender provided by the DIP Loan Documents shall be granted in any of the Bankruptcy Cases, or (c) the filing of any pleading by any Loan Party seeking or otherwise consenting to or supporting any of the matters set forth in clause (a) or clause (b) of this clause (d);

(e) the Bankruptcy Court shall enter one or more orders during the pendency of the Bankruptcy Cases granting relief from the automatic stay to the holder or holders of any Lien evidencing Indebtedness other than in connection with the 363 Sales or any of the Prepetition Facilities in excess of \$2,000,000 to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on assets of any Loan Party;

(f) the Loan Parties petition the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility;

(g) the Loan Parties' "exclusive period" under section 1121 of the Bankruptcy Code for the filing of a chapter 11 plan terminates;

(h) the consummation of a sale of any material portion of the Collateral (other than through the contemplated 363 Sale or a sale in the ordinary course of business that is contemplated by the Approved Budget);

(i) the confirmation of a chapter 11 plan of reorganization or liquidation that does not provide for payment in full in cash of the Loans or such other treatment acceptable to Lender, or any Loan Party proposes or supports, or fails to contest in good faith, the entry of such a plan of reorganization or liquidation;

(j) any Loan Party (A) engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of this Agreement, the DIP Facility, the Prepetition Bridge Facility, the Richmond Facility, the Morehead Facility, or the Liens on or security interest in the assets of the Loan Parties securing the foregoing, including without limitation seeking to equitably subordinate or avoid the Liens securing such Indebtedness or (B) engages in or supports any investigation or asserts any claims or causes of action (or directly or indirectly support assertion of the same) against the Lender or its Affiliates;

(k) the occurrence of a DIP Termination Event as defined in the Interim Order or Final Order, as applicable;

(l) allowance of any claim or claims under section 506(c) of the Bankruptcy Code against any of the Collateral; and

(m) entry of an order by the Bankruptcy Court in favor of any statutory committee appointed in the Bankruptcy Cases by the U.S. Trustee (each, a "Committee"), any ad hoc committee, or any other party in interest, (i) granting such party standing to pursue any claims against the Lender and/or any Prepetition Lender (ii) sustaining an objection to claims of the Lender and/or any Prepetition Lender, (iii) avoiding any Liens held by the Lender, or (iv) avoiding any Liens held by any Prepetition Lender except as otherwise agreed by such Prepetition Lender in writing (provided, that the foregoing shall not be deemed to prohibit the investigation by any such committee of any such claims or Liens in respect of the Prepetition Obligations).

8.9 Remedies.

Upon the occurrence and during the continuation of an Event of Default, and without further application to the Bankruptcy Court, pursuant to the DIP Order, the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Lender to take any of the following actions, at the same or different times:

(a) issue a written notice (which may be by email) to the Loan Parties and their counsel, counsel for any Committee, and the U.S. Trustee (collectively, the "Remedies Notice Parties") declaring the occurrence of the Termination Date and the suspension or termination of any New Money Loan Commitment, liability or obligation of the Lender hereunder and the acceleration of all of the Obligations under this Agreement and the other DIP Loan Documents, but without affecting the Liens on the Collateral or Obligations;

- (b) issue a Carve-Out Notice (as defined in the DIP Order);
- (c) declare all the Obligations to be immediately due and payable without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Loan Parties;
- (d) declare that all the Loans and other Obligations shall bear interest at the Default Rate; or
- (e) exercise all other rights and remedies available to it under the other Financing Documents and applicable law, including the UCC and DIP Orders.

provided that the Lender shall not exercise remedies against the Collateral pursuant to clause (e) above or any other Financing Document other than in accordance with the applicable DIP Order.

ARTICLE IX GUARANTY

9.1 Guaranty. Each Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and not as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, the Obligations, owing by the Borrower or any other Loan Party to the Lender arising under, pursuant to, or in connection with this Agreement or under any other DIP Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and, as provided in the DIP Loan Documents, all costs, fees, reasonable attorneys' fees, and documented expenses incurred by the Lender in connection with the collection or enforcement thereof). The Lender's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor and conclusive, absent manifest error, for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of any Guarantor under this Guaranty other than the indefeasible payment in full of the Obligations, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing. Anything contained herein to the contrary notwithstanding, the obligations of each Guarantor hereunder at any time shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code (or any comparable provisions of any similar federal or state law) after giving effect to the value of any rights of subrogation, contribution, reimbursement or indemnity of such Guarantor pursuant to applicable law or agreement, including Section 9.2 hereof.

9.2 Subrogation.

(a) No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this

Guaranty until the Discharge Date. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Lender and shall forthwith be paid to the Lender to reduce the amount of the Obligations, whether matured or unmatured.

(b) The Guarantors hereby agree, as among themselves, that if any Guarantor or any other guarantor of the Obligations shall become an Excess Funding Guarantor (as defined below) (but subject to the succeeding provisions of this Section 9.2(b)), to pay to such Excess Funding Guarantor an amount equal to such Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, assets, liabilities and debts of such Excess Funding Guarantor) of such Excess Payment (as defined below). The payment obligation of any Guarantor to any Excess Funding Guarantor under this Section 9.2(b) shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of this Guaranty, and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess except as provided in Section 9.2(a) above or in any similar provision of any other guaranty of the Obligations. For purposes hereof, (i) "Excess Funding Guarantor" shall mean, in respect of any obligations arising under the other provisions of this Guaranty and any similar provisions of any other guaranty of the Obligations (hereafter, the "Guaranteed Obligations"), a Guarantor or any other guarantor of the Obligations that has paid an amount in excess of its Pro Rata Share of the Guaranteed Obligations; (ii) "Excess Payment" shall mean, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations; and (iii) "Pro Rata Share", for purposes of this Section 9.2(b), shall mean, for any Guarantor or any other guarantor of the Obligations, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all of its assets and properties exceeds the amount of all debts and liabilities of such guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such guarantor under this Guaranty or the other applicable guaranty) to (y) the amount by which the aggregate present fair saleable value of all assets and other properties of the Borrower, all of the Guarantors and all of the other guarantors of the Obligations exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Borrower under the Loan Agreement, the Guarantors hereunder and any other guarantors of the Obligations under the applicable guaranties) of the Borrower, all of the Guarantors and all of the other guarantors of the Obligations, all as of the Closing Date (if any Guarantor becomes a party hereto (or any other guarantor of the Obligations becomes a party to the applicable guaranty) subsequent to the Closing Date, then for purposes of this Section 9.2(b) such subsequent guarantor shall be deemed to have been a guarantor of the Obligations as of the Closing Date and the information pertaining to, and only pertaining to, such guarantor as of the date such guarantor became a guarantor of the Obligations shall be deemed true as of the Closing Date).

ARTICLE X
MISCELLANEOUS

10.1 Amendments. Neither this Agreement or any other Financing Document, nor any terms hereof or thereof, may be amended or modified except by written consent of the parties hereto.

10.2 Addresses. Any communications between the parties hereto or regular notices provided herein to be given shall be given to the following addresses:

To Lender: CEFF II AppHarvest Holdings, LLC
c/o Controlled Environment Foods Fund, LLC
411 NW Park Ave, Suite 401
Portland, Oregon 97209
Attn: General Counsel
Email: campbell@eq-cap.com

Copy to: Amis, Patel & Brewer, LLP
1050 K Street, NW, Fifth Floor
Washington, DC 20001
Attn: Rusty Brewer
Email: rustybrewer@apbllp.com

To Borrower: AppHarvest, Inc.
500 Appalachian Way
Morehead, KY 40351
Attn: Gary Broadbent
Email: info@appharvest.com

Copy to: Sidley Austin LLP
787 Seventh Avenue
New York, New York
Attn: Anthony R. Grossi; Patrick Venter
Email: agrossi@sidley.com; pventer@sidley.com

Any notice that is personally served shall be effective upon the date of service; any notice given by U.S. Mail shall be deemed effectively given, if deposited in the United States Mail, registered or certified with return receipt requested, postage prepaid and addressed as provided above, on the date of receipt, refusal or non-delivery indicated on the return receipt. In addition, either party hereto may send notices by electronic mail, or by a nationally recognized overnight courier service which provides written proof of delivery (such as U.P.S. or Federal Express). Any notice sent by electronic mail shall be effective upon confirmation of receipt in legible form, and any notice sent by a nationally recognized overnight courier shall be effective on the date of delivery (or rejected delivery) to the applicable party at its address specified above as set forth in the courier's delivery receipt. Either party may, by notice to the other from time to time in the manner herein provided, specify a different address for notice purposes.

10.3 No Waiver; Cumulative Remedies.

(a) No failure or delay of Lender in exercising any right or power hereunder or under any other Financing Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce any such right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

(b) The rights and remedies of Lender hereunder and under the other Financing Documents are cumulative and are not exclusive of any rights or remedies that it would otherwise have.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Financing Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5 Payment of Expenses, Indemnities and Taxes.

(a) Borrowers will pay to Lender all of its reasonable and documented third-party and out-of-pocket costs and expenses in connection with the preparation, negotiation, closing and costs of administering this Agreement, the DIP Orders, and the documents contemplated hereby or matters pertaining to the Bankruptcy Cases, including the reasonable fees, expenses and disbursements of Lender's attorneys incurred in connection with such matters and the preparation of such documents and any amendments hereof or thereof, or the negotiation, closing or administration of such documents, and the reasonable and documented fees, expenses and disbursements of any bankruptcy, engineering, insurance, environmental and construction consultants of Lender in connection with this Agreement, the Loans, the DIP Orders or any matters pertaining to the Bankruptcy Cases.

(b) Subject to any limitations separately agreed in writing by the relevant parties, Borrower agrees (i) to pay or reimburse Lender for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, including any workout and/or restructuring of the Loans, and the other Financing Documents, including the fees and disbursements of counsel (including the allocated reasonable fees and expenses of in-house counsel) to Lender, (ii) to pay, indemnify, and hold Lender harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other Taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Financing Documents, the DIP Orders or any matters pertaining to the Bankruptcy Cases and any such other documents, and (iii) to pay, indemnify, and hold Lender and its officers, directors, employees, affiliates, agents, advisors and controlling Persons (each, an "Indemnitee") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses (including reasonable attorneys' fees and expenses) or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration

of (or the non-compliance by any party with the terms of) this Agreement and the other Financing Documents, the use of proceeds of the Loans, any of the transactions contemplated by the Financing Documents, the Property of the Loan Parties, or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Loan Parties and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any Indemnitee against the Borrower under any Financing Document, the DIP Orders or any matters pertaining to the Bankruptcy Cases (all the foregoing in this clause (b), the “Indemnified Liabilities”); provided, that the Borrower shall not have any obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the foregoing, and to the extent permitted by Governmental Rules, Borrower agrees not to assert, and hereby waives, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that it might have by statute or otherwise against any Indemnitee. All amounts due under this Section 10.5 shall be payable not later than ten (10) days after written demand therefor. The agreements in this Section 10.5 shall survive the Discharge Date. Each Indemnitee that is not party to this Agreement shall be a third-party beneficiary of, and entitled to enforce, the provisions of this Section 10.5 as if party hereto.

10.6 Successors and Assigns. This Agreement shall be binding upon each of the parties hereto and each of their permitted successors and assigns, if any. Neither party may assign any of its or their rights or obligations under this Agreement, in whole or in part, to any other Person without obtaining the written consent or approval of the other party; provided, that Lender shall be entitled to assign this Agreement (a) to any of its Affiliates, or (b) in connection with a merger or acquisition of Lender or its Affiliates, in each case, so long as the assignee shall agree to be bound by the terms and conditions of this Agreement.

10.7 [Reserved].

10.8 Entire Agreement. This Agreement, together with other agreements attached hereto or referred to herein and the other Financing Documents constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Financing Documents.

10.9 GOVERNING LAW. EXCEPT TO THE EXTENT GOVERNED BY THE BANKRUPTCY CODE, THIS AGREEMENT AND ANY CLAIM OR CONTROVERSY ARISING HEREUNDER OR RELATED HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

10.10 Submission to Jurisdiction; Waivers.

(a) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER, OR ANY AFFILIATE OF THE LENDER ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE BANKRUPTCY COURT AND IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURTS. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER DIP LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any New York state or federal court. Each Loan Party hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

10.11 Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

10.12 Interpretation. The Section headings in this Agreement are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

10.13 Acknowledgements. Each Loan Party hereby acknowledges that: (a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Financing Documents; (b) Lender has no fiduciary relationship with or duty to a Loan Party arising out of or in connection with this Agreement or any of the other Financing Documents, and the relationship between Lender, on the one hand, and the Loan Parties, on the other hand, in

connection with the Financing Documents is solely that of debtor and creditor; and (c) no joint venture is created hereby or by the other Financing Documents or otherwise exists by virtue of the transactions contemplated hereby or thereby among Lender, the Borrower, or any other Loan Party.

10.14 [Reserved].

10.15 Limitation on Liability. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NO CLAIM SHALL BE MADE BY ANY PARTY HERETO, OR ANY OF SUCH PARTY'S AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS AGAINST ANY OTHER PARTY HERETO OR ANY OF ITS AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT, DUTY IMPOSED BY LAW OR OTHERWISE), IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH; AND EACH PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

10.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY GOVERNMENTAL RULES, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

10.17 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective when executed and delivered by each Person intended to be a party hereto. Delivery of an executed counterpart to this Agreement by facsimile transmission or "pdf" electronic format shall be as effective as delivery of a manually signed original.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives as of the day and year first above written.

LENDER:

CEFF II APPHARVEST HOLDINGS, LLC

By: EqCEF II, LLC, its manager

By: _____

Name:

Title:

BORROWER:

APPHARVEST, INC.

By: _____

Name:

Title:

GUARANTORS:

[]

Exhibit 2

Approved Budget

Weekly DIP Budget Forecast – Consolidated



Cash Flow Forecast | July 30, 2023 – September 24, 2023

Week Ending	Post-Petition 7/30/2023	Post-Petition 8/6/2023	Post-Petition 8/13/2023	Post-Petition 8/20/2023	Post-Petition 8/27/2023	Post-Petition 9/3/2023	Post-Petition 9/10/2023	Post-Sale 9/17/2023	Post-Sale 9/24/2023	9 -week Total
Net Operating Cash Receipts	\$ 1,387,790	\$ 1,048,574	\$ 1,114,110	\$ 1,161,205	\$ 1,184,512	\$ 1,114,110	\$ 770,652	\$ 770,652	\$ 770,652	\$ 9,322,258
Methodology Disbursements										
Employee Wages & Benefits	\$ 78,229	\$ 895,227	\$ 104,615	\$ 860,747	\$ 324,615	\$ 1,031,966	\$ 117,650	\$ 997,486	\$ 1,320,581	\$ 5,731,116
Insurance	115,000	-	-	-	-	115,000	-	-	-	230,000
Rent & Leases	-	73,245	11,080	6,855	-	73,245	11,080	6,855	-	182,360
Utilities	22,511	27,556	682,349	35,770	4,207	27,556	602,349	18,070	4,207	1,424,574
Ordinary Course Professionals	-	-	-	124,154	66,759	156,408	49,122	106,885	51,423	554,752
Taxes & Regulatory Costs	39,602	82,400	66,500	4,466	5,044	-	1,628	2,805	5,044	207,489
Total Methodology Disbursements	\$ 255,342	\$ 1,078,428	\$ 864,544	\$ 1,031,992	\$ 400,625	\$ 1,404,175	\$ 781,829	\$ 1,132,100	\$ 1,381,255	\$ 8,330,291
Non-Methodology Disbursements										
Cost of Goods Sold	\$ 284,470	\$ 523,210	\$ 330,201	\$ 273,572	\$ 1,500,007	\$ 89,753	\$ 331,482	\$ 253,236	\$ 250,553	\$ 3,836,482
Contract Labor	786,942	566,280	540,384	540,384	540,384	343,980	300,300	300,300	289,380	4,208,334
IT & Communications	-	-	-	23,544	29,815	30,461	227,944	29,926	37,790	379,480
Facilities Expenses	11,864	11,864	4,184	10,021	4,152	10,958	4,184	10,021	4,152	71,399
Sales & Marketing	-	-	-	4,519	16,134	8,691	8,503	4,519	7,134	49,502
Supplies	-	-	-	25,505	38,848	9,304	7,202	25,505	16,787	123,151
Other G&A	-	-	-	5,000	5,000	25,223	5,000	5,000	22,500	67,723
Total Non-Methodology Disbursements	\$ 1,083,275	\$ 1,101,353	\$ 874,769	\$ 882,545	\$ 2,134,340	\$ 518,369	\$ 884,615	\$ 628,507	\$ 628,296	\$ 8,736,069
Operating Cash Flow	\$ 49,172	\$ (1,131,207)	\$ (625,203)	\$ (753,331)	\$ (1,350,453)	\$ (808,434)	\$ (895,792)	\$ (989,955)	\$ (1,238,899)	\$ (7,744,102)
Cumulative Operating Cash Flow	49,172	(1,082,035)	(1,707,238)	(2,460,570)	(3,811,022)	(4,619,456)	(5,515,249)	(6,505,203)	(7,744,102)	(7,744,102)
Non-Operating Receipts										
Construction Reimbursements	\$ -	\$ -	\$ -	\$ 480,000	\$ -	\$ -	\$ 1,092,431	\$ -	\$ -	\$ 1,572,431
MPL Berea Sale	-	-	-	-	3,750,000	-	-	-	-	3,750,000
Other Non-Operating Receipts	-	4,842	-	-	-	4,842	-	-	-	9,684
Total Non-Operating Receipts	\$ -	\$ 4,842	\$ -	\$ 480,000	\$ 3,750,000	\$ 4,842	\$ 1,092,431	\$ -	\$ -	\$ 5,332,115
Non-Operating Disbursements										
Capital Spending	\$ 35,000	\$ -	\$ 851,177	\$ 975,177	\$ 371,177	\$ 1,063,389	\$ 371,177	\$ 371,177	\$ 39,141	\$ 4,077,416
Board Fees	-	-	-	-	-	-	-	-	-	-
Total Non-Operating Disbursements	\$ 35,000	\$ -	\$ 851,177	\$ 975,177	\$ 371,177	\$ 1,063,389	\$ 371,177	\$ 371,177	\$ 39,141	\$ 4,077,416
Total Restructuring Costs	\$ 540,000	\$ -	\$ -	\$ 1,100,000	\$ -	\$ 2,425,000	\$ -	\$ -	\$ 12,067,000	\$ 16,132,000
Total Disbursements	\$ 1,913,618	\$ 2,179,781	\$ 2,590,490	\$ 3,989,714	\$ 2,906,142	\$ 5,410,933	\$ 2,037,622	\$ 2,131,784	\$ 14,115,692	\$ 37,275,776
Beginning Cash (Book)	\$ 2,028,410	\$ 9,502,582	\$ 8,376,217	\$ 6,899,837	\$ 4,551,328	\$ 10,579,698	\$ 6,287,717	\$ 6,113,178	\$ 4,752,046	\$ 2,028,410
Net Cash Flow	(525,828)	(1,126,365)	(1,476,380)	(2,348,509)	2,028,370	(4,291,981)	(174,539)	(1,361,132)	(13,345,040)	(22,621,403)
DIP Draw (Repayment)	8,000,000	-	-	-	4,000,000	-	-	-	11,323,197	23,323,197
Ending Cash (Book)	\$ 9,502,582	\$ 8,376,217	\$ 6,899,837	\$ 4,551,328	\$ 10,579,698	\$ 6,287,717	\$ 6,113,178	\$ 4,752,046	\$ 2,730,204	\$ 2,730,204
Debt Rollforward										
Beginning DIP Balance	\$ 2,690,000	\$ 11,548,000	\$ 11,548,000	\$ 11,548,000	\$ 11,548,000	\$ 15,548,000	\$ 15,696,658	\$ 15,696,658	\$ 15,696,658	\$ 2,690,000
Draw (Repayment)	8,000,000	-	-	-	4,000,000	-	-	-	11,323,197	23,323,197
DIP Fees	858,000	-	-	-	-	-	-	-	1,430,000	2,288,000
DIP Interest	-	-	-	-	-	148,658	-	-	150,145	298,803
Ending DIP Balance	\$ 11,548,000	\$ 11,548,000	\$ 11,548,000	\$ 11,548,000	\$ 15,548,000	\$ 15,696,658	\$ 15,696,658	\$ 15,696,658	\$ 28,600,000	\$ 28,600,000
DIP Availability	17,052,000	17,052,000	17,052,000	17,052,000	13,052,000	12,903,342	12,903,342	12,903,342	-	-
DIP Commitment	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000	\$ 28,600,000

