

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-K**

(Mark One)  
☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2022

OR  
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_ 0

Commission file number 001-39288



**AppHarvest, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**82-5042965**

(IRS Employer Identification No.)

**500 Appalachian Way**

**Morehead, KY**

(Address of principal executive offices)

**40351**

(Zip Code)

**(606) 653-6100**

Registrant's telephone number, including area code:

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

| Title of each class                                                                                | Trading Symbol(s) | Name of each exchange on which registered |
|----------------------------------------------------------------------------------------------------|-------------------|-------------------------------------------|
| Common Stock, \$0.0001 par value per share                                                         | APPH              | The Nasdaq Stock Market LLC               |
| Warrants, each exercisable for one share of Common Stock at an exercise price of \$11.50 per share | APPHW             | The Nasdaq Stock Market LLC               |

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Non-accelerated filer ☒

Accelerated filer ☐

Smaller reporting company ☒

Emerging growth company ☐

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

☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of June 30, 2022, the last day of the registrant's most recently completed second fiscal quarter. The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant, based on the closing price of the registrant's shares of common stock as reported by the Nasdaq Stock Market LLC, was approximately \$259.7 million. This calculation does not reflect a determination that certain persons are affiliates for any other purpose.

As of March 10, 2023, there were 154,889,419 shares of \$0.0001 par value common stock outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's Proxy Statement for its 2023 annual meeting of shareholders, to be filed within 120 days after the end of the registrant's fiscal year, are incorporated by reference in Part III.

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## RISK FACTORS SUMMARY

Our business is subject to a number of risks of which you should be aware before making a decision to invest in our securities. These risks include, among others, the following:

- There is substantial doubt about our ability to continue as a going concern and we will require significant additional financing to achieve our goals, and a failure to obtain this necessary capital when needed on acceptable terms, or at all, may force us to delay, limit, reduce or terminate our operations and future growth.
- If we fail to meet all applicable requirements of Nasdaq and Nasdaq determines to delist our Common Stock, the delisting could adversely affect the market liquidity of our Common Stock and the market price of our Common Stock could decrease.
- We are a “smaller reporting company” and have elected to comply with reduced public company reporting requirements, which could make our common stock less attractive to investors.
- We have a significant amount of long-lived assets, which are assessed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. In addition, we may never realize the full value of our long-lived assets, causing us to record material impairment charges.
- We have a history of losses and expect to incur significant expenses and continuing losses for the foreseeable future. Our business could be adversely affected if we fail to effectively manage our future growth and liquidity.
- We have an evolving business model, which increases the complexity of our business and makes it difficult to evaluate our future business prospects.
- We face risks inherent in the agriculture business, including the risks of diseases and pests.
- We currently rely primarily on a single facility for the majority of our operations.
- Any damage to or problems with our CEA facilities, or delays in land acquisition or construction, could severely impact our operations and financial condition.
- Mastronardi is currently our exclusive marketing and distribution partner. We are highly dependent on this relationship, and impairment to or termination of this relationship could adversely affect our results of operations and financial condition.
- We depend on employing a skilled local labor force, and failure to attract, develop, and retain qualified employees could negatively impact our business, results of operations and financial condition.
- We could be adversely affected by a change in consumer preferences, perception and spending habits in the food industry, and failure to develop and expand our product offerings or gain market acceptance of our products could have a negative effect on our business.
- We may be unable to successfully execute on our growth strategy. Failure to adequately manage our planned growth strategy may harm our business or increase our risk of failure.
- We have agreed not to compete with Mastronardi outside of Kentucky and West Virginia, which may limit our business opportunities.
- We build CEA facilities which may be subject to unexpected costs and delays due to reliance on third parties for construction, material delivery, supply-chains and fluctuating material prices.
- We may not be able to compete successfully in the highly competitive natural food market.
- We have only recently completed our second harvest, which makes it difficult to forecast future results of operations.
- Demand for our current and expected future products, which include tomatoes, salad greens, berries, and other produce, is subject to seasonal fluctuations and may adversely impact our results of operations in certain quarters.
- Food safety and foodborne illness incidents or advertising or product mislabeling may materially adversely affect our business by exposing us to lawsuits, product recalls, regulatory enforcement actions, or changes in consumer demand increasing our operating costs and reducing demand for our product offerings.
- As a public benefit corporation, our duty to balance a variety of interests may result in actions that do not maximize stockholder value.
- If we are unable to apply technology effectively in driving value for our clients through our technology-based platforms, our results of operations, client relationships and growth could be adversely affected.



## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (the “Annual Report”) contains statements that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that involve substantial risks and uncertainties. All statements contained in this Annual Report other than statements of historical fact, including statements regarding our future results of operations and financial position, our business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “believes,” “expects,” “intends,” “estimates,” “projects,” “anticipates,” “will,” “plan,” “design,” “may,” “should,” or similar language are intended to identify forward-looking statements. These statements speak only as of the date of this Annual Report and involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements include, without limitation, statements about:

- our ability to continue as a going concern;
- our financial and business performance, including financial projections and business metrics and any underlying assumptions thereunder;
- our ability to obtain funding for our future operations;
- changes in our strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects and plans;
- our ability to successfully construct Controlled Environment Agriculture (“CEA”) facilities, which may be subject to unexpected costs and delays and obtaining necessary capital when needed on acceptable terms;
- our business, expansion plans and opportunities, including CEA technology and future expected produce;
- our future capital requirements and sources and uses of cash;
- the outcome of any known and unknown litigation and regulatory proceedings;
- the implementation, market acceptance and success of our business model;
- our ability to scale in a cost-effective manner;
- developments and projections relating to our competitors and industry;
- the impact of health epidemics, including the COVID-19 pandemic, on our business and the actions we may take in response thereto;
- our ability to develop our new CEA facilities and expand our product lines;
- our expectations regarding our ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- our ability to maintain compliance with the listing requirements of the Nasdaq Stock Market LLC (“Nasdaq”);
- our ability to maintain our status as a Certified B Corporation;
- our ability to hire capable employees and/or independent contractors to fill positions that have previously been eliminated; and
- changes in applicable laws or regulations.

You should refer to Item 1A. “Risk Factors” section of this Annual Report for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this Annual Report will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame or at all. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. You should, therefore, not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this Annual Report.

You should read this report and the documents that we reference in this report, completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

Unless the context indicates otherwise, references in this Annual Report to the “Company,” “AppHarvest,” “we,” “us,” “our” and similar terms refer to AppHarvest, Inc. (f/k/a Novus Capital Corporation) and its consolidated subsidiaries (including Legacy AppHarvest (as defined below)). References to “Novus” refer to the predecessor company prior to the consummation of the Business Combination.

**Industry and Market Data**

We obtained the industry data and market data included in this Annual Report from independent third party surveys, market research, publicly available information, reports of governmental agencies and industry publications and surveys. All of management’s estimates presented herein are based upon management’s review of independent third-party surveys and industry publications prepared by a number of sources and other publicly available information. All of the market data used in this Annual Report involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. We believe that the information from these industry publications and surveys included in this Annual Report is reliable. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the section titled “Risk Factors.” These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

## Part I

### Item 1. Business

#### Overview

We were founded on January 19, 2018 as AppHarvest Operations, Inc. (f/k/a AppHarvest, Inc. “Legacy AppHarvest”) a Delaware public benefit corporation. Together with our subsidiaries, we are a sustainable food company in Appalachia developing and operating some of the world’s largest high-tech indoor farms with robotics and artificial intelligence to build a reliable, climate-resilient food system. Our farms are designed to grow produce using sunshine, rainwater and up to 90% less water than open-field growing, all while producing yields up to 30 times that of traditional agriculture and preventing pollution from agricultural runoff. We combine conventional agricultural techniques with cutting-edge technology, including artificial intelligence and robotics, to improve access to nutritious food, while farming more sustainably, building a domestic food supply, and increasing investment in Appalachia.

On January 29, 2021, Legacy AppHarvest, Novus Capital Corporation (“Novus”), and ORGA, Inc., wholly-owned subsidiary of Novus (“Merger Sub”), consummated the closing of the transactions contemplated by that certain Business Combination Agreement, dated September 2020 (the “Business Combination Agreement”), following the approval at a special meeting of the stockholders of Novus held on January 29, 2021. Pursuant to the terms of the Business Combination Agreement, a business combination of Legacy AppHarvest and Novus was effected through the merger of Legacy AppHarvest with and into Merger Sub, with Legacy AppHarvest surviving as a wholly owned subsidiary of Novus (the “Business Combination”). On the closing date, Legacy AppHarvest changed its name to AppHarvest Operations, Inc. and Novus changed its name from Novus Capital Corporation to AppHarvest, Inc.

We are committed to the communities where we operate by providing compelling, long-term career opportunities to the local workforce as well as partnering with educational institutions, such as the University of Kentucky and local high schools and technical schools, to create programs that benefit students, researchers, and our own operations. At AppHarvest, the goal is to lay the foundation for Appalachia to become the AgTech capital of North America.

Our commitment to Appalachia is driven by the personal connection of AppHarvest’s leadership, including Jonathan Webb, Founder and Chief Executive Officer, to the area. As a proud Kentucky native, Mr. Webb has developed deep relationships within the Appalachian community that include civic leaders, strategic vendors and suppliers, and local and state elected officials. Our deep connection to the local community has been instrumental in facilitating our growth and development.

We have a refined geographic strategy in place designed to impart immediate as well as long-term benefits. Central Appalachia presents multiple strategic advantages for us, including beneficial climate patterns that allow all, or substantially all, of our water requirements to be supplied naturally by rainfall, and geographic proximity to approximately 70% of all U.S. households within a one-day drive.

We are a mission-driven organization with an ethos rooted in sustainability and environmental, social, and governance (“ESG”) principles. Our leadership team and employees share a deeply-held belief that, as an organization, we are responsible to multiple stakeholders, including our workers, community, customers, environment, and stockholders. We are a public benefit corporation, which underscores the commitment to our mission and stakeholders. In addition, we elected to have our social and environmental performance, accountability, and transparency assessed against the proprietary criteria established by an independent non-profit organization. As a result of this assessment, we were designated as a Certified B Corporation in December 2019.

Prior to October 2020, our operations were limited to the “start-up” concerns of organizing and staffing, business planning, raising capital, and acquiring and developing properties for CEA. In October 2020, we partially opened our first CEA facility in Morehead, Kentucky (“AppHarvest Morehead”). We harvested our first crop of beefsteak tomatoes and tomatoes on the vine in January 2021 and March 2021, respectively. In May 2021, we opened production of the full 60 acres at AppHarvest Morehead, and in November 2022 began harvesting snacking tomatoes.

Subsequent to the construction of AppHarvest Morehead, we started construction on four more CEA facilities. The facility located in Berea, Kentucky (“AppHarvest Berea”) became operational in October 2022, and the facility located in Somerset, Kentucky (“AppHarvest Somerset”) became operational in November 2022. AppHarvest Berea harvests salad greens and AppHarvest Somerset primarily grows strawberries but is also expected to seasonally grow cucumbers. In December 2022, we

entered into an agreement to sell AppHarvest Berea to an affiliate of our distribution partner Mastronardi Produce Limited (“Mastronardi”) as further discussed below. The CEA facility in Richmond, Kentucky (“ AppHarvest Richmond”), which is still under construction, was half planted in December 2022, and began commercial shipments in January 2023.

We commenced construction of a second Morehead, Kentucky facility (“AppHarvest Morehead North”), which is adjacent to AppHarvest Morehead, in June 2021, which is intended to grow salad greens. We have indefinitely paused the development of the 10-acre Morehead salad greens facility, with resumption of construction contingent upon financing.

**Agriculture’s Current Challenges and Our Opportunity**

Today’s agriculture challenges are wide-reaching and accelerating. The World Bank forecasts that global food production will need to increase by approximately 70% or more by 2050 to feed the growing global population. Inclusive of vine crops, the U.S. Department of Agriculture (“USDA”) predicts that the total annual value of domestic fruit, vegetable, and nut production will exceed \$66 billion by 2029, a \$14 billion annual increase over the 2020 annual value. In 2020, vegetable production accounted for approximately 41% of total farm value (or approximately \$21.5 billion), with fresh use vegetables comprising approximately 32% of the market (or approximately \$6.9 billion). Tomatoes are the second most popular fresh market produce in the United States. Per capita consumption<sup>1</sup> of fresh tomatoes has grown to approximately 19 pounds per year in 2020, approximately 51% higher than it was nearly four decades ago. The USDA attributes this growth primarily to changing consumer preferences and a shift towards a healthier diet and overall lifestyle.

Domestically, the increasing demand for fresh fruits and vegetables has necessitated significant imports of produce into the United States. The majority of America’s supply of fresh tomatoes and other vine crops, including cucumbers, bell peppers, and eggplants, are imported. In 2021, 68% of fresh tomatoes for sale in the United States were imported, up from 50% in 2011.

Meanwhile, 76% of bell peppers and 87% of cucumbers were imported in 2021, up from 51% and 66%, respectively, in 2011. Over approximately the last three decades, the United States’ reliance on imports has more than doubled. The country’s single largest import partner is Mexico, which comprises 77% of U.S. fresh vegetable imports in 2020.

**Percentage of Crops Imported:**



A continued reliance on imports puts the U.S. food supply at risk from both natural and politically destabilizing events. The COVID-19 pandemic highlighted this risk. During the pandemic, the supply chain has been disrupted and food imports have been, at times, delayed or even cancelled.

A reduced or delayed supply of produce can have a pronounced impact on grocers, which generally operate on thin financial margins and just-in-time inventory practices. A consistent and reliable supply chain is vital to the grocery retail industry, which attempts to match closely the perishable supply of produce to near-term customer demand. We believe that CEA, which provides more reliable, sustainable, and higher quality produce, produced in accordance with much higher food safety standards, is an optimal solution for the grocery industry’s reliance on imports, and that there will be a strong preference among distributors and grocers to shift from imports to CEA as more supply becomes available from CEA.

Demand for sustainable farming and new CEA infrastructure has been amplified by the effects of climate change and other environmental factors. Historically, California and Mexico have produced a majority of the fresh produce sold to consumers in the United States. Unsustainable farming practices, structural changes in water resources, and an over-reliance on chemicals,

<sup>1</sup> Consumption is a measure of per capita demand for a particular good. Availability refers to the supply that is available for human consumption on a per capita basis and is frequently used as a proxy measure for per capita consumption when supply, rather than demand, data are available.

which can be harmful to people in a variety of ways, have degraded large swaths of arable land. Globally, approximately one-third of arable land is estimated to be at least partially degraded. This could increase to more than 90% of arable land unless there is a significant shift in farming practices and infrastructure.

In addition, shifting weather patterns believed to be the result of climate change are accelerating the threat to existing agricultural regions. Reduced rainfall and increasingly hot conditions in certain growing regions are increasing the demand for, and consumption of, irrigation water. Two-thirds of Mexico is arid or semi-arid, with annual rainfalls of less than 500 millimeters. California’s Public Policy Institute estimates that 500,000 to 780,000 acres would need to lie fallow for the state’s natural aquifers to re-balance.

Our facilities are well positioned to take advantage of Kentucky’s relatively high precipitation levels by capturing rainfall in large on-site retention ponds to help meet our ongoing irrigation needs.

We believe that CEA is the global solution to address the rising demand for fresh fruits and vegetables, to offset the declining availability of high-quality farmland, and to mitigate the effect of climate change on agriculture. By using leading-edge technology, we expect, at full production capacity, to be able to grow up to 30 times more produce on a single indoor acre compared to a single, traditionally farmed outdoor acre.

This belief is based on third-party research and publications stating that produce grown in CEA facilities can yield anywhere from 20 to 50 times as much as traditional farming on the same amount of land. CEA allows for systematic measurements and tailoring of important variables on a per-crop level, such as nutrient levels, temperature, humidity, and irrigation. CEA generally benefits from potential year-round optimal farming conditions, whereas open field farming and traditional greenhouses have more limited growing seasons.

We also believe that we are positioned to become a global leader in the CEA industry. We are one of only a handful of publicly traded companies focused on CEA-enabled food production in the United States. Our CEA facilities in Appalachia are designed to maximize the sustainability and efficiency of our operations. For example, our ability to farm using captured rainwater not only decreases our impact on the environment, but helps to offset the high cost of water. Captured rainwater also allows us to avoid harmful agricultural runoff, a major source of U.S. waterways pollution. Our geographic proximity to the markets we serve reduces the fuel needed to transport our fruits and vegetables to customers, thereby reducing the environmental impact of distributing our products. Relative to growers in California and Mexico, we estimate we can distribute our products using up to 80% less fuel and with an extended shelf life and less spoilage due to a shorter time spent in transit.

**Strengths**

*Industry Leading Position with an Early Mover Advantage*

AppHarvest Morehead, combined with AppHarvest Richmond, AppHarvest Somerset, and AppHarvest Berea that we lease, position us among the largest CEA growers in the United States. Our current production acreage is growing beefsteak tomatoes, tomatoes on the vine, snacking tomatoes, salad greens and strawberries. We are also employing a “go-to-market” strategy through our partnership with Mastronardi Produce Limited, which we believe will enable us to build customer awareness and brand loyalty for future fruits, vegetables, and other value-added products.

*Skilled Integrator of Proven Technologies*

Our development and technology teams are highly skilled in applied agricultural technology. In many instances, the right technology to maximize crop yields sustainably already exists in the marketplace. The Netherlands, for example, has long relied on high-tech CEA facilities for domestic fruit and vegetable production and is the world’s second-largest agricultural exporter despite a land mass roughly one-third the size of Kentucky. To this end, we are working directly with companies that have been successful in the Netherlands, as well as construction firms with experience building these types of structures.

*Strategic Partnerships with Important Industry Participants*

To aid us in accomplishing our objectives, we have pursued partnerships with select third parties to allow us to focus our capital and resources in areas that maximize value for our Company and our shareholders.

Mastronardi is our exclusive marketing and distribution partner for all fresh fruits and vegetables grown in Kentucky and West Virginia, including tomatoes, cucumbers, peppers, berries, and/or all salad greens that meet certain quality standards. Mastronardi is a leading marketer and distributor in North America of tomatoes, peppers, cucumbers, berries, and salad greens. Mastronardi has an extensive and long-established retail network and is nationally recognized under the primary SUNSET® brand and other brands, including Campari®, Angel Sweet®, Flavor Bombs®, Sugar Bombs® tomatoes, Queen of Greens® washed-and-ready-to-eat salad packs and WOW™ berries. Through our partnership, we receive immediate access to a large and coveted customer base. Our produce is currently available for sale in the produce aisles of some grocers.

Pursuant to our agreement with Mastronardi (the “Mastronardi Agreement”), Mastronardi is the sole and exclusive marketer and distributor of all tomatoes, cucumbers, peppers, berries and salad greens produced at our CEA facilities that meet certain quality standards (collectively, the “Products”). Under the terms of the Mastronardi Agreement, we are responsible for growing, producing, packing and delivering all products to Mastronardi, and Mastronardi is responsible for marketing, branding, and distributing our products to its customers.

Mastronardi has agreed to sell our products at market prices consistent with the best and highest prices available throughout the applicable growing season for similar USDA Grade No. 1 products. Mastronardi will set the market price for the products and will pay AppHarvest the gross sale price of the products it sells, less a marketing fee and its costs incurred in the sale and distribution of the products. If Mastronardi rejects, returns, or otherwise refuses products for failure to meet certain quality standards, we have the right, at our cost and expense, to sell or otherwise dispose of the products, subject to certain conditions. We have developed options for generating revenue from any such products, including by selling them to secondary distribution outlets.

Under the Mastronardi Agreement, if we expand the growing acreage or operations of any of our existing facilities in Kentucky or West Virginia, Mastronardi has a right of first refusal to be the exclusive distributor of any produce arising as a result of such expansion for the greater of ten years from the date of first commercial production of the additional products or the remainder of the term of the Mastronardi Agreement. Any additional sale transactions with Mastronardi would be at market price, less the marketing fee and costs incurred in the sale and distribution of the relevant products. If Mastronardi declines to exercise its right of first refusal, we have the right to contract with unaffiliated third parties that are industry recognized bona fide marketers for distribution of such produce. We have agreed not to compete with Mastronardi outside of Kentucky and West Virginia, including by growing fresh produce in a new facility outside of Kentucky and West Virginia. The non-compete provision runs for ten years from the date of the first commercial harvest from AppHarvest Morehead, which occurred in January 2021, and also runs for ten years measured from the date of a first commercial harvest from any facility deemed to be a New Grower Facility by Mastronardi under the terms of the Mastronardi Agreement. In the event we or our affiliates operate a new facility in Kentucky or West Virginia, Mastronardi has the right to deem such “New Grower Facility” to be under an agreement with Mastronardi on the same material terms and conditions of the Mastronardi Agreement for a period of ten years. In December 2020, Mastronardi elected to deem our new facilities in Richmond and Berea as New Grower Facilities. We have also agreed not to solicit any employee of Mastronardi or its affiliates without Mastronardi’s written consent during the term of each applicable Mastronardi purchase and marketing agreement, and for a period thereafter.

The initial term of the Mastronardi Agreement is ten years, beginning on the date of the commercial harvest of our first crop, which was in January 2021. After the initial term, the Mastronardi Agreement renews automatically for additional one-year terms unless terminated by either party by written notice not later than 240 calendar days prior to the end of the applicable term. Either AppHarvest or Mastronardi can terminate the Mastronardi Agreement if the other party is subject to certain bankruptcy or insolvency proceedings or if the other party is in breach of the Mastronardi Agreement and the breach remains uncured for a specified period. Our obligation to deliver timely products to Mastronardi and to maintain exclusivity is not subject to cure.

On December 23, 2022, our wholly-owned subsidiary AppHarvest Berea Farm, LLC entered into a purchase and sale agreement with Mastronardi Berea LLC, (the “Buyer”), pursuant to which we agreed to sell approximately 40 acres of land located in Berea, Kentucky and AppHarvest Berea located thereon to the Buyer and we agreed to leaseback the property from Buyer (the “Sale-Leaseback Transaction”). The Buyer is a joint venture between Mastronardi and COFRA Holding. The Sale-Leaseback Transaction closed on December 27, 2022.

Concurrently with the closing of the Sale-Leaseback Transaction, we as tenant, and Buyer, as landlord, entered into a lease agreement (the “Berea Lease”) for an initial term of 10 years, with four renewal options of five years each, subject to the conditions set forth in the Berea Lease. The total annual rent under the Berea Lease is initially \$9.5 million per year, subject to

the prepaid rent paid by us at the closing of the Sale-Leaseback Transaction, and shall increase annually starting after the second lease year in accordance with the terms of the Berea Lease. Subject to the terms of the Berea Lease, beginning in 2023, we (as tenant under the Lease) shall be entitled to a rent credit equal to 25% of the marketing fees received by Mastronardi prior to the third anniversary of the commencement of the Berea Lease, with respect to products grown or produced at AppHarvest Morehead, AppHarvest Richmond and AppHarvest Somerset pursuant to the Mastronardi Agreement, as reduced by costs incurred by Mastronardi in connection with the sale and distribution of such products. We are responsible for the payment of all operating expenses, taxes, insurance and maintenance and repair of AppHarvest Berea during the term of the Berea Lease.

*Experienced and Passionate Team*

We are a mission-driven company led by highly committed and passionate professionals. Our founder and Chief Executive Officer, Jonathan Webb, is a Kentucky native with more than a decade of experience focused on sustainable infrastructure. Prior to founding AppHarvest in 2018, Mr. Webb led a public-private partnership on behalf of the Department of Defense, developing what was then the largest solar project in the southeastern United States. At AppHarvest, Mr. Webb has used his experience in renewable infrastructure to create a CEA platform in North America.

In January 2023, we announced the appointment of Anthony Martin, who has served as a member of our board of directors since October 2022, to serve as Chief Operating Officer. Mr. Martin has served as a member of the board of directors of the Fruit and Vegetable Dispute Resolution Corporation, a non-profit, member-based dispute resolution organization in the fresh produce industry, since May 2018. Previously Mr. Martin served as Chief Financial Officer of Windset Farms, a controlled environment agriculture producer, from December 2007 to October 2019.

We have attracted a highly experienced “grow team” to operate our high-tech indoor farms, and we have a construction management and development team with extensive experience in complex, large scale, multi-site, and global projects.

*ESG Company*

AppHarvest has an authentic and overarching commitment to sustainability, ESG, and social impact. Our Certified B Corporation certification recognizes our commitment to our stakeholders, including our employees, community, environment, customers, and stockholders. We believe we present a unique and a compelling opportunity for the growing number of investors who share our dedication to sustainability and a broader set of ESG principles.

We have also been certified by an independent non-profit organization as meeting rigorous standards of social and environmental performance, accountability, and transparency. Some examples of our achievements to date include:

- building our farms in underserved areas in Central Appalachia, such as Rowan County, where despite reduced wage expectations in this area, we have provided career opportunities with entry-level wages that are higher than average hourly wages for comparable jobs in the state;
- providing support for implementing AgTech educational programs with AgTech farm classrooms at 12 Appalachian high schools.

In addition we believe we also have an opportunity to impact how the regional power grid evolves. As we grow and need more power, we are committed to exploring how to catalyze new renewable energy sources in our market. We believe that when corporations insist upon completely renewable energy, market forces will drive suppliers to provide electrical energy with a reduced carbon footprint.

We aim not only to transform the Appalachia region in terms of social and economic impact, but also to build a platform to transform agriculture and bring new solutions for growing threats to the agriculture sector, including water shortages, land shortages, soil depletion, surface water pollution, pesticide use, food waste, and systemic risks from climate change. Our growing process aims to reduce environmental impacts and manage the environmental risks increasingly threatening our food systems. Specifically, our CEA facilities are designed to manage these risks and reduce environmental impacts by:

- using up to 90% less water per pound harvested than conventional agriculture in a closed system that prevents pollution from excess fertilizers and chemical pesticides from entering the aquifer, local streams, and waterways;
- making efficient use of land without depleting soil and its nutrients;

- using integrated pest management that requires skilled workers, crop maintenance activities, beneficial insects (predators) and hygiene protocols in accordance with our Chemical Pesticide Policy.
- using a horizontal greenhouse structure to maximize passive solar energy.
- implementing new lighting systems that use up to 40% less energy than traditional lighting systems through integration of LEDs.
- exploring opportunities to link operations to renewable energy initiatives.

## Our Strategy

We are a sustainable food company with global ambitions and a desire to become a trusted brand with broad brand awareness. We aim to leverage our ESG- and mission-driven ethos to grow and produce fruits, vegetables and value-added products that customers will actively seek out at their local grocery stores.

The key components to our strategy include:

- **Sustainable CEA facilities:** By insulating our food production system from seasonal and weather constraints, our CEA facilities are expected to produce up to 30 times more fruits and vegetables compared to traditional open-field agriculture, while also using up to 90% less water per pound harvested.
- **Strategic location near major population centers:** Given our location within one day's drive of nearly 70% of the U.S. population, we are positioned to use significantly less fuel to transport our products, compared to fruits and vegetables shipped from the southwestern United States, especially California, and Mexico.
- **AgTech ecosystem:** We led the signing of a non-binding collaboration agreement by a 17-organization coalition of universities, governments, and leading AgTech companies in the U.S. and abroad, which increased to a 26-organization coalition in February 2022. The collaboration agreement is intended to identify opportunities to leverage each other's expertise and find opportunities to work together to support large-scale development in Central Appalachia. AppHarvest believes this coalition will partially reduce our research & development costs and enable us to source and identify new advancements, technologies, and opportunities more quickly than we necessarily would on our own.
- **Technology:** Sourcing, developing, and implementing applied technology will be a key differentiator for AppHarvest over the long term. We are working with leading technology companies in the agriculture industry.
- **Strong and available local labor force:** We are committed to paying a living wage which is generally higher than the average wage for comparable work in Kentucky. As a result, we believe we can recruit and develop a competitive workforce.

## Our CEA Facilities

We operate four controlled environment agriculture facilities which include the following suite of cutting-edge technology:

- **Hybrid lighting system:** Our lighting system features a combination of natural sunlight, Signify GreenPower LEDs, and high-pressure sodium lighting.
- **Water independence:** Our CEA facilities are designed to be water-independent using rainwater collected in on-site retention ponds. This closed-loop system enables us to use up to 90% less water per pound harvested compared to open field agriculture.
- **Advanced closed-loop irrigation system:** Our closed-loop irrigation system incorporates nano-bubble technology to combat harmful algae blooms and cyanotoxins, as well as sand filters and high-density ultraviolet lighting (Ultraviolet lighting is designed to kill bacteria).
- **Climate and CEA operations software:** Our climate and high-tech indoor farm operations software allows our growers to monitor carefully microclimates inside our CEA facility and to calculate the precise levels of light, water,



and carbon dioxide each plant needs to thrive. This operations software also allows for precise dosing of nutrients as well as temperature and humidity control.

- **Integrated pest management:** “IPM” is an environmentally sensitive approach to pest management, which relies in part on the use of beneficial insects to control parasites and to combat damaging pests. In addition, human scouts work to identify any pest or plant health issues early to help mitigate potential harm.

#### *AppHarvest Morehead*

AppHarvest Morehead, which partially opened in October 2020, is among the world’s largest indoor farms at 60 acres (approximately 2.8 million square feet) and was our first operating CEA facility. The Morehead farm currently grows beefsteak tomatoes, tomatoes on the vine, and snacking tomatoes.

#### *AppHarvest Berea*

AppHarvest Berea, which became operational in October 2022, is 15-acres (approximately 654 thousand square feet) and features a cutting-edge touchless growing system that is automated from pre-seeding to packaging including autonomous harvesting and onsite washing to help improve both food safety and efficiency for the “Queen of Greens®” washed-and-ready-to-eat salad brand. Pursuant to the terms of the Sale-Leaseback Transaction, as of December 2022, we lease AppHarvest Berea from Mastronardi Berea LLC, a joint venture between Mastronardi Produce Limited, and COFRA Holding.

#### *AppHarvest Somerset*

AppHarvest Somerset began operating in November 2022, and at 30-acres, is expected initially to primarily grow strawberries, alternating seasonally with cucumbers. AppHarvest Somerset features a blast chiller that rapidly lowers the temperature of harvested strawberries prior to packaging to extend shelf life.

#### *AppHarvest Richmond*

AppHarvest Richmond began operating in December 2022 and at 60-acres is similar in size to AppHarvest Morehead. Half of the farm was planted in December 2022, with the second half expected to be planted in 2023. The first harvest from Richmond began in January 2023.

### **Competition**

With vine crops imports rapidly increasing, our competition includes large-scale operations in Mexico, Canada, and, to a lesser extent, the southwestern United States. With studies having found that a U.S. meal travels 1,500 miles on average to the consumer’s plate, we believe we are unique in becoming a large-scale CEA operator growing produce closer to the end consumer.

#### *Overall Competition*

The U.S. CEA industry has grown steadily over the past decade as producers use its advantages to grow more using fewer resources, seeking to solve issues caused by limited land, energy, water and labor. The USDA attributes growth to CEA operators’ ability to realize greater market access both in the off-season and in northern retail produce markets, better product consistency and improved yields.

By 2017, the percentage of CEA-grown U.S. shipments of fresh tomatoes had grown to 5% of all shipments. Only four states (California, Minnesota, Nebraska and New York) produce more than 10 million pounds of CEA-grown tomatoes annually, according to the most recent USDA data. Kentucky’s production was estimated by the USDA to be between 500,000 pounds to 1 million pounds annually.

#### *High-Tech “Vertical Farming” Agricultural Startups*

While most CEA production comes from traditional greenhouse companies, a number of high-tech vertical farms also exist in the market. These startups are often focused on development of small-scale farms reliant on 100% artificial lighting and municipal water either in or near major cities. These companies generally have smaller product offerings and tend to focus on salad greens products due to limitations of their technologies and economics. By contrast, we believe our facilities will have the

ability to grow a variety of crops including salad greens, tomatoes, cucumbers, strawberries, peppers, eggplants, and more. We are also differentiated in prioritizing use of two of the earth’s natural inputs: sunlight and rainwater. In fact, our CEA facilities are some of the only facilities of their type and size in North America to rely primarily on rainwater for production. Although we supplement the light our plants receive with a hybrid LED light array, leveraging natural sunlight supports produce quality and reduces required energy per plant compared to indoor warehouse farms.

**Government Regulation**

We are subject to laws and regulations administered by various federal, state and local government agencies in the United States, such as FDA, the FTC, the EPA, the OSHA, and the USDA. These laws and regulations apply to the processing, packaging, distribution, sale, marketing, labeling, quality, safety, and transportation of our products, as well as our occupational safety and health practices.

Under various federal statutes and implementing regulations, these agencies, among other things, prescribe the requirements and establish the standards for quality and safety and regulate our products and the manufacturing, labeling, marketing, promotion, and advertising thereof.

Among other things, the facilities in which our products are grown, packed or processed may be required to register with the FDA (depending on specific growing, packing, and processing operations), comply with regulatory schemes including Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food and FDA and USDA labeling and marketing requirements, as amended by the Food Safety Modernization Act of 2011 (“FSMA”), the Organic Food Production Act, among other laws and regulations implemented by the FDA, the USDA, and other regulators. FSMA regulations are still being developed and implemented, including product traceability requirements recently proposed, which would be directly applicable to our products. The FDA and the USDA have the authority to inspect these facilities depending on the type of product and operations involved. The FDA and the USDA also require that certain nutrition and product information appear on its product labels and more generally, that its labels and labeling be truthful and non-misleading. Similarly, the FTC requires that our marketing and advertising be truthful, non-misleading, not deceptive to consumers, and not otherwise an unfair means of competition. We are also restricted by FDA and USDA from making certain types of claims about our products, including nutrient content claims, health claims, organic claims, and claims regarding the effects of our products on any structure or function of the body, whether express or implied, unless we satisfy certain regulatory requirements.

We are also subject to parallel state and local food safety regulation, including registration and licensing requirements for our facilities, enforcement of standards for our products and facilities by state and local health agencies, and regulation of our trade practices in connection with selling our products.

We are also subject to labor and employment laws, laws governing advertising, privacy laws, safety regulations and other laws, including consumer protection regulations that regulate retailers or govern the promotion and sale of merchandise. Our operations, and those of our distributors and suppliers, are subject to various laws and regulations relating to environmental protection and worker health and safety matters.

**Certified B Corporation**

While not required by Delaware law or the terms of our amended and restated certificate of incorporation, we have elected to have our social and environmental performance, accountability and transparency assessed against the proprietary criteria established by an independent non-profit organization. As a result of this assessment, in December 2019, we were designated as a Certified B Corporation.

To be designated as a Certified B Corporation, companies are required to take a comprehensive and objective assessment of their positive impact on society and the environment. The assessment evaluates how a company’s operations and business model impact its workers, customers, suppliers, community and the environment using a 200-point scale. While the assessment varies depending on a company’s size (number of employees), sector and location, representative indicators in the assessment include payment above a living wage, employee benefits, stakeholder engagement, supporting underserved suppliers and environmental benefits from a company’s products or services. After completing the assessment, the independent organization that certified us as a Certified B Corporation will verify our score to determine if we meet the 80- point minimum bar for certification. The review process includes a phone review, a random selection of indicators for verifying documentation and a random selection of company locations for onsite reviews, including employee interviews and facility tours. Once certified, every Certified B Corporation must make its assessment score transparent on the independent organization’s website.

Acceptance as a Certified B Corporation and continued certification is at the sole discretion of the independent organization that certified us as a Certified B Corporation. To maintain our certification, we are required to update our assessment and verify our updated score with the independent organization every three years. We received our recertification as a Certified B Corporation during the year ended December 31, 2022, based on KPIs from the year ended December 31, 2021.

#### **Public Benefit Corporation**

In connection with our Certified B Corporation status and as a demonstration of our long-term commitment to our mission, we have been a public benefit corporation under Delaware law since inception.

Under Delaware law, a public benefit corporation is required to identify in its certificate of incorporation the public benefit or benefits it will promote and its directors have a duty to manage the affairs of the corporation in a manner that balances the pecuniary interests of the corporation's stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or public benefits identified in the public benefit corporation's certificate of incorporation. To date, there is limited case law involving public benefit corporations and the application of this and other distinct public benefit corporation requirements, which may create some uncertainty until additional case law develops.

Security holders should note, however, that Sections 361 and 365 of the Delaware General Corporation Law ("DGCL") indicate that Delaware's longstanding "business judgment rule" should apply to the balancing determinations required of public benefit corporation directors so long as directors remain informed and free of conflicts of interests. Similarly, a director's ownership of or other interest in stock of the public benefit corporation will not, for purposes of Subsection XV, create conflict of interest on the part of the director with respect to the director's decision implicating the balancing requirement in the public benefit corporation, except to the extent that such ownership or interest would create a conflict of interest if the corporation were not a public benefit corporation. We expect that, in large part, traditional Delaware corporation law principles and the application of those principles in case law — including those related to self-dealing, conflicts of interest, and the application of the business judgment rule — will continue to apply with respect to public benefit corporations.

As provided in our amended and restated certificate of incorporation, the public benefits that we promote, and pursuant to which we manage, are empowering individuals in Appalachia, driving positive environmental change in the agriculture industry, and improving the lives of our employees and the community at large. Public benefit corporations organized in Delaware are required to assess their benefit performance internally and to disclose to stockholders at least biennially a report detailing their success in meeting their benefit objectives. We will also consider the objectives and standards by which we will measure and report our public benefit performance in our public benefit corporation reports, including potential key performance metrics, and we have not made a final decision on such matters. We expect that we will conduct our own assessment of our benefit performance against the standards and metrics we develop, rather than having such performance conducted by a third party. We have completed a materiality assessment with an independent third party, designated our ESG metrics, and reported our first set of data in our Sustainability Report, which we released in the first half of 2022.

#### **Trademarks and Other Intellectual Property**

Our intellectual property and proprietary rights are valuable assets and we rely on a combination of federal, state, common law and international rights in the jurisdictions to safeguard our intellectual property. Our trademarks and other proprietary rights are valuable assets that reinforce the distinctiveness of our brand to our consumers. We believe our patents, trademarks, copyrights and domain names, and the protection of the underlying intellectual property, are important to our success. Accordingly, we own and have registered with the U.S. Patent and Trademark Office trademarks that are important to our business, including our principal trademark, APPHARVEST, and have several additional trademark applications pending, as well.

Further, in addition to our U.S. intellectual property portfolio, we are also seeking intellectual property protection in certain other jurisdictions where available and where we deem appropriate.. We aggressively protect our intellectual property rights by relying on trademark and copyright, as well as the use of nondisclosure, confidentiality, and intellectual property assignment agreements.

## Employees and Human Capital Resources

As of December 31, 2022, we had approximately 500 full-time employees and approximately 414 independent contractors, most of whom are located in the United States. At December 31, 2022, our full-time workforce consisted of 36% female employees, and female employees represented approximately 13% of our management. Approximately 10% of our employees identified as a racial minority and racial minority employees represented 12% of our management. None of our employees are represented by a labor union. We have never experienced a labor-related work stoppage.

We have made a particular commitment to second-chance/fair-chance employment. We work with community partners who help prepare those potential candidates for employment with us. To ensure a fair shot, our interviewers are never aware interviewees are from second-chance or fair-chance programs. From top to bottom, we aim to hire a team of people as diverse as the communities in which we operate and then empower them as individuals.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees. The principal purposes of our equity incentive plans are to attract, retain and motivate personnel through the granting of equity-based compensation awards, to increase stockholder value and the success of the company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

We encourage employees to engage with our mission in many ways. One avenue is through “Mission Day” paid leave hours. These hours are intended to be used toward activities related to the Company’s mission, including but not limited to community volunteering and involvement. Examples include volunteering at a food bank or an animal shelter, participating in community beautification projects, or tutoring kids. Each year, employees receive up to 16 hours of paid leave designated as Mission Days depending upon their date of hire.

## Website Access to Reports

Our website is [www.appharvest.com](http://www.appharvest.com). We are subject to the informational requirements of the Exchange Act and file or furnish reports, including our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act, proxy statements and other information with the SEC. We make copies of these reports and other information available free of charge through our website (under the heading “SEC Filings”) as soon as reasonably practicable after we file or furnish them with the SEC. The SEC maintains a website that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov). The information contained on the websites referenced in this Annual Report is not incorporated by reference into this filing, and the website addresses are provided only as inactive textual references.

## Item 1A. Risk Factors

*Investing in our securities involves a high degree of risk. Before you make a decision to buy our securities, in addition to the risks and uncertainties discussed above under “Special Note Regarding Forward Looking Statements,” you should carefully consider the risks and uncertainties described below together with all of the other information contained in this Annual Report. If any of the events or developments described below were to occur, our business, prospects, operating results and financial condition could suffer materially, the trading price of our securities could decline, and you could lose all or part of your investment. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business.*

## Risks Related to Our Business and Industry

***There is substantial doubt about our ability to continue as a going concern and we will require significant additional financing to achieve our goals, and a failure to obtain this necessary capital when needed on acceptable terms, or at all, may force us to delay, limit, reduce or terminate our operations and future growth.***

We have incurred losses from operations and generated negative cash flows from operating activities since inception. Our current operating plan, which includes our planting and harvesting activities, indicates that we will continue to incur losses from operations and generate negative cash flows from operating activities. In addition, debt service requirements and our plans to continue investing in the build-out and start-up of future CEA facilities, including AppHarvest Berea, Richmond tomato facility and Somerset facility, will have an adverse impact on liquidity. The impact of these events and conditions on our liquidity raise substantial doubt about our ability to continue as a going concern.

The high-tech CEA agriculture business is extremely capital-intensive and we expect to expend significant resources to complete the build-out of facilities under construction, including the development of related technology, continue harvesting existing crops and plant and harvest new crops in our existing and future CEA facilities. These expenditures are expected to include working capital, costs of acquiring and building out new facilities, costs associated with planting and harvesting, such as the purchase of seeds and growing supplies, and the cost of attracting, developing and retaining a skilled labor force, including local labor. In addition, other unanticipated costs may arise due to the unique nature of these CEA facilities and increased production in our single operating facility at full capacity. We currently import many of the supplies and materials for greenhouse production and operations from abroad, including the construction materials for our CEA facilities and seeds for plants. Accordingly, we are subject to risk of fluctuation in exchange rates, which could cause unexpected increases in our costs and harm our financial position. In addition, our ability to execute on our growth strategy and CEA technology require significant additional financing.

We will need to raise additional funds in order to operate our business, meet obligations as they become due and continue the ongoing construction, build-out and start-up of our CEA facilities. In December 2022, we entered into the Sale-Leaseback Transaction with Mastronardi Brea LLC, pursuant to which we sold 40 acres of land located in Berea, Kentucky and AppHarvest Berea situated thereon. On February 9, 2023, we entered into an underwriting agreement (the “Underwriting Agreement”) with Cowen and Company, LLC, as representative of the several underwriters named therein, relating to the issuance and sale (the “Public Offering”) of 40,000,000 shares of our common stock, par value \$0.0001 per share (the “Common Stock”), at a price to the public of \$1.00 per share. In addition, pursuant to the Underwriting Agreement, we granted the underwriters a 30-day option (the “Overallotment Option”) to purchase up to 6,000,000 additional shares of Common Stock. On February 14, 2023, the Public Offering closed, and we issued and sold 40,000,000 shares of Common Stock and on February 24, 2023, we issued an additional 6,000,000 shares under the Overallotment Option. The net proceeds from the Public Offering, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, were approximately \$43.1 million, including the \$6.0 million from the Overallotment Option.

We are currently exploring additional financing alternatives, including but not limited to additional sale-leaseback transactions related to our other CEA facilities, third-party equity or debt financing, or other sources, such as strategic relationships or other transactions with third parties, that may or may not include business combination transactions. However, financing may not be available to us in the necessary time frame, in amounts that we require, on terms that are acceptable to us, or at all. If we are unable to raise the necessary funds when needed, it may materially and adversely impact our ability to execute on our operating plans, the operation of our current CEA facilities and the construction, build-out and start-up of our CEA facilities could be delayed, scaled back, or abandoned. If we become unable to continue as a going concern, we may have to dispose of assets and might realize significantly less than the values at which they are carried on our consolidated financial statements. These actions may cause our stockholders to lose all or part of their investment in our Common Stock. In the absence of additional sources of financing, we expect that our existing cash and cash equivalents will only allow us to continue our planned operations into the fourth quarter of 2023.

***We have a history of losses, and expect to incur significant expenses and continuing losses for the foreseeable future. Our business could be adversely affected if we fail to effectively manage our future growth.***

We incurred net losses of \$176.6 million and \$166.2 million during the years ended December 31, 2022 and 2021, respectively. We believe we will continue to incur net losses for the foreseeable future as we continue to invest in world-class technology to increase production and commercial sales of our products. There is no guarantee when, if ever, we will become profitable. We expect to expend substantial resources as we:

- complete the build-out of facilities for which building has commenced and begin construction on additional facilities;
- continue harvesting existing crops and plant and harvest new crops in our existing and future facilities;
- fulfill our obligations under our marketing and distribution agreement with Mastronardi;
- identify and invest in future growth opportunities, including the purchase or lease of land and new or expanded facilities;
- invest in sales and marketing efforts to increase brand awareness, engage customers and drive sales of our products;
- invest in product innovation and development; and
- incur additional general administration expenses, including increased finance, legal and accounting expenses, associated with being a public company and growing operations.

These investments may not result in the growth of our business. Even if these investments do result in the growth of our business, if we do not effectively manage our growth, we may not be able to execute on our business plan and vision, respond

to competitive pressures, take advantage of market opportunities, satisfy customer requirements or maintain high-quality product offerings, any of which could adversely affect our business, financial condition and results of operations.

***We face risks inherent in the agriculture business, including the risks of diseases and pests.***

We are focused on building large-scale CEA facilities in Appalachia with the goal of providing quality domestic supply of fresh fruits and vegetables to nearly 70% of the U.S. population. We primarily grow three varieties of tomatoes at AppHarvest Morehead — beefsteak tomatoes, tomatoes on the vine and snacking tomatoes— and primarily grow salad greens at AppHarvest Berea and strawberries at AppHarvest Somerset and we expect to expand to other tomato varieties and other fruits and vegetables such as berries, peppers, and cucumbers in the future at other facilities. As such, we are subject to the risks inherent in an agricultural business, such as insects, plant and seed diseases and similar agricultural risks, which may include crop losses, for which we are not insured; production of non-saleable products; and rejection of products for quality or other reasons, all of which may materially affect our operational and financial performance. Although our produce is grown in climate-controlled greenhouses, there can be no assurance that natural elements will not have an effect on the production of these products. In particular, plant diseases, such as root rot or tomato brown rugose fruit virus (“ToBRFV”), or pest infestations, such as whiteflies, aphids, thrips, or mites, can destroy all or a significant portion of our produce and could eliminate or significantly reduce production until we are able to disinfect the greenhouse and grow replacement tomatoes or other vegetables and fruits. ToBRFV is a virus affecting tomatoes, peppers and possibly other plants. Seed and transplant production are the most critical areas to identify the virus as contamination creates the risk of spreading to hundreds, if not thousands, of plants. ToBRFV can be transmitted mechanically and spread between plants or on contaminated tools, clothes or hands and mitigation efforts could require a complete facility clean out, including multiple sanitations with disinfectants known to be effective on the ToBRFV. ToBRFV may lead to reduced crop quality, ending a crop cycle early or clearing out a portion of a CEA facility or its entirety. In addition, delivery of tomato crops across the U.S.-Mexico and U.S.-Canada borders encounters additional inspections due to ToBRFV and those crops may be denied entry.

Although we have taken, and continue to take, precautions to guard against crop diseases and pests, these efforts may not be sufficient. For example, in June 2021 and during the course of the fourth quarter of 2021, we experienced outbreaks of various pests and disease on certain of our plants and during the second quarter of 2022, we observed pest-damaged tomatoes on the vine and active pests. Also, during the fourth quarter of 2022 we observed pest-damaged strawberries and active pests. In response, we undertook and are undertaking several mitigation efforts, including the removal of plants, shortened growing periods of plants that were or may have been affected, and modifications to operational practices to eliminate or greatly reduce potential transmission vectors. These efforts adversely affected yields for the 2021-2022 growing season at our Morehead facility, and the 2022-2023 growing season at our Somerset facility, including shorter than expected growing seasons. In addition, diseases and pests can make their way into greenhouses from outside sources over which we have limited or no control. Diseases and pests can be inadvertently brought in by employees and/or independent contractors, from seed and propagation vendors and from the trucks that transport supplies to the greenhouse. Once a disease or pest is introduced, we will need to quickly identify the problem and take remedial action in order to preserve the growing season. Failure to identify and remediate any diseases or pests in a timely manner could cause the loss of all or a portion of our crop and result in substantial time and resources to resume operations. Crop losses as a result of these agricultural risks have and could continue to negatively and materially impact our business, prospects, financial condition, results of operations and cash flows.

***We have an evolving business model, which increases the complexity of our business and makes it difficult to evaluate our future business prospects.***

Our business model is continuing to evolve. We are a sustainable food company in Appalachia developing and operating some of the world’s largest high-tech indoor farms with robotics and artificial intelligence to build a reliable, climate-resilient food system. We may in the future also pursue additional CEA opportunities through partnerships with third parties, including opportunities outside of the U.S. From time to time, we may continue to modify aspects of our business model relating to our products and services. For example, while we were previously engaged in building an applied technology company, through our AppHarvest Technology, Inc. subsidiary, we recently temporarily paused development of CEA technology solutions with resumption of development contingent upon financing. We do not know whether these or any other modifications will be successful. The evolution of and modifications to our business model will continue to increase the complexity of our business and place significant strain on our management, personnel, operations, systems, technical performance and financial resources. Future additions to or modifications of our business model are likely to have similar effects. Further, any new products or services we offer that are not favorably received by the market could damage our reputation or our brand. The occurrence of any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

*We currently rely primarily on a single facility for the majority of our operations.*

Our first CEA facility is a 2.76 million square foot CEA facility in Morehead, Kentucky, which partially opened in October 2020 and became fully operational in March 2021. For the immediate future, we will rely primarily on the operations at AppHarvest Morehead while we continue to build up our operations at AppHarvest Berea, AppHarvest Somerset and AppHarvest Richmond. Adverse changes or developments affecting AppHarvest Morehead could impair our ability to produce our products and our business, prospects, financial condition and results of operations. Any shutdown or period of reduced production at AppHarvest Morehead, which may be caused by regulatory noncompliance or other issues, as well as other factors beyond our control, such as severe weather conditions, natural disaster, fire, power interruption, work stoppage, disease outbreaks or pandemics (such as COVID-19), equipment failure or delay in supply delivery, would significantly disrupt our ability to grow and deliver our produce in a timely manner, meet our contractual obligations and operate our business. Our farm equipment is costly to replace or repair, and our equipment supply chains may be disrupted in connection with pandemics, such as COVID-19, decades-high inflation, trade wars, labor shortages, or other factors. If any material amount of our machinery were damaged, we would be unable to predict when, if at all, we could replace or repair such machinery or find co-manufacturers with suitable alternative machinery, which could adversely affect our business, financial condition and operating results. Any insurance coverage we have may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all.

*Any damage to or problems with our CEA facilities, or delays in land acquisition or construction, could severely impact our operations and financial condition.*

Any damage to or problems with AppHarvest Morehead, Berea salad greens facility, Somerset facility, Richmond tomato facility, or any other CEA facilities we build or use in the future, including defective construction, repairs, or maintenance, could have an adverse impact on our operations and business. We face risks including, but not limited to:

- **Weather.** Our operations may be adversely affected by severe weather including tornadoes, lightning strikes, wind, snow, hail and rain. A tornado, lightning strike, severe hailstorm or unusually large amount of precipitation could cause damage or destruction to all or part of our CEA facility or affect the ability of our workforce to get to or remain at the facility. We may be required to expend significant resources and time in mitigating damage to our crops, and such damage may not be covered by insurance. The impact of a severe weather event or natural disaster could result in significant losses and seriously disrupt our entire business.
- **Water Supply.** We irrigate our plants with rainwater, collected in each site's retention pond, which eliminates the need for city water or well water. The pond is designed to be constantly aerated with nanobubble technology, which combats harmful algae blooms and cyanotoxins. Once rainwater is pumped into the facility from the pond, it enters a closed-loop irrigation system. The water is processed through a sand filter and then sanitized with UV light. This destroys viruses, bacteria and protozoa without the use of chemicals and with no unwanted disinfection by-products. Despite these precautions, there remains risk of contamination to our water supply from outside sources. Any contamination of the water in the retention pond could require significant resources to correct and could result in damage or interruption to our growing season.
- **Energy Costs or Interruption.** Although our plants primarily grow using natural sunlight, requiring less energy per plant than indoor warehouse farms, we do supplement the light our plants receive with LED lighting and high-pressure sodium lighting, which makes us vulnerable to rising energy costs. We have diesel generators to maintain energy supply in the case of an outage, but these generators would not be able to power the facility for any prolonged period of time and therefore outages could result in reduced crop yield. Rising or volatile energy costs may adversely impact our business, and our operations could be significantly affected by a prolonged power outage.

In addition, we have experienced and may continue to experience unexpected delays in building our CEA facilities for a variety of reasons, including limited financing, limited labor due to COVID-19 or other factors, unexpected construction problems, decades-high inflation or severe weather. If we experience significant unexpected delays in construction, we may have to limit or miss out on an entire growing season depending on the timing and extent of the delays, which could harm our business, financial condition and results of operations. For example, we experienced construction delays at AppHarvest Richmond which required us to facilitate other solutions to commence operations, thereby increasing our expense incurred.

*We depend on employing a skilled local labor force, and failure to attract, develop and retain qualified employees and/or independent contractors could negatively impact our business, results of operations and financial condition.*

Agricultural operations are labor intensive, and the growing season for greenhouses is year-round. In general, each year, we plan to begin planting vine crops in August or September, grow and harvest the produce into June, July, or August and then

remove plants and clean the greenhouse in July or August. Our salad greens are grown year round. These year-round operations depend on the skills and regular availability of labor in Appalachia.

We have rapidly hired in the region as we prepared to open our CEA facilities and benefited from a strong network of employer assistance programs ready to help companies interested in locating in the region to provide jobs for its ready workforce. However, there is competition for skilled agricultural labor in the region, particularly from the cannabis, food, and distribution industries, and even if we are able to identify, hire and develop our labor force, there is no guarantee that we will be able to retain these employees and/or independent contractors. For example, we continue to observe an overall tightening and increasingly competitive local labor market. To help forestall any potential labor shortfall, we have hired experienced agricultural workers while we strive to develop a local labor force. If we are unable to hire, develop and retain a labor force capable of performing at a high-level, or if mitigation measures we take to respond to a deficit of adequate local labor, such as overtime and contract laborers, have unintended negative effects, our business results of operations and financial condition could be adversely affected. Further, the operation of CEA facilities requires unique skills, which may not be widely available in the regions where we operate. Any additional shortages of labor, lack of training or skills, or lack of regular availability could restrict our ability to operate our greenhouses profitably, or at all.

In addition, efforts by labor unions to organize our employees and/or independent contractors could divert management attention away from regular day-to-day operations and increase our operating expenses. Labor unions may make attempts to organize our non-unionized employees and/or independent contractors. We are not aware of any activities relating to union organizations at any of our facilities, but we cannot predict which, if any, groups of employees and/or independent contractors may seek union representation in the future or the outcome of any collective bargaining. If we are unable to negotiate acceptable collective bargaining agreements, we may have to wait through “cooling off” periods, which are often followed by union-initiated work stoppages, including strikes. Depending on the type and duration of our any work stoppage, our operating expenses could increase significantly, which could negatively impact our financial condition, results of operations and cash flows.

***Our results of operations can be adversely affected by labor shortages, turnover and labor cost increases.***

Labor is a primary component of operating our business. A number of factors may adversely affect the labor force available to us or increase labor costs, including high employment levels, and other government regulations. We continue to observe an overall tightening and increasingly competitive local labor market. A sustained labor shortage or increased turnover rates within our employee base, including those caused by COVID-19, or measures taken to address COVID-19, or as a result of general macroeconomic factors, could lead to increased costs, such as increased overtime to meet demand and increased wage rates to attract and retain employees and/or independent contractors, and could negatively affect our ability to efficiently operate our greenhouse equipment and overall business.

If we are unable to hire, develop and retain employees and/or independent contractors capable of performing at a high-level, or if mitigation measures we may take to respond to a decrease in labor availability, such as overtime and contract laborers, have unintended negative effects, our business could be adversely affected. An overall labor shortage, lack of skilled labor, increased turnover or labor inflation, including those caused by COVID-19 or as a result of general macroeconomic factors, could have a material adverse impact on our operations, results of operations, liquidity or cash flows.

***Our management has limited experience in operating a public company.***

Our executive officers have limited experience in the management of a publicly traded company. Our management team may not successfully or effectively manage our regulatory oversight and reporting obligations as a public company under the federal securities laws of the U.S. Our management’s limited experience in dealing with the increasingly complex laws pertaining to public companies could be a significant disadvantage in that it is likely that an increasing amount of their time may be devoted to these activities, which will result in less time being devoted to the management and growth of our company. We may not have adequate personnel with the appropriate level of knowledge, experience, and training in the accounting policies, practices or internal controls over financial reporting required of public companies in the U.S. The development and implementation of the standards and controls necessary for us to achieve the level of accounting standards required of a public company in the U.S. may require costs greater than expected. It is possible that we will be required to expand our employee base and hire additional employees to support our operations as a public company, which will increase our operating costs in future periods.



***Mastronardi is currently our exclusive marketing and distribution partner. We are highly dependent on our relationship with Mastronardi, and impairment to or termination of this relationship could adversely affect our results of operations and financial condition.***

Mastronardi is our exclusive marketing and distribution partner for all products pursuant to the Mastronardi Agreement. Under the terms of the Mastronardi Agreement, we are responsible for growing, producing, packing and delivering all products to Mastronardi, and Mastronardi is responsible for marketing, branding and distributing the products to its customers. Mastronardi will sell the products at market prices that are consistent with the best and highest prices available during the duration of the applicable growing season for like kind USDA Grade No. 1 products. Mastronardi will set the market price for the products and will pay over to us the gross sale price of our products sold by Mastronardi, less a marketing fee and Mastronardi's costs incurred in the sale and distribution of the products, which can fluctuate.

Mastronardi is only obligated to purchase our products that are at or above USDA Grade No. 1 standards and export quality standards within North America and of a quality required by Mastronardi's customers, in Mastronardi's sole determination. The Mastronardi Agreement provides for an inspection period during which Mastronardi will inspect our products to determine whether it meets the required quality standards, and Mastronardi may reject and return any of our products that do not meet these standards. Any significant or unexpected rejection of our products could negatively impact our results of operations, and we may be unable to sell the rejected products to other third parties. Further, because Mastronardi acts as an intermediary between us and the retail grocers or food service providers, we do not have short-term or long-term commitments or minimum purchase volumes with them that ensure future sales of our products.

If we expand our growing acreage or operations in Kentucky or West Virginia, Mastronardi has a right of first refusal to be the exclusive distributor of any produce arising as a result of such expansion for the greater of ten years from the date of first commercial production of the additional products or the remainder of the term of the Mastronardi Agreement. In the event we or our affiliates engage in the business of growing fresh produce in a greenhouse in Kentucky and West Virginia, Mastronardi has the right to deem such New Grower Facility to be under an agreement with Mastronardi on the same material terms and conditions of the Mastronardi Agreement for a period of ten years. In December 2020, Mastronardi elected to deem our Richmond tomato facility and Berea salad greens facility to be New Grower Facilities.

Due to the exclusive nature of this long-term distribution relationship, we could also be adversely affected if Mastronardi experiences impairment to its brand and reputation or to its financial condition. Mastronardi and we are each entitled to terminate the Mastronardi Agreement in the case of the other party's uncured breach of the contract or bankruptcy or insolvency. If the Mastronardi Agreement is terminated, we may experience difficulty or delay in finding a suitable replacement distributor in a timely manner or at all, and our business, financial condition and results of operations could be harmed.

***Our business could be adversely affected by economic downturns, inflation, increases in interest rates, natural disasters, public health crises such as the COVID-19 pandemic, political crises, geopolitical events, such as the crisis in Ukraine, or other macroeconomic conditions, which have in the past and may in the future negatively impact our business and financial performance.***

The global economy, including credit and financial markets, has experienced extreme volatility and disruptions, including, among other things, severely diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, supply chain shortages and disruptions, increases in inflation rates, higher interest rates and uncertainty about economic stability. For example, the COVID-19 pandemic resulted in supply chain disruptions related to the construction of our Berea salad greens facility and Richmond tomato facility, and caused delays in the completion of AppHarvest Berea, and a phased opening at AppHarvest Richmond. Further, the COVID-19 pandemic, resulted in widespread unemployment, economic slowdown and extreme volatility in the capital markets. The Federal Reserve has raised interest rates multiple times in response to concerns about inflation and it may raise them again. Higher interest rates, coupled with reduced government spending and volatility in financial markets may increase economic uncertainty and affect consumer spending. Similarly, the ongoing military conflict between Russia and Ukraine has created extreme volatility in the global capital markets and is expected to have further global economic consequences, including disruptions of the global supply chain and energy markets. Any such volatility and disruptions may adversely affect our business or the third parties on whom we rely. If the equity and credit markets deteriorate, or do not improve, including as a result of political unrest or war, it may make any necessary debt or equity financing more difficult to obtain in a timely manner or on favorable terms, more costly or more dilutive. Increased inflation rates can adversely affect us by increasing our costs, including labor and employee benefit costs. In addition, higher inflation and macro turmoil and uncertainty could also adversely affect our customers, which could reduce demand for our products.

***Further downgrades of the U.S. credit rating, automatic spending cuts, or a government shutdown could negatively impact our liquidity, financial condition and earnings.***

U.S. debt ceiling and budget deficit concerns have increased the possibility of credit-rating downgrades and economic slowdowns, or a recession in the United States. Although U.S. lawmakers have previously passed legislation to raise the federal debt ceiling on multiple occasions, there is a history of ratings agencies lowering or threatening to lower the long-term sovereign credit rating on the United States given such uncertainty. The impact of this or any further downgrades to the U.S. government's sovereign credit rating or its perceived creditworthiness could adversely affect the U.S. and global financial markets and economic conditions. Moreover, these developments could cause interest rates and borrowing costs to rise, which may negatively impact our ability to access the debt markets on favorable terms. In addition, disagreement over the federal budget has caused the U.S. federal government to shut down for periods of time. Continued adverse political and economic conditions could have a material adverse effect on our business, financial condition and results of operations.

***We could be adversely affected by a change in consumer preferences, perception and spending habits in the food industry, and failure to develop and expand our product offerings or gain market acceptance of our products could have a negative effect on our business.***

The market in which we operate is subject to changes in consumer preference, perception and spending habits. Our performance will depend significantly on factors that may affect the level and pattern of consumer spending in the U.S. food industry market in which we operate. Such factors include consumer preference, consumer income, consumer confidence in and perception of the safety and quality of our products and shifts in the perceived value for our products relative to alternatives.

- **Consumer Preferences.** We currently produce primarily beefsteak tomatoes, tomatoes on the vine, and snacking tomatoes. Although tomatoes are the second most popular fresh market vegetable per capita in the U.S., with per capita consumption increasing significantly in the past 40 years, there is no guarantee that tomatoes will continue to garner this popularity, that consumers will prefer the varieties of tomatoes grown by us, or that we will be successful in capturing a sufficient market share. If we are able to expand our product offerings to include other vegetables and fruits, such as cucumbers, peppers, and berries, and expand our production of salad greens and strawberries, we will similarly be impacted by consumer preferences for such vegetables and fruits.
- **Safety and Quality Concerns.** Media coverage regarding the safety or quality of, or diet or health issues relating to, our products or the processes involved in our manufacturing, may damage consumer confidence in our products. For example, manufacturers and regulatory authorities have issued recalls of tomatoes in the past due to issues such as salmonella contamination. Any widespread safety or quality issues involving tomatoes or other fresh fruits or vegetables — even if not involving us — could adversely affect consumer confidence in and demand for such tomatoes or other fresh produce.
- **Consumer Income.** A general decline in the consumption of our products could occur at any time as a result of change in consumer spending habits, including an unwillingness to pay a premium or an inability to purchase our products due to financial hardship, decades-high inflation, or increased price sensitivity, which may be exacerbated by the effects of the COVID-19 pandemic, global macroeconomic conditions or other events.

The success of our products will depend on a number of factors including our ability to accurately anticipate changes in market demand and consumer preferences, our ability to differentiate the quality of our products from those of our competitors, and the effectiveness of marketing and advertising campaigns for our products. We may not be successful in identifying trends in consumer preferences and growing or developing products that respond to such trends in a timely manner. We or our partners also may not be able to effectively promote our products by marketing and advertising campaigns and gain market acceptance. If our products fail to gain market acceptance, are restricted by regulatory requirements, have quality problems, or are affected by consumer perceptions of safety and quality even arising from our competitors' products, we may not be able to fully recover costs and expenses incurred in our operations, and our business, financial condition or results of operations could be materially and adversely affected.

***We may be unable to successfully execute on our growth strategy.***

Our growth strategy includes the development of new CEA facilities and the expansion of our product line.

- **New Controlled Agriculture Facilities.** AppHarvest Berea became operational in October 2022, and the AppHarvest Somerset facility became operational in November 2022. AppHarvest Berea salad greens facility harvests salad greens, and AppHarvest Somerset primarily grows strawberries but is also expected to seasonally grow cucumbers. AppHarvest Richmond, which is in final stages of completion, was half planted in December 2022, and began commercial shipments in January 2023. For risks related to delays in land acquisition or construction of our CEA facilities, please see the risk factor “We build CEA facilities, which may be subject to unexpected costs and delays due to reliance on third parties for construction, material delivery, supply-chains and fluctuating material prices.”

Identifying, planning, developing, constructing and finishing new CEA facilities in Central Appalachia has required and will continue to require substantial time, capital, and resources. CEA facilities, like ours, require a large amount of flat land with a maximum cut and fill area, the ability to obtain the appropriate permits and approvals, sufficient utilities and road access and adequate availability of skilled labor, among other things. We may be unsuccessful in identifying available sites in Central Appalachia that are conducive to our planned projects, and even if identified, we may ultimately be unable to lease, purchase, build or operate on the land for any number of reasons. Because of the capital-intensive nature of these projects, we will need to prioritize which sites we plan to develop, and there can be no guarantee that we will select or prioritize sites that will ultimately prove to be appropriate for construction. Further, we may spend time and resources developing sites at the expense of other appropriate sites, which may ultimately have been a better selection or more profitable location. On the other hand, if we overestimate market demand and expands into new locations too quickly, we may have significantly underutilized assets and may experience reduced profitability. If we do not accurately align capacity at our greenhouses with demand, our business, financial condition and results of operations could be adversely affected.

- **New Product Lines.** We aspire to develop a leading fruit and vegetable brand widely known for its sustainable practices. We plan to leverage our strong mission to build an iconic brand recognized and revered by a loyal customer base that values a sustainable homegrown food supplier. We successfully launched and sold out our first value-added product, salsa, in 2021, and we expect to leverage this platform as we continue to refine and grow our value-added products strategy in the future, depending on the availability of financing on acceptable terms. We have paused the sale and development of our salsa and other products in 2022. The three farms that are operational in 2022 should provide us a significantly larger volume of produce from which to derive value-added and direct-to-consumer products when expected sales and development resume. Accordingly, we plan to spend time and resources developing capacity for larger-scale production that we believe will enable us to secure financing and permit us to relaunch our value-added products at a larger scale in the future.

We may not be able to implement our growth strategy successfully. Our sales and operating results will be adversely affected if we fail to implement our growth strategy or if we invest resources in a growth strategy that ultimately proves unsuccessful.

***Failure to adequately manage our planned growth strategy may harm our business or increase our risk of failure.***

For the foreseeable future, we intend to pursue a growth strategy for the expansion of our operations through increased product development and marketing. Our ability to rapidly expand our operations will depend upon many factors, including our ability to work in a regulated environment, establish and maintain strategic relationships with suppliers, and obtain adequate and necessary capital resources on acceptable terms. Any restrictions on our ability to expand may have a materially adverse effect on our business, results of operations, and financial condition, including with respect to our technology initiatives. Accordingly, we may be unable to achieve our targets for sales growth, and our operations may not be successful or achieve anticipated operating results.

***We have agreed not to compete with Mastronardi outside of Kentucky and West Virginia, which may limit our business opportunities.***

We have agreed not to compete with Mastronardi outside of Kentucky and West Virginia, which includes the businesses of growing, harvesting, packaging, distributing or selling fresh produce, subject to certain exceptions for fresh produce that is grown in Kentucky or West Virginia. Although we are currently focused on building greenhouses in Central Appalachia, if we desired in the future to build or operate facilities outside of Kentucky or West Virginia that were competitive with Mastronardi, the Mastronardi Agreement requires us to obtain Mastronardi’s consent before doing so. If Mastronardi withholds such consent

for any reason, this could have the effect of restricting certain business opportunities outside of Kentucky and West Virginia during the term of the non-compete provision. The non-compete provision runs for ten years from the date of a first commercial harvest from AppHarvest Morehead and also runs for ten years measured from the date of a first commercial harvest from a facility deemed to be a New Grower Facility by Mastronardi under the terms of the Mastronardi Agreement. In December 2020, Mastronardi elected to deem our new facilities in Richmond and Berea as New Grower Facilities.

***We build CEA facilities, which may be subject to unexpected costs and delays due to reliance on third parties for construction, material delivery, supply-chains and fluctuating material prices.***

We build CEA facilities that are dependent on a number of key inputs and their related costs including materials such as steel and glass and other supplies, as well as electricity and other local utilities. Any significant interruption or negative change in the availability or economics of the supply chain for key inputs could materially impact our business, financial condition and operating results. We have entered into a direct contractual relationship with Dalsem for the construction of our Richmond tomato facility and Berea salad greens facility. We have also entered into a direct contractual relationship with Havecon for the construction of our Somerset facility. If Dalsem or Havecon encounter unexpected costs, delays or other problems in building these CEA facilities, our financial position and ability to execute on our growth strategy could be negatively affected. In addition, from time to time, our construction partners may place mechanics' liens on our properties under construction, the effect of which is to secure a contractor's right to payment of past due amounts by using our real property as collateral for such amounts. As of the date of this Annual Report, Dalsem has filed a mechanics lien on the Richmond tomato facility in the amount of approximately \$14 million, of which we are contesting a portion. Any inability to secure required supplies and services or to do so on appropriate terms could have a materially adverse impact on our business, financial condition and operating results.

The price of production, sale and distribution of these goods may fluctuate widely based on the impact of numerous factors beyond our control including international, economic and political trends, transportation disruptions, inflation, global or regional consumptive patterns, speculative activities and increased production due to new production and distribution developments and improved production and distribution methods. In addition, we import substantially all of the construction materials used to build the CEA facilities. The use of third-party import services can cause logistical problems, unexpected costs and delays in facility construction, which we cannot directly control. Any prolonged disruption of third-party delivery and shipping services could negatively affect our facility building schedule. Rising costs associated with third-party transportation services used to ship materials may also adversely impact our building schedule and crop season planning, and more generally our business, financial condition, results of operations and prospects.

The COVID-19 pandemic continues to impact worldwide economic activity, and the governments of some countries, states, cities and other geographic regions have taken preventative or protective actions in response, such as closures or other restrictions on the conduct of business operations of manufacturers, suppliers and vendors, which, combined with geopolitical tensions, are creating disruption in global supply chains. The increased global demand on shipping and transport services has and may cause us to experience delays in the future, which could impact our ability to obtain materials or build our greenhouses in a timely manner. For example, the COVID-19 pandemic resulted in supply chain disruptions related to the construction of our Berea salad greens facility and Richmond tomato facility, and we are currently assessing any long-term effects on our ability to build our greenhouses in a timely manner. These factors could otherwise disrupt our operations and could negatively impact our business, financial condition and results of operations.

If we experience significant unexpected delays in construction, we may have to limit or miss out on an entire growing season depending on the timing and extent of the delays, which could harm our business, financial condition and results of operations.

***We may not be able to compete successfully in the highly competitive natural food market.***

We operate in the highly competitive natural foods environment. With the importing of vine crops rapidly increasing, our competition includes large-scale operations in Mexico and to a lesser extent the southwestern U.S. In this market, competition is based on, among other things, product quality and taste, brand recognition and loyalty, product variety, product packaging and package design, shelf space, reputation, price, advertising, promotion and nutritional claims.

We may not be able to compete successfully with imported goods, including from Mexico and Canada. A risk for high-tech producers in the U.S. is that lower-cost Mexican producers will be able to increasingly step up and meet emerging U.S. retail market preferences for higher quality, improved product safety, year-round availability, and product innovation. Mexican producers achieve this not by investing equivalent capital, but by leveraging climatic advantages at lower cost. Market

leadership will accrue to the most efficient producers who are able to reliably meet the needs of large U.S. retailers and can demonstrate advantages in marketing strategy, geography, technology, and production learning curves sufficient to warrant the substantial long-term working capital required to fuel the expected sustained growth of this niche. Meanwhile, Canadian producers are beginning or expanding production in the U.S. The major factors driving this expansion are brand value of U.S. production and lower transportation and energy costs at U.S. facilities. The Canadian greenhouse industry is located primarily in Ontario in the east and British Columbia in the west. The Canadian greenhouse industry is supported by extensive government subsidies and financing that allows them to compete with the U.S. and Mexico on production cost.

We also face competition from traditional greenhouse operators both domestic and abroad, as well as from high-tech agricultural startups that are focused on development of farms either in or near major cities.

Each of these competitors may have substantially greater financial and other resources than us and some of whose products are well accepted in the marketplace today. We cannot be certain that we will successfully compete with larger competitors that have greater financial, sales and technical resources. They may also have lower operational costs, and as a result may be able to offer comparable or substitute products to customers at lower costs. This could put pressure on us to lower our prices, resulting in lower profitability or, in the alternative, cause us to lose market share if we fail to lower prices. Retailers may also market competitive products under their own private labels, which are generally sold at lower prices, and may change the merchandising of our products so we have less favorable placement.

The CEA agriculture business also has low barriers to entry, and we will not be able to prevent competitors from building and operating similar greenhouses. We rely heavily on the know-how of our employees and management team, our experience and our relationships with significant stakeholders in the agriculture industry and in Central Appalachia.

In addition, our ability to compete successfully in this market depends, in large part, on our ability to implement our growth strategy of building additional controlled environment facilities and expanding our product line. Our sales and operating results will be adversely affected if we fail to implement our growth strategy or if we invest resources in a growth strategy that ultimately proves unsuccessful.

***We have only recently commenced our third harvest, which makes it difficult to forecast future results of operations.***

Our first CEA facility in Morehead, Kentucky partially opened in October 2020, marking the beginning of our first growing season. AppHarvest Morehead was completed in March 2021 and we concluded our first growing season in August 2021. We completed planting our second crop in September 2021, the harvest of the new crop commenced in the fourth quarter of 2021 and we completed our second harvest at the end of July 2022. In November 2022, we commenced our third harvest. As a result, our ability to accurately forecast future results of operations is limited and subject to a number of uncertainties, including our ability to plan for and model future growth. In future periods, net sales growth could slow or net sales could decline for a number of reasons, including plant diseases or pest infestations, slowing demand for our products, increasing competition, a decrease in the growth of the overall market, or our failure, for any reason, to take advantage of growth opportunities. For example, the impact to our second season yield by the plant health issue ended up higher than our original forecast of 10% to 15%, as we removed some extra rows in the affected area out of an abundance of caution and curtailed our second growing season. If our assumptions regarding these risks and uncertainties and future net sales growth are incorrect or change, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations, and our business could suffer.

***Our AppHarvest Berea farm is subject to lease obligations that may restrict our ability to operate our business.***

On December 23, 2022, we sold approximately 40 acres of land located in Berea, Kentucky and the Berea salad greens facility situated thereon to Mastronardi Berea LLC, and, concurrently, we, as tenant, and Mastronardi Berea LLC, as landlord, entered into the Berea Lease for an initial term of 10 years, with four renewal options of five years each, subject to the conditions set forth in the Berea Lease. A failure to make scheduled lease payments, or a breach of any of the other covenants related to the Sale-Leaseback Transaction could result in a default thereunder, which could allow Mastronardi Berea LLC to take possession of AppHarvest Berea. If we lost possession of AppHarvest Berea, our business, results of operations and financial condition could be materially adversely affected.

*If we fail to develop and maintain our brand, our business could suffer.*

We plan to leverage our strong mission to build an iconic brand recognized and revered by a loyal customer base that values a sustainable homegrown food supplier. Our success depends on our ability to maintain and grow the value of our brand. Maintaining, promoting and positioning our brand and reputation will depend on, among other factors, the success of our product offerings, food safety, quality assurance, marketing and merchandising efforts, our continued focus on the environment and sustainability and ability to provide a consistent, high-quality consumer and customer experience. Any negative publicity, regardless of its accuracy, could impair our business.

With respect to our products that are distributed by Mastronardi, Mastronardi controls the packaging, branding and marketing of these products. Although Mastronardi has agreed to use its best efforts to include the AppHarvest name and branding on our products, it is under no obligation to do so if such inclusion would conflict with instructions from a Mastronardi customer for the products or Mastronardi believes that we have suffered material impairment to our reputation or any of our brands. If Mastronardi does not include prominent AppHarvest branding on the packaging of our products we distribute, or if Mastronardi fails to effectively market our products, this could hamper our efforts to establish and grow our brand and reputation.

Further, the growing use of social and digital media by us, our consumers and third parties increases the speed and extent that information or misinformation and opinions can be shared. Negative publicity about us, our partners or our products on social or digital media could seriously damage our brand and reputation. Brand value is based on perceptions of subjective qualities, and any incident that erodes the loyalty of our consumers, customers or distributors, including adverse publicity or a governmental investigation, litigation, including securities class actions, or regulatory enforcement action, could significantly reduce the value of our brand and significantly damage our business. If we do not achieve and maintain favorable perception of our brand, our business, financial condition and results of operations could be adversely affected.

***Our brand and reputation may be diminished due to real or perceived quality, food safety, or environmental issues with our products, which could negatively impact our business, reputation, operating results and financial condition.***

Real or perceived quality, food safety, or environmental concerns or failures to comply with applicable food regulations and requirements, whether or not ultimately based on fact and whether or not involving our products (such as incidents involving Mastronardi or our competitors), could cause negative publicity and reduced confidence in our company, brand or products, which could in turn harm our reputation and sales, and could adversely affect our business, financial condition and operating results. Brand value is also based on perceptions of subjective qualities, such as appearance and taste, and any incident that erodes the loyalty of our consumers, including changes to product appearance, taste or packaging, could significantly reduce the value of our brand and significantly damage our business.

We also have no control over our products once Mastronardi or any other distributor takes possession of them. Distributors or consumers may store our products under conditions and for periods of time inconsistent with the USDA, U.S. Food and Drug Administration (the “FDA”), and other governmental guidelines, which may adversely affect the quality and safety of our products.

If consumers do not perceive our products to be of high quality or safe, then the value of our brand would be diminished, and our business, results of operations and financial condition would be adversely affected. Any loss of confidence on the part of consumers in the quality and safety of our products would be difficult and costly to overcome. Any such negative effect could be exacerbated by our market positioning as a socially conscious grower of high-quality produce and may significantly reduce our brand value. Issues regarding the safety of any of our products, regardless of the cause, may harm our brand, reputation and operating results.

***Demand for our current and expected future products, which include tomatoes, berries, peppers, cucumbers, other vine produce, and salad greens is subject to seasonal fluctuations and may adversely impact our results of operations in certain quarters.***

Demand for our current and expected future products, which include tomatoes berries, peppers, cucumbers, other vine produce, and salad greens fluctuates and tends to be greater during the summer months. As a result, comparisons of our sales and operating results between different quarters within a single fiscal year may not necessarily be meaningful comparisons. If we are not correct in predicting demand and planning our growing seasons accordingly, we may experience a supply and demand imbalance, which could adversely impact our results of operations.

***If we cannot maintain our company culture or focus on our vision as we grow, our business and competitive position may be harmed.***

Our vision is to create America's AgTech capital from within Appalachia and provide better produce, better farming practices and better jobs. Any failure to preserve our culture or focus on our vision could negatively affect our ability to retain and recruit personnel, which is critical to our growth, and to effectively focus on and pursue our corporate objectives. As we grow and develop the infrastructure of a public company, we may find it difficult to maintain these important values. If we fail to maintain our company culture or focus on our vision, our business and competitive position may be harmed.

***Food safety and foodborne illness incidents or advertising or product mislabeling may materially adversely affect our business by exposing us to lawsuits, product recalls, regulatory enforcement actions, or changes in consumer demand increasing our operating costs and reducing demand for our product offerings.***

Selling food for human consumption involves inherent legal and other risks, and there is increasing governmental scrutiny of and public awareness regarding food safety. Unexpected side effects, illness, injury or death related to allergens, foodborne illnesses or other food safety incidents caused by products, or involving our suppliers, could result in the discontinuance of sales of these products or our relationships with such suppliers, or otherwise result in increased operating costs, regulatory enforcement actions, or harm to our reputation. Shipment of adulterated or misbranded products, even if inadvertent, can result in criminal or civil liability. Such incidents could also expose us to product liability, negligence, or other lawsuits, including consumer class action lawsuits. Any claims brought against us may exceed or be outside the scope of our existing or future insurance policy coverage or limits. Any judgment against us that is more than our policy limits or not covered by our policies or not subject to insurance would have to be paid from our cash reserves, which would reduce our capital resources.

The occurrence of foodborne illnesses or other food safety incidents could also adversely affect the price and availability of affected raw materials, resulting in higher costs, disruptions in supply and a reduction in sales. Furthermore, any instances of food contamination or regulatory noncompliance, whether or not caused by our actions, could compel us, our suppliers, distributors or customers, depending on the circumstances, to conduct a recall in accordance with FDA regulations, and comparable state laws. Food recalls could result in significant losses due to their costs, the destruction of product inventory, lost sales due to the unavailability of the product for a period of time and potential loss of existing distributors or customers and a potential negative impact on our ability to attract new customers due to negative consumer experiences or because of an adverse impact on our brand and reputation. The costs of a recall could be outside the scope of our existing or future insurance policy coverage or limits.

In addition, food companies have been subject to targeted, large-scale tampering as well as to opportunistic, individual product tampering, and we, like any food company, could be a target for product tampering. Forms of tampering could include the introduction of foreign material, chemical contaminants, and pathogenic organisms into consumer products as well as product substitution. FDA regulations require companies like us to analyze, prepare, and implement mitigation strategies specifically to address tampering designed to inflict widespread public health harm. If we do not adequately address the possibility, or any actual instance, of product tampering, we could face possible seizure or recall of our products, suspension of our facilities' registrations, and/or the imposition of civil or criminal sanctions, which could materially adversely affect our business, financial condition, and operating results.

***Our operations are subject to FDA and USDA governmental regulation and state regulation, and there is no assurance that we will be in compliance with all regulations.***

Our operations are subject to extensive regulation by the FDA and other federal, state and local authorities. Specifically, we are subject to the requirements of the Federal Food, Drug and Cosmetic Act and regulations promulgated thereunder by the FDA. This comprehensive regulatory program governs, among other things, the manufacturing, composition and ingredients, packaging, labeling and safety of food. Under this program, the FDA requires that facilities that grow, pack, and/or process food products comply with a range of requirements, including standards for the growing, harvesting, packing, and holding of produce, hazard analysis and preventative controls regulations, current good agricultural practices, or GAPs, current good manufacturing practices, or GMPs, and supplier verification requirements. Our processing facilities are subject to periodic inspection by federal, state and local authorities. If we cannot successfully manufacture products that conform to our specifications and the strict regulatory requirements of the FDA or others, we may be subject to adverse inspectional findings or enforcement actions, which could materially impact our ability to market our products or could result in a recall of our product that have already been distributed. If the FDA or a comparable foreign regulatory authority determines that we have not complied with the applicable regulatory requirements, our business may be materially impacted.

We seek to comply with applicable regulations through a combination of employing internal experience and expert personnel to ensure quality-assurance compliance (i.e., assuring that products are not adulterated or misbranded) and contracting with third-party laboratories that conduct analyses of products to ensure compliance with nutrition labeling requirements and to identify any potential contaminants before distribution. Failure by us to comply with applicable laws and regulations or maintain permits, licenses or registrations relating to our operations could subject us to civil remedies or penalties, including fines, injunctions, recalls or seizures, warning letters, restrictions on the marketing or manufacturing of products, or refusals to permit the import or export of products, as well as potential criminal sanctions, which could result in increased operating costs resulting in a material effect on our operating results and business.

***Future acquisitions could disrupt our business and adversely affect our business operations and financial results.***

We may choose to expand our current business by acquiring additional businesses or technologies in the future. Acquisitions involve many risks, including the following:

- an acquisition may negatively affect our financial results because it may require us to incur charges (including impairment charges) or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by third parties, including intellectual property claims and disputes, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition;
- we may encounter difficulties or unforeseen expenditures in integrating the business, technologies, products, personnel or operations of any company that we acquire, particularly if key personnel of the acquired company decide not to work for us;
- an acquisition may disrupt our ongoing business, divert resources, increase our expenses and distract our management;
- an acquisition may result in uncertainty about continuity and effectiveness of service from either company;
- we may encounter difficulties in, or may be unable to, successfully integrate or sell any acquired solutions;
- an acquisition may involve the entry into geographic or business markets in which we have little or no prior experience or where competitors have stronger market positions;
- our use of cash to pay for an acquisition would limit other potential uses for our cash; and
- if we incur debt to fund such acquisition, such debt may subject us to material restrictions on our ability to conduct our business as well as financial maintenance covenants.

The occurrence of any of these risks could have an adverse effect on our business operations and financial results. For example, in the fourth quarter of 2021, we incurred an after tax expense of \$59.7 million related to the full impairment of the goodwill and definite lived technology intangibles acquired with Root AI. For example, we recently temporarily paused development of CEA technology solutions with resumption of development contingent upon financing to prioritize our core operations, which resulted in additional charges of \$1.1 million related to impairment of fixed assets, as well as severance and other charges. In addition, we may only be able to conduct limited due diligence on an acquired company's operations. Following an acquisition, we may be subject to unforeseen liabilities arising from an acquired company's past or present operations and these liabilities may be greater than the warranty and indemnity limitations that we negotiate. Any unforeseen liability that is greater than these warranty and indemnity limitations could have a negative impact on our financial condition.

***Changes in existing laws or regulations, or the adoption of new laws or regulations, may increase our costs and otherwise adversely affect our business, results of operations and financial condition.***

The manufacture and marketing of food products is highly regulated. We and our suppliers are subject to a variety of laws and regulations. These laws and regulations apply to many aspects of our business, including the manufacture, packaging, labeling, distribution, advertising, sale, quality, and safety of our products, as well as the health and safety of our employees and/or independent contractors the protection of the environment.



In the U.S., we are subject to regulation by various government agencies, including the FDA, Federal Trade Commission (the “FTC”), Occupational Safety and Health Administration (“OSHA”), Environmental Protection Agency (the “EPA”), and USDA, as well as various state and local agencies. We are also regulated outside the U.S. by various international regulatory bodies. In addition, depending on customer specification, we may be subject to certain voluntary, third-party standards, such as Global Food Safety Initiative, standards and review by voluntary organizations, such as the Council of Better Business Bureaus’ National Advertising Division. We could incur costs, including fines, penalties and third-party claims, because of any violations of, or liabilities under, such requirements, including any competitor or consumer challenges relating to compliance with such requirements. The loss of third-party accreditation could result in lost sales and customers, and may adversely affect our business, results of operations, and financial condition. In connection with the marketing and advertisement of our products, we could be the target of claims relating to false or deceptive advertising, including under the auspices of the FTC and the consumer protection statutes of some states.

The regulatory environment in which we operate could change significantly and adversely in the future. Any change in manufacturing, labeling or packaging requirements for our products may lead to an increase in costs or interruptions in production, either of which could adversely affect our operations and financial condition. New or revised government laws and regulations could result in additional compliance costs and, in the event of non-compliance, civil remedies, including fines, injunctions, withdrawals, recalls, or seizures and confiscations, as well as potential criminal sanctions, any of which may adversely affect our business, results of operations, and financial condition.

***Failure by any partner farms, suppliers of raw materials or co-manufacturers to comply with food safety, environmental or other laws and regulations, or with the specifications and requirements of our products, may disrupt our supply of products and adversely affect our business.***

If our suppliers, or any partner farms or co-manufacturers that we engage or may engage in the future, fail to comply with food safety, environmental, or other laws and regulations, or face allegations of non-compliance, our operations may be disrupted. Additionally, such partner farms and co-manufacturers would be required to maintain the quality of our products and to comply with our standards and specifications. In the event of actual or alleged non-compliance, we might be forced to find alternative partner farms, suppliers or co-manufacturers and we may be subject to lawsuits related to such non-compliance by such partner farms, suppliers, and co-manufacturers. As a result, our supply of produce and finished inventory could be disrupted or our costs could increase, which would adversely affect our business, results of operations, and financial condition. The failure of any future co-manufacturer to produce products that conform to our standards could adversely affect our reputation in the marketplace and result in product recalls, product liability claims, and economic loss. Additionally, actions we may take to mitigate the impact of any disruption or potential disruption in our supply of produce, including increasing inventory in anticipation of a potential supply or production interruption, may adversely affect our business, results of operations, and financial condition.

***We are subject to stringent environmental regulation and potentially subject to environmental litigation, proceedings, and investigations.***

Our business operations and ownership and operation of real property are subject to stringent and complex federal, state, and local environmental laws and regulations pertaining to the discharge of materials into the environment, and the handling and disposition of hazardous materials (including pesticides) and wastes (including solid and hazardous wastes) or otherwise relating to protection of the environment and to occupational safety and health. In addition, we may be required to obtain and maintain environmental permits for our business operations under certain environmental laws and regulations. Compliance with these laws and regulations, and the ability to comply with any modifications to these laws and regulations, is material to our business. Failure to comply with these laws and regulations may result in the assessment of administrative, civil and criminal penalties, imposition of investigatory and remedial obligations and the issuance of injunctions delaying or prohibiting our business operations. New matters or sites may be identified in the future that will require additional investigation, assessment, or expenditures. Future discovery of contamination of property underlying or in the vicinity of our present properties or facilities and/or waste disposal sites could require us to incur additional expenses. The occurrence of any of these events, the implementation of new laws and regulations, regulations, or stricter interpretation of existing laws or regulations, could adversely affect our financial results.

Climate change and the regulation of greenhouse gases emissions have the potential to affect our business operations. For example, the EPA has adopted regulations for the measurement and annual reporting of carbon dioxide, methane and other greenhouse gases emitted from certain large facilities. In addition, both houses of Congress have considered legislation to reduce emissions of greenhouse gases, and a number of states have taken, or are considering taking, legal measures to reduce emissions of greenhouse gases. In January 2021, President Biden issued the 2021 Climate Change Executive Order that, among

other things, sets goals of a carbon pollution free power sector by 2035 and a net zero economy by 2050. This Executive Order also commenced the process for the U.S. reentering the Paris Climate Agreement. The Paris Climate Agreement provides for the cutting of carbon emissions every five years, beginning in 2023, and sets a goal of keeping global warming to a maximum limit of two degrees Celsius and a target limit of 1.5 degrees Celsius greater than pre-industrial levels. Federal and state regulatory agencies can impose administrative, civil and/or criminal penalties for non-compliance with greenhouse gas requirements. In addition, states and local governments are undertaking efforts to meet climate goals. Even if limits on greenhouse gas emissions are not directly applicable to us, they could result in increased electricity, fuel or other supply costs that may adversely affect our business. Moreover, some experts believe climate change poses potential physical risks, including an increase in sea level and changes in weather conditions, such as an increase in precipitation and extreme weather events. Our operations may be adversely affected by severe weather including tornados, lightning strikes, wind, snow, hail and rain.

We limit the use of chemical pesticides in accordance with our Chemical Pesticide Policy. Any use of chemical pesticides, as defined in our Chemical Pesticide Policy, to address any pests incidents will be disclosed, as stated in that policy, in our annual sustainability report. In any such circumstance we would use, to the extent practicable, the chemical pesticide with the lowest human toxicity, and apply such substance in a manner designed to eliminate or minimize pesticide residue on our products. Chemical pesticide use may cause reputational harm and could adversely affect our business, prospects, financial condition and operating results. We use biopesticides and biofungicides as a part of an integrated crop management program whereby cultural controls are used to limit pesticide intervention. Biopesticides and biofungicides are only used where no other control step is practicable. From time to time, we use ethephon-based products, considered organophosphate pesticides by the United States EPA, as plant growth regulators to facilitate even ripening of tomatoes on the vine. The federal environmental laws to which our operations are, or may be, subject include the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and regulations thereunder, which regulate pesticides; the Clean Air Act (CAA) and regulations thereunder, which regulate air emissions; the Clean Water Act (CWA) and regulations thereunder, which regulate the discharge of pollutants in industrial wastewater and storm water runoff; the Resource Conservation and Recovery Act (RCRA) and regulations thereunder, which regulate the management and disposal of hazardous and non-hazardous solid wastes; and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and regulations thereunder, known more commonly as “Superfund,” which impose liability for the remediation of releases of hazardous substances in the environment. We are also subject to regulation under OSHA and regulations thereunder, which regulate the protection of the safety and health of workers. Analogous state and local laws and regulations may also apply.

***The unavailability, reduction or elimination of government and economic incentives could negatively impact our business, prospects, financial condition and operating results.***

Any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, the reduced need for such subsidies and incentives due to the perceived success of our operations or other reasons may result in the diminished competitiveness of the CEA facility industry generally or our products in particular. This could materially and adversely affect the growth of the CEA facility markets and our business, prospects, financial condition and operating results.

***We rely on information technology systems and any inadequacy, failure, interruption or security breaches of those systems may harm our ability to effectively operate our business.***

We are dependent on various information technology systems, including, but not limited to, networks, applications, operating systems, and outsourced services in connection with the current and planned operation of our business.

A failure of these information technology systems to perform as anticipated could cause our business to suffer. For example, our growers are aided in their work by climate and greenhouse operations software designed by Priva B.V. If this software does not perform as anticipated, our growers may receive inadequate or erroneous information about the condition of the plants being grown, which may result in increased mitigation expenses, waste, additional labor expenses and partial or full loss of the crop.

In addition, our information technology systems may be vulnerable to damage or interruption from circumstances beyond our control, including fire, natural disasters, systems failures, viruses and security breaches. Any such damage or interruption could negatively impact our business.

***A cybersecurity incident or other technology disruptions could negatively impact our business.***

We use or plan to use computers, software and technology in substantially all aspects of our business operations. We build and operate robotics which rely on these technologies. Our employees and/or independent contractors also use or plan to use mobile devices, social networking and other online activities to connect with team members, distributors, customers and consumers. Such uses give rise to cybersecurity risks, including security breaches, espionage, system disruption, theft and inadvertent release of information. Cybersecurity incidents are increasing rapidly in their frequency, sophistication and intensity, with third-party phishing and social engineering attacks, and increased with the shift toward remote or hybrid work environments as a result of the COVID-19 pandemic. Furthermore, cyber-attacks may potentially occur as a result of the ongoing conflict between Russia and Ukraine. Our business involves sensitive information and intellectual property, including know-how, private information about team members and financial and strategic information about us and our business partners.

While we have implemented and plans to implement measures to prevent security breaches and cyber incidents, these preventative measures and incident response efforts may not be entirely effective. The theft, destruction, loss, misappropriation or release of sensitive information or intellectual property, or interference with our information technology systems or the technology systems of third parties on which we rely, could result in business disruption, negative publicity, brand damage, violation of privacy laws, loss of customers and distributors, potential liability and competitive disadvantage all of which could negatively impact our business, financial condition or results of operations.

***If we are unable to apply technology effectively in driving value for our clients through our technology-based platforms, our results of operations, client relationships and growth could be adversely affected.***

Our future success depends, in part, on our ability to anticipate and respond effectively to the threat and opportunity presented by digital disruption and developments in technology. These may include new robotics and automation products which we seek to introduce as turnkey CEA technology solutions. We may be exposed to competitive risks related to the adoption and application of new technologies by established market participants (for example, through disintermediation) or new entrants such as technology companies and others. These new entrants are focused on using technology and innovation, including artificial intelligence, to simplify and improve the client experience, increase efficiencies, alter business models and effect other potentially disruptive changes in the industries in which we operate. If we fail to develop and implement technology solutions and technical expertise among our employees that anticipate and keep pace with rapid and continuing changes in technology, industry standards, client preferences and internal control standards, our value proposition and operating efficiency could be adversely affected. We may not be successful in anticipating or responding to these developments on a timely and cost-effective basis and our ideas may not be accepted in the marketplace. Additionally, the effort to gain technological expertise and develop new technologies in our business requires us to incur significant expenses. Our ability to build our technology depends on obtaining necessary capital when needed and on acceptable terms, which we may not be able to secure. If we cannot offer new technologies as quickly as our competitors, or if our competitors develop more cost-effective technologies or product offerings, we could experience a material adverse effect on our results of operations, client relationships, growth and compliance programs.

***The loss of any intellectual property could enable other companies to compete more effectively with us.***

We own trademarks and other proprietary rights that are important to our business, including our principal trademark, APPHARVEST. Our trademarks are valuable assets that reinforce the distinctiveness of our brand to consumers. We believe that the protection of our trademarks, copyrights and domain names is important to our success. We have also invested a significant amount of money in establishing and promoting our trademarked brand. In connection with our acquisition of Root AI, (now AppHarvest Technology, Inc.), we acquired nine U.S. patent applications, which, if issued, are expected to expire in 2039 to 2041, without taking into account any possible patent term adjustment. We also rely on unpatented proprietary expertise and copyright protection to develop and maintain our competitive position. Our continued success depends, to a significant degree, upon our ability to protect and preserve our intellectual property, including patents, trademarks, and copyrights.

We rely on confidentiality agreements and trademark and copyright law to protect our intellectual property rights. These confidentiality agreements with our employees and certain of our consultants, contract employees, suppliers and independent contractors generally require that all confidential information be kept strictly confidential.

We cannot assure you that the steps we have taken to protect our intellectual property rights are adequate, that our intellectual property rights can be successfully defended and asserted in the future or that third parties will not infringe upon or misappropriate any such rights. In addition, our trademark rights and related registrations may be challenged in the future and

could be canceled or narrowed. Failure to protect our trademark rights could prevent us in the future from challenging third parties who use names and logos similar to our trademarks, which may in turn cause consumer confusion or negatively affect consumers' perception of our brand and products. We also cannot offer any assurances about which of our patent applications will issue, the breadth of any resulting patent or whether any of the issued patents will be found invalid and unenforceable or will be threatened by third parties. We cannot offer any assurances that the breadth of our granted patents will be sufficient to stop a competitor from developing and commercializing robots, gripping tools and arms, and sensors that would be competitive with one or more of the technologies we are developing. Moreover, intellectual property disputes and proceedings and infringement claims may result in a significant distraction for management and significant expense, which may not be recoverable regardless of whether we are successful. Such proceedings may be protracted with no certainty of success, and an adverse outcome could subject us to liabilities, force us to cease use of certain trademarks or other intellectual property or force us to enter into licenses with others. Any one of these occurrences may negatively impact our business, financial condition and results of operations.

***We may be unable to obtain or qualify for government grants and incentives in the future.***

We applied for and received various government grants and incentives in connection with building AppHarvest Morehead, and we may in the future apply for federal and state grants, loans and tax incentives under government programs designed to stimulate the economy and support sustainable agriculture. Our ability to obtain funds or qualify for incentives from government or other sources is subject to availability of funds under applicable programs and approval of our applications to participate in such programs. The application process for these funds and other incentives will likely be highly competitive. We cannot assure you that we will be successful in obtaining or qualifying for any of these additional grants, loans and other incentives, and failure to obtain or qualify for these grants, loans and other incentives could have a negative effect on our operating costs and ability to open additional greenhouses.

***If our estimates or judgments relating to our critical accounting estimates prove to be incorrect, our results of operations could be adversely affected.***

The preparation of financial statements in conformity with United States generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and related notes appearing elsewhere in this Annual Report. We base our estimates on historical experience and on various other assumptions that it believes to be reasonable under the circumstances, as provided in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Estimates." The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity, and the amount of net sales and expenses that are not readily apparent from other sources. Significant estimates and judgments involve the useful lives of fixed assets, the valuation of instruments issued for financing and stock-based compensation, and income taxes, among others. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our securities.

***Our employees and independent contractors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could negatively impact our business, prospects, financial condition and operating results.***

We are exposed to the risk that our employees and independent contractors may engage in misconduct or other illegal activity. Misconduct by these parties could include intentional, reckless or negligent conduct or other activities that violate laws and regulations, including production standards, U.S. federal and state fraud, abuse, data privacy and security laws, other similar non-U.S. laws or laws that require the true, complete and accurate reporting of financial information or data. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations.

In addition, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, prospects, financial condition and operating results, including, without limitation, the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, disgorgement, integrity oversight and reporting obligations to resolve allegations of non-compliance, imprisonment, other

sanctions, contractual damages, reputational harm, diminished profits and future earnings and curtailment of our operations, any of which could adversely affect our business, prospects, financial condition and operating results.

*Adherence to our values and our focus on long-term sustainability may negatively influence our short- or medium-term financial performance.*

Our values are integral to everything we do. We are committed to empowering individuals in Appalachia, driving positive environmental change in the agriculture industry and improving the lives of our employees and the community at large. We may take actions in furtherance of those goals and, therefore, our stockholders over a longer period of time, even if those actions do not maximize short- or medium-term financial results. However, these longer-term benefits may not materialize within the timeframe we expect or at all. For example, we are a public benefit corporation under Delaware law. As a public benefit corporation, we are required to balance the financial interests of our stockholders with the best interests of those stakeholders materially affected by our conduct, including particularly those affected by the specific benefit purpose set forth in our second amended and restated certificate of incorporation (the “amended and restated certificate of incorporation”). In addition, there is no assurance that the expected positive impact from being a public benefit corporation will be realized. Accordingly, being a public benefit corporation and complying with our related obligations could negatively impact our ability to provide the highest possible return to our stockholders.

As a public benefit corporation, we are required to publicly disclose a report at least biennially on our overall public benefit performance and on our assessment of our success in achieving our specific public benefit purpose. If we are not timely or are unable to provide this report, or if the report is not viewed favorably by parties doing business with us or regulators or others reviewing our credentials, our reputation and status as a public benefit corporation may be harmed.

While not required by Delaware law or the terms of our amended and restated certificate of incorporation, we elected to have our social and environmental performance, accountability and transparency assessed against the proprietary criteria established by an independent non-profit organization. As a result of this assessment, we have been designated as a “Certified B Corporation.” The term “Certified B Corporation” does not refer to a particular form of legal entity, but instead refers to companies that are certified by an independent non-profit organization as meeting rigorous standards of social and environmental performance, accountability and transparency. The standards for Certified B Corporation certification may change over time. These standards may not be appropriately tailored to the legal requirements of publicly traded companies or to the operational requirements of larger companies. Our reputation could be harmed if we lose our status as a Certified B Corporation, whether by our choice or by our failure to meet certification requirements, if that change in status were to create a perception that we are more focused on financial performance and are no longer as committed to the values shared by Certified B Corporations. Likewise, our reputation could be harmed if our publicly reported B Corporation score declines and that created a perception that we have slipped in our satisfaction of the Certified B Corporation standards. Similarly, our reputation could be harmed if we take actions that are perceived to be misaligned with our values.

*As a public benefit corporation, our duty to balance a variety of interests may result in actions that do not maximize stockholder value.*

As a public benefit corporation, our board of directors (the “Board”) has a duty to balance (i) the pecuniary interest of our stockholders, (ii) the best interests of those materially affected by our conduct and (iii) specific public benefits identified in our charter documents. While we believe that our public benefit corporation designation and obligations will benefit our stockholders, in balancing these interests the Board may take actions that do not maximize stockholder value. Any benefits to stockholders resulting from our public benefit purposes may not materialize within the timeframe we expect or at all and may have negative effects.

For example:

- We may choose to revise our policies in ways that we believe will be beneficial to our stakeholders, including farmers, employees, regional economic development organizations, retailers, sustainability experts at BSR, suppliers, local communities, and our internal senior management and Board members, even though the changes may be costly;
- We may take actions, such as building state-of-the-art facilities with technology and quality control mechanisms that exceed the requirements of USDA, EPA, and the FDA, even though these actions may be more costly than other alternatives;
- We may be influenced to pursue programs and services to demonstrate our commitment to the communities to which we serve and bringing ethically produced food to the table even though there is no immediate return to our stockholders; or

- In responding to a possible proposal to acquire the company, our Board may be influenced by the interests of our stakeholders, including farmers, employees, regional economic development organizations, retailers, sustainability experts at BSR, suppliers, local communities, and our internal senior management and Board members, whose interests may be different from the interests of our stockholders.

We may be unable or slow to realize the benefits we expect from actions taken to benefit our stakeholders, including farmers, employees, suppliers and local communities, which could adversely affect our business, financial condition and results of operations, which in turn could cause our stock price to decline.

***As a public benefit corporation, we may be subject to increased derivative litigation concerning our duty to balance stockholder and public benefit interests, the occurrence of which may have an adverse impact on our financial condition and results of operations.***

Stockholders of a Delaware public benefit corporation (if they, individually or collectively, own at least 2% of its outstanding capital stock shares of at least \$2.0 million in market value) are entitled to file a derivative lawsuit claiming that its directors failed to balance stockholder and public benefit interests. This potential liability does not exist for traditional corporations. Therefore, we may be subject to the possibility of increased derivative litigation, which would require the attention of management and, as a result, may adversely impact management's ability to effectively execute our strategy. Any such derivative litigation may be costly and have an adverse impact on our financial condition and results of operations.

## **Risks Related to Our Indebtedness**

***Our existing indebtedness could adversely affect our financial condition, results of operation and business growth.***

As of December 31, 2022, we had aggregate outstanding indebtedness of approximately \$184.2 million, of which approximately \$3.8 million matures in 2023 and approximately \$70.0 million matures in 2024. Our indebtedness could affect our operations in many ways, including:

- limiting management's discretion in operating our business and our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- limiting funds otherwise available for financing our capital expenditures and pursuing our growth strategies by requiring us to dedicate a portion of our cash flows from operations to the repayment of debt and the interest on this debt;
- making it more difficult for us to satisfy our financial obligations under our debt and our contractual and commercial commitments and increase the risk that we may default on our debt obligations;
- limiting our ability to access the capital markets to raise capital on favorable terms or to obtain additional financing for working capital, capital expenditures or acquisitions or to refinance existing indebtedness;
- increasing our vulnerability to downturns and adverse developments in our business, our industry or the general economy and restrict us from exploiting business opportunities or making acquisitions;
- making us vulnerable to rising interest rates as certain of our indebtedness may vary with prevailing interest rates; and
- placing us at a competitive disadvantage relative to competitors with lower levels of indebtedness or less restrictive terms governing their indebtedness.

In addition, a portion of our indebtedness bears interest at fluctuating interest rates, some of which uses London Interbank Offering Rate ("LIBOR"), as a benchmark for establishing the rate. The United Kingdom's Financial Conduct Authority, which regulates LIBOR, stopped publishing one week and 2 month U.S. Dollar, or USD, LIBOR rates after 2021 with remaining USD LIBOR rates ceasing to be published after June 30, 2023. In the United States, the U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, has proposed the Secured Overnight Financing Rate, or SOFR, a new index calculated by short-term repurchase agreements backed by Treasury 45 securities, as an alternative to LIBOR. In addition, the overall financial markets may be disrupted as a result of the phase-out or replacement of LIBOR. The consequences of these developments cannot be entirely predicted, but may include an increase

in the cost of our variable rate indebtedness, which may have an adverse effect on our financial condition, operating results or cash flows.

***We may not be able to generate sufficient cash to service our debt and other contractual obligations and may be forced to take other actions to satisfy our debt and other obligations, which may not be successful.***

Our ability to make scheduled payments on or to refinance or restructure our debt and other obligations and to fund planned capital expenditures and expansion efforts and any strategic alliances or acquisitions we may make in the future depends on our ability to generate cash in the future and our financial condition and on our operating performance, which are subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. We cannot assure you that we will maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our debt and other obligations.

If our cash flows and capital resources are insufficient to fund our debt service and other obligations, we may be forced to reduce or delay investments and capital expenditures, or to sell assets, seek additional capital or restructure or refinance our debt. These alternative measures may not be successful and may not permit us to meet our debt service and other obligations. If our operating results and available cash are insufficient to meet our debt service and other obligations, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. We may not be able to consummate those dispositions or to obtain the proceeds that we could realize from them, and these proceeds may not be adequate to meet any debt service or other obligations then due.

Certain of our debt obligations contain covenants that are subject to interpretation. Although we do not believe we are in breach of any such covenants, if a creditor under any such debt obligations decides to declare a breach of any such covenant, then such creditor could exercise its rights under the applicable debt obligations, which will trigger cross-defaults in other debt obligations. Such actions by creditors could require repayment of our debt before maturity, and we cannot assure you that we will be able to meet such repayment obligations.

### **Risks Related to Ownership of Our Securities**

***If we fail to meet all applicable requirements of Nasdaq and Nasdaq determines to delist our common stock, the delisting could adversely affect the market liquidity of our Common Stock and the market price of our Common Stock could decrease.***

On January 11, 2023, we received a letter from Nasdaq, notifying us that, for the previous 30 consecutive business day periods prior to the date of the letter, the closing bid price for our Common Stock was below \$1.00. In accordance with Nasdaq Listing Rule 5810(c)(3)(A) we have been provided an initial period of 180 calendar days, or until July 10, 2023, to regain compliance with Nasdaq's bid price requirement. If, at any time before July 10, 2023, the bid price for our Common Stock closes at \$1.00 or more for a minimum of 10 consecutive business days, we will regain compliance with the bid price requirement, unless Nasdaq staff exercised its discretion to extend this 10-day period pursuant to Nasdaq rules. On January 26, 2023, as a result of our Common Stock trading over \$1.00 for 10 consecutive business days, we received a notice from the Nasdaq Listing Qualifications Office indicating that we regained compliance with the minimum bid price requirement under Nasdaq Listing Rule 5450(a)(1).

There can be no assurance that we will maintain compliance with the requirements for listing our Common Stock on Nasdaq. If we are unable to satisfy the Nasdaq criteria for continued listing, our Common Stock would be subject to delisting. A delisting of our Common Stock could negatively impact us by, among other things, reducing the liquidity and market price of our Common Stock; reducing the number of investors willing to hold or acquire our Common Stock, which could negatively impact our ability to raise equity financing; decreasing the amount of news and analyst coverage of us; and limiting our ability to issue additional securities or obtain additional financing in the future. In addition, delisting from Nasdaq may negatively impact our reputation and, consequently, our business.

***“Penny stock” rules may make buying or selling our securities difficult which may make our Common Stock less liquid and make it harder for investors to buy and sell our securities.***

Trading in our securities is subject to the “penny stock” rules of the SEC and it is anticipated that trading in our securities will continue to be subject to the penny stock rules for the foreseeable future. The SEC has adopted regulations that generally define a penny stock to be any equity security that has a market price of less than \$5.00 per share, subject to certain exceptions. These rules require that any broker-dealer who recommends our securities to persons other than prior customers and accredited

investors must, prior to the sale, make a special written suitability determination for the purchaser and receive the purchaser's written agreement to execute the transaction. Unless an exception is available, the regulations require the delivery, prior to any transaction involving a penny stock, of a disclosure schedule explaining the penny stock market and the risks associated with trading in the penny stock market. In addition, broker-dealers must disclose commissions payable to both the broker-dealer and the registered representative and current quotations for the securities they offer. The additional burdens imposed upon broker-dealers by these requirements may discourage broker-dealers from recommending transactions in our securities, which could severely limit the liquidity of our securities and consequently adversely affect the market price for our securities.

***We have previously identified a material weakness in our internal control over financial reporting. This material weakness could continue to adversely affect our ability to report our results of operations and financial condition accurately and in a timely manner.***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our management is likewise required, on a quarterly basis, to evaluate the effectiveness of our internal controls and to disclose any changes and material weaknesses identified through such evaluation of those internal controls. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Failure to maintain effective internal control over financial reporting could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our financial statements.

***The valuation of our Private Warrants could increase the volatility in our net income (loss) in our consolidated statements of earnings (loss).***

At December 31, 2022, there were 13,241,617 warrants to purchase Common Stock outstanding, consisting of 12,190,548 public warrants ("Public Warrants") and 1,051,069 private warrants ("Private Warrants" and together with Public Warrants, "Warrants"). The Private Warrants are held by the Novus initial stockholders. Each warrant entitles the registered holder to purchase one share of Common Stock at a price of \$11.50 per share. As further outlined in the Notes to our consolidated financial statements, the Private Warrants are classified as a liability and remeasured at fair value at each reporting date. The change in fair value of our Private Warrants is the result of changes in stock price and the number of Warrants outstanding at each reporting period. The change in fair value of warrant liabilities represents the mark-to-market fair value adjustments to the outstanding Private Warrants issued in connection with Novus's IPO. Significant changes in our stock price or number of Private Warrants outstanding may adversely affect our net income (loss) in our consolidated statements of operations.

***Concentration of ownership among our executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions.***

As of December 31, 2022, our affiliates, executive officers, directors and their respective affiliates as a group beneficially owned approximately 23.5% of our outstanding Common Stock. As a result, these stockholders are able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, appointment and removal of officers, any amendment of the amended and restated certificate of incorporation and approval of mergers and other business combination transactions requiring stockholder approval, including proposed transactions that would result in our stockholders receiving a premium price for their shares and other significant corporate transactions. This control could have the effect of delaying or preventing a change of control or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

***Because our stock price has and will likely continue to be highly volatile, the market price for our Common Stock may be lower or more volatile than expected.***

Our stock price has been highly volatile. From December 1, 2022 through January 30, 2023, the closing sale price of our Common Stock has been as low as \$0.47 per share and as high as \$2.64 per share. This extreme stock price volatility has been accompanied by extremely high trading volume in our Common Stock in comparison to historical experience. During this period, the average daily trading volume of our Common Stock has been approximately 3.2 million shares and on January 12, 2023, our trading volume exceeded 11.8 million shares.

The extreme increase in trading volume and volatility has not necessarily correlated to the company's announcement of material developments and often appears unrelated to changes in actual or expected operating performance. Purchases or sales of large quantities of our stock, including the establishment and/or closing of significant short positions in our stock could have



an unusual or adverse effect on our market price. Market fluctuations may also cause short sellers to periodically enter the market in the belief that we will have poor results in the future. Abnormal trading activity, including activity that is considered market manipulation, can lead to irrational and/or temporary movements in the price of our Common Stock, which, in turn, may increase its risk and volatility. We cannot predict the actions of market participants and therefore, can offer no assurances that the market for our Common Stock will be stable or appreciate over time.

*The market price of our Common Stock may be influenced by many factors, including:*

- threatened or actual litigation or government investigations;
- additional sales of our securities by us, our directors, executive officers or principal stockholders;
- our operating and financial performance, quarterly or annual earnings relative to similar companies;
- the public's reaction to our press releases, our other public announcements and our filings with the SEC;
- the occurrence of severe weather conditions and other catastrophes;
- publication of research reports or news stories about us, our competitors or our industry, or positive or negative recommendations or withdrawal of research coverage by securities analysts;
- announcements by us or our competitors of acquisitions, business plans or commercial relationships;
- any major change in our Board or senior management;
- adverse market reaction to any indebtedness we may incur or securities we may issue in the future;
- short sales, hedging and other derivative transactions in our securities;
- exposure to capital market risks related to changes in interest rates, realized investment losses, credit spreads, equity prices, foreign exchange rates and performance of insurance linked investments;
- our creditworthiness, financial condition, performance, and prospects;
- our dividend policy and whether dividends on our Common Stock have been, and are likely to be, declared and paid from time to time;
- perceptions of the investment opportunity associated with our securities relative to other investment alternatives;
- regulatory or legal developments;
- changes in general market, economic, and political conditions, as well as uncertainty resulting from the COVID-19 pandemic, geopolitical tensions, and other macroeconomic conditions;
- conditions or trends in our industry, geographies or customers; and
- changes in accounting standards, policies, guidance, interpretations or principles.

*Litigation or legal proceedings could expose us to significant liabilities and have a negative impact on our reputation or business. For example, we are subject to securities litigation and our officers and directors are subject to a related derivative complaint, which are expensive and could divert management attention and adversely impact our business.*

From time to time, we may be party to various claims and litigation proceedings. For example, in September 2021, a putative securities class action complaint was filed against us and certain of our officers and in March and June 2022, derivative complaints were filed against our officers and directors. These cases are still pending. See Part II, Item 8. Note 11 - *Commitments and Contingencies* of our consolidated financial statements included elsewhere in this Annual Report for more information. We evaluate these claims and litigation proceedings to assess the likelihood of unfavorable outcomes and to estimate, if possible, the amount of potential losses. Based on these assessments and estimates, we may establish reserves, as appropriate. These assessments and estimates are based on the information available to management at the time and involve a significant amount of management judgment. Actual outcomes or losses may differ materially from our assessments and estimates.

Even when not merited, the defense of these lawsuits is expensive and may divert management's attention, and we may incur significant expenses in defending these lawsuits. The results of litigation and other legal proceedings are inherently uncertain, and adverse judgments or settlements in some of these legal disputes may result in adverse monetary damages, penalties or injunctive relief against us, which could negatively impact our financial position, cash flows or results of operations. Any claims or litigation, even if fully indemnified or insured, could damage our reputation and make it more difficult to compete effectively or to obtain adequate insurance in the future.

Furthermore, while we maintain insurance for certain potential liabilities, such insurance does not cover all types and amounts of potential liabilities and is subject to various exclusions as well as caps on amounts recoverable. Even if we believe a claim is covered by insurance, insurers may dispute our entitlement to recovery for a variety of potential reasons, which may affect the timing and, if the insurers prevail, the amount of our recovery.

***If securities or industry analysts do not publish or cease publishing research or reports about us, our business, or our market, or if they change their recommendations regarding our securities adversely, the price and trading volume of our securities could decline.***

The trading market for our securities will be influenced by the research and reports that industry or securities analysts may publish about us, our business, market or competitors. Securities and industry analysts do not currently, and may never, publish research on us. If no securities or industry analysts commence coverage of us, the price and trading volume of our securities would likely be negatively impacted. If any of the analysts who may cover us change their recommendation regarding our shares of Common Stock adversely, or provide more favorable relative recommendations about our competitors, the price of our shares of Common Stock would likely decline. If any analyst who may cover us were to cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our share price or trading volume to decline.

***Future sales of our Common Stock into the public market could cause the market price of our Common Stock to drop significantly, even if our business is doing well.***

Sales of a substantial number of shares of Common Stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of Common Stock. We are unable to predict the effect that sales may have on the prevailing market price of Common Stock and Public Warrants.

To the extent our Warrants are exercised, additional shares of Common Stock will be issued, which will result in dilution to the holders of Common Stock and increase the number of shares eligible for resale in the public market. Sales, or the potential sales, of substantial numbers of shares in the public market by our stockholders could increase the volatility of the market price of Common Stock or adversely affect the market price of Common Stock.

In connection with the closing of the Business Combination, Novus's prior registration rights agreement was amended and restated to, among other things, (i) provide our stockholders with three demand registration rights; (ii) provide our stockholders and the Novus initial stockholders customary underwritten takedown rights (subject to customary priorities, minimums, frequency, and quantity limits, cutbacks, deferrals and other terms); and (iii) afford each of our stockholders and the Novus initial stockholders, on a *pari passu* basis, "piggy back" registration rights with respect to any underwritten offerings by the other stockholders and by us. The sale or possibility of sale of these additional securities trading in the public market may negatively impact the market price of our securities.

February 14, 2023, the Public Offering closed, and we issued and sold 40,000,000 shares of Common Stock. See "*Management's Discussion and Analysis of Financial Condition and Results of Operations - Recent Developments - Public Offering.*" In addition, we have filed a registration statement on Form S-8 under the Securities Act registering the issuance of approximately 17.4 million shares of Common Stock subject to options or other equity awards issued or reserved for future issuance under our equity incentive plans. Shares registered under this registration statement on Form S-8 will be available for sale in the public market subject to vesting arrangements, exercise of options and settlement of restricted stock units.

***Because we have no current plans to pay cash dividends on the Common Stock for the foreseeable future, you may not receive any return on investment unless you sell the Common Stock for a price greater than that which you paid for it.***

We may retain future earnings, if any, for future operations, expansion and debt repayment and have no current plans to pay any cash dividends for the foreseeable future. Any decision to declare and pay dividends as a public company in the future will be made at the discretion of our Board and will depend on, among other things, our results of operations, financial condition, cash requirements, contractual restrictions and other factors that our Board may deem relevant. In addition, our ability to pay dividends may be limited by covenants of any existing and future outstanding indebtedness we or our subsidiaries incur. As a result, you may not receive any return on an investment in the Common Stock unless you sell your shares of Common Stock for a price greater than that which you paid for it.

***Our amended and restated certificate of incorporation designates specific courts as the exclusive forum for certain stockholder litigation matters, which could limit the ability of our stockholders to obtain a favorable forum for disputes with us or our directors, officers or employees.***

Our amended and restated certificate of incorporation requires, to the fullest extent permitted by law, that derivative actions brought in our name, actions against current or former directors, officers or other employees for breach of fiduciary duty, other

similar actions, any other action as to which the DGCL confers jurisdiction to the Court of Chancery of the State of Delaware and any action or proceeding concerning the validity of our amended and restated certificate of incorporation or our amended and restated bylaws may be brought only in the Court of Chancery in the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware does not have subject matter jurisdiction thereof, any state court located in the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware), unless we consent in writing to the selection of an alternative forum. This provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Our amended and restated certificate of incorporation also provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the U.S. shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. This provision may limit our stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us and our directors, officers or other employees and may have the effect of discouraging lawsuits against our directors, officers and other employees. Furthermore, our stockholders may be subject to increased costs to bring these claims, and the exclusive forum provision could have the effect of discouraging claims or limiting investors' ability to bring claims in a judicial forum that they find favorable.

In addition, the enforceability of similar exclusive forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with one or more actions or proceedings described above, a court could rule that this provision in our amended and restated certificate of incorporation is inapplicable or unenforceable. In March 2020, the Delaware Supreme Court issued a decision in *Salzburg et al. v. Sciabacucchi*, which found that an exclusive forum provision providing for claims under the Securities Act to be brought in federal court is facially valid under Delaware law. We intend to enforce this provision, but we do not know whether courts in other jurisdictions will agree with this decision or enforce it. If a court were to find the exclusive forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, prospects, financial condition and operating results.

***There is no guarantee that the Warrants will be in the money at the time they become exercisable, and they may expire worthless.***

The exercise price for our Warrants is \$11.50 per share of Common Stock. There is no guarantee that the Warrants will be in the money following the time they become exercisable and prior to their expiration, and as such, the Warrants may expire worthless.

We may amend the terms of the Warrants in a manner that may be adverse to holders with the approval by the holders of at least 50% of the then-outstanding Warrants. As a result, the exercise price of your Warrants could be increased, the exercise period could be shortened and the number of shares of Common Stock purchasable upon exercise of a Warrant could be decreased, all without your approval.

Our Warrants are issued in registered form under the Warrant Agreement, dated May 19, 2020, (the "Warrant Agreement"), between us and the Continental Stock Transfer & Trust Company, as the warrant agent. The Warrant Agreement provides that the terms of the Warrants may be amended without the consent of any holder to cure any ambiguity or correct any defective provision, but requires the approval by the holders of at least 50% of the then outstanding Warrants to make any other modifications or amendments. Accordingly, we may amend the terms of the Warrants in a manner adverse to a holder if holders of at least 50% of the then- outstanding Warrants approve of such amendment. Although our ability to amend the terms of the Warrants with the consent of at least 50% of the then outstanding Warrants is unlimited, examples of such amendments could be amendments to, among other things, increase the exercise price of the Warrants, convert the Warrants into cash or stock (at a ratio different than initially provided), shorten the exercise period or decrease the number of shares of Common Stock purchasable upon exercise of a Warrant.

***We may redeem unexpired Public Warrants prior to their exercise at a time that is disadvantageous to Warrant holders, thereby making such Warrants worthless.***

We have the ability to redeem outstanding Public Warrants at any time after they become exercisable and prior to their expiration, at a price of \$0.01 per Public Warrant, provided that the last reported sales price of Common Stock equals or exceeds \$18.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within a 30 trading-day period ending on the third trading day prior to the date on which we give proper notice of such redemption and provided certain other conditions are met. If and when the Public Warrants become redeemable by us, we may not exercise our redemption right if we are unable to register or qualify the underlying securities for sale under all applicable state securities laws. Redemption of the outstanding Public Warrants could force you (a) to exercise your Public Warrants and pay the exercise price therefor at a time when it may be disadvantageous for you to do so, (b) to sell your Public Warrants at the then-current market price when you might otherwise wish to hold your Public Warrants or (c) to accept the nominal redemption price which, at the time the outstanding Public Warrants are called for redemption, is likely to be substantially less than the market value of your Public Warrants.

In addition, we may redeem the Public Warrants after they become exercisable for a number of shares of Common Stock determined based on the redemption date and the fair market value of the Common Stock. Any such redemption may have similar consequences to a cash redemption described above. In addition, such redemption may occur at a time when the Public Warrants are “out-of-the-money,” in which case, you would lose any potential embedded value from a subsequent increase in the value of the Common Stock had your Public Warrants remained outstanding.

***You will be diluted by any exercises of outstanding Warrants and outstanding options, as well as settlement of outstanding restricted stock units, and/or the sale and issuance of our Common Stock pursuant to the Purchase Agreement with B. Riley Principal Capital, or the ATM Agreement with Cowen. In addition, we may issue additional shares of Common Stock or other equity securities convertible into Common Stock without your approval, which would dilute your ownership interests and may depress the market price of the Common Stock.***

As of December 31, 2022, we had 13,241,617 Warrants, 1,854,661 options, and 4,052,327 restricted stock units outstanding. The exercise of such Warrants or options, and the settlement of such restricted stock units, will result in dilution of your investment and could negatively impact the market price of our Common Stock.

On December 15, 2021, we entered into the Purchase Agreement with B. Riley Principal Capital pursuant to which B. Riley Principal Capital committed to purchase up to \$100 million of our Common Stock, subject to certain limitations and conditions set forth in the Purchase Agreement. See Note 15 - Shareholders' Equity to our consolidated financial statements for additional information. For the year-ended December 31, 2022, we sold 3,509,685 shares of our Common Stock under the Purchase Agreement. The shares of our Common Stock that were and may be issued under the Purchase Agreement were and may be sold by us to B. Riley Principal Capital at our discretion from time to time over an approximately 24-month commencing on the Commencement Date as defined in the Purchase Agreement. We may ultimately decide to sell more or all, of the shares of our Common Stock that may be available for us to sell to B. Riley Principal Capital pursuant to the Purchase Agreement. The purchase price for the shares that we sold and may sell to B. Riley Principal Capital under the Purchase Agreement will fluctuate based on the price of our Common Stock. Depending on market liquidity at the time, sales of such shares may cause the trading price of our Common Stock to fall.

After B. Riley Principal Capital has acquired the shares from us, B. Riley Principal Capital may resell more or all of those shares at any time or from time to time in its discretion. Therefore, sales to B. Riley Principal Capital by us could result in substantial dilution to the interests of other holders of our Common Stock. Additionally, the sale of a substantial number of shares of our Common Stock to B. Riley Principal Capital, or the anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a price that we might otherwise wish to effect sales.

On August 3, 2022, we entered into the ATM Agreement with Cowen, pursuant to which we may offer and sell, from time to time, through Cowen, shares of common stock, having an aggregate offering price up to \$100 million. See Note 15 - Shareholders' Equity for additional information.

On February 9, 2023, we entered into the Underwriting Agreement with Cowen and Company, LLC, as representative of the several underwriters named therein, relating to the Public Offering of 40,000,000 shares of our Common Stock, at a price to the public of \$1.00 per share. In addition, pursuant to the Underwriting Agreement, we granted the underwriters the Overallotment Option to purchase up to 6,000,000 additional shares of Common Stock. On February 14, 2023, the Public Offering closed, and we issued and sold 40,000,000 shares of Common Stock and on February 24, 2023, we issued an

additional 6,000,000 shares under the Overallotment Option. The net proceeds from the Public Offering, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, were approximately \$43.1 million, including the \$6.0 million from the Overallotment Option.

We may also issue additional shares of Common Stock or other equity securities of equal or senior rank in the future in connection with, among other things, future acquisitions or repayment of outstanding indebtedness, without stockholder approval, in a number of circumstances.

The issuance of additional shares or other equity securities of equal or senior rank would have the following effects:

- existing stockholders' proportionate ownership interest in us will decrease;
- the amount of cash available per share, including for payment of dividends in the future, may decrease;
- the relative voting strength of each previously outstanding share of Common Stock may be diminished; and
- the market price of our Common Stock may decline.

***Anti-takeover provisions in our amended and restated certificate of incorporation and under Delaware law could make an acquisition of our company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our then current management.***

Our amended and restated certificate of incorporation contains provisions that may delay or prevent an acquisition of our company or a change in our management. These provisions may make it more difficult for stockholders to replace or remove members of our Board. Because the Board is responsible for appointing the members of the management team, these provisions could in turn frustrate or prevent any attempt by our stockholders to replace or remove our current management. In addition, these provisions could limit the price that investors might be willing to pay in the future for shares of Common Stock. Among other things, these provisions include:

- the limitation of the liability of, and the indemnification of, our directors and officers;
- a prohibition on actions by our stockholders except at an annual or special meeting of stockholders;
- a prohibition on actions by our stockholders by written consent; and
- the ability of the Board to issue preferred stock without stockholder approval, which could be used to institute a "poison pill" that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by the Board.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the DGCL, which prohibits a person who owns 15% or more of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired 15% or more of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This could discourage, delay or prevent a third party from acquiring or merging with us, whether or not we are desired by, or beneficial to, our stockholders. This could also have the effect of discouraging others from making tender offers for the Common Stock, including transactions that may be in our stockholders' best interests. Finally, these provisions establish advance notice requirements for nominations for election to the Board or for proposing matters that can be acted upon at stockholder meetings. These provisions would apply even if the offer may be considered beneficial by some stockholders.

***Our status as a public benefit corporation could make an acquisition of our company, which may be beneficial to our stockholders, more difficult.***

While Delaware common law, as stated in *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, and related cases, may impose upon directors of a traditional corporation a duty to maximize short-term stockholder value in certain "sale of the company" transactions, a public benefit corporation board's decision-making would not be subject to those same constraints. As a public benefit corporation, our Board would need to take into account interests other than short-term stockholder value when evaluating a sale, and this balancing of interests may result in accepting a bid that may not maximize short-term stockholder value. This does not mean that, as a public benefit corporation, our Board's balancing of interests would preclude us from accepting a bid that maximizes short-term stockholder value. Rather, our Board would weigh the merits of accepting the short-term value offered by a bid against other options that may generate greater long-term value or have other meaningful effects on those materially affected by our conduct or public benefit purpose and, if appropriate, could accept a bid that does not maximize short-term value. Our Board would also be able to reject a bid in favor of pursuing other stakeholder interests or the specified public benefit, to the detriment of stockholders.

In addition, Article VIII of our amended and restated certificate of incorporation provides that we shall not, either directly or indirectly, merge or consolidate with or into another entity if, as a result of such merger or consolidation, our capital stock would become, or be converted into or exchange for the right to receive, shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity and the certificate of incorporation (or similar governing document) of which does not contain identical provisions to Article III of our amended and restated certificate of incorporation identifying the public benefit or public benefits, unless we have obtained, in addition to any affirmative vote required by law or by our amended and restated certificate of incorporation, the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of our capital stock entitled to vote generally in the election of directors, voting as a single class. This provision of our amended and restated certificate of incorporation would require us to obtain a super-majority vote in order to merge or consolidate with an entity that is not a public benefit corporation, which could discourage acquisition offers that may otherwise be beneficial to stockholders.

## **General Risk Factors**

***If we fail to retain and motivate members of our management team or other key employees, our business and future growth prospects would be harmed.***

Our success and future growth depend largely upon the continued services of our executive officers as well as other key employees. These executives and key employees have been primarily responsible for determining the strategic direction of the business and executing our growth strategy and are integral to our brand, culture and reputation with distributors and others in the industry. Reduction in force actions, such as the cost-saving measures taken in fiscal 2022, could result in difficulty in rehiring capable employees to refill the positions eliminated as needed once business recovers. From time to time, there may be changes in our executive management team or other key employees resulting from the hiring or departure of these personnel. The loss of one or more of executive officers, or the failure by the executive team to effectively work with employees and lead the company, could harm our business.

***We will continue to incur significant costs as a result of operating as a public company, and our management will continue to devote substantial time to compliance initiatives.***

As a public company, we have incurred and will continue to incur significant legal, accounting and other expenses. As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), the Dodd-Frank Wall Street Reform and Consumer Protection Act, as well as rules adopted, and to be adopted, by the SEC and Nasdaq. Our management and other personnel need to continue to devote a substantial amount of time to comply with these requirements. Moreover, these rules and regulations have increased, and will continue to increase, our legal and financial compliance costs and make some activities more time-consuming and costly. The increased costs may increase our net loss. For example, these rules and regulations make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be forced to accept reduced policy limits or incur substantially higher costs to maintain the same or similar coverage as we did prior to becoming a public company. These rules and regulations are often subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in future uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our Board, our board committees or as our executive officers.

***We are a “smaller reporting company” and have elected to comply with reduced public company reporting requirements, which could make our Common Stock less attractive to investors.***

Because our annual revenue was less than \$100.0 million during the most recently completed fiscal year and the market value of our voting and non-voting Common Stock held by non-affiliates was less than \$560.0 million measured on the last business day of our second fiscal quarter, we qualify again as a “smaller reporting company” as defined in the Exchange Act. Accordingly, we may provide less public disclosure than larger public companies, including the inclusion of only two years of audited financial statements and only two years of related selected financial data and management’s discussion and analysis of financial condition and results of operations disclosure. We are also no longer required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests. We cannot predict if investors will find our Common Stock less attractive as a result of our reliance on these exemptions. If some investors find our Common Stock less attractive as a result of any choice we make to reduce disclosure, there may be a less active trading market for our Common Stock and the market price for our Common Stock may be more volatile.

***We have a significant amount of long-lived assets, which are assessed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. In addition, we may never realize the full value of our long-lived assets, causing us to record material impairment charges.***

We are required to assess our long-lived assets, principally property and equipment, for impairment if conditions indicate that an impairment may have occurred. As more fully described in Notes 2 and 7 to the consolidated financial statements, during 2022, we recorded impairment losses for certain long-lived assets. We evaluated our long-lived assets for recoverability after identifying indicators of impairment at December 31, 2022, and determined that certain assets were not recoverable and were impaired. As a result, the Company recognized a \$50.1 million impairment loss at December 31, 2022, which is the amount by which the carrying value exceeded the fair value of these assets. This is in addition to the \$1.1 million impairment related to the restructuring of Root AI as discussed in Note 4 - *Restructuring*.

The high-tech greenhouse agriculture business is extremely capital-intensive. Future impairment of long-lived assets could be recorded in results of operations as a result of changes in assumptions, estimates, or circumstances, some of which are beyond our control. There can be no assurance that a material impairment charge of long-lived assets will be avoided. We can provide no assurance that a material impairment loss of long-lived assets will not occur in a future period, and the risk of future material impairments has been significantly heightened as result of our liquidity profile. Such impairment charges could have a material adverse effect on our business, results of operations and financial condition.

***Changes in tax laws may materially adversely affect our business, prospects, financial condition and operating results.***

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could adversely affect our business, prospects, financial condition and operating results. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, U.S. federal tax legislation enacted in 2017, informally titled the Tax Cuts and Jobs Act (the "Tax Act"), enacted many significant changes to the U.S. tax laws. Future guidance from the U.S. Internal Revenue Service (the "IRS") with respect to the Tax Act may affect us, and certain aspects of the Tax Act could be repealed or modified in future legislation. The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") has already modified certain provisions of the Tax Act. Recently, the United States passed the Inflation Reduction Act, which provides for a minimum tax equal to 15% of the adjusted financial statement income of certain large corporations, as well as a 1% excise tax on certain share buybacks by public corporations that would be imposed on such corporations. Such tax law changes could have a material adverse impact on us. In addition, it is uncertain if and to what extent various states will conform to any newly enacted federal tax legislation.

While it is too early to assess the overall impact of these changes, as these and other tax laws and related regulations are revised, enacted, and implemented, our financial condition, results of operations, and cash flows could have a material adverse impact.

***Our ability to use net operating loss carryforwards and other tax attributes may be limited.***

We have incurred losses during our history and do not expect to become profitable in the near future, and may never achieve profitability. To the extent that we continue to generate taxable losses, unused losses will carry forward to offset future taxable income, if any, until such unused losses expire, if at all. As of December 31, 2022, we had U.S. federal net operating loss carryforwards of approximately \$224.2 million.

Under the Tax Act, as modified by the CARES Act, U.S. federal net operating loss carryforwards generated in taxable periods beginning after December 31, 2017, may be carried forward indefinitely, but the deductibility of such net operating loss carryforwards in taxable years beginning after December 31, 2020, is limited to 80% of taxable income. It is uncertain if and to what extent various states will conform to the Tax Act or the CARES Act.

In addition, our net operating loss carryforwards are subject to review and possible adjustment by the IRS, and state tax authorities. Under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the "Code"), our federal net operating loss carryforwards and other tax attributes may become subject to an annual limitation in the event of certain cumulative changes in our ownership. An "ownership change" pursuant to Section 382 of the Code generally occurs if one or more stockholders or groups of stockholders who own at least 5% of a company's stock increase their ownership by more than

50 percentage points over their lowest ownership percentage within a rolling three-year period. Our ability to utilize our net operating loss carryforwards and other tax attributes to offset future taxable income or tax liabilities may be limited as a result of ownership changes, including potential changes in connection with the business combination or other transactions. Similar

rules may apply under state tax laws. If we earn taxable income, such limitations could result in increased future income tax liability to us and our future cash flows could be adversely affected. We have recorded a valuation allowance related to our net operating loss carryforwards and other deferred tax assets due to the uncertainty of the ultimate realization of the future benefits of those assets.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

We have corporate offices in Lexington, Kentucky. Our facilities are used to support our operations and are currently suitable and adequate for the conduct of our business. We primarily own such facilities with the exception of our corporate offices in Lexington, Kentucky, and AppHarvest Berea. The following table sets forth the location and size of our owned and leased facilities as of December 31, 2022:

| Type                      | Location            | Owned/Leased | Approximate Size <sup>1</sup> |
|---------------------------|---------------------|--------------|-------------------------------|
| Corporate offices         | Lexington, Kentucky | Leased       | 22,000 sqft                   |
| AppHarvest Morehead       | Morehead, Kentucky  | Owned        | 366 acres                     |
| AppHarvest Berea          | Berea, Kentucky     | Leased       | 40 acres                      |
| AppHarvest Richmond       | Richmond, Kentucky  | Owned        | 252 acres                     |
| AppHarvest Somerset       | Somerset, Kentucky  | Owned        | 173 acres                     |
| AppHarvest Morehead North | Morehead, Kentucky  | Owned        | 200 acres                     |

<sup>1</sup>For CEA facilities this is the land parcel size and not the size of the greenhouse

Item 3. Legal Proceedings

We are subject to various legal proceedings and claims that arise in the ordinary course of our business. Although the outcome of these and other claims cannot be predicted with certainty, we do not believe the ultimate resolution of the current matters will have a material adverse effect on our business, financial condition, results of operations or cash flows. However, depending on the nature and timing of a given dispute, an unfavorable resolution could materially affect our current or future results of operations or cash flows. For a description of our legal proceedings, see Note 11 - *Commitments and Contingencies* of our consolidated financial statements included elsewhere in this Annual Report.

Item 4. Mine Safety Disclosures

Not applicable.



## Part II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Our Common Stock and Warrants are traded on The Nasdaq Stock Market LLC under the symbols "APPH" and "APPHW", respectively.

#### Holders of Common Stock

As of December 31, 2022, we had 63 holders of record of our Common Stock and 11 holders of record of our separately traded Warrants. This number does not reflect the beneficial holders of our securities who hold shares in street name through brokerage accounts or other nominees.

#### Dividends

We have never declared or paid any cash dividends on our Common Stock. For the foreseeable future, we intend to retain any earnings to finance the development and expansion of our business, and we do not anticipate paying any cash dividends on our Common Stock. Any future determination to pay dividends will be at the discretion of our Board and will be dependent upon then existing conditions, including our financial condition and results of operations, capital requirements, contractual restrictions, business prospects and other factors that OUR Board considers relevant.

#### Recent Sales of Unregistered Securities

In December 2021, we entered into the Purchase Agreement with B. Riley Principal Capital, pursuant to which we have a right to sell to B. Riley Principal Capital, up to the lesser of (i) \$100 million of newly issued shares of our Common Stock and (ii) Exchange Cap, which is 20,143,404 shares of Common Stock, from time to time during the two-year term of the purchase agreement. See "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources."

#### Issuer Purchases of Equity Securities

| Period                | (a) Total Number of Shares Purchased <sup>1</sup> | (b) Average Price Paid per Share | (c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs | (d) Maximum Number of Shares that May Yet be Purchased under the Plans or Programs |
|-----------------------|---------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| 10/01/2022-10/31/2022 | 10,203                                            | \$ 1.84                          | —                                                                                    | —                                                                                  |
| 11/01/2022-11/30/2022 | 12,728                                            | 1.55                             | —                                                                                    | —                                                                                  |
| 12/01/2022-12/31/2022 | 11,659                                            | 0.76                             | —                                                                                    | —                                                                                  |

<sup>1</sup>A total of 34,590 shares of Common Stock were repurchased in the fourth quarter of 2022 related to shares withheld to satisfy employee tax withholding obligations in association with the vesting of restricted stock units. These shares were not repurchased as part of a publicly announced plan or program.

### Item 6. [Reserved]

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our financial statements and related notes included in this Annual Report on Form 10-K.

#### Overview

We were founded on January 19, 2018 as AppHarvest Operations, Inc. (f/k/a AppHarvest, Inc. "Legacy AppHarvest"), a Delaware public benefit corporation. Together with our subsidiaries, we are a sustainable food company in Appalachia developing and operating some of the world's largest high-tech indoor farms with robotics and artificial intelligence to build a

reliable, climate-resilient food system. Our farms are designed to grow produce using sunshine, rainwater and up to 90% less water than open-field growing, all while producing yields up to 30 times that of traditional agriculture and preventing pollution from agricultural runoff. We combine conventional agricultural techniques with cutting-edge technology, including artificial intelligence and robotics, to improve access to nutritious food, while farming more sustainably, building a domestic food supply, and increasing investment in Appalachia.

Prior to October 2020, our operations were limited to the “start-up” concerns of organizing and staffing, business planning, raising capital, and acquiring and developing properties for CEA. In October 2020, we partially opened AppHarvest Morehead. We harvested our first crop of beefsteak tomatoes and tomatoes on the vine in January 2021 and March 2021, respectively. In May 2021, we opened production of the full 60 acres at AppHarvest Morehead, and in November 2022 began harvesting snacking tomatoes.

In October 2022, we began shipping salad greens from AppHarvest Berea and harvesting the first strawberries from AppHarvest Somerset. AppHarvest Somerset will primarily grow strawberries, and is expected to seasonally grow cucumbers. Half of AppHarvest Richmond was planted in December 2022 and began commercial shipments in January 2023.

AppHarvest Morehead North, which is adjacent to AppHarvest Morehead, commenced construction in June 2021 and is intended to grow salad greens. We have indefinitely paused the development of the 10-acre Morehead salad greens facility, with resumption of construction contingent upon financing.

The high-tech greenhouse agriculture business is extremely capital-intensive and we expect to expend significant resources to complete the build-out of facilities under construction, to build out and start up our new CEA facilities and continue harvesting existing crops and plant and harvest new crops. These expenditures are expected to include working capital, costs of acquiring and building out new facilities, costs associated with planting and harvesting, such as the purchase of seeds and growing supplies, and the cost of attracting, developing and retaining a skilled labor force, including local labor. In addition, other unanticipated costs may arise due to the unique nature of these CEA facilities and increased production in our new operating facilities at full capacity.

### ***Going Concern***

We have incurred net losses of \$176.6 million and \$166.2 million during the years ended December 31, 2022 and December 31, 2021, respectively. We believe we will continue to incur net losses for the foreseeable future as we continue to invest in world-class technology to increase production and commercial sales of our products. We generated negative cash flows from operations of \$86.1 million and \$103.9 million during the years ended December 31, 2022 and December 31, 2021, respectively. There is no guarantee when, if ever, we will become profitable. In addition, debt service requirements and our plans to continue to invest in the build-out and start-up of our new and future CEA facilities, including AppHarvest Berea, Richmond tomato facility and Somerset facility, will have an adverse impact on our liquidity.

As of December 31, 2022, we had \$54.3 million of cash on hand, and an accumulated deficit of \$364.0 million. We continue to take actions to maintain appropriate levels of liquidity. In October 2022, we entered into a \$30.0 million note and loan agreement with Mastronardi Produce-USA, Inc. (“Mastronardi USA”) and received \$15.0 million upon execution followed by another \$15 million in November 2022. In November 2022, we initiated a third restructuring plan to further reduce operating costs and our losses. In December 2022, we repaid the \$30.0 million note and accumulated interest after entering into the Berea Sale-Leaseback Transaction, which provided us with net proceeds of \$57.5 million (of which \$22.5 million was required to be set aside for construction costs for AppHarvest Richmond). In addition, on February 14, 2023, the Public Offering closed, and we issued and sold 40,000,000 shares of Common Stock, and on February 24, 2023, the Overallotment Option closed, and we issued and sold 6,000,000 shares of Common Stock. The net proceeds from the Public Offering, and Overallotment Option, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, were approximately \$42.9 million. Despite these actions, we believe there is substantial doubt about our ability to continue as a going concern and absent additional sources of financing, we expect that our existing cash and cash equivalents will only allow us to continue our planned operations into the fourth quarter of 2023. Investors should read the section below titled *Liquidity and Capital Resources* for additional information regarding our financial condition and ability to continue operations.

### ***Basis of Presentation***

Currently, we conduct business through one operating segment. We began generating sales during the first quarter of 2021 and conduct our operations solely in the United States.

For more information about our basis of presentation, refer to Note 1 - *Description of Business* to our consolidated financial statements included elsewhere in this Annual Report.

## ESG

AppHarvest is both a public benefit corporation (“PBC”) and a Certified B Corporation because we believe in collective benefit over individual gain. We believe growing healthy fruits and vegetables are good business, and new technologies can deliver cleaner produce with safer growing methods, which we believe benefits all stakeholders. We are all in this together, for good.

PBCs are for-profit corporations and, under Delaware law, our directors have a duty to balance the financial interests of stockholders, the best interests of those materially affected by our conduct (including our stockholders, employees, communities, customers and suppliers), and the specific public benefits identified in our second amended and restated certificate of incorporation (the “amended and restated certificate of incorporation”) when making decisions. Our amended and restated certificate of incorporation includes three specific public benefit goals:

- **Goal 1** Drive positive environmental change in agriculture
- **Goal 2** Empower individuals in Appalachia
- **Goal 3** Improve the lives of our employees and the communities in which we operate

In early 2021, we launched our first materiality assessment with Business for Social Responsibility (“BSR”) to further assess which ESG issues are most important to AppHarvest’s stakeholders and our business success. Our stakeholders include farmers, employees, regional economic development organizations, retailers, sustainability experts at BSR, suppliers, local communities, and our internal senior management and Board members.

While our PBC charter-specific goals broadly relate to our corporate purpose and inform all other ESG efforts, our materiality assessment (which was guided by Sustainability Accounting Standards Board standards, now a resource of the International Financial Reporting Standards Foundation (the “IFRS Foundation”), the United Nation’s Sustainable Development Goals and the B Impact Assessment from B Lab) and B Corporation assessment will inform our specific ESG strategies. Our ESG key performance indicators (“KPIs”) will align with our material issues to measure our progress. Our first full year of operations ending on December 31, 2021 served as our baseline year for reporting ESG KPIs.

More information on our key ESG programs, goals and commitments, and key metrics can be found in our 2021 sustainability report, which is available on our website <https://www.appharvest.com/>. Website references throughout this document are provided for convenience only, and the content on the referenced websites is not incorporated by reference into this Annual Report.

While we believe all of our ESG goals align with our long-term growth strategy and financial and operational priorities, they are aspirational and may change, and there is no guarantee or promise that they will be met or that they will not hinder financial or operational performance.

## Recent Developments

### Nasdaq Notice

On January 11, 2023, we received a letter from Nasdaq, notifying us that, for the previous 30 consecutive business day periods prior to the date of the letter, the closing bid price for our Common Stock was below \$1.00. In accordance with Nasdaq Listing Rule 5810(c)(3)(A) we were provided an initial period of 180 calendar days, or until July 10, 2023, to regain compliance with Nasdaq’s bid price requirement. If, at any time before July 10, 2023, the bid price for our Common Stock closed at \$1.00 or more for a minimum of 10 consecutive business days, we would regain compliance with the bid price requirement, unless Nasdaq staff exercised its discretion to extend this 10-day period pursuant to Nasdaq rules.

On January 26, 2023, as a result of our Common Stock trading over \$1.00 for 10 consecutive business days, we received a notice from the Nasdaq Listing Qualifications Office indicating that we regained compliance with the minimum bid price requirement under Nasdaq Listing Rule 5450(a)(1).

## ***Public Offering***

On February 9, 2023, we entered into the Underwriting Agreement with Cowen and Company, LLC, as representative of the several underwriters named therein, relating to the Public Offering of 40,000,000 shares of our Common Stock, at a price to the public of \$1.00 per share. On February 14, 2023, the Public Offering closed and we issued and sold 40,000,000 shares of Common Stock to the underwriters.

In addition, pursuant to the Underwriting Agreement, we granted the underwriters the Overallotment Option to purchase up to 6,000,000 additional shares of Common Stock. The underwriter exercised the Overallotment Option on February 22, 2023, to purchase 6,000,000 shares of Common Stock and on February 24, 2023, we issued the 6,000,000 shares under the Overallotment Option. The net proceeds from the Public Offering, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, were approximately \$42.9 million, including the \$6.0 million from the Overallotment Option.

## **Factors Affecting Our Financial Condition and Results of Operations**

We have expended, and expect to continue to expend, substantial resources as we:

- continue the build-out and start-up of AppHarvest Richmond and invest in additional CEA facilities in the future;
- finalize construction of Berea salad greens facility and Somerset facility;
- continue our third growing season at AppHarvest Morehead, which began during the third quarter of 2022, and plant and harvest new crops at AppHarvest Berea, AppHarvest Richmond, and AppHarvest Somerset, including future growing seasons;
- fulfill our obligations under the Purchase and Marketing Agreement with Mastronardi;
- identify and invest in future growth opportunities, including new or expanded facilities and new product lines;
- invest in sales and marketing efforts to increase brand awareness, engage customers and drive sales of our products;
- invest in product innovation and development; and
- incur additional general and administrative expenses, including increased finance, legal and accounting expenses, associated with being a public company and expanding operations.

## **Business Combination and Public Company Costs**

On January 29, 2021, we consummated the Business Combination. Upon consummation of the Business Combination and the closing of the concurrent private placement of the 37,500 shares of our Common Stock (the “PIPE”), the most significant change in our reported financial position and results of operations was an increase in cash and cash equivalents of approximately \$435.2 million, including \$375.0 million in gross proceeds from the PIPE.

As a consequence of the Business Combination, we became the successor to an SEC-registered and Nasdaq-listed company, which requires us to hire additional personnel and implement procedures and processes to address public company regulatory requirements and customary practices. We expect to incur additional annual expenses as a public company for, among other things, directors’ and officers’ liability insurance, director fees and additional internal and external accounting, legal and administrative resources, including increased audit and legal fees.

## Key Components of Statement of Operations

### *Non-GAAP Financial Measures*

To supplement our consolidated financial statements, which are prepared and presented in accordance with United States GAAP, we use certain non-GAAP measures, such as Adjusted EBITDA and Adjusted gross loss, to understand and evaluate our core operating performance. We define and calculate Adjusted EBITDA as net loss before the impact of interest income or expense, income tax expense or benefit, depreciation and amortization, adjusted to exclude: stock-based compensation expense, Business Combination transaction-related costs, restructuring and impairment costs, remeasurement of warrant liabilities, start-up costs for new CEA facilities, Root AI acquisition related costs and certain other non-core items. We define and calculate Adjusted gross profit/(loss) as gross profit/(loss) adjusted to exclude the impact of depreciation and amortization and stock-based compensation expense related to cost of goods sold. We believe these non-GAAP measures of financial results provide useful information to management and investors regarding certain financial and business trends relating to our financial condition and results of operations. Our management uses these non-GAAP measures for trend analyses and for budgeting and planning purposes.

We believe that the use of these non-GAAP financial measures provide additional tools for investors to use in evaluating operating results and trends. Other similar companies may present different non-GAAP measures or calculate similar non-GAAP measures differently. Management does not consider these non-GAAP measures in isolation or as an alternative to financial measures determined in accordance with GAAP. The principal limitation of these non-GAAP financial measures is that they exclude significant expenses that are required to be presented in our GAAP financial statements. Because of this limitation, you should consider Adjusted EBITDA and Adjusted gross loss alongside other financial performance measures, including net loss, gross loss, and our other financial results presented in accordance with GAAP.

### *Net sales*

Substantially all of our net sales in 2022 and 2021 were generated from the sale of tomatoes, and to a lesser extent salad greens and strawberries, under an agreement with one customer, Mastronardi. Net sales include revenues earned from the sale of our products, less commissions, shipping, distribution and other costs incurred as defined in our customer agreements.

### *Cost of Goods Sold*

Cost of goods sold (COGS) consists of expenses incurred related to the production of inventory sold to customers.

### *Selling, General and Administrative Expenses*

Selling, general and administrative expenses ("SG&A") for the year ended December 31, 2022 and December 31, 2021 consisted of payroll and payroll related expenses, stock-based compensation, professional services and legal fees, licenses and registration fees, insurance, depreciation, rent and various other personnel and office related costs. SG&A also includes start-up expenses related to pre-commencement commercial activities for tomatoes on the vine at AppHarvest Morehead in 2021 and new CEA facilities which were under construction and ramping up operations in 2022.

### *Goodwill and Intangible Impairment*

There was no impairment related to goodwill or other intangibles during the year ended December 31, 2022.

During the year ended December 31, 2021, we recorded goodwill impairment expense and other intangible impairment expense of \$59.9 million, for a non-cash charge of \$59.7 million, net of tax of \$0.2 million, to fully impair the carrying value of goodwill and definite lived intangible assets included in our acquisition of Root AI. The impairment reflected current market valuations and strategic investment requirements as we continue to develop commercial technologies through AppHarvest Technology, Inc.

### *Fixed Asset Impairment*

During the year ended December 31, 2022, we recorded a fixed asset impairment charge of \$50.1 million to reduce the book value of our CEA facilities, and machinery and equipment therein, to an estimated fair value.

## Interest Expense

Interest expense for the year ended December 31, 2022 primarily relates to long-term debt to help finance the construction of our CEA facilities and has been capitalized as a component of the cost of those facilities. Interest expense from related parties for the year ended December 31, 2021 primarily relates to the finance lease and financing obligation for AppHarvest Morehead which were settled upon purchase of Morehead Farm on March 1, 2021 and the convertible note that was converted to Common Stock upon completion of the Business Combination on January 29, 2021. Note 10 - *Debt* to our consolidated financial statements included elsewhere in this Annual Report.

## Results of Operations

### Comparison of the Years Ended December 31, 2022 and 2021

The following table sets forth our historical operating results for the periods indicated:

|                                                | Year Ended December 31, |              | \$ Change   |
|------------------------------------------------|-------------------------|--------------|-------------|
|                                                | 2022                    | 2021         |             |
| <i>(Dollars in thousands)</i>                  |                         |              |             |
| Net sales                                      | \$ 14,592               | \$ 9,050     | \$ 5,542    |
| Cost of goods sold                             | 56,995                  | 41,938       | 15,057      |
| Gross loss                                     | (42,403)                | (32,888)     | (9,515)     |
| Operating expenses:                            |                         |              |             |
| Selling, general and administrative expenses   | 81,266                  | 107,245      | (25,979)    |
| Goodwill and other intangible asset impairment | —                       | 59,901       | (59,901)    |
| Fixed asset impairment                         | 50,101                  | —            | 50,101      |
| Total operating expenses:                      | 131,367                 | 167,146      | (35,779)    |
| Loss from operations                           | (173,770)               | (200,034)    | 26,264      |
| Other income (expense):                        |                         |              |             |
| Interest expense from related parties          | —                       | (658)        | 658         |
| Change in fair value of Private Warrants       | 111                     | 35,047       | (34,936)    |
| Other                                          | (480)                   | 448          | (928)       |
| Loss before income taxes                       | (174,139)               | (165,197)    | (8,942)     |
| Income tax expense                             | (2,507)                 | (989)        | (1,518)     |
| Net loss                                       | \$ (176,646)            | \$ (166,186) | \$ (10,460) |

## Reconciliation of GAAP to Non-GAAP

The following table presents a reconciliation of net loss, the most directly comparable financial measure calculated and presented in accordance with GAAP, to Adjusted EBITDA:

|                                                                 | Year Ended December 31, |              | \$ Change   |
|-----------------------------------------------------------------|-------------------------|--------------|-------------|
|                                                                 | 2022                    | 2021         |             |
| <i>(Dollars in thousands)</i>                                   |                         |              |             |
| Net loss                                                        | \$ (176,646)            | \$ (166,186) | \$ (10,460) |
| Interest expense from related parties                           | —                       | 658          | (658)       |
| Interest income                                                 | (769)                   | (277)        | (492)       |
| Income tax expense                                              | 2,507                   | 989          | 1,518       |
| Depreciation and amortization expense                           | 16,354                  | 10,794       | 5,560       |
| EBITDA                                                          | (158,554)               | (154,022)    | (4,532)     |
| Fixed asset impairment                                          | 50,101                  | —            | 50,101      |
| Goodwill and other intangible asset impairment                  | —                       | 59,901       | (59,901)    |
| Change in fair value of Private Warrants                        | (111)                   | (35,047)     | 34,936      |
| Stock-based compensation expense                                | 26,918                  | 40,910       | (13,992)    |
| Issuance of common stock for commitment shares                  | —                       | 1,006        | (1,006)     |
| Transaction success bonus on completion of Business Combination | —                       | 1,500        | (1,500)     |
| Start-up costs for new CEA facilities <sup>(1)</sup>            | 2,873                   | —            | 2,873       |
| Restructuring and Root AI fixed asset impairment costs          | 5,529                   | 946          | 4,583       |
| Business Combination transaction costs                          | —                       | 13,883       | (13,883)    |
| Berea sale leaseback transaction costs                          | 1,225                   | —            | 1,225       |
| Root AI Acquisition costs                                       | —                       | 1,032        | (1,032)     |
| Adjusted EBITDA                                                 | \$ (72,019)             | \$ (69,891)  | \$ (2,128)  |

The following table presents a reconciliation of gross loss, the most directly comparable financial measure calculated and presented in accordance with GAAP, to Adjusted gross loss:

|                                  | Year Ended December 31, |          | \$ Change |
|----------------------------------|-------------------------|----------|-----------|
|                                  | 2022                    | 2021     |           |
| <i>(Dollars in thousands)</i>    |                         |          |           |
| Net sales                        | \$ 14,592               | \$ 9,050 | \$ 5,542  |
| Cost of goods sold               | 56,995                  | 41,938   | 15,057    |
| Gross loss                       | (42,403)                | (32,888) | (9,515)   |
| Depreciation and amortization    | 12,072                  | 8,310    | 3,763     |
| Stock-based compensation expense | 666                     | 1,880    | (1,214)   |
| Adjusted gross loss              | (29,665)                | (22,698) | (6,967)   |

The following sections discuss and analyze the changes in the significant line items in our Consolidated Statements of Operations and Comprehensive Loss for the year ended December 31, 2022 compared to the year ended December 31, 2021.

### Net Sales

Net sales for the year ended December 31, 2022 were \$14.6 million compared to \$9.1 million for the prior year. The increase of \$5.5 million, or 61%, was due to higher tomato sales prices, and the introduction of strawberries and salad greens to our portfolio of Products during the year ended December 31, 2022. These increases were offset by mitigation efforts related to the plant health issue at AppHarvest Morehead, which led us to remove some extra rows in the affected area out of an abundance of caution and re-plant with new seedlings, and active pests at AppHarvest Somerset which impacted approximately half of our strawberry plants. We replanted approximately half of the effected portion with strawberries, and will be using the remaining impacted section to test cucumber packaging equipment and harvesting capabilities ahead of the cucumber season.

We expect the strawberry pest issue to create headwinds for the remainder of the strawberry season as we navigate our first season at AppHarvest Somerset. In comparison, net sales for the year December 31, 2021 were adversely impacted by labor and productivity investments associated with the training and development of the new workforce at AppHarvest Morehead and low market prices for tomatoes through the end of the first harvest, which rebounded in the fourth quarter.

#### ***Cost of Goods Sold***

COGS for the year ended December 31, 2022 was \$57.0 million compared to \$41.9 million for the prior year. The increase of \$15.1 million, or 36%, was due to increased sales with Morehead being fully operational during the year ended December 31, 2022, as compared to the phased launch during the year ended December 31, 2021, as well as increased overhead and material costs associated with starting operations at AppHarvest Berea and AppHarvest Somerset.

#### ***Selling, General, and Administrative Expenses***

SG&A for the year ended December 31, 2022 was \$81.3 million compared to \$107.2 million for the prior year. The decrease of \$26.0 million, or 24%, was primarily due to reduction in stock compensation expense of \$14.0 million for the year ended December 31, 2022, lower salaries and wages due to restructuring initiatives, and decreased professional fees, partially offset by new facility start up costs. SG&A for the year ended December 31, 2022 also includes \$1.1 million of fixed asset impairment costs associated with the restructuring of Root AI.

#### ***Goodwill and Intangible Asset Impairment***

During the year ended December 31, 2021, we recorded a non-cash charge of \$59.7 million, net of tax of \$0.2 million, to fully impair the carrying value of goodwill and definite-lived intangible assets included in the acquisition of Root AI. We did not incur any impairment related to goodwill or intangible assets in the year ended December 31, 2022.

#### ***Fixed Asset Impairment***

During the year ended December 31, 2022, we recorded a non-cash fixed asset impairment charge of \$50.1 million to reduce the carrying value of certain long-lived assets to an estimated fair value. There were no fixed asset impairment charges recognized during the year ended December 31, 2021. See Note 2 - *Summary of Significant Accounting Policies* to our consolidated financial statements included elsewhere in this Annual Report, as well as *Critical Accounting Estimates* within this section, for more information regarding this impairment charge.

#### ***Interest Expense***

Interest expense for the year ended December 31, 2022 and December 31, 2021 was incurred on long-term debt used to help finance the construction of our CEA facilities and has been capitalized as a component of the cost of those facilities. Interest expense from related parties for the year-ended December 31, 2021 primarily relates to the finance lease and financing obligation for AppHarvest Morehead which were settled upon purchase of Morehead Farm on March 1, 2021, and the convertible note that was converted to Common Stock upon completion of the Business Combination on January 29, 2021.

#### ***Other***

Other expense for the years ending December 31, 2022, and 2021, was primarily attributable to foreign exchange currency (losses)/gains.

#### ***Income Taxes***

Our effective income tax rate was (1.4)% for the year ended December 31, 2022 compared to (0.6)% for the prior year. The variance from the U.S. federal statutory rate of 21% for the year ended December 31, 2022 was primarily attributable to a change in our valuation allowance related to our net operating loss carryforwards, non-deductible goodwill and intangible asset impairment expense and stock-based compensation expense, offset by the non-taxable change in the private warrant valuation.

#### ***Liquidity and Capital Resources***

##### ***Liquidity and Going Concern***



At December 31, 2022, we had an accumulated deficit of \$364.0 million. We have incurred losses and generated negative cash flows from operations since our inception in 2018. We expect to continue to incur losses and negative cash flows from operating expenses for the foreseeable future as we continue construction, build-out and start-up of our existing CEA facilities and ramp up operations and production at our new CEA facilities. In addition, our material cash requirements, as described below, will have an adverse impact on our liquidity.

Cash and cash equivalents totaled \$54.3 million and \$150.8 million as of December 31, 2022 and 2021, respectively. We expect that we will need additional capital to continue to fund our operations. Currently, our primary sources of liquidity are cash flows generated from the proceeds from debt and equity financings, our Berea Sale-Leaseback Transaction, our common stock purchase agreement with B. Riley Principal Capital, our at-the-market offering program (the “ATM”) with Cowen, the Public Offering and revenues from the sale of our tomatoes, salad greens and strawberries. Based on our current operating plan, we plan to rely on the remaining availability of \$97.6 million under our ATM pursuant to which we may offer and sell, from time to time, shares of Common Stock, and our ability to sell an additional approximately 16.4 million shares of our Common Stock to B. Riley Principal Capital, pursuant and subject to the limitations of the Purchase Agreement. However, our ability to use these sources of capital is dependent on a number of factors, including the prevailing market price of and the volume of trading in our Common Stock. The current volatility in the equity markets, coupled with the trading price of our Common Stock, create additional challenges to raising a sufficient amount of capital through equity financing in the near term.

We will need to raise additional funds in order to operate our business, meet obligations as they become due and continue the ongoing construction, build-out and start-up of our CEA facilities. We are pursuing additional financing alternatives, which include third-party equity or debt financing, or other sources, such as strategic relationships and other transactions with third parties, that may or may not include business combination transactions. However, financing may not be available to us in the necessary time frame, in amounts that we require, on terms that are acceptable to us, or at all. If we are unable to raise the necessary funds when needed, it may materially and adversely impact our ability to execute on our operating plans, and the construction, build-out and start-up of our future CEA facilities could be delayed, scaled back, or abandoned. These factors raise substantial doubt about our ability to continue as a going concern. In the absence of additional sources of financing, we expect that our existing cash and cash equivalents will only allow us to continue our planned operations into the fourth quarter of 2023.

#### *Material Cash Requirements*

Cash requirements for the next twelve months are expected to consist primarily of our current payroll, working capital requirements, planned capital expenditures, and debt service requirements. During the year ended December 31, 2022, we spent \$156.8 million on capital expenditures. Although we expect to incur approximately \$60 million to \$65 million more in capital expenditures during the next twelve months, dependent on the continued availability of financing on acceptable terms, we have already contributed approximately \$9.8 million of the capital expenditure requirements into a reserve account from the proceeds of the Sale-Leaseback Transaction. This \$9.8 million is reflected in other assets on our consolidated balance sheet at December 31, 2022. As a result, the net impact to our liquidity for the remaining capital expenditures is expected to be approximately \$50 million to \$55 million over the next twelve months. The increase in our projected capital expenditures is due to construction delays and supply chain disruptions. This is in addition to enhancements in scope for the construction of our Berea salad greens facility, Somerset facility and Richmond facility related to automation and configuration of equipment, food safety, and office space which have expanded in size from the original scope. For risks related to delays in construction of our CEA facilities, please refer to Part II, Item 1A. Risk Factors, “*Any damage to or problems with our CEA facilities or delays in land acquisition or construction, could severely impact our operations and financial condition,*” and “*We build CEA facilities, which may be subject to unexpected costs and delays due to reliance on third parties for construction, material delivery, supply-chains and fluctuating material prices.*”

In the long-term, our cash requirements are expected to be associated with planting and harvesting our crops, acquiring and building out new facilities, investment and development in CEA technology, attracting, developing and retaining a skilled labor force, and working capital.

To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interests of our common stockholders will be diluted, and the terms of those securities may include liquidation or other preferences that adversely affect the rights of our common stockholders. Debt financing and preferred equity financing, if available, may involve agreements that include covenants that will further limit or restrict our ability to take specific actions, such as incurring additional debt or making capital expenditures. If we raise additional funds through collaborations with third parties, we may be required to relinquish valuable rights to our technologies, or future revenue streams.

Our failure to raise capital as and when needed could have significant negative consequences for our business, financial condition and results of consolidated operations. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth in the section titled “*Risk Factors*”.

For a discussion of our future funding requirements, please refer to Part II, Item 1A. Risk Factors, “*There is substantial doubt about our ability to continue as a going concern and we will require significant additional financing to achieve our goals, and a failure to obtain this necessary capital when needed on acceptable terms, or at all, may force us to delay, limit, reduce or terminate our operations and future growth.*”

#### *Public Offering*

On February 9, 2023, we entered into the Underwriting Agreement with Cowen and Company, LLC, as representative of the several underwriters named therein, relating to the Public Offering of 40,000,000 shares of our Common Stock, at a price to the public of \$1.00 per share. On February 14, 2023, the Public Offering closed and we issued and sold 40,000,000 shares of Common Stock to the underwriters.

In addition, pursuant to the Underwriting Agreement, we granted the underwriters the Overallotment Option to purchase up to 6,000,000 additional shares of Common Stock. The underwriters exercised the Overallotment Option on February 22, 2023, to purchase 6,000,000 shares of Common Stock and on February 24, 2023, we issued the 6,000,000 shares under the Overallotment Option. The net proceeds from the Public Offering, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, were approximately \$42.9 million, including the \$6.0 million from the Overallotment Option.

#### *At-the-Market Offering*

We filed a shelf registration on Form S-3 (the “Registration Statement”). Pursuant to the Registration Statement, we may offer and sell securities having an aggregate public offering price of up to \$300 million. In connection with the filing of the Registration Statement, we also entered into the ATM Agreement with Cowen pursuant to which we may offer and sell, from time to time, through Cowen, shares of our Common Stock having an aggregate offering price of up to \$100 million under the ATM, which is included in the \$300 million of securities that may be offered pursuant to the Registration Statement. We are not obligated to sell any shares under the ATM Agreement. Pursuant to the ATM Agreement, we will pay Cowen a commission of up to 3% of the aggregate proceeds from the sale of shares and reimburse certain legal fees. As of December 31, 2022, we have sold \$2.4 million worth of Common Stock under the ATM for net proceeds of \$2.3 million, leaving \$97.6 million available to be sold.

#### *Purchase Agreement*

We have entered into the Purchase Agreement with B. Riley Principal Capital, pursuant to which we have the right to sell to B. Riley Principal Capital up to the lesser of (i) \$100 million of newly issued shares of our Common Stock and (ii) the exchange cap, which is 20.1 million shares of our Common Stock (subject to certain limitations and conditions), from time to time during the 24-month term of the Purchase Agreement. Sales, and the timing of any sales, are solely at our option, and we are under no obligation to sell any securities to B. Riley Principal Capital under the Purchase Agreement. As of December 31, 2022, we have sold an aggregate 3.5 million shares of Common Stock, for aggregate net proceeds of \$10.1 million. As of December 31, 2022, there were 16.4 million shares reserved for future sale pursuant to the Purchase Agreement.

#### *Debt Facilities*

##### *Mastronardi Note and Loan Agreement*

On October 24, 2022, AppHarvest Berea Farm, LLC, our wholly-owned indirect subsidiary, entered into a note and loan agreement (the “Note and Loan Agreement” in the principal amount of \$30.0 million (the “Note”) with Mastronardi USA. Pursuant to the Note and Loan Agreement, Mastronardi USA agreed to advance \$15.0 million upon the execution of the agreement and further amounts of up to \$15.0 million provided that no event of default had occurred under the Note and certain other conditions had been met. The first tranche of \$15.0 million was funded on October 25, 2022, the second in November 2022. The maturity date had extension options for two successive terms of thirty days each to January 18, 2023 and February 17, 2023, respectively, subject to the satisfaction of certain conditions, including that we shall have agreed to the material terms for a sale leaseback transaction with Mastronardi USA, its affiliate or another third party. We exercised the first extension and then repaid the Note at the completion of the sale leaseback transaction with Mastronardi USA in December 2022.

#### *GNCU Loan Agreement*

On July 29, 2022, we entered into a loan agreement with Greater Nevada Credit Union (the “GNCU Loan Agreement”) for an original principal amount of \$50.0 million. The GNCU Loan has a maturity of 23 years with interest-only monthly payments on the aggregate unpaid principal balance of the GNCU Loan for the first 36 months. Thereafter, we will make 239 monthly installments of principal and interest based on a 20-year amortization, with the remaining balance of principal and interest due upon maturity. The initial interest rate is fixed at 6.45% per annum for the first five years of the GNCU Loan term. Thereafter, the interest rate is subject to change every five years during the term of the GNCU Loan, based on the Federal Home Loan Bank of Des Moines 5-Year Advance Rate as of such dates, plus a 3.40% spread, with an interest rate floor of 4.75%. The proceeds of the GNCU Loan were used at closing to, in part, pay off the JPM Loan (subsequently defined) and accrued interest, of approximately \$45.7 million, and to pay the closing costs, loan fees, and other costs of entering into the GNCU Loan. The GNCU Loan is recorded at cost, net of debt issuance costs of \$2.6 million. The GNCU Loan required us to contribute \$3.3 million to be held in an interest reserve account and \$19.1 million in a project account, to be used to pay interest and the balance of project cost for AppHarvest Somerset in excess of the loan, respectively. The balance of these amounts are reflected in restricted cash in the consolidated balance sheet as of December 31, 2022.

#### *Rabo Loan Agreement*

On June 15, 2021, we entered into a master credit agreement with Rabo AgriFinance LLC for a real estate term loan in the original principal amount of \$75.0 million (the “Rabo Loan”). The Rabo Loan matures on April 1, 2031, with quarterly interest payments commencing on July 1, 2021 and quarterly principal payments commencing on January 1, 2022, with the remaining balance of principal and interest due upon maturity. Payments are based on one month LIBOR plus 2.500% per annum. The Rabo Loan is collateralized by the business assets of the first Morehead CEA facility and requires compliance with financial covenants. On July 29, 2022, we obtained a waiver from Rabo AgriFinance LLC whereby we were no longer required to measure or report the current ratio for the June 30, 2022 reporting period but will begin to report the current ratio covenant compliance for the December 31, 2022, reporting period. The change aligns all measurements of material financial covenants to begin with the December 31, 2022, measurement date. In exchange, we agreed to fund an additional \$2.0 million to a reserve account. At June 30, 2022, we would not have met the current ratio requirement for the Morehead CEA subsidiary. Our liability under the Rabo Loan was \$71.3 million at December 31, 2022.

#### *Equilibrium Loan Agreement*

On July 23, 2021, we entered into a credit agreement with CEFF II AppHarvest Holdings, LLC, an affiliate of Equilibrium for a construction loan in the original principal amount of \$91.0 million (the “Construction Loan”) for the development of a CEA facility at our property in Richmond, Kentucky (the “Project”). The Construction Loan provides monthly disbursements to fund capital costs of the Project in excess of our required equity contribution of 34.5% of the capital costs of the Project. The Construction Loan requires monthly interest payments based on drawn capital at an initial interest rate of 8.000% per annum, which will increase by 0.2% per annum, beginning two years after closing of the Construction Loan through maturity, which is expected to be July 23, 2024, with no required principal payments until maturity. On July 29, 2022, we amended the credit agreement with Equilibrium to require that we decrease the balance of the Construction Loan to \$81.0 million on or prior to December 31, 2022 and further decrease the balance to \$76.0 million on or prior to March 31, 2023. As of December 31, 2022, we had \$66.3 million outstanding on the Construction Loan.

#### *Berea Facility*

On December 23, 2022, we entered into the Purchase Agreement with the Buyer, for the Berea Land and the Berea Property for a sale price of \$125.0 million. The Buyer is a joint venture between Mastronardi, our exclusive marketing partner for all fresh fruits and vegetables grown in Kentucky and West Virginia pursuant to our Purchase and Marketing Agreement, and COFRA Holding. The purchase price was determined based on an appraisal of the Property.

The Purchase Agreement was finalized on December 27, 2022 and coincided with the Sale-Leaseback Transaction for net proceeds to us of \$57.5 million, of which \$22.5 million was set aside for enhancement costs for our Richmond tomato facility, after giving effect to the paydown of the Note owed to Mastronardi Produce-USA, Inc, the payment of \$19.1 million in prepaid rent under the Berea Lease, the payment and holding back of amounts owed and estimated to be incurred for completion of the facility located on the Property, and transaction fees, taxes and expenses.

Concurrently with the closing of the Sale-Leaseback Transaction, we entered into the Lease. The Lease is repayable over an initial term of 10 years, with four renewal options of five years each. The total annual rent under the Lease shall initially be \$9.5 million per year, and shall increase annually starting after the second lease year. We are entitled to a rent credit equal to 25% of the marketing fees received by Mastronardi prior to the third anniversary of the commencement of the Lease, with respect to products grown or produced at the facilities owned by the Company and located in Morehead, Richmond and Somerset, Kentucky. See Note 11-*Commitments and Contingencies* for more information about the Berea Sale-Leaseback Transaction.

### Summary of Cash Flows

A summary of our cash flows from operating, investing, and financing activities is presented in the following table:

| (Dollars in thousands)                                               | Year Ended December 31, |                   | Change             |
|----------------------------------------------------------------------|-------------------------|-------------------|--------------------|
|                                                                      | 2022                    | 2021              |                    |
| Net cash used in operating activities                                | \$ (86,129)             | \$ (103,924)      | \$ 17,795          |
| Net cash used in investing activities                                | (179,682)               | (315,409)         | 135,727            |
| Net cash provided by financing activities                            | 168,032                 | 573,734           | (405,702)          |
| Cash and cash equivalents, beginning of year                         | 176,311                 | 21,909            | 154,402            |
| Cash and cash equivalents (including restricted cash), end of period | <u>\$ 78,532</u>        | <u>\$ 176,311</u> | <u>\$ (97,778)</u> |

#### Net Cash used in Operating Activities

Net cash used in operating activities was \$86.1 million for the year ended December 31, 2022 compared to \$103.9 million in the prior year. The decrease of \$17.8 million, or 17%, reflects non-recurring material expenditures, including \$13.8 million for transaction costs related to the Business Combination that were incurred in 2021 and payment of utility and hedge program deposits that were made in 2021, partially offset by increased operating expenses in 2022 related to full production at AppHarvest Morehead, and the commencement of planting and harvesting at our Somerset, Berea, and Richmond CEA facilities.

#### Net Cash used in Investing Activities

Net cash used in investing activities was \$179.7 million for the year ended December 31, 2022 compared to \$315.4 million for the prior year. The decrease of \$135.7 million, or 43%, was primarily due to expenditures of \$123.0 million for the purchase of AppHarvest Morehead from Equilibrium that we completed on March 1, 2021, \$9.8 million for the acquisition of Root AI, and a \$5.0 million investment in an unconsolidated entity in the year ended December 31, 2021. The decrease was partially offset by an increase of \$5.4 million in capital expenditures related to purchases of property and equipment primarily related to construction of our Richmond, Berea, and Somerset CEA facilities and cash of \$1.1 million received for our sale of the land associated with AppHarvest Berea, during the year ended December 31, 2022.

#### Net Cash provided by Financing Activities

Net cash provided by financing activities was \$168.0 million for the year ended December 31, 2022 compared to \$573.7 million for the prior year. The decrease of \$405.7 million, or 71% was primarily due to the proceeds from the Business Combination of approximately \$448.5 million received during the year ended December 31, 2021, which was primarily offset by the combined proceeds from the financing transaction related to the Berea Sale-Leaseback Transaction and repayments of debt in the aggregate amount of \$44.2 million during the year ended December 31, 2022.

### Critical Accounting Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Although these estimates are based on our knowledge of current events and actions we may undertake in the future, actual results could differ from those estimates and assumptions.

### ***Long-lived Asset Impairment***

Long-lived assets are assessed for recoverability when events or changes in circumstances indicate that the carrying value of an asset group may not be recoverable. We assess the recoverability of long-lived assets at an individual CEA facility level, which we consider to be the lowest level for which independent identifiable cash flows are available. Indicators of impairment might include persistent negative economic trends affecting the markets we serve, recurring losses or lowered expectations of future cash flows to be generated by our CEA facilities, and declines in the market price of our long-lived assets. When necessary, the amount of impairment is determined based on the excess of carrying value over the estimated fair value of the assets. Judgment and estimation are required in assessing long-lived assets for impairment, including whether events or changes in circumstances require an impairment assessment and the determination of fair value.

At December 31, 2022 and throughout the fourth quarter, we experienced a significant decline in the market value of our Common Stock. Because our CEA facilities represent the vast majority of our net asset value and all of our future earnings potential, we viewed the decline in our market value as an indicator of long-lived asset impairment. In addition, our history of current and historical operating and cash flow losses combined with projections of operating and cash flow losses for the foreseeable future are also factors we considered. While our CEA facilities are relatively new construction and we remain optimistic on the long-term value of controlled environment agriculture to address systemic issues with food production, the decline in our market value caused us to reassess the recoverability of our asset groups.

At December 31, 2022, we recorded a non-cash impairment charge of \$50.1 million to reduce the carrying value of real and personal property associated with our CEA facilities to their estimated fair value. In estimating the fair value of the real and personal property within each asset group, we engaged valuation specialists to estimate the price that would be received to sell the asset groups in an orderly transaction between market participants. Due to the specialized nature of the CEA asset groups, the age, and significant amount of construction in progress, only the cost approach was fully developed for our asset groups. Specifically, fair value was determined by the Company's valuation specialists using a cost-approach methodology that applied market trend factors to original cost data to arrive at an estimate of fair value. The contributory value of the land at each site was valued utilizing the sales comparison approach. The income approach was excluded as the appraised properties consist of large, specialized facilities. An investigation of the marketplace did not reveal sufficient arm's-length lease data relating to comparable facilities from which to derive a market rent or comparable rates of return for this analysis of the real property. It would be difficult, if not totally speculative, to estimate the value of the property based on a prospective income stream given the start-up nature of the Company's operations.

We recognized a \$1.1 million impairment charge for certain technology property and equipment that will no longer be utilized following our alignment of our technology initiatives with our core farm operations.

The Company did not recognize any long-lived asset impairment charges during 2021.

### ***Private Warrants***

We account for our Private Warrants in accordance with ASC 815-40, *Derivatives and Hedging: Contracts in Entity's Own Equity*, under which we have determined that the Private Warrants are recognized as liabilities at fair value and subject to re-measurement at each balance sheet date until exercised. Changes in fair value of the Private Warrants are recognized in our audited Consolidated Statements of Operations and Comprehensive Loss. The fair value of the Private Warrants is estimated at each measurement date using a Black-Scholes option pricing model.

We estimate the fair value of our stock option awards and Private Warrants using the Black-Scholes option pricing model, which is subject to uncertainty and requires the input of the following assumptions:

*Fair Value of Common Stock* — Historically, as there had been no public market for our Common Stock, the fair value of the Common Stock for stock-based awards was determined by the Board based in part on valuations of the Common Stock prepared by a third-party valuation firm. Since the closing of the Business Combination, the fair value of each share of Common Stock underlying stock-based awards and our Private Warrants is based on the closing price of our Common Stock as reported by Nasdaq on the date of the grant.

*Expected Term* — The expected term of the options represents the average period the stock options are expected to remain outstanding. As we do not have sufficient historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior, the expected term of options granted is derived from the average midpoint between the weighted average vesting and the contractual term, also known as the simplified method. For the Private Warrants, the expected term is the time from transaction date to expiration in years.

*Expected Volatility* — As we were not a public company before the closing of the Business Combination, and did not have any trading history for Common Stock, the expected volatility for the stock-based awards was based on the historical volatility of the Common Stock of comparable publicly traded companies. Since the closing of the Business Combination, our expected volatility is primarily based on the trading history for our Common Stock.

*Risk-Free Interest Rate* — The risk-free interest rate is based on the yield of zero-coupon U.S. Treasury notes as of the grant date with maturities commensurate with the expected term of the awards.

*Expected Dividends* — The expected dividends assumption is based on the expectation of not paying dividends in the foreseeable future; therefore, we used an expected dividend yield of zero.

Assumptions used in applying the Black-Scholes option-pricing model to determine the estimated fair value of Private Warrants involve inherent uncertainties and the application of judgment. As a result, if factors or expected outcomes change and significantly different assumptions or estimates are used, our Private Warrant liabilities could be materially different.

#### ***Inventory Valuation***

Inventory is valued at the lower of cost or net realizable value. The net realizable value of inventories represents the estimated selling price for inventories in the ordinary course of business, less all estimated costs of completion and costs necessary to make the sale. The determination of net realizable value is subject to uncertainty and requires judgment, including consideration of factors such as expected future selling price the Company expects to realize by selling the inventory and the contractual arrangements with customers. The estimates are made at a point in time, using available information, expected business plans and expected market conditions. As a result, the actual amount received on sale could differ from the estimated value of inventory. Periodic reviews are performed on the inventory balance. The impact of changes in inventory reserves is reflected in cost of goods sold.

#### **Recent Accounting Guidance**

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board or other standard setting bodies that we adopt as of the specified effective date. Unless otherwise discussed, we believe that the impact of recently issued standards that are not yet effective will not have a material impact on our consolidated financial position or consolidated results of operations under adoption.

#### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

Because we are considered to be a “smaller reporting company” under SEC rules and regulations, we are not required to provide the information required by this item in this report.

#### **Item 8. Financial Statements and Supplementary Data**

| <b>Index to Consolidated Financial Statements</b>                                                           |                           |
|-------------------------------------------------------------------------------------------------------------|---------------------------|
| <b>Consolidated Financial Statements of AppHarvest, Inc. for the Years Ended December 31, 2022 and 2021</b> |                           |
| Report of Independent Registered Public Accounting Firm (PCAOB ID 42)                                       | <a href="#"><u>57</u></a> |
| Consolidated Balance Sheets as of December 31, 2022 and 2021                                                | <a href="#"><u>59</u></a> |
| Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2022 and 2021 | <a href="#"><u>60</u></a> |
| Consolidated Statements of Stockholders’ Equity for the Years Ended December 31, 2022 and 2021              | <a href="#"><u>61</u></a> |
| Consolidated Statements of Cash Flows for the Years Ended December 31, 2022 and 2021                        | <a href="#"><u>62</u></a> |
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## **Report of Independent Registered Public Accounting Firm**

To the Stockholders and the Board of Directors of AppHarvest, Inc.

### **Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of AppHarvest, Inc. (the Company) as of December 31, 2022 and 2021, the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows for each of the two years in the period ended December 31, 2022, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

### **The Company's Ability to Continue as a Going Concern**

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations, incurred negative cash flows from operating activities since inception, and has stated that substantial doubt exists about the Company's ability to continue as a going concern. Management's evaluation of the events and conditions and management's plans regarding these matters also are described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### **Basis for Opinion**

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

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

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

### **Critical Audit Matter**

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

### ***Impairment of Long-lived Assets***

#### ***Description of the matter***

As more fully described in Notes 2 and 7 to the consolidated financial statements, during 2022, the Company recorded impairment losses for certain long-lived assets. The Company evaluated its long-lived assets for recoverability after identifying indicators of impairment at December 31, 2022, and determined that certain assets associated with the controlled environment agriculture (CEA) facilities were not recoverable and were impaired. As a result, the Company recognized a \$50.1 million impairment loss at December 31, 2022, which is the amount by which the carrying value exceeded the fair value of these assets.

Auditing the valuation of the Company's long-lived assets was complex due to the specialized nature of the CEA assets, the age, and the significant amount of construction in progress. These factors required complex judgment as to the appropriate valuation methodology and inputs to utilize. Specifically, fair value was determined by the Company's valuation specialists using a cost-approach methodology that applied market trend factors to original cost data to arrive at an estimate of fair value. The contributory value of the land was valued utilizing the sales comparison approach.

#### ***How we addressed the matter in our audit***

Our audit procedures included, among others, evaluating the identification and timing of impairment indicators and the Company's selection of the cost approach valuation methodology. We also evaluated the reasonableness of the contributory land value and market trend factors by comparing to external data. The audit procedures involved the use of professionals with specialized skill and knowledge to assist in evaluating the valuation methodology and inputs utilized. We also tested the underlying data used by the Company and its valuation specialist in its analyses for completeness and accuracy.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2020.

Louisville, Kentucky  
March 15, 2023



**AppHarvest, Inc.**  
**Consolidated Balance Sheets**  
(in thousands, except per share amounts)

|                                                                                                                                                                            | December 31,<br>2022 | December 31,<br>2021 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------|
| <b>Assets</b>                                                                                                                                                              |                      |                      |
| Current assets:                                                                                                                                                            |                      |                      |
| Cash and cash equivalents                                                                                                                                                  | \$ 54,334            | \$ 150,755           |
| Restricted cash                                                                                                                                                            | 24,198               | 25,556               |
| Accounts receivable, net                                                                                                                                                   | 2,786                | 1,575                |
| Inventories, net                                                                                                                                                           | 18,078               | 4,998                |
| Prepaid expenses and other current assets                                                                                                                                  | 14,716               | 5,613                |
| Total current assets                                                                                                                                                       | 114,112              | 188,497              |
| Operating lease right-of-use assets, net                                                                                                                                   | 2,626                | 5,010                |
| Property and equipment, net                                                                                                                                                | 456,178              | 343,913              |
| Other assets, net                                                                                                                                                          | 22,412               | 16,644               |
| Total non-current assets                                                                                                                                                   | 481,216              | 365,567              |
| Total assets                                                                                                                                                               | <u>\$ 595,328</u>    | <u>\$ 554,064</u>    |
| <b>Liabilities and stockholders' equity</b>                                                                                                                                |                      |                      |
| Current liabilities:                                                                                                                                                       |                      |                      |
| Accounts payable                                                                                                                                                           | \$ 16,571            | \$ 8,553             |
| Accrued expenses                                                                                                                                                           | 21,996               | 15,794               |
| Current portion of lease liabilities                                                                                                                                       | 514                  | 751                  |
| Current portion of long-term debt                                                                                                                                          | 3,685                | 28,020               |
| Other current liabilities                                                                                                                                                  | 202                  | 119                  |
| Total current liabilities                                                                                                                                                  | 42,968               | 53,237               |
| Long-term debt, net of current portion                                                                                                                                     | 180,537              | 102,637              |
| Lease liabilities, net of current portion                                                                                                                                  | 2,628                | 4,938                |
| Financing obligation                                                                                                                                                       | 103,787              | —                    |
| Deferred income tax liabilities                                                                                                                                            | 4,925                | 2,418                |
| Private Warrant liabilities                                                                                                                                                | 119                  | 1,385                |
| Other liabilities                                                                                                                                                          | 73                   | 1,809                |
| Total non-current liabilities                                                                                                                                              | 292,069              | 113,187              |
| Total liabilities                                                                                                                                                          | 335,037              | 166,424              |
| Commitments and contingencies (Note 11)                                                                                                                                    |                      |                      |
| Stockholders' equity                                                                                                                                                       |                      |                      |
| Preferred stock, par value \$0.0001, 10,000 shares authorized, 0 issued and outstanding as of December 31, 2022 and December 31, 2021, respectively                        | —                    | —                    |
| Common stock, par value \$0.0001, 750,000 shares authorized, 108,511 and 101,136 shares issued and outstanding as of December 31, 2022 and December 31, 2021, respectively | 11                   | 10                   |
| Additional paid-in capital                                                                                                                                                 | 615,452              | 576,895              |
| Accumulated deficit                                                                                                                                                        | (363,960)            | (187,314)            |
| Accumulated other comprehensive income (loss)                                                                                                                              | 8,788                | (1,951)              |
| Total stockholders' equity                                                                                                                                                 | 260,291              | 387,640              |
| Total liabilities and stockholders' equity                                                                                                                                 | <u>\$ 595,328</u>    | <u>\$ 554,064</u>    |

See accompanying notes to the consolidated financial statements

**AppHarvest, Inc.**  
**Consolidated Statements of Operations and Comprehensive Loss**  
(in thousands, except per share amounts)

|                                                                    | <b>Year ended December 31,</b> |                            |
|--------------------------------------------------------------------|--------------------------------|----------------------------|
|                                                                    | <b>2022</b>                    | <b>2021</b>                |
| Net sales                                                          | \$ 14,592                      | \$ 9,050                   |
| Cost of goods sold                                                 | 56,995                         | 41,938                     |
| Gross loss                                                         | <u>(42,403)</u>                | <u>(32,888)</u>            |
| Operating expenses                                                 |                                |                            |
| Selling, general and administrative expenses                       | 81,266                         | 107,245                    |
| Goodwill and other intangible asset impairment                     | —                              | 59,901                     |
| Fixed asset impairment charge                                      | <u>50,101</u>                  | <u>—</u>                   |
| Total operating expenses                                           | <u>131,367</u>                 | <u>167,146</u>             |
| Loss from operations                                               | <u>(173,770)</u>               | <u>(200,034)</u>           |
| Other income (expense):                                            |                                |                            |
| Interest expense from related parties                              | —                              | (658)                      |
| Change in fair value of Private Warrants                           | 111                            | 35,047                     |
| Other                                                              | <u>(480)</u>                   | <u>448</u>                 |
| Loss before income taxes                                           | <u>(174,139)</u>               | <u>(165,197)</u>           |
| Income tax expense                                                 | <u>(2,507)</u>                 | <u>(989)</u>               |
| Net loss                                                           | <u>(176,646)</u>               | <u>(166,186)</u>           |
| Other comprehensive income (loss):                                 |                                |                            |
| Net unrealized gains (losses) on derivatives contracts, net of tax | 10,739                         | (1,951)                    |
| Comprehensive loss                                                 | <u><u>\$ (165,907)</u></u>     | <u><u>\$ (168,137)</u></u> |
| Net loss per common share:                                         |                                |                            |
| Basic and diluted                                                  | \$ (1.69)                      | \$ (1.74)                  |
| Weighted average common shares outstanding:                        |                                |                            |
| Basic and diluted                                                  | 104,763                        | 95,571                     |

See accompanying notes to the consolidated financial statements

**AppHarvest, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
(in thousands)

|                                                                   | Common Stock |        | Additional<br>Paid-in<br>Capital | Accumulated<br>Deficit | Accumulated Other<br>Comprehensive<br>(Loss)/Gain | Total<br>Stockholders'<br>Equity |
|-------------------------------------------------------------------|--------------|--------|----------------------------------|------------------------|---------------------------------------------------|----------------------------------|
|                                                                   | Shares       | Amount |                                  |                        |                                                   |                                  |
| Balance, December 31, 2020                                        | 44,461       | 4      | 45,890                           | (21,128)               | —                                                 | 24,766                           |
| Business Combination and PIPE financing                           | 53,361       | 6      | 433,521                          | —                      | —                                                 | 433,527                          |
| Conversion of Private Warrants                                    | —            | —      | 9,133                            | —                      | —                                                 | 9,133                            |
| Exercise of warrants                                              | 8            | —      | 95                               | —                      | —                                                 | 95                               |
| Issuance of common stock for business combination                 | 2,329        | —      | 48,991                           | —                      | —                                                 | 48,991                           |
| Vesting of restricted stock, net of taxes paid                    | 605          | —      | (3,216)                          | —                      | —                                                 | (3,216)                          |
| Issuance of stock options for business combination                | —            | —      | 361                              | —                      | —                                                 | 361                              |
| Issuance of common stock in connection with equity line of credit | 198          | —      | 1,006                            | —                      | —                                                 | 1,006                            |
| Issuance of common stock under Employee Stock Purchase Plan       | 39           | —      | 165                              | —                      | —                                                 | 165                              |
| Net loss                                                          | —            | —      | —                                | (166,186)              | —                                                 | (166,186)                        |
| Other comprehensive loss                                          | —            | —      | —                                | —                      | (1,951)                                           | (1,951)                          |
| Stock options exercised                                           | 135          | —      | 39                               | —                      | —                                                 | 39                               |
| Stock-based compensation                                          | —            | —      | 40,910                           | —                      | —                                                 | 40,910                           |
| Balance, December 31, 2021                                        | 101,136      | 10     | 576,895                          | (187,314)              | (1,951)                                           | 387,640                          |
| Conversion of Private Warrants                                    | —            | —      | 1,155                            | —                      | —                                                 | 1,155                            |
| Stock options exercised                                           | 1,135        | —      | 154                              | —                      | —                                                 | 154                              |
| Issuance of common stock under the Purchase Agreement             | 3,510        | —      | 9,530                            | —                      | —                                                 | 9,530                            |
| Issuance of common stock under Employee Stock Purchase Plan       | 178          | —      | 287                              | —                      | —                                                 | 287                              |
| Issuance of common stock, net                                     | 1,018        | —      | 2,085                            | —                      | —                                                 | 2,085                            |
| Vesting of restricted stock units                                 | 1,534        | —      | (1,572)                          | —                      | —                                                 | (1,572)                          |
| Stock-based compensation                                          | —            | —      | 26,918                           | —                      | —                                                 | 26,918                           |
| Net loss                                                          | —            | —      | —                                | (176,646)              | —                                                 | (176,646)                        |
| Other comprehensive gain                                          | —            | —      | —                                | —                      | 10,739                                            | 10,739                           |
| Balance, December 31, 2022                                        | 108,511      | \$ 11  | \$ 615,452                       | \$ (363,960)           | \$ 8,788                                          | \$ 260,291                       |

See accompanying notes to the consolidated financial statements

**AppHarvest, Inc.**  
**Consolidated Statements of Cash Flows**  
(In thousands)

|                                                                             | Year ended December 31, |                   |
|-----------------------------------------------------------------------------|-------------------------|-------------------|
|                                                                             | 2022                    | 2021              |
| <b>Operating Activities</b>                                                 |                         |                   |
| Net loss                                                                    | \$ (176,646)            | \$ (166,186)      |
| Adjustments to reconcile net loss to net cash used in operating activities: |                         |                   |
| Change in fair value of Private Warrants                                    | (111)                   | (35,047)          |
| Deferred income tax provision                                               | 2,507                   | 989               |
| Depreciation and amortization                                               | 16,354                  | 10,794            |
| Fixed asset impairment                                                      | 51,171                  | —                 |
| Stock-based compensation expense                                            | 26,918                  | 40,910            |
| Issuance of common stock for commitment shares                              | —                       | 1,006             |
| Rent payments in excess of average rent expense, net                        | (378)                   | (10)              |
| Goodwill and other intangible asset impairment                              | —                       | 59,901            |
| Changes in operating assets and liabilities, net of acquisitions:           |                         |                   |
| Accounts receivable                                                         | (1,211)                 | (1,316)           |
| Inventories, net                                                            | (13,079)                | (1,611)           |
| Prepaid expenses and other current assets                                   | (176)                   | (4,872)           |
| Other assets, net                                                           | 1,277                   | (10,528)          |
| Accounts payable                                                            | 1,810                   | 402               |
| Accrued expenses                                                            | 5,369                   | 2,366             |
| Other current liabilities                                                   | 146                     | (874)             |
| Other non-current liabilities                                               | (80)                    | 153               |
| Net cash used in operating activities                                       | (86,129)                | (103,924)         |
| <b>Investing Activities</b>                                                 |                         |                   |
| Purchases of property and equipment                                         | (170,913)               | (177,742)         |
| Purchases of property and equipment from a related party                    | —                       | (122,911)         |
| Proceeds from sale of land                                                  | 1,059                   | —                 |
| Cost of acquisition, net of cash acquired                                   | —                       | (9,756)           |
| Investment in unconsolidated entity                                         | —                       | (5,000)           |
| Advances on construction                                                    | (9,828)                 | —                 |
| Net cash used in investing activities                                       | (179,682)               | (315,409)         |
| <b>Financing Activities</b>                                                 |                         |                   |
| Proceeds from Business Combination and PIPE Shares, net                     | —                       | 448,500           |
| Proceeds from debt                                                          | 136,006                 | 131,278           |
| Repayments of debt                                                          | (79,782)                | —                 |
| Debt issuance costs                                                         | (4,340)                 | (1,038)           |
| Proceeds from financing obligation, net                                     | 123,941                 | —                 |
| Payments on financing obligation                                            | (18,865)                | —                 |
| Payments on financing obligation to a related party                         | —                       | (2,089)           |
| Proceeds from stock options exercised                                       | 154                     | 39                |
| Proceeds from employee stock purchase plan                                  | 287                     | 165               |
| Proceeds from exercise of warrants                                          | —                       | 95                |
| Payments of withholding taxes on restricted stock conversions               | (1,572)                 | (3,216)           |
| Proceeds from issuance of common stock                                      | 12,203                  | —                 |
| Net cash provided by financing activities                                   | 168,032                 | 573,734           |
| Change in cash, cash equivalents and restricted cash                        | (97,779)                | 154,402           |
| Beginning of period                                                         | 176,311                 | 21,909            |
| Cash, cash equivalents and restricted cash at the end of period             | 78,532                  | 176,311           |
| Less restricted cash at the end of the period                               | 24,198                  | 25,556            |
| <b>Cash and cash equivalents at the end of period</b>                       | <b>\$ 54,334</b>        | <b>\$ 150,755</b> |
| <b>Non-cash activities</b>                                                  |                         |                   |
| Fixed assets purchases in accounts payable                                  | \$ 6,208                | \$ 6,779          |
| Fixed assets purchases in accrued liabilities                               | \$ 734                  | \$ 8,826          |
| Termination of operating lease right-of-use assets and liabilities          | \$ 3,031                | \$ —              |
| Operating lease right-of-use assets and liabilities                         | \$ 1,220                | \$ 3,989          |

See accompanying notes to the consolidated financial statements

**AppHarvest, Inc.**  
**Notes to Consolidated Financial Statements**  
**December 31, 2022 and 2021**  
(amounts in thousands, except per share amounts)

## 1. Description of Business

AppHarvest, Inc. (the “Company”, or “AppHarvest”) was founded on January 19, 2018. Together with its subsidiaries, AppHarvest is a sustainable food company in Appalachia developing and operating some of the world’s largest high-tech indoor farms with robotics and artificial intelligence to build a reliable, climate-resilient food system. AppHarvest’s farms are designed to grow produce using sunshine, rainwater and up to 90% less water than open-field growing, all while producing yields up to 30 times that of traditional agriculture and preventing pollution from agricultural runoff. AppHarvest currently operates its 60-acre flagship farm in Morehead, Kentucky (“AppHarvest Morehead”), producing tomatoes, a 15-acre indoor farm for salad greens in Berea, Kentucky (“AppHarvest Berea”), a 30-acre farm for strawberries and cucumbers in Somerset, Kentucky (“AppHarvest Somerset”), and a 60-acre farm in Richmond, Kentucky (“AppHarvest Richmond”), for tomatoes. The four-farm network consists of 165 acres under glass.

AppHarvest is organized as a single operating segment. Substantially all of the assets and operations of AppHarvest are located in the United States (“U.S.”).

### ***Basis of Presentation***

On January 29, 2021, (the “Closing Date”), Novus Capital Corporation (“Novus”), a special purpose acquisition company, consummated the business combination agreement and plan of reorganization (the “Business Combination Agreement”) dated September 2020, by and among ORGA, Inc., a wholly owned subsidiary of Novus (“Merger Sub”), and AppHarvest Operations, Inc., a Delaware corporation (f/k/a AppHarvest, Inc.) (“Legacy AppHarvest”).

Pursuant to the terms of the Business Combination Agreement, a business combination between Novus and Legacy AppHarvest was effected through the merger of Merger Sub with and into Legacy AppHarvest, with Legacy AppHarvest surviving the merger as a wholly-owned subsidiary of Novus (the “Merger” and, collectively with the other transactions described in the Business Combination Agreement, the “Business Combination”). On the Closing Date, Novus changed its name to AppHarvest, Inc.

The Merger was accounted for as a reverse recapitalization (the “Reverse Recapitalization”) in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”). Under this method of accounting, Novus is treated as the “acquired” company and Legacy AppHarvest is treated as the acquirer for financial reporting purposes. The Reverse Recapitalization was treated as the equivalent of Legacy AppHarvest issuing stock for the net assets of Novus, accompanied by a recapitalization.

Legacy AppHarvest was determined to be the accounting acquirer based on the following predominant factors:

- Legacy AppHarvest stockholders have the largest portion of voting rights in the Company;
- The Board and Management are primarily composed of individuals associated with Legacy AppHarvest; and
- Legacy AppHarvest was the larger entity based on historical operating activity and Legacy AppHarvest had the larger employee base at the time of the Business Combination.

In connection or concurrent with the Business Combination:

- Each share of Legacy AppHarvest redeemable convertible preferred stock that was issued and outstanding prior to the Business Combination was automatically converted into shares of Legacy AppHarvest common stock, such that each converted share of redeemable convertible preferred stock was no longer outstanding and ceased to exist.
- Novus assumed an outstanding convertible note issued by Legacy AppHarvest (the “Legacy AppHarvest Convertible Note”) after the date of the Business Combination Agreement and before the Merger. At the time of the Merger, the outstanding principal and unpaid accrued interest due on the Legacy AppHarvest Convertible Note were converted into shares of the Company’s Common Stock, \$0.0001 par value per share (the “Common Stock”) in accordance with the terms of the Legacy AppHarvest Convertible Note, and such converted Legacy AppHarvest Convertible Note was no longer outstanding and ceased to exist, and any liens securing obligations under the Legacy AppHarvest Convertible Note were released.

**AppHarvest, Inc.**  
**Notes to Consolidated Financial Statements**  
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(amounts in thousands, except per share amounts)

- Each share of Legacy AppHarvest Common Stock, including the Legacy AppHarvest Common Stock issued upon conversion of the Legacy AppHarvest redeemable convertible preferred stockholders, was converted into and exchanged for 2.1504 shares (the “Exchange Ratio”) of the Company’s Common Stock.
- Each option to purchase Legacy AppHarvest Common Stock that was outstanding, whether vested or unvested, was converted into an option to purchase a number of shares of the Company’s Common Stock equal to the product(rounded down to the nearest whole number) of (i) the number of shares of Legacy AppHarvest Common Stock subject to such Legacy AppHarvest option and (ii) the Exchange Ratio, at an exercise price per share (rounded up to the nearest whole cent) equal to (A) the exercise price per share of such Legacy AppHarvest option, divided by (B) the Exchange Ratio.
- Each restricted stock unit awarded by Legacy AppHarvest that was outstanding, whether vested or unvested, was converted into an award of restricted stock units to acquire a number of shares of the Company Common Stock equal to the product (rounded down to the nearest whole number) of (1) the number of shares of Legacy AppHarvest Common Stock subject to the Legacy AppHarvest restricted stock unit award and (2) the Exchange Ratio.
- On the Closing Date, a number of purchasers purchased from the Company an aggregate of 37,500 shares of Common Stock in a private placement pursuant to separate subscription agreement (the “PIPE investment”), for \$10.00 per share and an aggregate purchase price of \$375,000.
- The Company’s certificate of incorporation was amended and restated to, among other things, increase the total number of authorized shares of all classes of capital stock to 760,000 shares, of which 750,000 shares were designated Common Stock, \$0.0001 par value per share, and 10,000 shares designated preferred stock, \$0.0001 par value per share.

These transactions, together with the Business Combination, are collectively referred to as the “Recapitalization Transaction”. Upon closing of the Business Combination, the Company received gross proceeds of \$475,000, including \$375,000 in gross proceeds from the fully committed Common Stock PIPE. No goodwill or other intangible assets were recognized in connection with the Recapitalization Transaction.

The accompanying consolidated financial statements have been prepared in accordance with U.S. GAAP and the rules and regulations of the Securities and Exchange Commission (“SEC”).

All U.S. Dollar and share amounts are in thousands, except per share amounts, unless otherwise noted. Share and per share amounts are presented on a post-conversion basis for all periods presented, unless otherwise specified.

#### ***Nature of Operations***

The high-tech greenhouse agriculture business is extremely capital-intensive and the Company expects to expend significant resources to complete the build-out of facilities under construction, continue harvesting existing crops and plant and harvest new crops in the existing and future controlled environment agriculture (“CEA”) facilities. These expenditures are expected to include working capital, costs of acquiring and building out new facilities, costs associated with planting and harvesting, such as the purchase of seeds and growing supplies, and the cost of attracting, developing and retaining a skilled labor force, including local labor. In addition, other unanticipated costs may arise due to the unique nature of these CEA facilities and increased production in the Company’s new operating facilities at full capacity.

#### ***Going Concern***

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and payments of liabilities in the ordinary course of business. Accordingly, the consolidated financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount of and classification of liabilities that may result should the Company be unable to continue as a going concern. The Company has incurred losses from operations and generated negative cash flows from operating activities since inception. During the twelve-months ended December 31, 2022, the Company incurred net losses of \$176,646 and generated negative cash flows from operations of \$86,129. The Company’s current operating plan,

**AppHarvest, Inc.**  
**Notes to Consolidated Financial Statements**  
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(amounts in thousands, except per share amounts)

which includes its planting and harvesting activities, indicates that it will continue to incur losses from operations and generate negative cash flows from operating activities. In addition, debt service requirements and the Company's plans to continue to invest in the build-out and start-up of its new and future CEA facilities, including AppHarvest Berea, Richmond tomato facility and Somerset facility, will have an adverse impact on its liquidity. As of December 31, 2022, the Company had \$54,334 cash on hand, and an accumulated deficit of \$363,960. Management believes there is substantial doubt about the Company's ability to continue as a going concern.

The Company will need to raise additional funds in order to operate its business, meet obligations as they become due and continue the ongoing operation, construction, and build-out and start-up of its CEA facilities. The Company completed a sale-leaseback of AppHarvest Berea as further discussed in Note 11 - *Commitments and Contingencies* and raised additional capital through an equity offering that closed on February 14, 2023, and included an Overallotment Option which closed on February 24, 2023, as further discussed in Note 16 - *Subsequent Events*. The Company is also exploring additional financing alternatives, including, but not limited to additional sale-leaseback transactions related to other CEA facilities, third-party equity or debt financing, or other sources, such as strategic relationships or other transactions with third parties, that may or may not include business combination transactions. However, financing may not be available to the Company in the necessary time frame, in amounts that the Company requires, on terms that are acceptable to the Company, or at all. If the Company is unable to raise the necessary funds when needed, it may materially and adversely impact the Company's ability to execute on its operating plans, the operation of the Company's current CEA facilities and the construction, build-out and start-up of the CEA facilities could be delayed, scaled back, or abandoned. If the Company becomes unable to continue as a going concern, it may have to dispose of assets and might realize significantly less than the values at which they are carried on its consolidated financial statements. These actions may cause the Company's stockholders to lose all or part of their investment in the Company's common stock. The consolidated financial statements do not include any adjustments that might result from this uncertainty.

## **2. Summary of Significant Accounting Policies**

### ***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amount of assets and liabilities at the date of the financial statements and accompanying notes. Although these estimates are based on the Company's knowledge of current events and actions the Company may undertake in the future, actual results could differ from those estimates and assumptions. Significant items subject to such estimates and assumptions include the valuation of inventory, private warrants, and property and equipment.

The Company's results can also be affected by economic, political, legislative, regulatory, legal actions, and the global volatility and general market disruption resulting from the global outbreak of the novel coronavirus disease ("COVID-19") and related variants. Economic conditions, such as recessionary trends, inflation, interest and monetary exchange rates, and government fiscal policies, can have a significant effect on operations. While the Company maintains reserves for anticipated liabilities and carries various levels of insurance, the Company could be affected by civil, criminal, environmental, regulatory or administrative actions, claims, or proceedings.

### ***Principles of Consolidation***

The consolidated financial statements include the accounts of the Company and its wholly-owned, majority owned or controlled subsidiaries, collectively referred to as the Company. The Company consolidates entities in which it holds a controlling financial interest. For voting interest entities, the Company is considered to hold a controlling financial interest when it is able to exercise control over the investees' operating and financial decisions.

At December 31, 2022 and 2021, the Company does not have interests in any entities that would be considered variable interest entities.

All significant intercompany balances and transactions have been eliminated in consolidation. Certain prior period amounts have been reclassified to conform with current period presentation.

**AppHarvest, Inc.**  
**Notes to Consolidated Financial Statements**  
**December 31, 2022 and 2021**  
(amounts in thousands, except per share amounts)

***Cash, Cash Equivalents, and Restricted Cash***

The Company considers all highly liquid, short-term investments with an original maturity date of three months or less to be cash equivalents.

The Company deposits its cash and cash equivalents in a commercial bank. From time to time, cash balances in these accounts exceed the Federal Deposit Insurance Corporation insured limits. The Company mitigates exposure to credit risk by placing cash and cash equivalents with highly rated financial institutions. To date, the Company has not experienced any losses in such accounts, and believes it is not exposed to any significant credit risk on its cash and cash equivalents.

Restricted cash as of December 31, 2022, includes \$12,007 related to a master credit agreement with Rabo AgriFinance LLC for a real estate term loan (the “Rabo Loan”), as well as \$9,791 in contributions to a project and interest reserve account for AppHarvest Somerset pursuant to a loan agreement entered into in July 2022 with Greater Nevada Credit Union (the “GNCU Loan Agreement”). See Note 10 - *Debt* for more information on these reserve accounts. Restricted cash as of December 31, 2021, represents collateral for a promissory note with JPMorgan Chase Bank, N.A. (the “JPM Loan”) which required 105% of the aggregate borrowings to be held as collateral. The JPM Loan was repaid in full in July 2022.

***Accounts Receivable***

The Company’s trade accounts receivable are non-interest bearing and are recorded at the net realizable value. The allowance for doubtful accounts represents the Company’s best estimate of the amount of expected credit losses in existing accounts receivable. As of December 31, 2022, and December 31, 2021, the Company had no allowance for doubtful accounts.

***Warrants***

At December 31, 2022, there were 13,242 warrants to purchase Common Stock outstanding, consisting of 12,191 public warrants (“Public Warrants”) and 1,051 private warrants (“Private Warrants” and together with Public Warrants, “Warrants”). The Private Warrants are held by the Novus initial stockholders. Each warrant entitles the registered holder to purchase one share of Common Stock at a price of \$11.50 per share. The warrants expire on January 29, 2026, or earlier upon redemption or liquidation.

The Company may redeem the Public Warrants:

- In whole and not in part
- At a price of \$0.01 per Warrant;
- Upon not less than 30 days’ prior written notice of redemption;
- If, and only if, the reported last sale price of the shares of Common Stock equals or exceeds \$18.00 per share (as adjusted for stock splits, stock dividends, reorganizations and recapitalizations), for any 20 trading days within a 30 trading day period commencing at any time after the warrants become exercisable and ending on the third business day prior to the notice of redemption to warrant holders; and
- if, and only if, there is a current registration statement in effect with respect to the shares of Common Stock underlying the Warrants.

If the Company calls the Public Warrants for redemption, management will have the option to require all holders that wish to exercise the Public Warrants to do so on a “cashless basis,” as described in the warrant agreement.

The Private Warrants are identical to the Public Warrants except that the Private Warrants and the shares of Common Stock issuable upon the exercise of the Private Warrants were not transferable, assignable or salable until after the completion of the Business Combination, subject to certain limited exceptions. Additionally, the Private Warrants are exercisable for cash or on a cashless basis, at the holder’s option, and are not redeemable so long as they are held by the initial purchasers or their permitted transferees. If the Private Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants. As a result of the provisions in the warrant agreement that provide for differences in the mechanics of a cashless exercise dependent upon the characteristics of the warrant holder, and because the holder of a warrant is not an input into the pricing of a fixed-for-fixed option on equity shares, such provisions preclude the Private Warrants from being classified in equity. Accordingly, the Private Warrants are classified as a liability and remeasured at fair value at each reporting date. Changes in



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fair value of the Private Warrants are recognized in the Company's Consolidated Statement of Operations and Comprehensive Loss. The fair value of the Private Warrants is estimated at each measurement date using a Black-Scholes option pricing model. See Note 5 - *Fair Value Measurements* for inputs used in calculating the estimated fair value. The Public Warrants are equity classified financial instruments.

***Derivative Financial Instruments***

Derivative financial instruments are used to manage interest rate risks. The financial instruments used by the Company are straight-forward, non-leveraged instruments. The counterparties to these financial instruments are institutions with strong credit ratings. The Company maintains control over the size of positions entered into with any one counterparty and regularly monitors the credit ratings of these institutions. For all transactions designated as hedges, the hedging relationships are formally documented at the inception and on an ongoing basis in offsetting changes in cash flows of the hedged transaction.

The Company records derivative financial instruments on the consolidated balance sheets as either an asset or liability measured at its fair value. Changes in a derivative fair value (i.e. unrealized gains or losses) are recorded each period in earnings unless the derivative qualifies as a hedging instrument. Gains and losses related to a hedge are either recognized in income immediately to offset the gain or loss on the hedged item, or deferred and recorded in the stockholders' equity section of the consolidated balance sheets as a component of accumulated other comprehensive loss ("AOCL") and subsequently recognized in the Consolidated Statements of Operations and Comprehensive Loss when the hedged item affects net loss. The ineffective portion of the change in fair value of a hedge, if any, is recognized in net loss immediately. For derivative instruments that are not designated as hedges, the gain or loss related to the change in fair value is also recorded to net loss immediately.

***Capitalization of Interest***

The Company capitalizes interest costs on borrowings during the construction period of major construction projects as part of the cost of the constructed assets. Capitalization of interest ceases when the project (or discernible portions of the project) is substantially complete. If substantially all of the construction activities of a project are suspended, capitalization of interest will cease until such activities are resumed. During the years ended December 31, 2022 and December 31, 2021, \$10,422 and \$2,260 of interest expense has been capitalized, respectively.

***Debt Issuance Costs***

Debt issuance costs are amortized into interest expense over the terms of the related loan agreements using the effective interest method or other methods which approximate the effective interest method. Debt issuance costs related to debt instruments other than lines of credit are presented on the consolidated balance sheets as a direct deduction from the carrying amount of that debt liability. Debt issuance costs associated with lines of credit are presented on the consolidated balance sheets as other current or non-current assets.

***Goodwill and Other Acquired Intangible Assets***

Goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. Separate identifiable intangible assets are stated at their historical cost and, for those with definite lives, amortized on a straight-line basis over their expected useful lives.

The Company conducts annual impairment tests of goodwill on the first day of the fourth quarter and additional impairment reviews when events and circumstances indicate it is more likely than not that an impairment may have occurred. The Company assesses goodwill for impairment at the consolidated level, which represents its single reporting unit. If the fair value of the reporting unit is less than its carrying amount, the Company would record an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value, but the loss recognized cannot exceed the amount of goodwill allocated to the reporting unit.

Fair value of the Company's single reporting unit is estimated using a weighted methodology considering the output from both the income and market approaches. The income approach incorporates the use of a discounted cash flow ("DCF") analysis. A number of judgments are involved in the application of the DCF model, including projections of business performance,

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weighted average cost of capital, and terminal values. The market approach is performed using the Guideline Public Companies method which is based on earnings multiple data derived from publicly traded peer group companies.

The Company reviews separately identifiable intangibles held and used for possible impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In evaluating the fair value and future benefits of its intangible assets, management performs an analysis of the anticipated undiscounted future net cash flow of the intangible assets over the remaining amortization period, if any. The Company recognizes an impairment loss if the carrying value of the asset exceeds the expected future cash flows.

As of December 31, 2021, the Company identified an indicator of impairment and determined it was no longer more likely than not that the fair value of the Company's sole reporting unit was in excess of the carrying value and that the carrying value of separately identifiable intangible assets was not recoverable. As a result, a quantitative goodwill and separately identifiable intangible asset impairment assessment was performed as of December 31, 2021, and the Company recorded an impairment of the carrying value of goodwill and definite lived intangible asset related to its acquisition of Root AI, Inc. ("Root AI") on April 7, 2021 (the "Root AI Acquisition"). The December 31, 2021 impairment reflected current market valuations and strategic investment requirements as the Company continues to develop commercial technologies and pursue other strategic investments in the CEA industry.

The following is a roll forward of the goodwill and definite-lived intangible assets activity during the year ended December 31, 2021:

|                            | <b>Goodwill</b> | <b>Definite-lived<br/>Intangible Assets</b> |
|----------------------------|-----------------|---------------------------------------------|
| Balance, December 31, 2020 | \$ —            | \$ —                                        |
| Root AI Acquisition        | 50,863          | 9,754                                       |
| Amortization               | —               | (716)                                       |
| Impairment                 | (50,863)        | (9,038)                                     |
| Balance, December 31, 2021 | \$ —            | \$ —                                        |

#### ***Inventories***

Inventories are valued at the lower of cost (first-in, first-out) or net realizable value. Finished goods inventories represent costs associated with boxed produce not yet sold. Growing crop inventories primarily represent the costs associated with growing produce within the Company's CEA facilities. Materials and supplies primarily represent growing and packaging supplies. Inventory costs are comprised of the purchase and transportation cost plus production labor and overhead.

#### ***Property and Equipment***

Property and equipment are stated at cost less accumulated depreciation. Expenditures for additions or renewals and improvements are capitalized; expenditures for maintenance and repairs that neither materially add to the value of the property nor appreciably prolong its economic life are charged to expense as incurred.

Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which are as follows:

- Building: 25 years
- Leasehold and building improvements: the lesser of the lease term or 4 to 10 years.
- Machinery: 5 to 10 years
- Equipment: 3 to 10 years

Assets held under financing leases are recorded at the net present value of the minimum lease payments, net of incentives provided by the lessor. Depreciation expense for assets held under financing leases is computed using the straight-line method over the shorter of the estimated useful lives of the assets or the period of the related lease. If the related lease contains an option to purchase the underlying asset that the Company is reasonably certain to exercise or the lease transfers ownership of

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the underlying asset to the Company by the end of the lease term, depreciation expense is computed over the estimated useful life of the asset.

Long-lived tangible assets are assessed for recoverability whenever events or changes in circumstances indicate the carrying amount of a long-lived asset or asset group may not be recoverable. We assess the recoverability of long-lived assets at an individual CEA facility level, which we consider to be the lowest level in the organization for which independent identifiable cash flows are available. Factors that may indicate impairment include persistent negative economic trends affecting the markets we serve, recurring losses or lowered expectations of future cash flows to be generated by our assets, and declines in the market price of our long-lived assets. When necessary, the amount of impairment to be recognized is measured by the amount by which the carrying value exceeds the estimated fair value.

#### ***Leases***

The Company determines if an arrangement contains a lease at inception. The right-of-use assets, net and liabilities associated with leases are recognized based on the present value of the future minimum lease payments over the lease term. The Company uses its incremental borrowing rate at the recognition date in determining the present value of future payments for leases that do not have a readily determinable implicit rate. Lease terms reflect options to extend or terminate the lease when it is reasonably certain that the option will be exercised. For leases that include residual value guarantees or payments for terminating the lease, the Company includes these costs in the lease liability when it is probable such costs will be incurred. Right-of-use assets and obligations for short-term leases (leases with an initial term of 12 months or less) are not recognized on the consolidated balance sheet. Lease expense for short-term leases is recognized on a straight-line basis over the lease term. Variable lease expense, which primarily includes taxes and insurance are expensed as incurred. When contracts contain lease and non-lease components, the Company generally accounts for both components as a single lease component.

When the Company enters into a sale-leaseback transaction as a seller-lessee, it applies the requirements in ASC 606 - *Revenue from Contracts with Customers* by assessing whether a contract exists and whether it satisfies a performance obligation by transferring control of an asset when determining whether the transfer of an asset shall be accounted for as a sale of the asset. If the Company transfers the control of an asset to the buyer-lessor, it accounts for the transfer of the asset as a sale and recognizes a corresponding gain or loss on disposal. The subsequent leaseback of the asset is accounted for in accordance with ASC 842 - *Leases* in the same manner as any other lease. If the Company does not transfer the control of an asset to the buyer-lessor, the failed sale-leaseback transaction is accounted for as a financing transaction. Consequently, the Company does not derecognize the transferred asset and accounts for proceeds received as borrowings in either current or non-current financing obligations, depending on the nature of the repayment.

#### ***Income Taxes***

The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. Deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Valuation allowances are provided if, based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

When uncertain tax positions exist, the Company recognizes the tax benefit of tax positions to the extent that some or all of the benefit will more likely than not be realized. The determination as to whether the tax benefit will more likely than not be realized is based upon the technical merits of the tax position, as well as consideration of the available facts and circumstances. As of December 31, 2022 and 2021, the Company does not have any uncertain tax positions. The Company's policy is to recognize interest and penalties on uncertain tax positions as income tax expense.

#### ***Retirement Plans***

The AppHarvest 401(k) Plan provides for matching contributions. The Company incurred \$851 and \$762 of expenses associated with the 401(k) Plan for the years ended December 31, 2022 and 2021, respectively.

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### ***Stock-Based Compensation***

The Company recognizes in its Consolidated Statements of Operations and Comprehensive Loss the grant-date fair value of stock options and restricted stock units (“RSUs”) issued to employees and directors. Stock-based compensation expense related to stock options and time-based RSUs are recognized on a straight-line basis over the associated service period of the award, which is generally the vesting term. Certain restricted stock unit awards are subject to service-, market- and/or performance-based vesting conditions. The performance criteria for performance-based RSUs are evaluated on a quarterly basis and stock-based compensation is recognized when the performance criteria are determined to be probable. The Company recognizes forfeitures as they occur.

The Company estimates the fair value of market-based RSUs using a Monte-Carlo simulation model. The Company estimates the fair value of its time-based and performance-based RSUs on the fair value of the Common Stock at the date the terms of the awards are mutually agreed upon between the Company and the holder. The Company estimates the fair value of its stock option awards using the Black-Scholes option pricing model, which requires the input of subjective assumptions, including (a) the expected stock price volatility, (b) the calculation of expected term of the award, (c) the risk-free interest rate, and (d) expected dividends. The expected stock price volatility for the Company is primarily based on the trading history for AppHarvest’s Common Stock. Prior to the Business Combination, the expected stock price volatility was primarily based on the historical volatility of the common stock of publicly traded peer companies.

The Company uses the simplified method as prescribed by the SEC Staff Accounting Bulletin No. 107, *Share-Based Payment*, to calculate the expected term, as it does not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term for options granted to employees. The expected term is applied to the stock option grant group as a whole, as the Company does not expect substantially different exercise or post-vesting termination behavior among its employee population. The expected term of the stock option awards granted historically was assumed to be the weighted average between the options contract life and the vesting term of the underlying award (based upon the underlying arrangement). The risk-free interest rate is based on a treasury instrument whose term is consistent with the expected life of the stock options.

### ***Net Loss Per Common Share***

The Company’s basic net loss per common share is calculated by dividing the net loss by the weighted-average number of shares of Common Stock outstanding for the period. The diluted net loss per common share is computed by giving effect to all potential Common Stock equivalents outstanding for the period determined using the treasury stock method. For purposes of this calculation, stock options to purchase Common Stock, Warrants and RSUs are considered to be Common Stock equivalents but have been excluded from the calculation of diluted net loss per common share as their effect is anti-dilutive.

### ***Advertising***

Advertising costs are expensed when incurred. Advertising expense for the years ended December 31, 2022 and 2021 was \$99 and \$382, respectively, and is included in selling, general and administrative expenses in the Consolidated Statements of Operations and Comprehensive Loss.

### ***Revenue***

On March 28, 2019, the Company entered into a Purchase and Marketing Agreement (the “Mastronardi Agreement”) with Mastronardi Produce Limited (“Mastronardi”) pursuant to which Mastronardi will be the sole and exclusive marketer and distributor of all tomatoes, cucumbers, peppers, berries and salad greens produced at the Company’s CEA facilities that meet certain quality standards (collectively, the “Products”). Under the terms of the Mastronardi Agreement, the Company is responsible for growing, producing, packing, and delivering the Products to Mastronardi, and Mastronardi is responsible for marketing, branding, and distributing the Products to its customers. Mastronardi will pay the Company market prices for the Products that are consistent with the best and highest prices available during the duration of the applicable growing season for like kind U.S. Department of Agriculture (“USDA”) Grade No. 1 products. Mastronardi will set the market price for the Products and will pay over to the Company the gross sale price of the Product sold by Mastronardi, less a marketing fee and Mastronardi’s costs incurred in the sale and distribution of the Products. If Mastronardi rejects, returns, or otherwise refuses Products for failure to meet certain quality standards, the Company has the right, at its cost and expense, to sell or otherwise dispose of the Products, subject to certain conditions.

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Substantially all of the Company's revenues are generated from the sale of Products to Mastronardi.

The Mastronardi Agreement has a term of 10 years. The Company has a limited, one-time right to terminate the Mastronardi Agreement if certain return targets are not reached. During the term of the Mastronardi Agreement, Mastronardi has a right of first refusal to enter similar arrangements with regard to any additional growing facilities the Company established in Kentucky or West Virginia.

The Company recognizes revenue at a point in time and at the amount it expects to be entitled to be paid when its performance obligation is complete, which is generally when control of the Products is transferred to Mastronardi, upon pick-up from the Company's facilities. Prices for the Company's Products are based on agreed upon rates with customers and do not include financing components or noncash consideration. Revenue is recorded net of variable consideration, such as commissions and other shipping, handling and marketing costs incurred as defined in the Mastronardi Agreement. Revenue is also recorded net of rejections for Products that do not meet quality specifications and net of sales and other taxes collected on behalf of governmental authorities. Payment terms are generally 30 days.

***Selling, general and administrative expenses ("SG&A")***

Selling, general and administrative expenses primarily consist of payroll and payroll related expenses, stock-based compensation, legal and professional costs, rent expense, marketing and advertising, communications, insurance and various other personnel and office related costs. During the years ended December 31, 2022 and December 31, 2021, \$2,873 and \$1,000 of start-up expenses related to pre-commencement commercial activities at the various CEA facilities were expensed as incurred by the Company and recorded within SG&A in the Consolidated Statements of Operations and Comprehensive Loss.

***New Accounting Pronouncements***

No new accounting pronouncement recently issued or newly effective had or is expected to have a material impact on the consolidated financial statements.

**3. Business Combinations**

***Reverse Recapitalization***

As discussed in Note 1 - *Description of Business*, on January 29, 2021, Novus completed the Recapitalization Transaction. The Business Combination is accounted for as a reverse recapitalization in accordance with U.S. GAAP. Under this method of accounting, Novus was treated as the "acquired" company for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination was treated as the equivalent of Legacy AppHarvest issuing stock for the net assets of Novus, accompanied by a recapitalization.

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The following table reconciles the elements of the Business Combination to the consolidated statements of stockholders' equity and cash flows for the year ended December 31, 2021:

|                                                                                          | <b>Recapitalization Transaction</b> |
|------------------------------------------------------------------------------------------|-------------------------------------|
| Cash - Novus trust and cash, net of redemptions                                          | \$ 99,896                           |
| Cash - PIPE financing                                                                    | 375,000                             |
| Non-cash Convertible Note conversion                                                     | 30,808                              |
| Non-cash net liabilities assumed from Novus                                              | (2,850)                             |
| Less: Fair value of assumed common stock Private Warrants                                | (45,565)                            |
| Less: transaction costs allocated to equity                                              | (23,762)                            |
| Net impact on total stockholders' equity                                                 | 433,527                             |
| Less: cash payments for transaction costs at Closing Date                                | (2,634)                             |
| Less: non-cash Convertible Note conversion                                               | (30,808)                            |
| Add: non-cash net liabilities assumed from Novus                                         | 2,850                               |
| Add: non-cash fair value of assumed common stock Private Warrants                        | 45,565                              |
| Net impact on net cash provided by financing activities                                  | 448,500                             |
| Less: transaction costs included in net cash used in operating activities <sup>(a)</sup> | (13,261)                            |
| Total net increase in cash and cash equivalents on Closing Date                          | <u>\$ 435,239</u>                   |

(a) Including transaction costs in the amount of \$2,887 allocated to the Private Warrants.

#### *Root AI Acquisition*

On April 7, 2021, the Company completed the Root AI Acquisition.

Total consideration, net of cash acquired, was as follows:

|                                                                                    |                  |
|------------------------------------------------------------------------------------|------------------|
| Common Stock issued (2,329 shares at approximately \$21.00 per share)              | \$ 48,991        |
| Stock options issued to replace unvested Root AI stock options                     | 361              |
| Total equity                                                                       | <u>49,352</u>    |
| Cash consideration paid for the settlement of vested Root AI stock options         | 230              |
| Cash consideration paid to Root AI shareholders                                    | 9,512            |
| Cash consideration paid to reimburse Root AI for seller transaction costs incurred | 150              |
| Cash acquired                                                                      | (136)            |
| Net cash                                                                           | <u>9,756</u>     |
| Total consideration                                                                | <u>\$ 59,108</u> |

The Company accounted for its acquisition of Root AI using the acquisition method of accounting in accordance with U.S. GAAP whereby the total purchase price was allocated to tangible and intangible assets acquired and liabilities assumed based on respective fair values.

The purchase price allocation for the Root AI Acquisition was as follows:

|                                                          |                  |
|----------------------------------------------------------|------------------|
| Goodwill                                                 | \$ 50,863        |
| Intangible assets (technology and intellectual property) | 9,754            |
| Deferred taxes                                           | (1,420)          |
| Net operating assets and liabilities                     | (89)             |
| Net assets acquired                                      | <u>\$ 59,108</u> |

Transaction costs of \$1,032 were included in SG&A within the Consolidated Statements of Operations and Comprehensive Loss for the year ended December 31, 2021.

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#### 4. Restructuring

During the twelve months ended December 31, 2022, the Company initiated and completed restructuring plans to reduce operating costs, prioritize core farm operations and align technical resources to support farm production and quality improvements. These restructuring plans included the elimination of a number of positions, including members of senior management. The Company anticipates the cost savings from the restructuring plans will support growth-related initiatives and help meet the long-term goals and liquidity needs. During the twelve months ended December 31, 2022, the Company incurred costs of \$10,050 related to the restructuring initiatives, of which \$8,869 was for severance and other benefits and \$1,181 was for legal and other costs. The Company did not recognize any such restructuring charges during the twelve months ended December 31, 2021.

In addition to the restructuring actions noted above, during the twelve months ended December 31, 2022, the Company recognized a \$1,070 impairment charge for certain technology property and equipment that will no longer be utilized following the Company's alignment of its technology initiatives with core farm operations. The Company did not recognize any such impairment charge during the twelve months ended December 31, 2021.

All of the costs as disclosed above are included in SG&A in the Consolidated Statements of Operations and Comprehensive Loss. As of December 31, 2022, the Company had \$188 remaining in accrued expenses on the consolidated balance sheet for liabilities remaining associated with the restructuring events as described above.

#### 5. Fair Value Measurements

The company categorizes its assets and liabilities into one of three levels based on the assumptions (inputs) used in determining their values, as defined below:

- **Level 1:** Unadjusted quoted prices in active markets for identical assets or liabilities.
- **Level 2:** Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities in active markets; quoted prices for identical assets or liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- **Level 3:** Unobservable inputs reflecting management's assumptions about the inputs used in pricing the asset or liability.

The table below presents the Company's financial assets and liabilities subject to fair value measurements on a recurring basis and the level of inputs used for each measurement:

|                          |                             | Fair Value as of December 31, 2022 |                 |             |                 |
|--------------------------|-----------------------------|------------------------------------|-----------------|-------------|-----------------|
|                          | Balance Sheet Account       | Level 1                            | Level 2         | Level 3     | Total           |
| <b>Assets:</b>           |                             |                                    |                 |             |                 |
| Interest rate swap       | Other assets, net           | —                                  | 8,788           | —           | 8,788           |
| <b>Total assets</b>      |                             | <b>\$ —</b>                        | <b>\$ 8,788</b> | <b>\$ —</b> | <b>\$ 8,788</b> |
| <b>Liabilities:</b>      |                             |                                    |                 |             |                 |
| Private Warrants         | Private Warrant liabilities | —                                  | 119             | —           | 119             |
| <b>Total liabilities</b> |                             | <b>\$ —</b>                        | <b>\$ 119</b>   | <b>\$ —</b> | <b>\$ 119</b>   |

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|                            |                             | Fair Value as of December 31, 2021 |                 |             |                 |
|----------------------------|-----------------------------|------------------------------------|-----------------|-------------|-----------------|
|                            | Balance Sheet Account       | Level 1                            | Level 2         | Level 3     | Total           |
| <b>Assets:</b>             |                             |                                    |                 |             |                 |
| Foreign currency contracts | Other assets, net           | \$ —                               | \$ 14           | \$ —        | \$ 14           |
| Total assets               |                             | <u>\$ —</u>                        | <u>\$ 14</u>    | <u>\$ —</u> | <u>\$ 14</u>    |
| <b>Liabilities:</b>        |                             |                                    |                 |             |                 |
| Foreign currency contracts | Other current liabilities   | \$ —                               | \$ 63           | \$ —        | \$ 63           |
| Interest rate swap         | Other liabilities           | —                                  | 1,657           | —           | 1,657           |
| Private Warrants           | Private Warrant liabilities | —                                  | 1,385           | —           | 1,385           |
| Total liabilities          |                             | <u>\$ —</u>                        | <u>\$ 3,105</u> | <u>\$ —</u> | <u>\$ 3,105</u> |

The Company's derivative contracts, including foreign currency forward and option contracts and an interest rate swap, are measured at fair value using valuations based upon quoted prices for similar assets and liabilities in active markets (Level 2) and are valued by reference to similar financial instruments, adjusted for terms specific to the contracts.

As of December 31, 2022, the carrying value of the Company's debt, other than the GNCU Loan, approximated fair value due to the short term nature of the debt or that such borrowings bear variable interest rates that correspond to current market rates. The fair value of the GNCU Loan was estimated using discounted cash flow analyses based on current estimated incremental borrowing rates for similar types of borrowing arrangements (Level 2). If our GNCU Loan was measured at fair value, it would have been \$43,522 as of December 31, 2022.

See Note 12 - *Derivative Financial Instruments* and Note 10 - *Debt* for more information on the Company's use of financial instruments.

The Private Warrant liabilities are determined using a Black-Scholes option pricing model, a Level 2 valuation. The significant inputs to the Private Warrant valuation are as follows:

|                         | December 31, 2022 | December 31, 2021 |
|-------------------------|-------------------|-------------------|
| Exercise price          | \$ 11.50          | \$ 11.50          |
| Stock price             | \$ 0.57           | \$ 3.89           |
| Volatility              | 114.0 %           | 54.0 %            |
| Remaining term in years | 3.08              | 4.08              |
| Risk-free rate          | 4.22 %            | 1.12 %            |
| Dividend yield          | —                 | —                 |

The following table summarizes the private warrant activity for the year ended December 31, 2022:

|                                                                     |               |
|---------------------------------------------------------------------|---------------|
| Fair value of Private Warrants outstanding as of December 31, 2021  | \$ 1,385      |
| Fair value of Private Warrants converted to Public Warrants         | (1,104)       |
| Change in fair value of Private Warrants                            | 1,329         |
| Fair value of Private Warrants outstanding as of March 31, 2022     | 1,610         |
| Fair value of Private Warrants converted to Public Warrants         | —             |
| Change in fair value of Private Warrants                            | (1,069)       |
| Fair value of Private Warrants outstanding as of June 30, 2022      | 541           |
| Fair value of Private Warrants converted to Public Warrants         | —             |
| Change in fair value of Private Warrants                            | (27)          |
| Fair value of Private Warrants outstanding as of September 30, 2022 | 514           |
| Fair value of Private Warrants converted to Public Warrants         | (51)          |
| Change in fair value of Private Warrants                            | (344)         |
| Fair value of Private Warrants outstanding as of December 31, 2022  | <u>\$ 119</u> |



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The Warrants are deemed equity instruments for income tax purposes. The changes in the fair value of the Private Warrants may be material to our future operating results.

The Company measures certain assets and liabilities at fair value on a non-recurring basis. Assets and liabilities that are measured at fair value on a non-recurring basis include long-lived and intangible assets which would generally be recorded at fair value as a result of an impairment charge. During 2022, the Company recognized impairments of property and equipment that were determined by comparing the fair value of the asset group to its carrying value. The Company used various valuation techniques to determine fair value, with the primary technique being the cost approach, which uses significant unobservable inputs, or Level 3 inputs, as defined by the fair value hierarchy. During 2021, goodwill and intangible assets were valued using Level 3 inputs, which included internal estimates of future cash flows (income approach). Assets acquired and liabilities assumed as part of a business combination are also measured at fair value on a non-recurring basis during the measurement period.

Carrying values of cash and cash equivalents, restricted cash, accounts receivable, inventories, prepaid expenses and other current assets, accounts payable, accrued expenses, and other current liabilities approximate fair values because of their short-term nature.

#### 6. Inventories, net

|                        | December 31, 2022 | December 31, 2021 |
|------------------------|-------------------|-------------------|
| Raw materials          | \$ 6,191          | \$ 1,314          |
| Growing crops          | 11,546            | 3,684             |
| Finished goods         | 341               | —                 |
| Total inventories, net | <u>\$ 18,078</u>  | <u>\$ 4,998</u>   |

#### 7. Property and Equipment, net

Property and equipment at cost and accumulated depreciation are as follows:

|                                         | December 31, 2022 | December 31, 2021 |
|-----------------------------------------|-------------------|-------------------|
| Land                                    | \$ 29,877         | \$ 32,395         |
| Buildings <sup>(1)</sup>                | 215,420           | 79,450            |
| Machinery and equipment <sup>(2)</sup>  | 114,407           | 49,418            |
| Construction in progress <sup>(3)</sup> | 116,544           | 186,848           |
| Leasehold improvements                  | 4,688             | 4,740             |
| Less: accumulated depreciation          | (24,758)          | (8,938)           |
| Total property and equipment, net       | <u>\$ 456,178</u> | <u>\$ 343,913</u> |

Amounts at December 31, 2022 related to our Berea failed sale-leaseback: (1) \$53,976, (2) \$52,267, (3) \$6,998.  
See Note 11 - *Commitments and Contingencies*.

Depreciation expense for property and equipment for the year ended December 31, 2022 and 2021 was \$16,110 and \$9,573, respectively.

In March 2021, the Company acquired AppHarvest Morehead and related property from Equilibrium Controlled Environment Foods Fund, LLC and its affiliates ("Equilibrium"), a related party at the date of acquisition (See Note 11(a) - *Commitments and Contingencies*- Equilibrium Transaction). The purchase price for AppHarvest Morehead was \$125,000 which was equal to a multiple of Equilibrium's cost to acquire, develop and construct AppHarvest Morehead. AppHarvest Morehead was placed in service during the year ended December 31, 2021.

At December 31, 2022, the Company recorded a non-cash impairment charge of \$50,101 to reduce the carrying value of real and personal property associated with the Company's CEA facilities to their estimated fair value. In estimating the fair value of the real and personal property within each asset group, the Company estimated the price that would be received to sell the asset groups in an orderly transaction between market participants. Due to the specialized nature of the CEA asset groups, the age, and significant amount of construction in progress, only the cost approach was fully developed for the Company's asset

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groups. Fair value was determined using a cost-approach methodology that applied market trend factors to original cost data to arrive at an estimate of fair value. The cost approach uses significant unobservable inputs, or Level 3 inputs, as defined by the fair value hierarchy. The contributory value of the land at each site was valued utilizing the sales comparison approach, a Level 2 input as defined by the fair value hierarchy. The Company also recognized a \$1,070 impairment charge for certain technology property and equipment that will no longer be utilized following the Company's alignment of its technology initiatives with core farm operations, which is recognized in SG&A for the year ended December 31, 2022. The abandonment of this technology resulted in a full impairment of these assets.

## 8. Other Assets

|                                     | December 31, 2022 | December 31, 2021 |
|-------------------------------------|-------------------|-------------------|
| Utility deposits                    | \$ 6,246          | \$ 7,479          |
| Investment in unconsolidated entity | 5,000             | 5,000             |
| Prepayments for fixed assets        | 1,284             | 2,888             |
| Interest rate swap                  | 8,788             | —                 |
| Other assets                        | 1,094             | 1,277             |
| Total other assets                  | <u>\$ 22,412</u>  | <u>\$ 16,644</u>  |

## 9. Accrued Expenses

|                           | December 31, 2022 | December 31, 2021 |
|---------------------------|-------------------|-------------------|
| Payroll and related       | \$ 5,314          | \$ 2,768          |
| Professional service fees | 983               | 1,944             |
| Construction costs        | 9,201             | 8,467             |
| Other accrued liabilities | 1,479             | 600               |
| Utilities                 | 2,746             | 1,461             |
| Inventory                 | 2,273             | 554               |
| Total accrued expenses    | <u>\$ 21,996</u>  | <u>\$ 15,794</u>  |

## 10. Debt

A summary of the carrying value of the debt is as follows:

|                                 | December 31, 2022 | December 31, 2021 |
|---------------------------------|-------------------|-------------------|
| Rabo Loan                       | \$ 71,250         | \$ 75,000         |
| Construction Loan               | 66,252            | 31,944            |
| GNCU Loan                       | 50,000            | —                 |
| JPM Loan                        | —                 | 24,335            |
| Unamortized debt issuance costs | (3,280)           | (622)             |
| Debt, net of issuance costs     | 184,222           | 130,657           |
| Less current portion            | (3,685)           | (28,020)          |
| Long term, net                  | <u>\$ 180,537</u> | <u>\$ 102,637</u> |

The principal requirements of debt maturing in the next five years are:

|                         | 2023     | 2024      | 2025     | 2026     | 2027     |
|-------------------------|----------|-----------|----------|----------|----------|
| Debt maturities by year | \$ 3,750 | \$ 70,002 | \$ 4,792 | \$ 6,250 | \$ 6,250 |

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*Mastronardi Note and Loan Agreement*

On October 24, 2022, the Company, through its wholly-owned subsidiary, AppHarvest Berea Farm, LLC, entered into a note and loan agreement in the principal amount of \$30,000 (the “Note”) with Mastronardi USA. The maturity date of the Note was February 17, 2023. The Company repaid the Note in full upon completion of the Sale-Leaseback Transaction with Mastronardi USA in December 2022 as further described in Note 11 - *Commitments and Contingencies*.

*GNCU Loan Agreement*

On July 29, 2022, the Company entered into the GNCU Loan Agreement for an aggregate original principal amount of \$50,000 (the “GNCU Loan”), to be used, in part, for the development of a commercial scale of AppHarvest Somerset. The GNCU Loan is guaranteed in favor of the GNCU Lender by the USDA through the USDA's Business and Industry Loan Guarantee and Rural Energy for America Programs. The GNCU Loan has a maturity of 23 years with interest-only monthly payments on the aggregate unpaid principal balance of the GNCU Loan for the first 36 months. Thereafter, the Company will make 239 monthly installments of principal and interest based on a 20-year amortization, with the remaining balance of principal and interest due upon maturity. The initial interest rate is fixed at 6.45% per annum for the first five years of the GNCU Loan term. Thereafter, the interest rate is subject to change every five years during the term of the GNCU Loan, based on the Federal Home Loan Bank of Des Moines 5-Year Advance Rate as of such dates, plus a 3.40% spread, with an interest rate floor of 4.75%. The collateral securing the payment and performance of the obligations under the GNCU Loan consists of: (i) a Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing granting a first priority lien on all real property, and a security interest in all personal property, and (ii) a Security Agreement pursuant to which AppHarvest has granted the Lender a security interest in and to all the AppHarvest machinery and equipment, and other personal property collateral within AppHarvest Somerset. The proceeds of the GNCU Loan were used at closing to, in part, pay off the JPM Loan and accrued interest, of approximately \$45,700. The GNCU Loan is recorded at cost, net of debt issuance costs of \$2,561.

The GNCU Loan required the Company to contribute \$3,250 to be held in an interest reserve account and \$19,084 in a project account, to be used to pay interest and the balance of the Project cost for AppHarvest Somerset in excess of the GNCU Loan, respectively. The balance of these amounts is reflected in restricted cash in the consolidated balance sheet as of December 31, 2022.

The GNCU Loan Agreement includes customary representations and covenants for financing transactions of this nature, including, among others, a maximum debt to net worth covenant and a debt service coverage ratio covenant, as well as operating covenants with respect to the completion and operation of AppHarvest Somerset, in each case as set forth in the GNCU Loan Agreement. As of December 31, 2022, the Company was in compliance with all covenants.

*Equilibrium Loan Agreement*

On July 23, 2021, the Company entered into a credit agreement with CEFF II AppHarvest Holdings, LLC, an affiliate of Equilibrium, for a construction loan with a principal amount of \$91,000 (the “Construction Loan”) for the development of a CEA facility in Richmond, Kentucky. The Construction Loan provides monthly disbursements to fund capital costs of the Project in excess of the Company's required equity contribution of 34.5% of the capital costs of AppHarvest Richmond. The Construction Loan requires monthly interest payments based on drawn capital costs at an initial interest rate of 8.000% per annum, which will increase on a monthly basis by 0.2% per annum, beginning two years after closing of the Construction Loan through maturity, which is expected to be July 23, 2024, with no required principal payments until maturity.

On July 29, 2022, the Company amended the credit agreement with Equilibrium to require that it decrease the balance of the Construction Loan to \$81,000 on or prior to December 31, 2022 and further decrease the balance to \$76,000 on or prior to March 31, 2023.

On December 21, 2022, the Company amended the Construction Loan with Equilibrium. This amendment provided that if and when the Company entered into a transaction or series of transactions to sell or otherwise convey its property, and the proceeds of such transaction(s) were \$22,500 or more, the Company would deposit a portion of the proceeds into a segregated deposit account to use for certain on-going construction work at AppHarvest Richmond. This amendment also reduced the principal balance to a maximum \$66,300 and modified certain covenants and waived all defaults under the credit agreement if applicable. At the funding of the Berea Sale-Leaseback Transaction, as further described in Note 11 - *Commitments and Contingencies*, the Company funded the deposit account required by this amendment as applicable. The Company incurred

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\$382 of debt issuance costs related to the amended Construction Loan, which were included in non-current assets on the consolidated balance sheet, and will be amortized over the term of the Construction Loan.

*Rabo AgriFinance*

On June 15, 2021, the Company entered into a master credit agreement with Rabo AgriFinance LLC (the “Lender”) for the Rabo Loan in the original principal amount of 75,000. The Rabo Loan matures on April 1, 2031, with quarterly interest payments commencing on July 1, 2021 and quarterly principal payments, commencing on January 1, 2022, with the remaining balance of principal and interest due upon maturity. Payments are based on one month LIBOR plus 2.500% per annum. The Rabo Loan is collateralized by the business assets of the first Morehead CEA facility and requires compliance with financial covenants. The financial covenants generally begin to be measured on December 31, 2022, except for the working capital ratio. On July 29, 2022, the Company obtained a waiver from Rabo AgriFinance where it was no longer required to measure or report the current ratio for the June 30, 2022, reporting period but will begin to report the current ratio covenant compliance for the December 31, 2022 reporting period. The change aligns all measurements of material financial covenants to begin with the December 31, 2022 measurement date. In exchange, the Company agreed to fund an additional \$2.0 million to a reserve account. At June 30, 2022, we would not have met the current ratio requirement for the Morehead CEA subsidiary.

On June 21, 2021, the Company entered into an interest rate swap with an affiliate of the Lender to make a series of payments based on a fixed rate of 1.602% and receive a series of payments based on LIBOR. Both the fixed and floating payment streams are based on the initial notional amount of \$75,000 and require quarterly payments under a twenty-year amortization schedule. As of December 31, 2022, the net fixed interest rate on the combined Rabo Loan and related interest rate swap is 4.102%. The Rabo Loan is recorded at cost, net of debt issuance costs of \$656.

On December 29, 2022, the Company entered into an addendum to the Rabo Loan dated June 15, 2021, with the Lender. The addendum requires that we deposit \$10 million into a designated reserve account to secure our obligations under the amended Rabo Loan. The addendum also modified certain covenants and reporting requirements. As of December 31, 2022, the Company was in compliance with all covenants.

*JPM Loan Agreement*

On September 27, 2021, the Company entered into the JPM Loan with JPMorgan Chase Bank, N.A., providing for a line of credit facility in the maximum amount of \$25,000 for capital expenditures and CEA facility construction and improvements. The interest rate on the JPM Loan approximated one-month LIBOR plus 2.25%. As of December 31, 2021, the Company borrowed \$24,335 under the JPM Loan and the interest rate was 2.375%. The JPM Loan required 105% of the aggregate borrowings to be held as cash collateral. At December 31, 2021 the Company had \$25,556 of restricted cash on the consolidated balance sheet to meet this requirement.

In January 2022, the Company amended the JPM Loan to: (i) increase the existing line of credit facility in the maximum amount from \$25,000 to \$50,000; and (ii) implement SOFR as the replacement of LIBOR as a benchmark interest rate for U.S. dollar borrowings. On July 29, 2022, the JPM Loan was repaid in full.

## **11. Commitments and Contingencies**

### ***(a) Related Party Transaction***

#### ***Equilibrium Transactions***

On March 1, 2021, the Company closed on the Membership Interest Purchase and Sale Agreement (the “MIPSA”) with Equilibrium that was entered into in December 2020, pursuant to which it purchased from Equilibrium 100% of its membership interests in its subsidiary, Morehead Farm LLC.

At closing, Morehead Farm LLC, which owns AppHarvest Morehead, became a wholly owned subsidiary of the Company. Concurrently with the closing of the MIPSA, the Master Lease Agreement dated May 13, 2019 with Morehead Farm LLC to lease AppHarvest Morehead and ancillary agreements related thereto, was terminated. As a result, the closing date balances of \$66,504 for the financing obligation related to construction in progress assets and \$58,496 for the finance lease liability related to the completed portion of AppHarvest Morehead were settled and de-recognized from the Company’s consolidated balance sheet.

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On May 12, 2020, the Company entered into a loan agreement with Equilibrium, a related party, at that time, to finance the purchase of equipment to be used in the Company's operations in Morehead, Kentucky. The loan agreement had an original principal balance of \$2,000 and an interest rate of 9.5% per year. The original proceeds from the loan are included in the financing section of the statement of cash flows as of December 31, 2021.

**(b) Leases**

The Company's lease portfolio is primarily comprised of operating leases for offices. At the inception of an arrangement, the Company determines whether the arrangement is or contains a lease based on whether the contract conveys the right to control the use of identified property, plant or equipment for a period of time in exchange for consideration. Leases are classified as operating or finance leases at the commencement date of the lease.

Operating lease right-of-use assets, net and liabilities are recognized within the Consolidated Balance Sheets based on the present value of lease payments over the lease term. As the implicit rate is generally not readily determinable for most leases, the Company uses an incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The incremental borrowing rate reflects the estimated rate of interest that the Company would pay to borrow on a collateralized basis over a similar term in a similar economic environment. Lease expense for operating leases is recognized on a straight-line basis over the lease term.

Leases may include renewal options, and the renewal option is included in the lease term if the Company concludes that it is reasonably certain that the option will be exercised. A certain number of the Company's leases contain rent escalation clauses, either fixed or adjusted periodically for inflation of market rates, that are factored into the calculation of lease payments to the extent they are fixed and determinable at lease inception.

For the year ended December 31, 2022 and 2021, the Company recognized \$868 and \$1,485, respectively, of operating lease expense, which was recognized within SG&A or cost of goods sold ("COGS") depending on whether it was related to administration or production, respectively, in the Consolidated Statements of Operations and Comprehensive Loss. Short-term lease expense was \$1,154 and \$940 in 2022 and 2021, respectively. Variable lease expense for the years ended December 31, 2022 and 2021 was immaterial.

The future minimum rental payments required under the leases for each year of the next five years ending December 31, and in the aggregate thereafter are as follows:

|                                                            | <b>Operating<br/>leases</b> |
|------------------------------------------------------------|-----------------------------|
| 2023                                                       | \$ 679                      |
| 2024                                                       | 613                         |
| 2025                                                       | 701                         |
| 2026                                                       | 707                         |
| 2027                                                       | 591                         |
| 2028 and thereafter                                        | 621                         |
| Total minimum payments required                            | 3,911                       |
| Less: imputed interest costs <sup>(1)</sup>                | (770)                       |
| Present value of net minimum lease payments <sup>(2)</sup> | \$ 3,141                    |
| Weighted-average imputed interest rate                     | 7.22 %                      |
| Weighted-average remaining lease term                      | 5.7                         |

(1) Represents the amount necessary to reduce net minimum lease payments to present value using actual rate in the lease agreement or the Company's incremental borrowing rate at lease inception.

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(2) Included in the Consolidated Balance Sheet as of December 31, 2022 as current and non-current lease liability of \$514 and \$2,628, respectively.

Supplemental Consolidated Statement of Cash Flow information is as follows for the years ended December 31:

|                                                                                                           | 2022       | 2021     |
|-----------------------------------------------------------------------------------------------------------|------------|----------|
| Cash paid for amounts included in the measurement of operating lease liabilities                          | \$ 1,141   | \$ 552   |
| Operating lease right-of-use assets obtained in exchange for new operating lease liabilities              | \$ 1,220   | \$ 3,989 |
| Operating lease right-of-use assets surrendered with the early termination of operating lease liabilities | \$ (3,031) | \$ —     |

**(c) Berea Sale Leaseback Financing Transaction**

On December 23, 2022, the Company entered into a purchase and sale agreement (the “Purchase Agreement”) with Mastronardi Berea LLC, (the “Buyer”), for the Company’s 40 acres of land located in Berea, Kentucky (the “Berea Land”) and the CEA facility, improvements and other assets located thereon (“Berea Property”), collectively the “Property”. The sale price was approximately \$125,000. The Buyer is a joint venture between Mastronardi and a third party.

On December 27, 2022, the Company and Buyer entered into a sale-leaseback transaction for the Property (the “Lease”). In conjunction with the execution of the Lease, and contemporaneous with the closing of the Purchase Agreement, the Company paid the Buyer \$19,055 in the form of advanced lease payments.

The Lease has an initial term of 10 years, with four renewal options of five years each. At the commencement date of the Lease, the renewal options are not reasonably certain to be exercised by the Company. The total annual rent under the Lease is \$9.5 million per year, and the annual rent is subject to 2.5% annual increases or consumer price index adjustments, whichever is greater, starting after the second lease year. Due to the fact the Lease contains both the Berea Land and Property, the land and building components were evaluated separately.

The Company determined that the Berea CEA facility did not qualify for sale-leaseback accounting and accounted for the Berea CEA facility lease component of the Lease transaction as a financing transaction. The Company has recorded the sale proceeds attributable to the facility lease component as a loan collateralized by the Berea CEA facility. This loan is payable as principal and imputed interest in the form of “lease payments” to the Buyer over the ten-year initial term of the Lease. As such, the Company did not derecognize the AppHarvest Berea facility from its consolidated balance sheet for accounting purposes, and AppHarvest Berea along with the long-lived assets within, which total \$109,351, as of December 31, 2022, will continue to be depreciated by the Company over the assets’ estimated remaining useful life. As of December 31, 2022, the carrying value of the financing liability was \$103,787, net of \$1,288 in debt issuance costs, of which all were classified as long-term on the balance sheet, giving account to the two years of prepaid rent. The monthly lease payments are split between a reduction of principal and interest expense using the effective interest rate method. There was no material interest expense associated with the financing arrangement for the year ended December 31, 2022. No gain or loss was recognized related to the Sale-Leaseback Transaction or the year ended December 31, 2022, as the sale proceeds allocated to the Berea Land lease component approximated the Berea Land carrying value.

Remaining future cash payments related to the financing liability for the next five years ending December 31, and in the aggregate thereafter are as follows:

|                                         |                  |
|-----------------------------------------|------------------|
| 2023                                    | \$ —             |
| 2024                                    | —                |
| 2025                                    | 9,669            |
| 2026                                    | 9,910            |
| 2027                                    | 10,158           |
| Thereafter                              | 54,729           |
| <b>Total Minimum Liability Payments</b> | <b>\$ 84,466</b> |

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***(d) Agreements with Dalsem***

The Company entered into agreements with Dalsem Greenhouse Technology, B.V. (“Dalsem”) for the construction of new greenhouse facilities in Richmond, Kentucky and Berea, Kentucky on November 20, 2020 and December 11, 2020, respectively. Under terms of the agreements, Dalsem will provide certain services related to the design, engineering, procurement, construction, startup and testing of a greenhouse and certain ancillary facilities at each site. Total costs under the agreements are based on actual costs incurred by Dalsem and payments are due upon the completion of certain established project milestones, with a portion of each payment due in Euros and a portion due in U.S. dollars. Either party is entitled to terminate the agreements upon the occurrence of certain events of default and the Company is entitled to terminate the agreements if Dalsem fails to meet certain performance requirements. The Company may also terminate the agreements without cause with written notice and a termination payment to Dalsem. In February 2023, Dalsem filed a mechanics lien on the AppHarvest Richmond facility in the amount of approximately \$14,000. The Company has accrued amounts it believes are owed to Dalsem and has contested certain other amounts.

***(e) Purchase Commitments***

During the year ended December 31, 2021, the Company entered into an agreement with its natural gas supplier to purchase a portion of its anticipated future natural gas usage at fixed prices. There were no material purchase commitments that were unrecorded at December 31, 2022. The unrecorded purchase commitments as of December 31, 2021, were \$915.

***(f) Litigation***

The Company is involved in various lawsuits, claims and other legal matters from time to time that arise in the ordinary course of business. The Company records a liability when a particular contingency is probable and estimable.

On September 24, 2021, the first of two federal securities class action lawsuits (captioned Ragan v. AppHarvest, Inc.) was filed by a purported stockholder of the Company in the United States District Court for the Southern District of New York on behalf of a proposed class consisting of those who acquired the Company’s securities between May 17, 2021 and August 10, 2021. On December 13, 2021, the court consolidated the two cases, and appointed a lead plaintiff. An amended complaint was filed on March 2, 2022. The amended complaint was brought as a purported class action on behalf of purchasers of the Common Stock between February 1, 2021 to August 10, 2021. The amended complaint named the Company and certain of its current officers as defendants, and alleged that the Company violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, by making materially false and misleading statements regarding the Company’s operations at AppHarvest Morehead in the first half of 2021. In particular, the lead plaintiff alleged that the Company’s public statements during the class period were false and misleading because the Company failed to disclose issues related to its tomato harvest and employee training and retention. The amended complaint sought unspecified monetary damages on behalf of the punitive class and an award of costs and expense, including reasonable attorneys’ fees. On May 2, 2022, the Company filed a motion to dismiss the amended complaint. On July 25, 2022, the lead plaintiff filed a second amended complaint with substantially similar allegations. On September 23, 2022, the Company filed a motion to dismiss the second amended complaint. The lead plaintiff filed his opposition to the Company’s motion to dismiss the second amended complaint on November 22, 2022, and the Company filed its reply in support of its motion to dismiss the second amended complaint on January 13, 2023.

Additionally, on March 11, 2022, a derivative complaint (captioned Michael Ross v. Kiran Bhatraju, et al.) was filed in the U.S. District Court for the Southern District of New York against certain of AppHarvest’s officers and directors. The derivative complaint restyles the federal securities class action allegations as a purported derivative claim on behalf of the Company against its officers and Board members for their alleged breaches of fiduciary duties in allowing the purported disclosure violations to occur. The derivative complaint seeks unspecified monetary restitution and disgorgement of profits, benefits, or compensation obtained by the defendants, an award of costs and expenses, including reasonable attorneys’ fees, and that the Court direct the Company to reform its corporate governance procedures. On June 15, 2022, another derivative complaint (captioned Zach Wester v. Kiran Bhatraju, et al.) was filed in the U.S. District Court for the Southern District of New York against certain of AppHarvest’s officers and directors. The Wester derivative complaint is substantially similar to the Ross derivative complaint. On July 22, 2022, the Ross and Wester derivative cases were consolidated, and are stayed until (1) the securities class action is dismissed with prejudice and all appeals related thereto are exhausted; (2) defendants file an answer in the securities class action; or (3) any party in the derivative cases no longer consents to the stay. On August 31, 2022, a third derivative complaint (captioned Kennedy v. AppHarvest, Inc., et al) was filed in the U.S. District Court for the District of Delaware against certain of AppHarvest’s officers and directors. The Kennedy derivative complaint is substantially similar to

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the Ross and Wester derivative complaints. On November 22, 2022, the Kennedy derivative case was stayed until (1) the securities class action is dismissed with prejudice and all appeals related thereto are exhausted; (2) defendants file an answer in the securities class action; or (3) any party in the derivative case no longer consents to the stay.

We intend to defend these cases vigorously, and have not recorded a liability related to these lawsuits because, at this time, we are unable to estimate reasonably possible losses or determine whether an unfavorable outcome is probable.

## 12. Derivative Financial Instruments

During the year ended December 31, 2021, the Company entered into foreign currency forward and option contracts to hedge certain cash flows related to anticipated expenditures related to the construction of its Berea, Kentucky and Richmond, Kentucky CEA facilities. These contracts, which had maturities ranging through December 2022, qualified as cash flow hedges and were used to hedge the Company's foreign currency risk associated with the Euro denominated payments due upon the completion of established project milestones under the applicable CEA facility construction contracts. The Company maintained collateral of \$140 and \$3,710 for the hedge program in prepaid expenses and other current assets in the consolidated balance sheet at December 31, 2022 and December 31, 2021, respectively.

The Company has elected to measure hedge effectiveness using the spot method under which the hedging relationship is considered perfectly effective and changes in the fair value of the forward and options contracts attributable to changes in the spot rate are recorded as a component of other AOCI. As the hedged items are ultimately capitalized as part of the CEA facility fixed assets, the AOCI amounts will be reclassified into earnings over the same periods as the future depreciation expense related to those assets. Consistent with the allocation of CEA facility fixed asset depreciation, the AOCI reclassification will also be allocated between COGS and SG&A within the Consolidated Statement of Operations and Comprehensive Loss.

Under the spot method, changes in the fair value of forward contracts attributable to changes in the difference between the forward rate and the spot rate (forward points) and the fair value of option contracts attributable to time and volatility values (up-front premium) will be excluded from the measure of hedge effectiveness and amortized as COGS and SG&A on a straight-line basis over the terms of the underlying contracts. During the year ended December 31, 2022 and December 31, 2021, the Company recognized amortization expense of \$244 and \$504 related to its foreign currency hedge contracts within the Consolidated Statement of Operations and Comprehensive Loss.

As of December 31, 2022, the Company no longer had outstanding foreign currency contracts designated as cash flow hedging instruments.

At December 31, 2022 and December 31, 2021, the Company had a net liability of \$0 and \$49 in foreign currency contracts designated as cash flow hedging instruments, which is included in other current and non-current liabilities according to the expected settlement dates of the related contracts.

On June 21, 2021, the Company entered into an interest rate swap which has been designated as an effective cash flow hedge and changes in the fair value are recorded as a component of AOCI in the consolidated balance sheet and reclassified into earnings as interest expense over the life of the debt. See Note 10 - *Debt* for more information on the interest rate swap.

The following table summarizes the before and after tax amounts for the various components of other comprehensive income(loss) for the periods presented:

|                    | Year Ended December 31, 2022 |                          |                  | Year Ended December 31, 2021 |                          |                   |
|--------------------|------------------------------|--------------------------|------------------|------------------------------|--------------------------|-------------------|
|                    | Before Tax                   | Tax (Expense)<br>Benefit | After Tax        | Before Tax                   | Tax (Expense)<br>Benefit | After Tax         |
| Foreign Currency   | \$ 294                       | \$ —                     | \$ 294           | \$ (294)                     | \$ —                     | \$ (294)          |
| Interest Rate Swap | 10,445                       | —                        | 10,445           | (1,657)                      | —                        | (1,657)           |
| Total AOCI/AOCL    | <u>\$ 10,739</u>             | <u>\$ —</u>              | <u>\$ 10,739</u> | <u>\$ (1,951)</u>            | <u>\$ —</u>              | <u>\$ (1,951)</u> |

During the twelve months ended December 31, 2022 an income tax expense of \$2,822 was recognized within other comprehensive income (loss) compared to an income tax benefit of \$521 during the twelve months ended December 31, 2021.

The income tax expense of \$2,822 related to the balance in AOCI at December 31, 2022 of \$10,739 and the income tax benefit related to the \$(1,951) balance in AOCL at December 31, 2021, respectively, is fully offset by a valuation allowance.



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The Company will release the AOCI amounts, net of any tax impact, from the foreign currency contracts, and the interest rate swap in the periods that the underlying transactions impact earnings as described above.

### 13. Stock-based Compensation

#### *Equity Incentive Plan*

On January 29, 2021, stockholders approved the 2021 Equity Incentive Plan, (the “Plan”), replacing the 2018 Equity Incentive Plan, (the “2018 Plan”), pursuant to which the Company’s Board of Directors (the “Board”) may grant stock awards, including stock options, stock appreciation rights, restricted stock awards, RSUs and other stock-based awards, to officers, key employees, and directors. The Plan allows for non-employee director grants, which are accounted for in the same manner as employee awards. There are 10,027 registered shares of Common Stock reserved for issuance under the Plan. During the year ended December 31, 2022, 1,539 awards were granted under the Plan, including 1,031 RSUs and 508 stock options, all of which had typical service-based vesting requirements.

During the year ended December 31, 2021, 6,589 awards were granted under the Plan, including 6,541 RSUs and 48 stock options granted as consideration in the Root AI Acquisition (see Note 3 - *Business Combinations* for more information). The RSU’s granted under the Plan include 2,937 executive awards with market and performance-based vesting requirements in addition to the typical service-based vesting requirements.

As of December 31, 2022, there are 3,053 registered shares of Common Stock reserved for issuance upon exercise or settlement, as applicable, of awards made under the 2018 Plan. While no further awards may be granted under the 2018 Plan, that plan continues to govern all outstanding awards previously issued under it.

Vesting of the RSUs issued under the 2018 Plan (“2018 RSUs”) was dependent on a liquidity event, the Business Combination, which occurred on January 29, 2021. Accordingly, the Company recognized a one-time stock-based compensation expense of \$2,616 as of that date as a retroactive catch-up of cumulative stock-based compensation expense for such awards from their original grant dates.

Total stock-based compensation expense was \$26,918 for the year ended December 31, 2022, compared to \$40,910 for the year ended December 31, 2021, respectively. Of these amounts, \$26,252 were included in SG&A and \$666 in COGS for the year ended December 31, 2022, respectively and \$39,030 was recognized in SG&A and \$1,880 in COGS for the year ended December 31, 2021, respectively.

The Company issues stock options in two forms. The incentive stock options (“ISO”) that have been granted generally vest over 48 months, with 25% vesting at the end of the first year and ratable vesting thereafter for the next 36 months. The nonqualified stock options (“NSO”) that have been granted vest ratably over 10 to 30 months. The ISOs and NSOs generally expire ten years after the date of grant.

The Company uses the Black-Scholes option-pricing model to calculate the fair value of the options granted. The grant date fair value was based on the following weighted average assumptions used within the Black-Scholes option pricing model for the year ended December 31, 2022 and 2021:

|                         | 2022    | 2021    |
|-------------------------|---------|---------|
| Expected term           | 6.25    | 5.80    |
| Risk-free interest rate | 3.40 %  | 0.41 %  |
| Expected volatility     | 64.57 % | 49.45 % |
| Expected dividend yield | — %     | — %     |

The Company recorded \$385 and \$236 of stock-based compensation expense for options issued to employees and directors during the years ended December 31, 2022 and 2021, respectively. As of December 31, 2022, unrecognized stock-based compensation expense of \$440, is related to non-vested options granted, which is anticipated to be recognized over the next weighted average 6.38 years, commensurate with the remaining requisite service period.

Aggregate intrinsic value represents the estimated fair value of the Company’s Common Stock at the end of the period in excess of the weighted average exercise price multiplied by the number of options outstanding or exercisable. The weighted

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average grant date fair value of options granted during the years ended December 31, 2022 and 2021 was \$0.80 and \$17.74, respectively. The Company uses authorized and unissued shares to satisfy award exercises.

The following table summarizes stock option activity for the year ended December 31, 2022 and December 31, 2021:

| Options                          | Shares  | Weighted average exercise price | Average remaining contractual term | Aggregate Intrinsic Value |
|----------------------------------|---------|---------------------------------|------------------------------------|---------------------------|
| Outstanding at December 31, 2020 | 2,978   | \$ 0.33                         | 8.71                               |                           |
| Granted                          | 48      | 0.56                            |                                    |                           |
| Exercised                        | (135)   | 0.32                            |                                    | \$ 751                    |
| Forfeited or expired             | (83)    | 0.58                            |                                    |                           |
| Outstanding at December 31, 2021 | 2,808   | \$ 0.33                         | 7.79                               | \$ 10,002                 |
| Exercisable, December 31, 2021   | 1,996   | 0.30                            | 7.60                               | \$ 7,165                  |
| Granted                          | 508     | 3.19                            |                                    |                           |
| Exercised                        | (1,183) | 0.26                            |                                    | \$ 3,679                  |
| Forfeited or expired             | (278)   | 2.76                            |                                    |                           |
| Outstanding at December 31, 2022 | 1,855   | 0.80                            | 6.39                               | \$ 284                    |
| Exercisable, December 31, 2022   | 1,368   | 0.50                            | 5.60                               | \$ 260                    |

During the year ended December 31, 2022, the Company granted RSUs to directors, officers, and employees. The following table summarizes RSU activity for the year ended December 31, 2022 and December 31, 2021:

| RSUs                             | Units   | Weighted average grant date fair value |
|----------------------------------|---------|----------------------------------------|
| Outstanding at December 31, 2020 | 2,545   | \$ 9.07                                |
| Granted                          | 6,568   | 14.74                                  |
| Vested                           | (955)   | 10.29                                  |
| Forfeited or cancelled           | (1,793) | 12.21                                  |
| Outstanding at December 31, 2021 | 6,365   | \$ 13.68                               |
| Granted                          | 1,031   | 3.83                                   |
| Vested                           | (2,000) | 14.02                                  |
| Forfeited or cancelled           | (1,345) | 11.97                                  |
| Unvested at December 31, 2022    | 4,052   | \$ 12.11                               |

Certain RSUs contain performance and service vesting conditions, and the related stock-based compensation is recognized using an accelerated attribution method. The requisite service period for the RSUs outstanding at December 31, 2022, is 48 months, with 25% vesting at the end of the first year and ratable vesting every 3 months thereafter for the next 36 months.

Total stock-based compensation recognized in 2022 and 2021 related to the market-based RSUs was \$8,646 and \$15,168, respectively, which is recorded within SG&A. Total stock-based compensation recognized in 2022 and 2021 for time-based RSUs was \$17,788 and \$25,273, respectively.

As of December 31, 2022, unrecognized stock-based compensation expense of \$11,847, is related to non-vested RSUs granted, which is anticipated to be recognized over the next weighted average 0.6 years.

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#### 14. Income Taxes

For the years ended December 31, 2022 and 2021, the Company incurred net operating losses and, accordingly, no current provision for income taxes has been recorded. Deferred income tax expense for the years ended December 31, 2022 and 2021 consisted of the following components:

|                                   | 2022     | 2021   |
|-----------------------------------|----------|--------|
| Deferred income tax expense:      |          |        |
| Federal                           | \$ 1,076 | \$ 920 |
| State                             | 1,432    | 69     |
| Total deferred income tax expense | 2,507    | 989    |
| Income tax expense                | \$ 2,507 | \$ 989 |

The reconciliation of the statutory income tax with the provision for income taxes are as follows for the years ended December 31:

|                                             | December 31, |         |             |         |
|---------------------------------------------|--------------|---------|-------------|---------|
|                                             | 2022         |         | 2021        |         |
| Statutory tax rate                          | \$ (36,570)  | 21.0 %  | \$ (34,691) | 21.0 %  |
| State tax - deferred, net of federal impact | (6,241)      | 3.6 %   | (4,940)     | 3.0 %   |
| Permanent items                             | 6,282        | (3.6)%  | 10,268      | (6.2)%  |
| Change in valuation allowance               | 39,462       | (22.6)% | 30,349      | (18.4)% |
| Other                                       | (426)        | 0.2 %   | 3           | — %     |
| Total taxes                                 | \$ 2,507     | (1.4)%  | \$ 989      | (0.6)%  |

The Company has considered the impact of state rate changes, apportionment weighting and state filing positions when determining its state effective tax rate. The Company adjusts its state effective tax rate for enacted law changes during the year.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income and for tax carryforwards. Significant components of the Company's deferred tax assets and liabilities are as follows:

|                                     | December 31, |            |
|-------------------------------------|--------------|------------|
|                                     | 2022         | 2021       |
| Deferred tax assets:                |              |            |
| Net operating loss carryforwards    | \$ 56,441    | \$ 29,340  |
| Stock-based compensation            | 1,775        | 3,170      |
| Lease liabilities and holdback      | 3,396        | 1,521      |
| Financing obligation                | 27,177       | —          |
| Other                               | 6,180        | 2,933      |
|                                     | \$ 94,968    | \$ 36,963  |
| Valuation allowance                 | (72,432)     | (35,792)   |
|                                     | \$ 22,536    | \$ 1,171   |
| Deferred tax liabilities:           |              |            |
| Property, plant and equipment       | \$ (24,472)  | \$ (2,250) |
| Interest rate swap                  | (2,301)      | —          |
| Operating lease right-of-use assets | (688)        | (1,339)    |
|                                     | (27,461)     | (3,589)    |
| Net deferred tax liabilities        | \$ (4,925)   | \$ (2,418) |

When realization of the deferred tax asset is more likely than not to occur, the benefit related to the deductible temporary differences attributable to operations is recognized as a reduction of income tax expense. Valuation allowances are provided against deferred tax assets when, based on all available evidence, it is considered more likely than not that some portion or all of the recorded deferred tax assets will not be realized in future periods. The Company cannot be certain that future taxable

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income will be sufficient to realize its deferred tax assets, and accordingly, a valuation allowance of \$72,432 and \$35,792 have been provided on the net deferred tax assets as of December 31, 2022 and 2021. The valuation allowance increased \$36,640 during the year ended December 31, 2022, primarily as a result of an increase in net operating loss carryforwards. The Company continues to monitor the need for a valuation allowance based on the sources of future taxable income.

At December 31, 2022, the Company has \$224,198 of federal and \$223,712 of state net operating loss carryforwards that have no expiration. Under the provisions of the Internal Revenue Code, net operating loss and tax credit carryforwards are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. Net operating loss and tax credit carryforwards may be subject to an annual limitation in the event of certain cumulative changes in the ownership interest of significant stockholders by more than 50% over a three-year period, as defined in Sections 382 and 383 of the Internal Revenue Code and similar state provisions. The amount of the annual limitation is determined based on the value of the Company immediately before the ownership change. Subsequent ownership changes may further affect the limitation in future years. The Company completed a Section 382 and 383 analysis as of December 31, 2022, which confirmed that a change in ownership as defined under Sections 382 and 383 occurred in 2021, but the computed limitation had no impact on the Company's ability to utilize pre-change net operating and tax credit carryforwards. Therefore, the Company's computed valuation allowance on net operating loss carryforwards was unaffected by the completion of the analysis.

As of December 31, 2022 and 2021, the Company had no accrued uncertain tax positions or associated interest or penalties and no amounts have been recognized in the Company's Consolidated Statements of Operations and Comprehensive Loss.

The Company files income tax returns in the U.S. federal jurisdiction and state jurisdictions. The tax years since inception remain open and subject to examination by federal and state taxing authorities.

## 15. Shareholders' Equity

### *Net Loss per Common Share*

Diluted net loss per common share is the same as basic loss per common share for all periods presented because the effects of potentially dilutive items were anti-dilutive given the Company's net loss. The following common share equivalent securities have been excluded from the calculation of weighted-average common shares outstanding because the effect is anti-dilutive for the periods presented:

|                                                     | December 31,  |               |
|-----------------------------------------------------|---------------|---------------|
|                                                     | 2022          | 2021          |
| <b>Anti-dilutive common share equivalents:</b>      |               |               |
| Stock options                                       | 1,855         | 2,808         |
| Restricted stock units                              | 4,052         | 6,325         |
| Warrants                                            | 13,242        | 13,242        |
| <b>Total anti-dilutive common share equivalents</b> | <b>19,149</b> | <b>22,375</b> |

Basic and diluted net loss per common share is calculated as follows:

|                                                               | Year Ended December 31, |                  |
|---------------------------------------------------------------|-------------------------|------------------|
|                                                               | 2022                    | 2021             |
| <b>Numerator:</b>                                             |                         |                  |
| Net loss                                                      | \$ (176,646)            | \$ (166,186)     |
| <b>Denominator:</b>                                           |                         |                  |
| Weighted-average common shares outstanding, basic and diluted | 104,763                 | 95,571           |
| <b>Net loss per common share, basic and diluted</b>           | <b>\$ (1.69)</b>        | <b>\$ (1.74)</b> |

### *At the Market Offering*

On August 3, 2022, the Company filed a shelf registration statement on Form S-3 (the "Registration Statement"). Pursuant to the Registration Statement, the Company may offer and sell securities having an aggregate public offering price of up to \$300,000. In connection with the filing of the Registration Statement, the Company also entered into a sales agreement (the

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“ATM Agreement”) with Cowen and Company, LLC (“Cowen”). Pursuant to the ATM Agreement, the Company may offer and sell, from time to time through Cowen, shares of Common Stock, having an aggregate offering price up to \$100,000 under an at-the-market offering program (the “ATM”), which is included in the \$300,000 of securities that may be offered pursuant to the Registration Statement. Pursuant to the ATM Agreement, the Company will pay Cowen a commission rate equal to 3.0% of the gross proceeds from the sale of any shares of Common Stock and reimburse certain legal fees. The ATM Agreement will terminate upon the earlier of (i) issuance and sale of all the shares as allowed within and (ii) termination of the ATM Agreement as permitted therein. During the twelve months ended December 31, 2022, the Company has sold 1,018 shares of its Common Stock pursuant to the ATM Agreement for gross proceeds of \$2,416 and net proceeds of \$2,343. Equity issuance costs of \$63 were netted with gross proceeds in equity during the twelve months ended December 31, 2022. As of December 31, 2022, there was \$97,584 in availability remaining under the ATM.

***Common Stock Purchase Agreement***

On December 15, 2021, the Company entered into a Common Stock Purchase Agreement (the “Purchase Agreement”) with B. Riley Principal Capital, LLC (“B. Riley Principal Capital”). Pursuant to the Purchase Agreement, the Company has the right to sell to B. Riley Principal Capital up to the lesser of (i) \$100,000 of newly issued shares of the Company’s Common Stock and (ii) the Exchange Cap, which is 20,143 shares of the Company’s Common Stock (subject to certain limitations and conditions), from time to time during the 24-month term of the Purchase Agreement. Sales of Common Stock pursuant to the Purchase Agreement, and the timing of any sales, are solely at the option of the Company, and the Company is under no obligation to sell any securities to B. Riley Principal Capital under the Purchase Agreement.

During the twelve months ended December 31, 2022, the Company has sold an aggregate 3,510 shares of its Common Stock pursuant to the Purchase Agreement for aggregate proceeds, net of fees incurred of \$456, of \$10,117. As a result, deferred equity issuance costs of \$587 were netted into equity during the twelve months ended December 31, 2022. As of December 31, 2022, there were 16,436 shares reserved for the Purchase Agreement.

**16. Subsequent Events**

On February 9, 2023, in order to raise capital to fund the Company’s planned expenditures and meet its obligations, the Company initiated a follow-on equity offering for the issuance and allotment of 40,000 shares of Common Stock in an underwritten public offering at a public offering price of \$1.00 per share. In addition, the Company granted the underwriters an option to purchase, for a period of 30 days, up to an additional 6,000 shares of Common Stock (the “Overallotment Option”). On February 14, 2023, the Company closed the follow-on offering via the issuance and allotment of 40,000 shares of Common Stock. On February 22, 2023 the underwriters exercised the Overallotment Option to purchase 6,000 shares of Common Stock and on February 24, 2023, the Company issued the 6,000 shares of Common Stock under the Overallotment Option. The Company received total net proceeds of approximately \$42,900, after deducting underwriting discounts and commissions of \$2,400, and offering costs of approximately \$700.

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

None.

**Item 9A. Controls and Procedures**

***Evaluation of Disclosure Controls and Procedures***

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of the end of the year ended December 31, 2022. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer and accounting officer have concluded that as of December 31, 2022, our disclosure controls and procedures were effective at a reasonable assurance level and, accordingly, provided reasonable assurance that the information required to be disclosed by us in reports filed under the Exchange Act is (1) recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (2)

accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer or person performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

#### ***Limitations on Controls and Procedures***

In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a control system, misstatements due to error or fraud may occur and not be detected.

#### ***Management's Annual Report on Internal Control over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Our internal control over financial reporting is a process designed by, or under the supervision of, our CEO and CFO to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Under the supervision and with the participation of our management, including our CEO and CFO, our management conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria set forth, in the Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Management's assessment included an evaluation of the design of our internal control over financial reporting and testing of the operational effectiveness of our internal control over financial reporting. Based on management's assessment, management has concluded that our internal control over financial reporting was effective as of December 31, 2022 based on those criteria.

#### ***Attestation on Internal Control over Financial Reporting***

Due to the Company becoming a non-accelerated filer and smaller reporting company in connection with the Annual Report on Form 10-K, the Company's independent registered public accounting firm is not required to issue an attestation report on the Company's internal control over financial reporting as of December 31, 2022.

#### ***Changes in Internal Control over Financial Reporting***

There were no changes in the Company's internal control over financial reporting in the quarter ended December 31, 2022 that has materially affected, or is reasonably likely to affect, the Company's internal control over financial reporting.

### **Item 9B. Other Information**

On February 20, 2023, the Compensation Committee (the "Compensation Committee") of our Board approved a Retention Bonus Agreement (the "Retention Agreement") between Mr. Eggleton and the Company, pursuant to which Mr. Eggleton became eligible for a one-time bonus payment (the "Transaction Bonus"), subject to his continued service with the Company through and until the consummation of a strategic transaction, whether through the issuance and sale of equity securities of the Company in a bona fide financing transaction, the sale of an asset or assets of the Company or its subsidiaries or the consummation of a Change in Control (as defined in the Company's 2021 Equity Incentive Plan) (a "Strategic Transaction"). On March 14, 2023, the Compensation Committee approved an Amendment to Retention Bonus Agreement between Mr. Eggleton and the Company (the "Amended Retention Agreement") to amend the terms of the Transaction Bonus to be calculated as a portion of the gross proceeds received by the Company in a qualifying Strategic Transaction as follows: (i) \$300,000 if the Strategic Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$75 million but less than \$100 million; (ii) \$600,000 if the Strategic Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$100 million but less than \$125 million; (iii) \$900,000 if the Strategic Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$125 million but less than \$150 million; or (iv)

\$1.2 million if the Strategic Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$150 million. The amount of the bonus will be calculated using straight line interpolation for gross proceed levels between the above-referenced tiers (e.g., if the Strategic Transaction results in gross proceeds to the Company or its stockholders, as applicable, of \$87.5 million, the Transaction Bonus would be \$450,000). If Mr. Eggleton's employment terminates for any reason prior to the closing date of a Strategic Transaction, no Transaction Bonus shall be paid unless such termination was by the Company without Cause or by Mr. Eggleton with Good Reason (each as defined in the Employment Agreement between Mr. Eggleton and the Company dated December 11, 2020, as amended) in the three month period preceding the closing date of a Strategic Transaction, subject to certain exceptions.

The foregoing description of the Retention Agreement and the Amended Retention Agreement do not purport to be complete and are qualified in their entirety by reference to the Retention Agreement and the Amended Retention Agreement, copies of which are filed with this Form 10-K as Exhibits 10.41 and 10.42, respectively, and incorporated herein by reference.

**Item 9c. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

Not applicable.

### **Part III**

#### **Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this item is hereby incorporated by reference in response to the Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2022.

We have adopted a Code of Business Conduct and Ethics (the “Code of Conduct”), applicable to all employees, executive officers and directors. The Code of Conduct is available at the investors section of our website at *www.appharvest.com*. Information contained on or accessible through this website is not a part of this proxy statement, and the inclusion of such website address in this proxy statement is an inactive textual reference only. Any amendments to the Code of Conduct, or any waivers of its requirements, will be disclosed on our website to the extent required by applicable rules and exchange requirements.

#### **Item 11. Executive Compensation**

The information required by this item is hereby incorporated by reference to the Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2022.

#### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information required by this item is hereby incorporated by reference to the Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2022.

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

The information required by this item is hereby incorporated by reference to the Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2022.

#### **Item 14. Principal Accountant Fees and Services**

The information required by this item is hereby incorporated by reference to the Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the SEC within 120 days of December 31, 2022.



## Part IV

### Item 15. Exhibit and Financial Statement Schedules

#### Financial Statements and Financial Statement Schedules

See “Index to Consolidated Financial Statements” in Part II, Item 8 of this Annual Report on Form 10-K.

#### Exhibits

| Exhibit Number | Description                                                                                                                                                             | Incorporated by Reference |            |         |                    |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------|---------|--------------------|
|                |                                                                                                                                                                         | Form                      | File No.   | Exhibit | Filing Date        |
| 1.1            | <a href="#">Sales Agreement by and between AppHarvest, Inc. and Cowen and Company, LLC, dated August 3, 2022</a>                                                        | Form S-3                  | 333-266502 | 1.2     | August 3, 2022     |
| 2.1+           | <a href="#">Business Combination Agreement and Plan of Reorganization, dated as of September 28, 2020, by and among Novus Capital, Merger Sub and Legacy AppHarvest</a> | Form 8-K                  | 001-39288  | 2.1     | September 29, 2020 |
| 3.1            | <a href="#">Amended and Restated Certificate of Incorporation of AppHarvest, Inc.</a>                                                                                   | Form 8-K                  | 001-39288  | 3.1     | February 2, 2021   |
| 3.2            | <a href="#">Amended and Restated Bylaws of AppHarvest, Inc.</a>                                                                                                         | Form 8-K                  | 001-39288  | 3.2     | February 2, 2021   |
| 4.1            | <a href="#">Specimen Common Stock Certificate</a>                                                                                                                       | Form S-4/A                | 333-249421 | 4.4     | December 1, 2020   |
| 4.2            | <a href="#">Specimen Warrant Certificate of Novus</a>                                                                                                                   | Form 10-K/A               | 001-39288  | 4.3     | June 2, 2021       |
| 4.3            | <a href="#">Warrant Agreement, dated May 19, 2020, by and between Continental Stock Transfer &amp; Trust Company and Novus</a>                                          | Form 8-K                  | 001-39288  | 4.1     | May 20, 2020       |
| 4.4*           | <a href="#">Description of Securities</a>                                                                                                                               |                           |            |         |                    |
| 10.1           | <a href="#">Form of PIPE Subscription Agreement</a>                                                                                                                     | Form 8-K                  | 001-39288  | 10.3    | September 29, 2020 |
| 10.2           | <a href="#">Amended and Restated Registration Rights Agreement dated January 29, 2021, by and among AppHarvest and certain stockholders of AppHarvest</a>               | Form 8-K                  | 001-39288  | 10.3    | February 2, 2021   |
| 10.3           | <a href="#">Form of Indemnification Agreement</a>                                                                                                                       | Form S-4/A                | 333-249421 | 10.25   | December 1, 2020   |
| 10.4           | <a href="#">Stockholder Rights Agreement, dated January 29, 2021, by and among AppHarvest and certain stockholders of AppHarvest</a>                                    | Form 8-K                  | 001-39288  | 10.5    | February 2, 2021   |
| 10.5           | <a href="#">Employment Agreement, dated December 11, 2020, by and between Legacy AppHarvest and Jonathan Webb</a>                                                       | Form S-4/A                | 333-249421 | 10.24   | December 21, 2020  |
| 10.6           | <a href="#">Employment Agreement, dated December 11, 2020, by and between Legacy AppHarvest and Loren Eggleton</a>                                                      | Form S-4/A                | 333-249421 | 10.28   | December 21, 2020  |
| 10.7           | <a href="#">2018 Equity Incentive Plan, as amended</a>                                                                                                                  | Form 8-K/A                | 001-39288  | 10.1    | March 2, 2021      |
| 10.8           | <a href="#">Forms of Notice of Grant, Stock Option Agreement, Notice of Exercise and Notice of Early Exercise under 2018 Equity Incentive Plan</a>                      | Form 8-K/A                | 001-39288  | 10.2    | March 2, 2021      |
| 10.9           | <a href="#">Forms of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under Legacy AppHarvest 2018 Equity Incentive Plan</a>                      | Form 8-K/A                | 001-39288  | 10.3    | March 2, 2021      |
| 10.10          | <a href="#">2021 Equity Incentive Plan</a>                                                                                                                              | Form 8-K/A                | 001-39288  | 10.4    | March 2, 2021      |
| 10.11          | <a href="#">Amendment No. 1 2021 Equity Incentive Plan</a>                                                                                                              | Form 10-Q                 | 001-39288  | 10.2    | November 10, 2021  |
| 10.12          | <a href="#">Forms of Stock Option Grant Notice and Stock Option Agreement under the 2021 Equity Incentive Plan</a>                                                      | Form 8-K/A                | 001-39288  | 10.5    | March 2, 2021      |
| 10.13          | <a href="#">Forms of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the 2021 Equity Incentive Plan</a>                        | Form 8-K/A                | 001-39288  | 10.6    | March 2, 2021      |
| 10.14          | <a href="#">2021 Employee Stock Purchase Plan</a>                                                                                                                       | Form 8-K/A                | 001-39288  | 10.7    | March 2, 2021      |
| 10.15          | <a href="#">Amendment No. 1 2021 Employee Stock Purchase Plan</a>                                                                                                       | Form 10-Q                 | 001-39288  | 10.3    | November 10, 2021  |
| 10.16^+        | <a href="#">Purchase and Marketing Agreement, dated March 28, 2019, by and between Legacy AppHarvest and Mastronardi Produce Limited</a>                                | Form S-4/A                | 333-249421 | 10.20   | December 4, 2020   |
| 10.17 ^        | <a href="#">Amendment No. 1 to Purchase &amp; Marketing Agreement, dated December 18, 2020, by and between Legacy AppHarvest and Mastronardi Produce Limited</a>        | Form S-4/A                | 333-249421 | 10.31   | December 21, 2020  |

|          |                                                                                                                                                                                                                                |            |            |       |                   |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|-------|-------------------|
| 10.18^   | <a href="#">Right of First Refusal Agreement, dated May 13, 2019, by and between Legacy AppHarvest and CEFF US Holdings, LLC</a>                                                                                               | Form S-4/A | 333-249421 | 10.23 | December 1, 2020  |
| 10.19^+  | <a href="#">Membership Interest Purchase and Sale Agreement, dated December 1, 2020, by and between CEFF Morehead Property, LLC and Legacy AppHarvest Morehead Farm, LLC</a>                                                   | Form S-4/A | 333-249421 | 10.30 | December 4, 2020  |
| 10.20^   | <a href="#">Assignment of and First Amendment to Right of First Refusal Agreement dated March 1, 2021, by and among CEFF US Holdings, LLC, Equilibrium Sustainable Foods, LLC and Legacy AppHarvest</a>                        | Form 8-K   | 001-39288  | 10.1  | March 2, 2021     |
| 10.21    | <a href="#">Second Amendment to Membership Interest Purchase and Sale Agreement, dated March 1, 2021, by and between CEFF Morehead Property and AppHarvest Morehead Farm, LLC</a>                                              | Form S-1   | 333-252964 | 10.22 | March 2, 2021     |
| 10.22    | <a href="#">AppHarvest, Inc. Non-Employee Director Compensation Policy</a>                                                                                                                                                     | Form 8-K   | 001-39288  | 10.1  | March 29, 2021    |
| 10.23    | <a href="#">AppHarvest, Inc. Employee Cash Incentive Plan</a>                                                                                                                                                                  | Form 8-K   | 001-39288  | 10.2  | March 29, 2021    |
| 10.24    | <a href="#">AppHarvest, Inc. Amended and Restated Employee Cash Incentive Plan</a>                                                                                                                                             | Form 10-Q  | 001-39288  | 10.1  | August 3, 2022    |
| 10.25^   | <a href="#">Credit Agreement, dated July 23, 2021, between CEFF II AppHarvest Holdings, LLC and AppHarvest Richmond Farm, LLC</a>                                                                                              | Form 10-Q  | 001-39288  | 10.4  | November 10, 2021 |
| 10.26*   | <a href="#">First Amendment to Credit Agreement between AppHarvest Richmond Farm, LLC, and CEFF II AppHarvest Holdings, LLC</a>                                                                                                | Form 10-Q  | 001-39288  | 10.2  | August 3, 2022    |
| 10.27^   | <a href="#">Second Amendment to Credit Agreement between AppHarvest Richmond Farm, LLC, and CEFF II AppHarvest Holdings, LLC</a>                                                                                               | Form 10-Q  | 001-39288  | 10.1  | November 7, 2022  |
| 10.28*   | <a href="#">Waiver and Amendment by and between AppHarvest Richmond Farm, LLC and CEFF II AppHarvest Holdings, LLC, dated as of December 21, 2022</a>                                                                          |            |            |       |                   |
| 10.29    | <a href="#">Second Amendment to Right of First Refusal Agreement, dated July 23, 2021, by and between Equilibrium Sustainable Foods, LLC and AppHarvest, Inc</a>                                                               | Form 10-Q  | 001-39288  | 10.5  | November 10, 2021 |
| 10.30^   | <a href="#">Promissory Note, in favor of JPMorgan Chase Bank, N.A., dated September 24, 2021 only for reference purposes, by AppHarvest Pulaski Farm, LLC</a>                                                                  | Form 10-Q  | 001-39288  | 10.6  | November 10, 2021 |
| 10.31    | <a href="#">Guaranty-Multiple Subsidiaries, dated September 24, 2021 only for reference purposes, by AppHarvest Operations, Inc</a>                                                                                            | Form 10-Q  | 001-39288  | 10.7  | November 10, 2021 |
| 10.32    | <a href="#">Assignment of Deposit Account, dated September 24, 2021 only for reference purposes, by AppHarvest Operations, Inc</a>                                                                                             | Form 10-Q  | 001-39288  | 10.8  | November 10, 2021 |
| 10.33    | <a href="#">Master Credit Agreement, dated June 15, 2021, as amended by that certain Addendum to Master Credit Agreement, dated June 15, 2021, by and between AppHarvest Morehead Farm, LLC and among Rabo AgriFinance LLC</a> | Form 8-K   | 001-39288  | 10.1  | June 15, 2021     |
| 10.34*^  | <a href="#">Addendum to the Master Credit Agreement, dated December 29, 2022, by and between AppHarvest Morehead Farm, LLC and among Rabo AgriFinance LLC</a>                                                                  |            |            |       |                   |
| 10.35    | <a href="#">Common Stock Purchase Agreement by and between the Registrant and B. Riley Principal Capital, LLC, dated December 15, 2021</a>                                                                                     | Form 8-K   | 001-39288  | 10.1  | December 15, 2021 |
| 10.36    | <a href="#">Registration Rights Agreement by and between the Registrant and B. Riley Principal Capital, LLC, dated December 15, 2021</a>                                                                                       | Form 8-K   | 001-39288  | 10.2  | December 15, 2021 |
| 10.37    | <a href="#">Loan Agreement between AppHarvest Pulaski Farm, LLC, AppHarvest Operations, Inc. and Great Nevada Credit Union</a>                                                                                                 | Form 10-Q  | 001-39288  | 10.2  | November 7, 2022  |
| 10.38*^+ | <a href="#">Purchase Agreement by and between AppHarvest Berea Farm, LLC and Mastronardi Berea LLC, dated as of December 23, 2022</a>                                                                                          |            |            |       |                   |
| 10.39*^+ | <a href="#">Lease Agreement by and between AppHarvest Berea Farm, LLC and Mastronardi Berea LLC, dated as of December 23, 2022</a>                                                                                             |            |            |       |                   |
| 10.40*   | <a href="#">Employment Agreement, dated February 20, 2023, by and between AppHarvest and Loren Eggleton</a>                                                                                                                    |            |            |       |                   |
| 10.41*   | <a href="#">Retention Bonus Agreement, dated February 20, 2023, by and between AppHarvest and Loren Eggleton</a>                                                                                                               |            |            |       |                   |
| 10.42*   | <a href="#">Amended Retention Bonus Agreement, dated March 14, 2023, by and between AppHarvest and Loren Eggleton</a>                                                                                                          |            |            |       |                   |
| 10.43*+  | <a href="#">Note and Loan Agreement by and between AppHarvest Berea Farm LLC and Mastronardi Produce-USA, Inc. dated October 24, 2022</a>                                                                                      |            |            |       |                   |

|          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 21.1*    | <a href="#">List of Subsidiaries</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 23.1*    | <a href="#">Consent of Ernst &amp; Young LLP, independent registered public accounting firm</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 24.1     | Power of Attorney (included on signature page)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 31.1*    | <a href="#">Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 31.2*    | <a href="#">Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 32.1**   | <a href="#">Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 101.INS* | Inline XBRL Instance Document (the instance document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL document)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 101.CAL* | Inline XBRL Taxonomy Extension Calculation Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 101.SCH* | Inline XBRL Taxonomy Extension Schema Document                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 101.DEF* | Inline XBRL Taxonomy Extension Definition Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 101.LAB* | Inline XBRL Taxonomy Extension Labels Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 101.PRE* | Inline XBRL Taxonomy Extension Presentation Linkbase Document                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 104*     | Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| *        | Filed herewith.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| **       | In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Annual Report on Form 10-K and will not be deemed "filed" for purpose of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference. |
| +        | Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601. The registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| ^        | Certain portions of this exhibit (indicated by asterisks) have been omitted because they are not material and are the type that AppHarvest, Inc. treats as private or confidential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|          | (b) Financial Statement Schedules                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|          | Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**Item 16. Form 10-K Summary**

Not applicable.

SIGNATURES

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

**AppHarvest, Inc.**

Dated: March 15, 2023

By: /s/ Jonathan Webb  
  
Jonathan Webb  
Chief Executive Officer and Chairperson

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Jonathan Webb and Loren Eggleton, jointly and severally, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign this Annual Report on Form 10-K of AppHarvest, Inc., and any or all amendments thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises hereby ratifying and confirming all that said attorneys-in-fact and agents, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

| Signature                    | Title                                                          | Date           |
|------------------------------|----------------------------------------------------------------|----------------|
| <u>/s/ Jonathan Webb</u>     | <u>Chief Executive Officer, Chairperson and Director</u>       | March 15, 2023 |
| Jonathan Webb                | (Principal Executive Officer)                                  |                |
|                              |                                                                |                |
| <u>/s/ Loren Eggleton</u>    | <u>Chief Financial Officer</u>                                 | March 15, 2023 |
| Loren Eggleton               | (Principal Financial Officer and Principal Accounting Officer) |                |
|                              |                                                                |                |
| <u>/s/ Tony Martin</u>       | <u>Chief Operating Officer and Director</u>                    | March 15, 2023 |
| Tony Martin                  |                                                                |                |
|                              |                                                                |                |
| <u>/s/ David Lee</u>         | <u>Director</u>                                                | March 15, 2023 |
| David Lee                    |                                                                |                |
|                              |                                                                |                |
| <u>/s/ J. Kevin Willis</u>   | <u>Director</u>                                                | March 15, 2023 |
| J. Kevin Willis              |                                                                |                |
|                              |                                                                |                |
| <u>/s/ Kiran Bhatraju</u>    | <u>Director</u>                                                | March 15, 2023 |
| Kiran Bhatraju               |                                                                |                |
|                              |                                                                |                |
| <u>/s/ Hollie P. Harris</u>  | <u>Director</u>                                                | March 15, 2023 |
| Hollie P. Harris             |                                                                |                |
|                              |                                                                |                |
| <u>/s/ Greg Couch</u>        | <u>Director</u>                                                | March 15, 2023 |
| Greg Couch                   |                                                                |                |
|                              |                                                                |                |
| <u>/s/ R. Geof Rochester</u> | <u>Director</u>                                                | March 15, 2023 |
| R. Geof Rochester            |                                                                |                |
|                              |                                                                |                |
| <u>/s/ Martha Stewart</u>    | <u>Director</u>                                                | March 15, 2023 |
| Martha Stewart               |                                                                |                |
|                              |                                                                |                |

**DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934**

*The following description summarizes selected information regarding our capital stock, as well as relevant provisions of: (i) our amended and restated certificate of incorporation; (ii) our amended and restated bylaws; and (iii) the General Corporation Law of the State of Delaware (the "DGCL"). The following summary is qualified in its entirety by, and should be read in conjunction with, the amended and restated certificate of incorporation and the amended and restated bylaws, copies of which have been filed as exhibits to our Annual Report on Form 10-K to which this exhibit is attached, and the applicable provisions of the DGCL.*

**General**

Our amended and restated certificate of incorporation authorizes us to issue up to 750,000,000 shares of common stock, \$0.0001 par value per share, and 10,000,000 shares of preferred stock, par value \$0.0001 per share.

**Common Stock*****Voting Rights***

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our amended and restated certificate of incorporation, our stockholders will not have cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election.

***Dividend Rights***

Subject to preferences that may apply to any then-outstanding preferred stock, the holders of common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by our board of directors out of legally available funds. We do not anticipate paying any cash dividends in the foreseeable future.

***Liquidation Rights***

In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of preferred stock.

***Preemptive or Similar Rights***

Holders of common stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

**Preferred Stock**

Under our amended and restated certificate of incorporation, our board of directors may, without further action by our stockholders, fix the rights, preferences, privileges and restrictions of up to an aggregate of 10,000,000 shares of preferred stock in one or more series and authorize their issuance. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of common stock. Any issuance of preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders would receive dividend payments and payments on liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deterring or preventing a change of

control or other corporate action. No shares of preferred stock are outstanding. We have no present plans to issue any shares of preferred stock.

## Warrants

At December 31, 2022, there were 13,241,617 warrants to purchase Common Stock outstanding, consisting of 12,190,548 public warrants (“Public Warrants”) and 1,051,069 private warrants (“Private Warrants” and together with Public Warrants, “Warrants”). The Private Warrants are held by the initial stockholders of Novus Capital Corporation, a Delaware corporation (“Novus”). Each warrant entitles the registered holder to purchase one share of Common Stock at a price of \$11.50 per share. Each Warrant entitles the registered holder to purchase one share of common stock at a price of \$11.50 per share at any time. The Warrants will expire on January 29, 2026, or earlier upon redemption or liquidation.

Holders of Public Warrants cannot pay cash to exercise of their Public Warrants unless we have an effective and current registration statement covering the issuance of the shares underlying such Public Warrants and a current prospectus relating thereto.

The Private Warrants are identical to the Public Warrants except that the Private Warrants will be exercisable for cash or on a cashless basis, at the holder’s option, and will not be redeemable by us, in each case so long as they are still held by the Novus initial stockholders or their permitted transferees. Under the terms of the Warrant Agreement, described below, if a Private Warrant is transferred to a holder other than an affiliate or permitted transferee, such Private Warrant will be treated as a Public Warrant.

We may call the Public Warrants for redemption, in whole and not in part, at a price of \$0.01 per Warrant,

- at any time after the Public Warrants become exercisable;
- upon not less than 30 days’ prior written notice of redemption to each Public Warrant holder;
- if, and only if, the reported last sale price of the shares of common stock equals or exceeds \$18.00 per share (as adjusted for stock splits, stock dividends, reorganizations and recapitalizations), for any 20 trading days within a 30-trading day period commencing at any time after the Public Warrants become exercisable and ending on the third trading day prior to the notice of redemption to Public Warrant holders; and
- if, and only if, there is a current registration statement in effect with respect to the shares of common stock underlying such Public Warrants.

The right to exercise will be forfeited unless the Public Warrants are exercised prior to the date specified in the notice of redemption. On and after the redemption date, a record holder of a Public Warrant will have no further rights except to receive the redemption price for such holder’s Public Warrant upon surrender of such Public Warrant.

The redemption criteria for our Public Warrants was established at a price which is intended to provide Public Warrant holders a reasonable premium to the initial exercise price and provide a sufficient differential between the then-prevailing share price and the Public Warrant exercise price so that if the share price declines as a result of our redemption call, the redemption will not cause the share price to drop below the exercise price of the Public Warrants.

If we call the Public Warrants for redemption as described above, our management will have the option to require all holders that wish to exercise Public Warrants to do so on a “cashless basis.” In such event, each holder would pay the exercise price by surrendering the Public Warrants for that number of shares of common stock equal to the quotient obtained by dividing (x) the product of the number of shares of common stock underlying the Public Warrants, multiplied by the difference between the exercise price of the Public Warrants and the “fair market value” (defined below) by (y) the fair market value. The “fair market value” for this purpose shall mean the average

reported last sale price of the shares of common stock for the 5 trading days ending on the third trading day prior to the date on which the notice of redemption is sent to the holders of Public Warrants.

The Warrants were issued in registered form under the Warrant Agreement between Continental Stock Transfer & Trust Company, as Warrant Agent, and us. The Warrant Agreement provides that the terms of the Warrants may be amended without the consent of any holder to cure any ambiguity or correct any defective provision, but requires the approval, by written consent or vote, of the holders of at least a majority of the then-outstanding Public Warrants and Private Warrants, if such modification or amendment is being undertaken in order to make any change that adversely affects the interests of the registered holders.

The exercise price and number of shares of common stock issuable on exercise of the Warrants may be adjusted in certain circumstances including in the event of a stock dividend, extraordinary dividend or our recapitalization, reorganization, merger or consolidation. The Warrants will not be adjusted for issuances of shares of common stock at a price below their respective exercise prices.

The Warrants may be exercised upon surrender of the Warrant certificate on or prior to the expiration date at the office of the Warrant Agent, with the subscription form, as set forth in the Warrant, duly executed, accompanied by full payment of the exercise price, by certified or official bank check payable to the order of the Warrant Agent, for the number of Warrants being exercised. The Warrant holders do not have the rights or privileges of holders of shares of common stock and any voting rights until they exercise their Warrants and receive shares of common stock. After the issuance of shares of common stock upon exercise of the Warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by stockholders.

Warrant holders may elect to be subject to a restriction on the exercise of their Warrants such that an electing Warrant holder would not be able to exercise their Warrants to the extent that, after giving effect to such exercise, such holder would beneficially own in excess of 9.8% of the shares of common stock outstanding.

#### **Anti-Takeover Provisions**

##### ***Section 203 of the Delaware General Corporation Law***

We are subject to Section 203 of the DGCL, which generally prohibits a publicly held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a “business combination” to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;



- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an “interested stockholder” as an entity or person who, together with the person’s affiliates and associates, beneficially owns or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

A Delaware corporation may “opt out” of these provisions with an express provision in its original certificate of incorporation or an express provision in its amended and restated certificate of incorporation or amended and restated bylaws resulting from a stockholders’ amendment approved by at least a majority of the outstanding voting shares. We have not opted out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

#### *Certificate of Incorporation and Bylaws*

Among other things, our amended and restated certificate of incorporation and amended and restated bylaws:

- permit our board of directors to issue up to 10,000,000 shares of preferred stock, with any rights, preferences and privileges as they may designate, including the right to approve an acquisition or other change of control;
- provide that the authorized number of directors may be changed only by resolution of our board of directors;
- provide that, subject to the rights of any series of preferred stock to elect directors, directors may only be removed for cause, which removal may be effected, subject to any limitation imposed by law, by the holders of at least 66 $\frac{2}{3}$ % of the voting power of all of our then-outstanding shares of the capital stock entitled to vote generally at an election of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent or electronic transmission;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide advance notice in writing, and also specify requirements as to the form and content of a stockholder’s notice;
- provide that special meetings of our stockholders may be called only by the chairperson of our board of directors, our chief executive officer or by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and

- not provide for cumulative voting rights, therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose.

The amendment of any of these provisions requires approval by the holders of at least 66 2/3% of the voting power of all of our then-outstanding capital stock entitled to vote generally in the election of directors, voting together as a single class.

The combination of these provisions will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and our policies and to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to reduce our vulnerability to hostile takeovers and to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of delaying changes in our control or management. As a consequence, these provisions may also inhibit fluctuations in the market price of our stock.

The amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be the exclusive forum for actions or proceedings brought under Delaware statutory or common law: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a breach of fiduciary duty; (3) any action asserting a claim against us arising under the DGCL; (4) any action regarding the certificate of incorporation or our amended and restated bylaws; (5) any action as to which the DGCL confers jurisdiction to the Court of Chancery of the State of Delaware; or (6) any action asserting a claim against us that is governed by the internal affairs doctrine. The amended and restated certificate of incorporation further provides that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

Section 27 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision of our amended and restated certificate of incorporation will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

Although we believe this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, a court may determine that this provision is unenforceable, and to the extent it is enforceable, the provision may have the effect of discouraging lawsuits against our directors and officers, although our stockholders will not be deemed to have waived our compliance with federal securities laws and the rules and regulations thereunder and therefore bring a claim in another appropriate forum. Additionally, we cannot be certain that a court will decide that this provision is either applicable or enforceable, and if a court were to find the choice of forum provision contained in the amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition.

#### ***Our Status as a Delaware Public Benefit Corporation***

Our amended and restated certificate of incorporation reflects our designation as a public benefit corporation under Delaware law and identifies our public benefit as (i) empowering individuals in Appalachia, (ii) driving positive environmental change in the agriculture industry and (iii) improving the lives of the our employees and the community at large.

Delaware public benefit corporations are governed by the DGCL, including subchapter XV of the DGCL. Section 361 of the DGCL states that if a corporation elects to become a public benefit corporation, it shall be subject in all respects to the provisions of the DGCL, except to the extent subchapter XV imposes additional or different requirements, in which case such requirements shall apply. Perhaps the most notable distinction of subchapter XV is its requirement that public benefit corporation directors balance the financial interests of stockholders, the best interests of those materially affected by the corporation’s conduct, and the specific public benefits identified in the public benefit corporation’s certificate of incorporation when making decisions. To date, there is limited case law involving public benefit corporations and the application of this and other distinct public benefit corporation requirements, which may create some uncertainty until additional case law develops.

Stockholders should note, however, that Sections 361 and 365 of the DGCL indicate that Delaware’s longstanding “business judgment rule” should apply to the balancing determinations required of public benefit corporation directors so long as directors remain informed and free of conflicts of interests. Similarly, a director’s ownership of or other interest in stock of the public benefit corporation will not, for purposes of Subsection XV, create a conflict of interest on the part of the director with respect to the director’s decision implicating the balancing requirement in the DGCL, except to the extent that such ownership or interest would create a conflict of interest if the corporation were not a public benefit corporation. We expect that, in large part, traditional Delaware corporation law principles and the application of those principles in case law — including those related to self-dealing, conflicts of interest, and the application of the business judgment rule — will continue to apply with respect to public benefit corporations.

The following is a summary of the material differences between traditional Delaware corporations not subject to subchapter XV of the DGCL and Delaware public benefit corporations to the extent subchapter XV of the DGCL imposes additional or different requirements than the DGCL generally. This summary is subject to the complete text of subchapter XV of the DGCL, which stockholders are encouraged to read carefully.

| <u>Provision</u> | <u>Traditional Delaware Corporation</u>                | <u>Delaware Public Benefit Corporation</u>                                                                                                                                | <u>Additional Practical Differences</u> |
|------------------|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| <b>General</b>   | Subject in all respects to the provisions of the DGCL. | Same as a traditional Delaware corporation, except to the extent subchapter XV imposes additional or different requirements, in which case such requirements shall apply. | Not applicable.                         |

| <u>Provision</u>           | <u>Traditional Delaware Corporation</u>                                                                                                                                 | <u>Delaware Public Benefit Corporation</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <u>Additional Practical Differences</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Purpose</b>             | Usually incorporated as a for-profit corporation that may engage in any lawful act or activity for which corporations may be organized and incorporated under the DGCL. | Same as a traditional Delaware corporation; in addition, a Delaware public benefit corporation is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. Accordingly, a Delaware public benefit corporation shall: <ul style="list-style-type: none"><li>◦ Identify within its statement of business or purpose one or more specific “public benefits,” i.e., a positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than shareholders in their capacities as shareholders), to be promoted by the corporation; and</li><li>◦ State within its heading that it is a public benefit corporation.</li></ul> | A public benefit corporation may be managed to consider the financial interests of its shareholders as well as to promote its public benefits and operate in a responsible and sustainable manner.                                                                                                                                                                                                                                                                                             |
| <b>Duties of Directors</b> | Manage in the best interests of the corporation and its stockholders.                                                                                                   | Manage in a manner that balances the pecuniary interests of the shareholders, the best interests of those materially affected by the corporation’s conduct, and the specific public benefit or public benefits identified in its certificate of incorporation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Directors of a traditional Delaware corporation may ordinarily take actions that they believe are not in the best interests of the stockholders in the short-term, at least if they believe that the actions are in the long-term best interests of the corporation. The balancing requirement for directors of a public benefit corporation might more readily permit them, but does not require them, to take actions that stockholders consider not to be in their financial best interest. |

| <b><u>Provision</u></b>                                             | <b><u>Traditional Delaware Corporation</u></b> | <b><u>Delaware Public Benefit Corporation</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b><u>Additional Practical Differences</u></b>                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Director Liability for Public Benefit Purpose</b>                | Not applicable.                                | A director of a public benefit corporation shall not, by virtue of the public benefit provisions of the DGCL, have any duty to any person on account of any interest of such person in the public benefit or public benefits identified in the certificate of incorporation or on account of any interest materially affected by the corporation's conduct and, with respect to a decision implicating the balance requirement described in "Duties of Directors" above, will be deemed to satisfy such director's fiduciary duties to stockholders and the corporation if such director's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.                                                                                                                   | No practical difference; directors of traditional Delaware corporations and public benefit corporations must both act with a duty of care and a duty of loyalty.                                                                                                                                                               |
| <b>Conflicts of Interest for Public Benefit Duties of Directors</b> | Not applicable.                                | A director's ownership of or other interest in the stock of the public benefit corporation shall not alone create a conflict of interest on the part of the director with respect to the director's decision implicating the balancing requirement described in "Duties of Directors" above, except to the extent that such ownership or interest would create a conflict of interest if the corporation were not a public benefit corporation. In the absence of a conflict of interest, no failure to satisfy that balancing requirement shall, for the purposes of §102(b)(7) or §145 of the DGCL, constitute an act or omission not in good faith, or a breach of the duty of loyalty, unless the certificate of incorporation so provides.                                                                                 | No practical difference; the same DGCL requirements regarding officer and director conflicts of interest of a traditional Delaware corporation are applicable to a public benefit corporation.                                                                                                                                 |
| <b>Suits to Enforce Public Benefit Duties of Directors</b>          | Not applicable.                                | Any action to enforce the balancing requirement described in "Duties of Directors" above, including any individual, derivative or any other type of action, may not be brought unless the plaintiffs in such action own individually or collectively, as of the date of instituting such action, at least 2% of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of such percentage or shares of the corporation with a market value of at least \$2,000,000 as of the date the action is instituted. The provisions of subchapter XV do not relieve the plaintiffs from complying with any other conditions applicable to filing a derivative action including §327 of the DGCL and any rules of the court in which the action is filed. | The enforcement suit structure available to shareholders of a Delaware public benefit corporation that have met the threshold requirements may provide for additional circumstances in which a Delaware public benefit corporation is the subject of litigation relating to a particular balancing decision made by the Board. |

| <u>Provision</u>                                                         | <u>Traditional Delaware Corporation</u>                                                                                                                                                                      | <u>Delaware Public Benefit Corporation</u>                                                                                                                                                                                                                                                                                                                                           | <u>Additional Practical Differences</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Public Benefit Notices</b>                                            | Not applicable.                                                                                                                                                                                              | A public benefit corporation shall include in every notice of a meeting of stockholders a statement to the effect that it is a public benefit corporation formed pursuant to subchapter XV.                                                                                                                                                                                          | A public benefit corporation's notice of meeting to stockholders must include a statement that it is a public benefit corporation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Biennial Public Benefit Corporation Reporting</b>                     | Not applicable.                                                                                                                                                                                              | A public benefit corporation shall no less than biennially provide its stockholders with a statement as to the corporation's promotion of the public benefit or public benefits identified in the certificate of incorporation and of the best interests of those materially affected by the corporation's conduct.<br>The statement shall include items specified in subchapter XV. | The stockholders of a public benefit corporation will have access to regular reports highlighting certain aspects of the public benefit corporation's conduct that might not be provided to stockholders of a traditional Delaware corporation.                                                                                                                                                                                                                                                                                                                                                                |
| <b>Common Law Fiduciary Duties in Transactions for Corporate Control</b> | In the context of certain transactions implicating a sale of control of a company, Delaware common law may impose on directors of a traditional corporation a duty to maximize short-term stockholder value. | In response to all sale transactions, the directors of a public benefit corporation are required to adhere to the balancing requirement described in "Duties of Directors" above.                                                                                                                                                                                                    | In a potential sale of control transaction of a public benefit corporation, the board of directors will consider and balance factors in addition to maximizing short-term stockholder value. In the context of a hostile bid for a public benefit corporation, the board of directors could choose to reject such a bid in circumstances where the directors of a traditional corporation might be compelled by their fiduciary duties to accept an offer.<br>Consequently, the stockholders of a public benefit corporation may not as easily realize their investment through a sale of control transaction. |

**Transfer Agent**

The transfer agent for our securities is Continental Stock Transfer & Trust Company. The transfer agent's address is One State Street Plaza, 30th Floor New York, New York 10004.

**Listing**

Our common stock and Public Warrants are traded on The Nasdaq Stock Market LLC under the symbols "APPH" and "APPHW", respectively.

**WAIVER AND THIRD AMENDMENT TO CREDIT AGREEMENT**

This WAIVER AND THIRD AMENDMENT TO CREDIT AGREEMENT (this “**Agreement**”), dated as of December 21, 2022, is entered into by and between AppHarvest Richmond Farm, LLC, a Delaware limited liability company (“**Borrower**”) and CEFF II AppHarvest Holdings, LLC, a Delaware limited liability company (“**Lender**”).

**RECITALS**

**WHEREAS**, Borrower and Lender have entered into that certain Credit Agreement, dated as of July 23, 2021 (as amended, modified, or supplemented, the “**Credit Agreement**”);

**WHEREAS**, certain Prior Defaults (as defined below) are alleged to have occurred and are continuing under the Credit Agreement;

**WHEREAS**, Borrower has requested that Lender provide a waiver of the Prior Defaults; and

**WHEREAS**, Lender has agreed to such waiver on the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Definitions**

1.1 Capitalized terms used in this Agreement, but not otherwise defined herein, shall have the respective meanings given to them in the Credit Agreement.

1.2 As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acceptable Account**” means a segregated depository account acceptable to Lender, which Borrower shall grant to Lender a security interest in, and any distribution therefrom shall be used by Borrower solely in accordance with Section 5.2 of this Agreement and in accordance with the Specified Budget; provided that, after the occurrence of a Third Amendment Default, any distribution therefrom shall be in the sole discretion of Lender.

“**Effective Date**” means the date on which all of the conditions precedent to the effectiveness of this Agreement set forth in Section 7 hereof shall have been satisfied or waived.

“**Prior Defaults**” means any actual Defaults or Events of Default known to Lender or Lender-alleged Defaults or Events of Default of Borrower or Parent under the Financing Documents, in each case, occurring and/or continuing on or prior to the Effective Date.

“**Proceeds**” or “**proceeds**” means “proceeds” as defined in Section 9-102(a)(64) of Article 9 of the UCC.

“**Qualified Transaction**” means, with respect to any asset or property of Borrower, Parent or any of their respective Affiliates, any sale, lease (as lessor), sale-leaseback (or similar transaction), assignment, conveyance, transfer, or other disposition of such asset or property, whether in one transaction or a series of transactions occurring within a six-month time period, the proceeds of which is equal to or exceeding \$22,500,000; provided that the foregoing shall not apply to the sale of Crops in the ordinary course of business.

“**Specified Budget**” has the meaning set forth in Section 3.4 of this Agreement.

“**Third Amendment Default**” means the occurrence of any or all of the following:

(a) the occurrence of any Event of Default after the Effective Date other than the Prior Defaults, (b) failure of Borrower or any other Borrower Party to timely comply with the covenants contained in Section 5 of this Agreement, and/or (c) any breach or inaccuracy of any representation or warranty made by Borrower under or in connection with this Agreement.

2. Confirmation of Obligations and Prior Defaults

- 2.1 Borrower acknowledges and agrees that the aggregate principal balance of the outstanding Loans under the Credit Agreement was equal to \$66,252,138.37 as of December 6, 2022. The foregoing amount does not include any of the interest, fees, costs, and expenses to which Lender is entitled under the Credit Agreement or other Financing Documents.

3. Waiver of Prior Defaults and Related Matters

- 3.1 Subject to the occurrence of the Effective Date and in reliance on the representations and warranties set forth in Section 6 below, Lender hereby waives the Prior Defaults; provided that such waiver only applies to the extent that such Prior Defaults exist as of the Effective Date and does not include any event, act, condition, or occurrence of whatever nature arising or occurring after the Effective Date.



- 1.1 Borrower acknowledges and agrees that the occurrence and continuation of any Third Amendment Default shall immediately permit Lender to declare an Event of Default under the Credit Agreement in accordance with the terms thereof, and such Event of Default shall not be a Prior Default.
- 1.2 Except as expressly set forth in this Agreement, nothing contained in this Agreement shall, or shall be deemed to, (i) constitute a waiver of any Default or Event of Default that may heretofore or hereafter occur or have occurred and be continuing other than in each case to the extent constituting a Prior Default, or (ii) modify, amend, alter or affect any provision of the Credit Agreement or any other Financing Document. Except as expressly provided herein, the execution and delivery of this Agreement and the waivers effected hereby shall not: (i) extend the terms of the Credit Agreement or the due date of any of the Obligations; (ii) give rise to any obligation on the part of Lender to extend, modify, alter, amend or waive any term or condition of the Credit Agreement or the other Financing Documents or otherwise prejudice any rights or remedies which Lender now has or may have in the future; or (iii) give rise to any defenses, setoffs, reductions or counterclaims to Lender's right to compel payment of the Obligations or to otherwise enforce, exercise and enjoy the benefits of its rights and remedies under the Credit Agreement and the other Financing Documents.
- 1.3 In accordance with Section 7.14(c) of the Credit Agreement, Lender approves the most current construction budget and construction schedule for the Project given to Lender concurrently with the execution of this Agreement (the "**Specified Budget**").

4. Amendments to Credit Agreement

- 4.1 Section 1.1 of the Credit Agreement is hereby amended to add the following definitions therein:

"Third Amendment" means that certain Waiver and Third Amendment to Credit Agreement, dated as of December 21, 2022, entered into by and between Borrower and Lender, as such amendment may be amended, modified or supplemented.

"Third Amendment Default" has the meaning set forth in the Third Amendment.
- 4.2 The definition of "Project Costs" in Section 1.1 of the Credit Agreement is hereby amended by deleting subsection (ii) thereof.
- 4.3 The definition of "Scheduled Final Completion Date" in Section 1.1 of the Credit Agreement is hereby deleted and replaced with:

"Scheduled Final Completion Date" means March 31, 2023.

4.4 The definition of “Scheduled Substantial Completion Date” in Section 1.1 of the Credit Agreement is hereby deleted and replaced with:

“Scheduled Substantial Completion Date” means February 28, 2023.

4.5 Section 2.2(a) of the Credit Agreement is hereby amended and restated to read in its entirety as follows:

(a) At all times, the sum of the aggregate outstanding principal amount of all Loans then outstanding shall not at any time exceed Sixty-Six Million Two Hundred and Fifty-Three Thousand Dollars (\$66,253,000) (the “**Commitment**”). Any Project Costs in excess of the Commitment shall be funded solely by equity contributions from the Borrower.

4.6 Section 3.5(d) of the Credit Agreement is hereby deleted in its entirety.

4.7 Section 3.5(e) of the Credit Agreement is hereby deleted in its entirety.

4.8 Section 5.7(h) of the Credit Agreement is hereby amended and restated to read in its entirety as follows:

No labor has been performed or material furnished by or at the direction of Borrower with respect to the Project Site for which Borrower is liable or the Project Site bound which has not been fully paid when due, except with respect to certain disputed amounts that Borrower is withholding from the EPC Contractor as of the Effective Date.

4.9 Section 6.12 of the Credit Agreement is hereby deleted in its entirety.

4.10 Section 8.6(a) of the Credit Agreement is hereby amended and restated to read in its entirety as follows:

(a) Immediate. Borrower shall fail to perform or observe any of the covenants set forth in Sections 6.4(a), 6.10 or Article VII (other than Sections 7.12 through 7.14) or a Third Amendment Default shall occur.

5. Additional Covenants of Borrower

5.1 Within two (2) Business Days of the consummation and funding of the first Qualified Transaction to occur that generates proceeds equal to or exceeding \$50,000,000, Borrower shall (or shall cause any Affiliate of Borrower to) deposit \$22,500,000 in cash into an Acceptable Account; provided that, to the extent the Qualified Transaction generates proceeds that are greater than \$22,500,000 but less than \$50,000,000, Borrower shall (or shall cause any Affiliate of Borrower to) deposit in cash into an Acceptable Account an amount of such proceeds equal to the product of (x) \$22,500,000 multiplied by (y) the ratio of the proceeds of such Qualified Transaction divided by \$50,000,000; provided further that such deposited amount shall in no event be less than \$10,000,000. For the avoidance of doubt,

nothing herein shall apply to any Qualified Transaction obtained by Borrower following Borrower's satisfaction of its obligation to so deposit \$22,500,000 in cash into an Acceptable Account.<sup>1</sup>

- 5.2 Borrower covenants and agrees that it may not use, pay, transfer, distribute, or dispose of any of the proceeds deposited into an Acceptable Account in any manner or for any purpose whatsoever except for the payment of Project Costs in accordance with the Draw Schedule or as may be approved in writing by Lender.

6. Representations and Warranties of Borrower

In order to induce Lender to enter into this Agreement, Borrower represents and warrants to Lender that the following statements are true and correct as of the Effective Date:

- 6.1 there are no Defaults or Events of Default under the Credit Agreement or any other Financing Document except for the Prior Defaults, if any;
- 6.2 Borrower has the full power, authority and legal right to enter into this Agreement and all documents, acknowledgments and instruments delivered in connection herewith, and this Agreement and such other documents, acknowledgments and instruments have been duly authorized by the governing body of Borrower; and
- 6.3 this Agreement and all documents, acknowledgments and instruments delivered in connection herewith constitute the legal, valid and binding obligations of Borrower and are enforceable against Borrower in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

7. Conditions Precedent

This Agreement shall be effective upon satisfaction or waiver of each of the following conditions precedent, in each case as reasonably determined by Lender:

- 7.1 this Agreement shall have been executed and delivered by Borrower and Lender;
- 7.2 Lender shall have received from Parent a fully executed counterpart to the acknowledgment and consent to this Agreement in the form attached hereto as Exhibit A, which acknowledgment shall be considered part of the defined term "Agreement," and

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<sup>1</sup> For example, if such proceeds equal \$40,000,000, then the deposited amount would equal \$18,000,000, which is \$22,500,000 multiplied by 80% (\$40,000,000 divided by \$50,000,000). And if such proceeds were \$30,000,000, then the deposited amount would equal \$13,500,000, which is \$22,500,000 multiplied by 60% (\$30,000,000 divided by \$50,000,000).

7.3 Borrower shall have delivered to Lender valid resolutions of the governing body of Borrower authorizing the execution and delivery of this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

8. General Provisions

- 8.1 Incorporation by Reference. Sections 1.2 (*Rules of Interpretation*), 9.2 (*Addresses*), 9.6 (*Successors and Assigns*), 9.8 (*Entire Agreement*), 9.9 (*Governing Law*), 9.10 (*Submission to Jurisdiction; Waivers*), 9.11 (*Severability*), 9.16 (*Waiver of Jury Trial*) and 9.17 (*Counterparts*) of the Credit Agreement are hereby incorporated by reference herein, *mutatis mutandis*.
- 8.2 Amendment. No term of this Agreement (or the exhibits and schedules attached hereto) may be waived, modified or amended except in a writing signed by Borrower and Lender.
- 8.3 No Waiver. Lender's failure, at any time or times, to require strict performance by Borrower and the other Borrower Parties of any provision of this Agreement and any of the other Financing Documents shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver of a Default or an Event of Default shall not suspend, waive or affect any other Default or Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type.
- 8.4 Time of Essence. Time is of the essence in the payment and performance of each of the obligations of Borrower and the other Borrower Parties and with respect to all covenants and conditions to be satisfied by Borrower and the other Borrower Parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.
- 8.5 No Strict Construction. Each of the parties represents to each other party hereto that it has discussed this Agreement with its counsel. This Agreement and all other agreements and documents executed in connection therewith have been prepared through the joint efforts of all of the parties. Neither the provisions of this Agreement or any such other agreements and documents nor any alleged ambiguity shall be interpreted or resolved against any party on the ground that such party's counsel drafted this Agreement or such other agreements and documents, or based on any other rule of strict construction.
- 8.6 Further Assurances. Borrower shall promptly take all further actions and execute all further documents as Lender may, from time to time, reasonably request to carry out the transactions contemplated by this Agreement, provided, however, that this provision shall not be interpreted as expanding any obligations of Borrower hereunder or under any Financing Document.
- 8.7 Headings Descriptive. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provisions of this Agreement.

8.8 No Third Party Beneficiaries. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of Borrower and Lender with respect to the transactions contemplated hereby, and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement.

8.9 Reference to and Effect Upon the Credit Agreement and other Financing Documents.

(a) Except as expressly set forth herein, all terms, conditions, covenants, representations and warranties contained in the Credit Agreement or any other Financing Document, and all rights of Lender and all Obligations of Borrower and the other Borrower Parties thereunder, shall remain in full force and effect. Borrower hereby ratifies and confirms that the Credit Agreement and the other Financing Documents are in full force and effect and that Borrower and the other Borrower Parties have no presently exercisable defenses, setoffs or counterclaims to the Obligations under the Credit Agreement or any other Financing Document. Borrower hereby acknowledges and agrees that this Agreement is and shall constitute a Financing Document.

(b) Except as expressly set forth herein, the execution, delivery and effectiveness of this Agreement and any consents and waivers set forth herein shall not directly or indirectly (i) constitute a consent or waiver of any past, present or future violations of any provisions of the Credit Agreement or any other Financing Documents, (ii) amend, modify or operate as a waiver of any provision of the Credit Agreement or any other Financing Document, or any right, power or remedy of Lender thereunder, or (iii) constitute a course of dealing or other basis for altering any Obligations of Borrower under the Credit Agreement, any other Financing Document, or any other contract or instrument.

***[SIGNATURE PAGES FOLLOW]***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**LENDER:**

**CEFF II APPHARVEST HOLDINGS, LLC**, By:

EqCEF II, LLC, its manager

By: /s/ Nicholas Houshower Name: Nicholas Houshower  
Title: Principal

**BORROWER:**

**APPHARVEST RICHMOND FARM, LLC**

By: /s/ Loren Joseph Eggleton  
Name: Loren Joseph Eggleton Title: Chief Financial Officer

**EXHIBIT A REAFFIRMATION OF PARENT GUARANTY**

The undersigned hereby acknowledges receipt of the attached Waiver and Third Amendment to Credit Agreement, dated as of the date hereof (the “**Agreement**”), and consents to the execution and performance thereof by AppHarvest Richmond Farm, LLC, a Delaware limited liability company (“**Borrower**”). Capitalized terms used and not otherwise defined herein shall have the meaning set forth in the Agreement.

The undersigned hereby also reaffirms that (i) its guarantee of the Obligations, dated as of August 10, 2021 (as amended, modified or supplemented, the “**Parent Guaranty**”), in favor of Lender, and (ii) any Financing Documents (as amended, modified or supplemented) to which it is a party, each remain in full force and effect and are confirmed and ratified in all respects.

The undersigned hereby further acknowledges and agrees that there is no presently exercisable defense, setoff or counterclaim of any kind, nature or description to any obligations arising under such Parent Guaranty or other Financing Document, and that the rights and remedies of the Lender thereunder and with respect thereto remain in full force and effect and are confirmed and ratified in all respects.

Dated: December 20, 2022

**APPHARVEST, INC.**, a Delaware corporation, as a Borrower Party and guarantor of the Obligations

By: /s/ Loren Eggleton  
Name: Loren Eggleton  
Title: Chief Financial Officer

**SECOND ADDENDUM TO MASTER CREDIT AGREEMENT**

This Second Addendum to Master Credit Agreement (this "Second Addendum") is entered into and is dated as of February 2, 2023 and made effective as of December 27, 2022 between APPHARVEST MOREHEAD FARM, LLC, a Delaware limited liability company ("Party") and RABO AGRIFINANCE LLC, a Delaware limited liability company (the "Lender"). The Party and the Lender agree as follows:

**PRELIMINARY STATEMENT.** The Party and the Lender have entered into that certain Master Credit Agreement dated as of June 15, 2021 (as amended by that certain Addendum to Master Credit Agreement dated as of December 27, 2022 (the "First Addendum") along with any and all other modifications or amendments thereto (the "Credit Agreement"). Capitalized terms that are not defined in this Second Addendum shall have the meanings set forth in the Credit Agreement. Except as expressly set forth herein, this Second Addendum shall not by implication or otherwise alter, modify, amend, or in any way affect any of the terms, conditions, obligations, covenants, or agreements contained in the First Addendum, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

The Party and the Lender agree that if not remedied pursuant to this Second Addendum, the Party is and continues to be in breach of Section 2.02(a) (Change in Management). Specifically, (i) on October 28, 2022, the Party announced, by filing a Form 8-K with the United States Securities and Exchange Commission (the "SEC"), the resignation of David Lee, as President, (ii) on November 7, 2022, the Party announced, by filing a quarterly report on Form 10-Q with the SEC, the separation of Julie Nelson, as Chief Operating Officer, and (iii) on July 23, 2022 the Party separated employment with Derek Lyons as General Counsel (collectively, the "Management Change Breaches"). The Lender acknowledges receipt of written notice from the Party of the replacement of the Party's Chief Operating Officer and General Counsel, as required by the MCA. The Lender is willing to waive the Management Change Breaches in consideration of the accommodations and concessions contained herein. In particular:

(1) As required pursuant to the First Addendum, the Party established that certain Reserve Account for the benefit of the Lender that is subject to that certain Blocked Account Control Agreement dated as of August 31, 2022 by and among the Party, the Lender and JPMorgan Chase Bank, N.A. The Party and the Lender have agreed to modify certain provisions related to the Reserve Account in this Second Addendum; and

(2) The Party has agreed to enter into a Master Security Agreement of even date herewith whereby the Party assigns and grants to Lender a further security interest in the Collateral (as defined therein), including but not limited to the Reserve Account.

The Party acknowledges that it will derive a substantial benefit from the loans, advances, extensions of credit, and/or other financial accommodations to be provided by the Lender hereunder, and the Party further acknowledges that it will receive at least reasonably equivalent value from the loans, advances, extensions of credit, and/or other financial accommodations to be provided by the Lender hereunder in exchange for its various obligations to the Lender and in exchange for the various security interests and liens granted by it to the Lender, all as set forth in the Credit Agreement.

The Party and Lender wish to amend certain provisions of the Credit Agreement.

NOW, THEREFORE, Party and Lender agree as follows:

1. **Definitions.** The defined term, "Reserve Account," as set forth in the Schedule of Definitions and Covenants pursuant to the First Addendum, is hereby amended and restated in its entirety and shall read as follows:

**Reserve Account** means that certain deposit account of the Borrower ending in ["\*"] and maintained with JPMorgan Chase Bank, N.A. ("JPM"), subject to that certain Blocked Account Control Agreement dated as of August 31, 2022 by and among the Borrower, the Lender and JPM, into which account deposits are made in accordance with the Credit Agreement and other Loan Documents.

2. **Amendment to Section 1.02(d) of the Applicable Obligor Covenants Schedule.** Section 1.02(d), as set forth in the Applicable Obligor Covenants Schedule attached to the Credit Agreement as Exhibit B, and as amended pursuant to the First Addendum, is hereby amended and restated in its entirety and shall read as follows:

(d) **Reserve Account.** AppHarvest Morehead Farm, LLC shall deposit \$10,000,000.00 into the Reserve Account on or before December 31, 2022. The Reserve Account shall be subject to a control agreement entered into by the Borrower, the Lender and the depository bank pursuant to which the Lender shall be authorized, at a minimum, to sweep the Reserve Account at any time, without further authorization from the Borrower. The Borrower and the Lender shall enter into that certain Master Security Agreement effective as of even date herewith, substantially in the form attached hereto as Appendix 1, whereby the Borrower assigns and grants to the Lender a security interest in the Collateral (as defined therein), including but not limited to the Reserve Account. The Reserve Account shall be classified as a current asset of the Borrower. The Reserve Account shall be in an amount sufficient to satisfy the Leverage Ratio as of any measurement date, or in such an amount as Lender, in its sole discretion, deems necessary. In the event that the Reserve Account is insufficient to satisfy the Leverage Ratio as of any measurement date (or such other amount as may be required by Lender), Borrower shall make a sufficient deposit to cure such deficiency within 15 days.

3. **Waiver of Breaches.** Lender hereby waives, and will not pursue or exercise any remedies with respect to, the Management Change Breaches. The foregoing waiver relates solely to the Management Change Breaches to the extent described above and nothing in this Second Addendum shall be deemed, or is intended, to: (x) constitute a waiver of compliance by the Party with respect to any other term, provision, or condition of the Credit Agreement or any other Loan Document, or any other instrument or agreement referred to therein; or (y) prejudice any right or remedy that the Lender may now have or may have in the future under or in connection with the Credit Agreement or any other Loan Document, or any other instrument or agreement referred to therein.

4. **Modification Agreement.** This Second Addendum does not release or extinguish the Loan under the Credit Agreement. All Collateral granted to or for the benefit of Lender for purposes of securing the Loan also secures the Loan under the Credit Agreement, as amended by this Addendum; and Party reaffirms the terms and provisions of all Collateral Documents including, without limitation, each previous assignment or grant of a security interest in Party's deposit accounts.

5. **Reference to and Effect on the Credit Agreement.**

(a) On and after the date hereof, each reference in the Credit Agreement to "this agreement", "hereunder" "hereof", "herein" or words of like import shall mean and be a reference to the Credit Agreement as amended hereby.

(b) Except as specifically amended by any prior amendments, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed.



(c) The execution, delivery and effectiveness of this Second Addendum shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of Lender under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement.

6. **Execution in Counterparts.** This Second Addendum may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Second Addendum and the other Loan Documents shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the Kentucky Uniform Electronic Transactions Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

7. **Expenses.** The Party shall pay on demand all costs and expenses incurred by the Lender in connection with the preparation, execution, delivery, filing, and administration of this Second Addendum (including, without limitation, Legal Fees incurred in connection with the preparation of this Second Addendum and advising the Lender as to its rights, and the cost of any credit verification reports or field examinations of the Party's properties or books and records). The Party's indebtedness to the Lender under this Section shall survive termination of this Second Addendum and repayment of the Loan under the Credit Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Second Addendum to be executed as of the date first above written.

Address for Notices:

500 Appalachian Way  
Morehead, KY 40351

Alternate address for notice by U.S. Mail:  
401 W. Main Street, Suite 321  
Lexington, KY 40507

**PARTY:**  
**APPHARVEST MOREHEAD FARM, LLC,**  
a Delaware limited liability company

By:

/s/ Loren Joseph Eggleton  
LOREN JOSEPH EGGLETON  
Chief Financial Officer

Address for Notices:

14767 N. Outer 40 Rd., Suite 400  
Chesterfield, MO 63017  
Attention: Loan Operations

**LENDER:**

**RABO AGRIFINANCE LLC,**  
a Delaware limited liability company

By:

/s/ Jeff Hanson  
JEFF HANSON  
Vice President

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Certain information has been excluded from this agreement (indicated by "[\*\*\*]") because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

**FINAL**

**PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN**

**APPHARVEST BEREAFARM, LLC**

**AS SELLER**

**AND**

**MASTRONARDI BEREAFARM LLC**

**AS BUYER**

#96273833v20

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### Attachments

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| Exhibit A           | Legal Description                          |
| Exhibit B           | Definitions                                |
| Exhibit C           | Form of Special Warranty Deed              |
| Exhibit D           | Form of Master Lease Agreement             |
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| Schedule 4(a)(xi)   | Suits, Judgments and Liens.                |
| Schedule 4(a)(xx)   | IT & IP Assets                             |

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## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of December 23, 2022 (the “**Effective Date**”), by and between APPHARVEST BEREAL FARM, LLC, a Delaware limited liability company (“**Seller**”) and MASTRONARDI BEREAL LLC, a Delaware limited liability company (“**Buyer**”). Buyer and Seller may be referred to herein as a “**Party**”, and collectively as the “**Parties**”.

### RECITALS:

A. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of Seller’s right, title and interest in and to the Property (as hereinafter defined).

B. Upon the consummation of the transactions contemplated in this Agreement, and concurrently therewith, Seller desires to lease from Buyer, and Buyer desires to lease to Seller, the Property pursuant to the Master Lease Agreement (as hereinafter defined). Any capitalized term used herein but not defined in this Agreement shall have the meaning set forth in the Master Lease Agreement.

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, Seller and Buyer agree as follows:

1. **Purchase and Sale.** On the terms and subject to the conditions set forth in this Agreement, at the Closing (as hereinafter defined), Seller shall sell and convey to Buyer, and Buyer shall purchase and accept from Seller, free and clear of all Liens other than Permitted Exceptions, all of Seller’s and its Affiliates right, title, and interest in and to the following: (i) that certain parcel or parcels of land situated in Madison County, Kentucky, more particularly described on Exhibit A attached hereto and made a part hereof, together with all and singular rights and appurtenances pertaining to such property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (collectively, the “**Land**”); (ii) the buildings, structures, fixtures, equipment, and other improvements on the Land, including specifically, without limitation, that certain controlled environment agriculture facility (the “**Facility**”) located thereon, including the fixed assets described on Schedule 1 attached hereto (collectively, the “**Improvements**”) (the Land and the Improvements being herein referred to together as the “**Real Property**”); (iii) all tangible personal property owned by Seller and/or its Affiliates upon the Land or within the Improvements (the “**Personal Property**”); (iv) all plans and specifications, architectural plans, controlled environment agricultural facility designs, engineering drawings, surveys, environmental and soil reports, and similar items in Seller’s possession or control relating to the Real Property (collectively, the “**Plans and Drawings**”); (v) all contracts listed on Schedule 2 or otherwise designated by Buyer in its reasonable discretion within thirty (30) days of the Closing Date by written notice to Seller (the “**Assumed Contracts**”); (vi) all warranties issued for the roof, equipment and components of the Facility (the “**Warranties**”); (vii) to the extent transferrable, all local, state and federal licenses, approvals, certifications and permits held by Seller or any Affiliate of Seller for the operation of any of the Improvements for its current, future and intended use (the “**Licenses and Permits**”); (viii) except for the Excluded IT and IP,

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Certain information has been excluded from this agreement (indicated by “[\*\*\*]”) because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

all computer hardware, licenses for software, and applications, networks, systems and information technology equipment and all other Intellectual Property owned by Seller or its Affiliates and used or necessary for the operation of any of the Improvements for its current, future and intended use (the **"IT & IP Assets"**) and (ix) all water rights held by Seller or any Affiliate of Seller and associated and/or appurtenant with the Real Property, including riparian rights, and rights to groundwater, appropriation and water allocations, water well permits, consumptive use permits, water storage rights, drainage rights, water permits, water supply agreements and arrangements, and water stock benefitting the Real Property (collectively, the **"Water Rights"**). The items described in paragraphs (i) through (ix) below (collectively, the **"Property"**).

2. **Purchase Price.** The total purchase price (the **"Purchase Price"**) for the Property shall be \$127,036,032.50 which shall be payable by Buyer in installments as follows:

(a) At the Closing, simultaneously with the delivery of the Deed (herein defined), Buyer shall pay \$117,209,620.08 to Seller by wire transfer of immediately available funds to an account designated by Seller.

(b) Subject to the terms of the Master Lease Agreement, the balance of the Purchase Price will be paid to Seller in accordance with the terms of the Master Lease Agreement upon satisfaction of the conditions described in Section 3.4 of the Master Lease Agreement.

3. **Title.** At the Closing, the Property shall be conveyed to Buyer free and clear of all liens, judgments and encumbrances of any kind whatsoever and vacant and free and clear of all leases, tenancies, licenses, subleases, assignments and/or other rental or occupancy agreements or rights affecting the use, enjoyment or occupancy of the Property or any portion thereof of any kind whatsoever, in each case except for the matters listed on Schedule 3 attached hereto (such exceptions, collectively, the **"Permitted Exceptions"**).

4. **Representations and Warranties.**

(a) **Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer (**"Seller's Representations"**) that as of the Effective Date and as of the Closing:

(i) **Qualification and Authority.** Seller is duly organized, validly existing and in good standing under the laws of its state of formation or incorporation, is qualified to do business in the jurisdiction in which the Property is located and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the other agreements contemplated hereunder to be entered into at Closing (collectively, the **"Transaction Documents"**). This Agreement, when executed and delivered by Seller and Buyer, shall constitute the valid and binding agreement of Seller, and shall be enforceable against Seller 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. All requisite authorizations, consents, resolutions and actions on the part of Seller have been obtained, adopted or taken, as applicable, by Seller (and its Affiliates as and if required) in connection with making, entering into and

performing under this Agreement and the other Transaction Documents and the consummation of the purchase and sale provided for herein, and no consents or approvals are required from any party which is not a party to this Agreement in order to consummate such purchase and sale.

(ii) Non-Contravention. The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated by this Agreement will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Governmental Authority, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Seller or any agreement or instrument to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates is bound or (iii) violate any Applicable Law relating to Seller.

(iii) Bankruptcy. Seller (i) is not and shall not be "insolvent" within the meaning of title 11 of the United States Code, as amended, as of the Closing and after giving effect to the transactions contemplated by this Agreement, (ii) has not ceased to pay its undisputed debts as they become due in the ordinary course of business, (iii) has not filed or taken any action to file for protection or relief under (a) the provisions of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended or replaced), or (b) any other liquidation, conservatorship, bankruptcy, moratorium, arrangement, rearrangement, insolvency, dissolution, wind-up, restructuring, reorganization or similar debtor relief laws or statutes (including, for greater certainty, any laws or statutes in respect of the compromise of debts or a stay of proceedings) of the United States or any other applicable jurisdictions from time to time in effect and any successors to any of the foregoing, dealing with the relief of debtors or affecting the rights of creditors generally ((a) and (b) together, "**Bankruptcy Law**"), (iv) has not suffered or been threatened by creditors with, the involuntary application of any Bankruptcy Law, (v) has not sought, consented to or acquiesced in the appointment of any receiver, trustee, liquidator or other custodian of all or substantially all of its assets, (vi) has not suffered the attachment or other judicial seizure of all or substantially all of its assets, and (vii) has not made or taken any action to make a general assignment for the benefit of creditors. Seller is not entering into the transactions described in this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other, and the consideration provided by Buyer pursuant to this Agreement constitutes reasonably equivalent value and fair consideration for the Property.

(iv) Leases. Except for the Master Lease Agreement (as defined below), there are no leases, tenancies, licenses, subleases, assignments and/or other rental or occupancy agreements or rights affecting the use, enjoyment or occupancy of the Property or any portion thereof that will be binding on Buyer after the Closing.

(v) Compliance With Laws; Zoning. To Seller's knowledge, the Property is in compliance with all applicable zoning, subdivision and land use laws, regulations and ordinances, all applicable health, fire, accessibility and building codes, and all other laws applicable to the Property. The right to use or operate the Property for its intended use is not in any way dependent upon or related to any property other than the Property.

(vi) Taxes. All real property and sales taxes with respect to the Property that are due and payable are not delinquent or have been paid. There is not presently pending (and to Seller's knowledge, there is not contemplated) any special assessment against the



Property or any part thereof. No tax liens have been filed and no claims are pending (and to Seller's knowledge, no claims are threatened) with respect to any such taxes.

(vii) Property Contracts. Schedule 4(a)(vii) is a true, correct, and complete list of all contracts, agreements and understandings relating to the use, operation, maintenance or repair of the Property to which Seller or any Affiliate of Seller is a party or by which the Property is bound (collectively, the "**Property Contracts**"). The Property Contracts are in full force and effect. Seller has not given or received written notice alleging a default in the performance of any material covenant to be performed by Seller or the counterparty under any Property Contract (which default remains uncured) and, to Seller's knowledge, there exists no circumstance or event which, with the giving of notice or passage of time, or both, would constitute a default by either Seller or any other counterparty under any Property Contract. Seller has made available to Buyer true, correct and complete copies of the Property Contracts. Except for the Assumed Contracts, as of the date hereof there are no Property Contracts that will affect the Property or to which Buyer will be bound. No Property Contract will be rendered invalid, illegal, non-binding or unenforceable as a result of the transactions contemplated by this Agreement.

(viii) Licenses and Permits. Schedule 4(a)(viii) sets forth a true, correct and complete list of all governmental or quasi-governmental occupancy and use permits, licenses, consents, approvals, permits, authorizations, certificates, and other requirements of the governmental or quasi-governmental authorities necessary or required for the use and operation of the Facility for its intended use (collectively, "**Licenses and Permits**"). Other than the Temporary Certificates of Occupancy, all requisite Licenses and Permits have been unconditionally and finally issued and paid for and are in full force and effect in accordance with the respective terms thereof. Seller has made available to Buyer a true, correct and complete copy of each License and Permit and all material documents, reports and correspondence sent or received by Seller or any of its Affiliates with respect to the Licenses and Permits. No notice of noncompliance or default has been received by Seller or any of its Affiliates in respect of any License and Permit and no event has occurred which with the giving of notice or the lapse of time, or both, would constitute non-compliance with the terms and conditions of the Licenses and Permits. Each of the Licenses and Permits is in full force and effect and the consummation of the sale and purchase contemplated by this Agreement will not affect the legality or validity of any of the Licenses and Permits.

(ix) Casualty/Condemnation. There is no material unrepaid damage to any portion of the Property and Seller has not received any written condemnation notice from any governmental authority with respect to all or any portion of the Property and to Seller's knowledge no such action is threatened against the Property.

(x) Title. To Seller's knowledge, there are no off-record matters adversely affecting title to the Property.

(xi) Suits, Judgments and Liens. Except as set forth on Schedule 4(a)(xi), there are no legal actions, suits or similar proceedings pending or threatened in writing against Seller or the Property.

(xii) FIRPTA. Seller is not a “foreign person” (as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and in the accompanying regulations).

(xiii) OFAC. Neither Seller or, to Seller’s knowledge, any person or entity that has a direct or indirect beneficial interest in Seller, is a Specially Designated National or Blocked Person. As used herein, the term “**Specially Designated National or Blocked Person**” shall mean a person (i) designated by the Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”), or other governmental entity, from time to time as a “specially designated national or blocked person” or similar status, (ii) described in Section 1 of U.S. Executive Order 13224 issued on September 23, 2001 or (iii) otherwise identified by government or legal authority as a person with whom Buyer is prohibited from transacting business.

(xiv) Patriot Act. Seller is in compliance with all applicable laws, regulations, and rules related to (i) combating corruption or bribery, including, but not limited to, the United States Foreign Corrupt Practices Act of 1977, as amended, and (ii) combating money laundering, suspicious transactions, trade embargos, economic sanctions, or terrorist financing, including, but not limited to, the US Bank Secrecy Act of 1986, the USA Patriot Act of 2001 (in each case to the extent applicable to the Parties and to the Master Lease Agreement), the Specially Designated Nationals List or any similar list maintained by the Office of Foreign Assets Control at the United States Department of the Treasury.

(xv) Employees. There are no employees of Seller that Buyer will be required to employ after the Closing. Neither Seller nor the Property is subject to any collective bargaining or similar agreements.

(xvi) ERISA. (a) Seller is not an employee benefit plan as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “plan” as defined in Code Section 4975; (b) the assets of Seller do not constitute “plan assets” of one or more such plans for purposes of Title I of ERISA or Code Section 4975; (c) Seller is not a “governmental plan” within the meaning of Section 3(32) of ERISA, and assets of Seller do not constitute plan assets of one or more such plans; and (d) the transactions contemplated by this Agreement do not and will not constitute a direct or indirect non-exempt prohibited transaction under ERISA or the Code or a violation of state statutes applicable to Seller regulating investments of and fiduciary obligations with respect to governmental plans.

(xvii) Water Rights. The municipally or government sourced water supplies available to the Property are sufficient for Seller to operate the Property in accordance with the Standards.

(xviii) Adequate Utilities. The Property has access to and is provided with sufficient utilities, facilities and services, including flue gas, natural gas and electricity (other than water, which is subject to Section 4(a)(xvii)), for the use and operation of the Real Property in accordance with the Standards.

(xix) Environmental. Seller has not received any written citation, directive, demand, pleading, complaint, claim, information inquiry, notice of potential

responsibility, notice of violation, order, notice of investigation, or other written communication from any governmental authority regarding (i) the existence of any Hazardous Materials in, on, under, or migrating from, the Real Property in violation of Environmental Laws in any material respect or (ii) the actual or potential material liability or responsibility of Seller under any Environmental Law. No Hazardous Materials have been located upon, stored, handled, installed or disposed in, on or about the Property during Seller's ownership thereof and to Seller's knowledge, at any other time, in violation of Environmental Laws in any material respect or which would be required to be remediated thereunder at a material cost.

(xx) Intellectual Property. Schedule 4(a)(xx) lists all IT & IP Assets, which (along with the Excluded IT & IP) are sufficient for Seller to operate the Property in accordance with the Standards. Seller owns or has adequate, valid and enforceable rights to use all the IT & IP Assets, free and clear of all Liens except Permitted Exceptions. Seller is not bound by any outstanding judgment, injunction, order or decree restricting the use of the IT & IP Assets, or restricting the licensing thereof to any person or entity. Seller's prior and current use of the IT & IP Assets has not and does not infringe, violate, dilute or misappropriate the Intellectual Property of any person or entity and there are no claims pending or threatened by any person or entity with respect to the ownership, validity, enforceability, effectiveness or use of the IT & IP Assets. No person or entity is infringing, misappropriating, diluting or otherwise violating any of the IT & IP Assets, and neither Seller nor any affiliate of Seller has made or asserted any claim, demand or notice against any person or entity alleging any such infringement, misappropriation, dilution or other violation.

(xxi) Financial Information Provided to Buyer. The financial statements and all other documents and information heretofore delivered to Buyer or its Affiliates or agents with respect to that certain Note and Loan Agreement dated as of October 24, 2022, by and between Seller, as maker, and Mastronardi Produce-USA, Inc., a Michigan corporation, as payee (i) are true and correct in all material respects as of the date of such statement, (ii) present fairly the information contained therein for the periods to which they pertain, and (iii) have been prepared in a manner consistent with the financial statements prepared during the same time period for other comparable controlled environment agricultural facilities owned by Seller or any of their Affiliates. Since the date of the most recent financial statements provided to Buyer or its agents or Affiliates, there has been no material adverse change in the financial condition of the Seller or its Affiliates.

(xxii) Condition of Property; Status of Construction. Except for the Tenant Required Work (as set forth in the Master Lease Agreement) the Property, including without limitation, all systems, are in good operating condition and repair and free from any material defects. Except for the Tenant Required Work and subject to any and all Warranties, all work completed in connection with the construction of the Improvements as of the date hereof is free from material defects (whether known or unknown).

(xxiii) Fairness Opinion. At or prior to the Closing, the Board of Directors of AppHarvest, Inc. has received a customary form of opinion of BRG Transaction and Valuation Opinions, LLC as to the fairness of the Purchase Price to be received by Seller as contemplated herein (such opinion, the "**Fairness Opinion**"). Such opinion has been provided to Buyer for solely informational purposes and has not been amended or rescinded.

(xxiv) Processing Facilities. The Property includes no processing facilities (as that term is used in 16 C.F.R. 802.2(g)(1)(i)).

(b) Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that as of the date of this Agreement:

(i) Buyer is duly organized, validly existing and in good standing under the laws of its state of formation or incorporation. Buyer has the right, power, and authority to execute, deliver, and perform this Agreement and the Transaction Documents. This Agreement, when executed and delivered by Buyer and Seller, shall constitute the valid and binding agreement of Buyer, and shall be enforceable against Buyer in accordance with its terms, except as enforceability may be limited by applicable Bankruptcy Law or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(ii) All requisite authorizations, consents, resolutions and actions on the part of Buyer, have been obtained, adopted or taken, as applicable, by Buyer (and its Affiliates, as and if required) in connection with making and entering into this Agreement and the other Transaction Documents and the consummation of the purchase and sale provided for herein, and no consents or approvals are required from any party which is not a party to this Agreement in order to consummate such purchase and sale. Neither this Agreement nor the consummation of any of the transactions contemplated hereby violates or shall violate any provision of any agreement or document to which Buyer is a party or to which Buyer is bound.

(iii) Buyer is currently in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

5. Closing. The consummation of the purchase and sale contemplated hereunder (the "**Closing**") including the delivery of all items required under the terms of this Agreement shall occur on or before December 23, 2022, subject to the satisfaction of the closing conditions set forth in this Section 5 attached hereof (the "**Closing Date**"). The date of the Closing shall be the "**Closing Date**".

(a) At the Closing, Buyer shall deliver or cause to be delivered to the Title Company, as escrow agent, all of the following:

(i) The first installment of the Purchase Price;

(ii) One (1) original of the special warranty deed (the "**Deed**") in the form attached hereto as Exhibit C, conveying to Buyer the Property subject only to the Permitted Exceptions, duly executed by Buyer and properly notarized and acknowledged, in proper form for recording in the applicable jurisdiction;

(iii) Two (2) counterpart originals of a Master Lease Agreement covering the Property (the "**Master Lease Agreement**") in the form attached hereto as Exhibit D,

duly executed by Buyer, and a Memorandum of the Master Lease Agreement (the “**Memorandum of Master Lease**”) in the form attached hereto as Exhibit E, each duly executed by Buyer, as landlord;

(iv) Any instruments or other documents required to be delivered to Seller, as tenant, pursuant to the Master Lease Agreement;

(v) Two (2) counterpart originals of a Bill of Sale with respect to the Personal Property, Plans and Drawings, Warranties and the IT & IP Assets (the “**Bill of Sale**”), duly executed by Buyer;

(vi) Two (2) counterpart originals of an Assignment and Assumption of Licenses and Permits in the form attached hereto as Exhibit F (the “**Assignment of Licenses and Permits**”), duly executed by Buyer;

(vii) Two (2) counterpart originals of an Assignment and Assumption of Contracts with respect to the Assumed Contracts listed on Schedule 1 attached hereto, in the form attached hereto as Exhibit G (the “**Assignment of Contracts**”), duly executed by Buyer;

(viii) Properly completed and duly executed sales and use tax exemption certificates, if any;

(ix) Any and all forms or affidavits (including, without limitation, transfer tax forms) required by any state or locality to be delivered by Buyer in connection with the recordation of the Deed and/or the conveyance of the Property;

(x) A closing statement reasonably approved by the Parties (the “**Closing Statement**”), duly executed by Buyer; and

(xi) Such other documents as may be reasonably necessary to effect the consummation of the transactions contemplated by this Agreement.

(b) At the Closing, Seller shall deliver or cause to be delivered to the Title Company, as escrow agent, all of the following:

(i) One (1) original Deed, conveying to Buyer the Property subject only to the Permitted Exceptions, duly executed by Seller and properly notarized and acknowledged, in proper form for recording in the applicable jurisdiction;

(ii) Two (2) counterpart originals of the Master Lease Agreement and the Memorandum of Master Lease, each duly executed by Seller, as tenant;

(iii) Two (2) counterpart originals of the Bill of Sale, duly executed by Seller; and

(iv) Two (2) counterpart originals of the Assignment of Licenses and Permits, duly executed by Seller;



(v) Two (2) counterpart originals of the Assignment of Contracts, duly executed by Seller;

(vi) Internal Revenue Service Form W-9 and any state-specific income tax withholding certificates required, duly executed by Seller;

(vii) The Fairness Opinion;

(viii) Any instruments or other documents required to be delivered by tenant to Buyer, as landlord, pursuant to the Master Lease Agreement;

(ix) Evidence reasonably satisfactory to Buyer or required by First American Title Insurance Company (the "**Title Company**") that Seller is fully authorized to have entered into this Agreement, and to consummate the transactions contemplated herein, including without limitation selling the Property to Buyer pursuant to the terms of this Agreement, and entering into the Master Lease Agreement;

(x) Any affidavits and documents which the Title Company shall require in order to issue Buyer a title insurance policy insuring good and marketable fee simple title to the Property in the condition provided for in this Agreement;

(xi) Any and all forms or affidavits (including, without limitation, transfer tax forms) required by any state or locality to be delivered by Seller in connection with the recordation of the Deed and/or the conveyance of the Property and/or the recordation of the Memorandum of Master Lease;

(xii) The Closing Statement, duly executed by Seller; and

(xiii) Such other documents as may be reasonably necessary to effect the consummation of the transactions contemplated by this Agreement.

(c) Buyer's obligations to close the transactions contemplated hereunder are subject to the satisfaction of each of the following conditions or the waiver of the same by Buyer in writing:

(i) As of the Closing Date, the representations and warranties made by Seller to Buyer as of the Effective Date shall be true and correct in all respects as if specifically remade on and as of the Closing Date.

(ii) Seller shall have made all closing deliveries required of Seller under this Section 5 and Seller shall have otherwise performed or complied in all material respects with each obligation and covenant required by this Agreement to be performed or complied with by Seller on or before the Closing.

(iii) As of the Closing Date, all Schedules and Exhibits to this Agreement or the Master Lease Agreement which are not attached hereto or otherwise in final form as of the Effective Date are approved by Buyer in its sole discretion.

(d) Seller's obligations to close the transactions contemplated hereunder are subject to the satisfaction of each of the following conditions or the waiver of the same by Seller in writing:

(i) As of the Closing Date, the representations and warranties made by Buyer to Seller as of the Effective Date shall be true and correct in all respects as if specifically remade on and as of the Closing Date.

(ii) Buyer shall have made all closing deliveries required of Seller under this Section 5 and Buyer shall have otherwise performed or complied in all material respects with each obligation and covenant required by this Agreement to be performed or complied with by Seller on or before the Closing.

(iii) As of the Closing Date, all Schedules and Exhibits to this Agreement or the Master Lease Agreement which are not attached hereto or otherwise in final form as of the Effective Date are approved by Seller in its sole discretion.

(e) If the Closing does not occur on or before 3:00 PM ET on December 27, 2022 (the "**Outside Closing Date**") then each of Seller and Buyer shall have the right to terminate this Agreement upon by delivering written notice of such election to terminate to the other party (the "**Termination Notice**"), delivered not later than 5:00 p.m. Eastern Time on the Closing Date. Upon delivery of the Termination Notice, this Agreement shall terminate and neither party shall have any further liabilities or obligations hereunder, except for those liabilities and obligations that expressly survive a termination of this Agreement.

(f) If Closing fails to occur as a result of Buyer's default, then Seller shall have the right to elect as its sole and exclusive remedy, to (a) terminate this Agreement by written notice to Buyer, and, thereafter, the parties shall have no further rights or obligations hereunder except for obligations which expressly survive the termination of this Agreement, or (b) waive the default or breach and proceed to close the transaction. Seller and Buyer have discussed the possible consequences to Seller in the event that the Closing does not occur by reason of Buyer's default and have agreed that termination of the Agreement is a reasonable and acceptable remedy and no other remedies shall be available to Seller.

(g) Seller shall provide the Kentucky Sales and Use Tax Clearance Certificate, duly executed by the Kentucky Department of Revenue, as soon as possible after Closing.

6. No Prorations.

(a) The Parties acknowledge that (i) the Master Lease Agreement will be a net lease and that Seller, as tenant, will be required to pay all taxes, assessments and utility charges in connection with such tenants use and occupancy of the Property which arise or are incurred on or after the Closing, and (ii) Seller shall pay all taxes, assessments and utility charges due at the time of Closing and in connection with the use and occupancy of the Property prior to the Closing. As a result, as between Seller and Buyer there will be no apportionment at Closing of such taxes, assessments and utility charges.

(b) At the Closing, the costs of the following will be included in the calculation of the Purchase Price to be paid by Buyer: (i) all documentary stamp, transfer, surtax, excise taxes, or other levies or charges of any kind and nature, payable upon the transfer of the Property and/or recordation of the Deed; (ii) the cost of the Title Company's charges and recording fees for recording satisfactions of mortgages; (iii) the cost of that certain Owner's Policy of Title Insurance issued by Title Company to Buyer as of the date hereof; (iv) the Title Company's escrow charges; and (v) Buyer's own legal and consulting fees and costs. At the Closing, Seller shall be responsible for payment of its own legal fees and costs.

7. Notices. All notices, consents, authorizations and approvals required to be given hereunder shall be in writing and delivered by (a) certified mail, return receipt requested, (b) personal delivery by messenger, with written acknowledgment of receipt returned to sender, or (c) a nationally recognized overnight courier service, to Seller or Buyer, as applicable, as follows:

If to Seller: AppHarvest Berea Farm, LLC  
500 Appalachian Way  
Morehead, KY 40351  
Attention: Jonathan Webb, CEO and Loren Eggleton, CFO E-mail: [\*\*\*]

With a copy to: Cooley LLP  
11951 Freedom Drive, Suite 1400  
Reston, VA 20190  
Attention: John G. Lavoie  
E-mail: [\*\*\*]

If to Buyer: Mastronardi Berea LLC  
c/o Mastronardi Produce – USA, Inc.  
28700 Plymouth Road  
Livonia, Michigan 48150  
Attention: David Einsteadig, SVP and General Counsel E-mail: [\*\*\*]

and: c/o Mastronardi Produce Limited  
2100 Road 4 East  
Kingsville, ON N9Y 2E5 Canada  
Attention: Richard Ball, CFO  
E-mail: [\*\*\*]

With a copy to: Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: Leonard Kreynin and Brian D. Hirsch  
E-mail: [\*\*\*]



and: COFRA Amsterdam C.V.  
Jachthavenweg 111  
1081 KM Amsterdam  
The Netherlands  
Attention: David Levin, Johanna Waterous  
and Bernard Roelvink  
Email: [\*\*\*]

With a copy to: Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
Attention: Andrew Herman  
E-mail: [\*\*\*]

or at such other address(es) and to such other parties as Seller or Buyer shall, from time to time, designate by notice given to the other in the manner herein above provided. Notices shall be effective on the date delivered by hand or by reputable overnight courier or, if sent by certified mail, return receipt requested. A notice given by counsel for Seller or Buyer shall be deemed a valid notice if addressed and sent in accordance with the provisions of this Section 7.

8. Commissions. Seller and Buyer each hereby represent and warrant to each other that, (a) such party has not contracted or entered into any agreement with any real estate broker, agent, finder or any other person or entity in connection with this transaction, and (b) such party has not taken any action that would result in any real estate broker's, agent's, finder's or other fees or commissions being due to any person or entity with respect to this transaction. Seller and Buyer hereby agree to indemnify, defend and hold each other harmless from any and all damages, liabilities, costs and claims suffered or incurred by the other party as a result of the foregoing representation and warranty made by such party being untrue in any respect.

9. Assigns. Seller shall not assign this Agreement or delegate its duties hereunder. Buyer may, after written notice to Seller prior to Closing, (i) direct that the Deed be granted to an entity under common Control with Buyer by notice to Seller or (ii) assign its rights under this Agreement to an entity under common Control with Buyer. Otherwise, Buyer may not assign or transfer all or any portion of its rights or obligations under this Agreement to any other individual, entity or person without the prior written consent thereto by Seller. This Agreement shall inure to the benefit of and be binding on the Parties hereto and their respective heirs, legal representatives, permitted successors and assigns.

10. Disclosure. Buyer and Seller shall keep information regarding terms of this Agreement, confidential and neither Party will announce or otherwise make public the terms of this transaction without the prior consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, except that each Party may disclose the terms this Agreement (a) on a confidential basis to its, and its Affiliates', officers, directors, employees, accountants, agents, existing or potential partners, investors and/or financing sources, and legal counsel as reasonably necessary to effectuate the closing of the transaction contemplated herein (or, with respect to potential partners, investors and/or financing sources, as reasonably necessary

to effectuate the consummation of any prospective transaction therewith), and (b) following written notice to Buyer, as required by law, regulation, stock exchange rule, administrative agency or court order, provided, however, if either party receives a request to disclose any confidential information under the terms of a valid and effective order issued by an administrative agency or court order then such party may disclose the confidential information to the extent required if such party as promptly as practicable (i) notifies the non-disclosing party of the existence, terms and circumstances of the order, (ii) consults in good faith with the non-disclosing party on the advisability of taking legally available steps to resist or to narrow the order, and (iii) if disclosure of the confidential information is required, exercises its reasonable best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to said information. The provisions of this 10 shall survive Closing or termination of this Agreement.

11. Indemnification. Following the Closing, Seller shall indemnify, hold Buyer, its Affiliates, and each of their respective partners, members, managers, employees, shareholders, officers, directors and agents (collectively, "**Indemnified Parties**") harmless from and against, any and all actual, out-of-pocket costs, out-of-pocket fees, actual, out-of-pocket expenses, actual damages, actual deficiencies, interest and actual penalties (including, without limitation, reasonable, out-of-pocket attorneys' fees and disbursements) suffered or incurred by Buyer and any such Buyer-related entities in connection with any and all losses, liabilities, claims, damages and expenses ("**Losses**"), arising out of, or resulting from, (a) any breach of any representation or warranty of Seller contained in this Agreement, (b) any breach of any covenant of Seller contained in this Agreement and (c) claims asserted by third parties, but only if and to the extent such Losses first arise or accrue prior to the date of the Closing, even if such claim is asserted on or after the date of the Closing. The representations and warranties of Seller set forth in this Agreement will survive the Closing for a period of eighteen (18) months (the "**Survival Period**"), but not thereafter except to the extent that a claim is asserted with respect to any representation and warranty during the Survival Period in which case the representation and warranty shall continue to survive until final resolution of such claim, it being the intention of the parties that all suits or actions for breach of any such representations or warranties herein, and any action for liabilities resulting from any such breach, must identify with specificity each such breach and must be brought, if at all, prior to the expiration of the Survival Period, or they shall be forever barred. This Section 11 shall survive the Closing for the Survival Period.

12. Severability. If any non-material provision of this Agreement is adjudicated by a court having jurisdiction over a dispute arising under this Agreement to be invalid or otherwise unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions hereof and such remaining provisions shall continue in force and effect to the full extent permitted by law.

13. Applicable Law; Jurisdiction; Waiver of Jury Trial; As-Is.

(a) This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles; provided, however, that any matter in this Agreement that must be governed by the internal laws of the Commonwealth of Kentucky to be enforceable shall be governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky.

(b) EACH OF SELLER AND BUYER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH OF SELLER AND BUYER ACCEPTS FOR ITSELF AND IN CONNECTION WITH THE PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT.

(c) EACH OF BUYER AND SELLER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANYWAY RELATING TO THIS AGREEMENT. EACH OF SELLER AND BUYER ACKNOWLEDGES THAT THE PROVISIONS OF THIS SUBSECTION ARE A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THE AGREEMENT.

(d) EXCEPT FOR SUCH REPRESENTATIONS AND WARRANTIES AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS ACQUIRING THE PROPERTY IN ITS "AS IS", "WHERE IS" CONDITION, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, ALL OF WHICH ARE HEREBY WAIVED AND DISCLAIMED BY BUYER. THE PROVISIONS OF THIS SECTION 13(d) SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT.

14. Entire Agreement; Modification. Except as provided below, this Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement between Seller and Buyer concerning the sale of the Property and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either Party unless reduced to writing and signed by the Party to be bound. All Schedules attached hereto are incorporated herein by this reference for all purposes.

15. Further Assurances. Seller and Buyer in a timely manner execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, any and all additional commercially reasonable documents, papers and other assurances, and shall do any and all acts reasonably necessary to give effect to the purchase and sale provided for herein, including (a) to transfer, convey and assign to Buyer, and to confirm Buyer's title to, the Property; (b) to effectuate the assignment to Buyer of the Assumed Contracts (including those Assumed Contracts that may be designated by Buyer in the thirty (30) day period immediately following Closing), and the Licenses and Permits; (c) to transfer, convey and assign to Buyer any assets or rights held by any Person after the Closing that were intended to be transferred to Buyer pursuant to this Agreement or (d) otherwise to consummate the transactions contemplated by this Agreement and the Transaction Documents. This provision shall survive the Closing.

16. Time of the Essence; Business Day. Time is of the essence in the performance of each and every provision of this Agreement. In the event that the last day for taking any action or serving notice under this Agreement falls on a day other than a Business Day, the time period shall be extended until the following Business Day.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. The parties agree that this Agreement may be electronically signed pursuant to the terms of the ESIGN Act of 2000 and is legally binding. The parties agree that any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

18. Attorneys' Fees. If any action or proceeding is instituted to enforce or interpret any provision of this Agreement, the substantially prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs from the losing Party.

19. No Waiver. The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy for which this Agreement provides shall not be a waiver of any remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

20. Date of Agreement. All references in this Agreement to "the date hereof" or similar references shall be deemed to refer to the Effective Date set forth above.

21. Transaction Characterization. The Parties intend that the conveyance of the Property to Buyer be an absolute conveyance in effect as well as form, and the instruments required to be delivered hereunder at Closing (including, without limitation, the Master Lease Agreement and the other Transaction Documents) are not intended to serve or operate as a mortgage, equitable mortgage, deed of trust, security agreement or financing or trust arrangement of any kind. After the execution and delivery of the Deed and payment to Seller of the entire Purchase Price, Seller will have no legal or equitable interest or any other claim or interest in the Property other than as set forth in the Transaction Documents. Neither Party shall contest the validity, enforceability or characterization of the sale and purchase of the Property by Buyer pursuant to this Agreement as an absolute conveyance for state law purposes, and both Parties shall support the intent expressed herein that the purchase of the Property by Buyer provides for an absolute conveyance and does not create a joint venture, partnership, equitable mortgage, trust, financing device or arrangement, security interest or the like, if and to the extent that any challenge occurs.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

**SELLER:**

**APPHARVEST BEREAFARM, LLC**, a  
Delaware limited liability company

By: AppHarvest Operations, Inc., a Delaware  
public benefit corporation  
Its: Sole Member

By: /s/ Loren Eggleton  
Name: Loren Eggleton  
Title: Chief Financial Officer

**BUYER:**

**MASTRONARDI BEREAFARM, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page – Berea SLB Purchase and Sale Agreement]*

Certain information has been excluded from this agreement (indicated by "[\*\*\*]") because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

**SELLER:**

**APPHARVEST BEREAFARM, LLC**, a  
Delaware limited liability company

By: AppHarvest Operations, Inc., a  
Delaware public benefit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

**MASTRONARDI BEREAFARM, LLC**, a  
Delaware limited liability company

By:  \_\_\_\_\_  
Name: Paul Mastronardi  
Title: President and Chief Executive Officer

*[Signature Page – Berea SLB Purchase and Sale Agreement]*

Certain information has been excluded from this agreement (indicated by "[\*\*\*]") because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Being all of that certain tract, containing 40.0 acres, as shown on the Minor Plat of BEREIA INDUSTRIAL DEVELOPMENT AUTHORITY, Menelaus Rd./Farristown Industrial Dr., 1000 Farristown Industrial Drive, Berea, Madison County, Kentucky 40403, of record in Plat Book 29, Page 158, in the Madison County Clerk's Office.

Being the same property acquired by Berea Land Company, LLC, a Delaware limited liability company, by Deed dated September 30, 2020, recorded October 2, 2020, as Document No. 2014021510, in Book 795, Page 94, in the Madison County Clerk's Office. Berea Land Company, LLC changed its name to AppHarvest Berea Farm, LLC, a Delaware limited liability company, on October 19, 2020, by Certificate of Amendment, filed with the Delaware Secretary of State on October 26, 2020.

Property address: 1000 Farristown Industrial Road, Berea, Kentucky (Madison County)  
Parcel ID

Exhibit A - 1

#96273833v20

Certain information has been excluded from this agreement (indicated by "[\*\*\*]") because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.



## EXHIBIT B

### DEFINITIONS

**"Affiliate"** shall mean, with respect to any Person, any other Person: (i) which directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such Person; or (ii) which, directly or indirectly, beneficially owns or holds 10% or more of any class of stock of or any other economic ownership interest in such Person; or (iii) 10% or more of the direct or indirect economic ownership of which is beneficially owned or held by such Person.

**"Applicable Law"** shall mean all statutes, laws, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, board of fire underwriters and similar quasi-governmental agencies or entities, and any judgment, injunction, order, directive, decree or other judicial or regulatory requirement of any Governmental Authority of competent jurisdiction affecting or relating to the Person or property in question.

**"Business Day"** shall mean any day other than Saturday, Sunday, any day that is a legal holiday in the State of New York, or any other day on which banking institutions in New York are authorized or required to be closed.

**"Control"** shall mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of stock or equity, by contract or otherwise; provided that the right of another Person to participate in significant management decisions of the Person in question shall not by itself constitute "Control" by such Person nor shall it negate "Control" by the primary "Controlling" party (and the terms "Controlled" and "Controlling" have meanings correlative thereto).

**"Environmental Laws"** means any applicable present and future federal, state and local laws, statutes, ordinances, rules, and regulations of a Governmental Authority, as well as common law, relating to protection of human health, natural resources or the environment or governing the use, transport, or disposal of biological, bio-hazardous wastes, or radiological elements. The term "Environmental Laws" includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; Clean Air Act, 42 U.S.C. §§ 7401 et seq.; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 et seq.; Occupational Safety and Health Act, 29 U.S.C. §§ 65 et seq., and all other applicable federal, state and local laws, regulations, ordinances, rules, and orders of any Governmental Authority that are equivalent or similar to the laws recited above, or otherwise relate to human health, natural resources or the environment, in each case together with their implementing regulations, guidelines, rules, or orders, and all state, regional, county, municipal, and other local laws, regulations, ordinances, rules, and orders that are equivalent or similar to the federal and state laws recited above.

### Exhibit B - 1

#96273833v20

Certain information has been excluded from this agreement (indicated by "[\*\*\*]") because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.



**“Excluded IT and IP”** shall mean user licenses, business applications, employee laptops and intellectual property not exclusive to the Property.

**“Governmental Authority”** shall mean any federal, municipal, state, provincial, local or foreign governmental, administrative or regulatory authority, department, agency, commission or body (including any court or similar tribunal).

**“Hazardous Materials”** shall mean any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any Environmental Laws, toxic mold or other toxic multicellular fungi (excluding solvents, cleaning fluids and other lawful substances used in the ordinary operation and maintenance of the Real Property, to the extent in closed containers).

**“Intellectual Property”** means any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) internet domain name registrations; and (vi) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present and future infringement and any other rights relating to any of the foregoing).

**“Lien”** shall mean any lien, pledge, mortgage, deed of trust, hypothecation, assignment, security, adverse claim, charge, option, restriction, lease or other similar encumbrance of any kind or nature whatsoever, including any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code or any other similar recording or notice statute.

**“Person”** shall mean any individual, partnership, corporation, limited liability company, limited liability partnership, trust or other entity.

**“Tax”** shall mean any and all federal, state, local, or foreign taxes, charges, fees, levies or other assessments imposed by a Governmental Authority, including any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs, duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind, including any interest, penalty, or addition thereto, whether disputed or not.

## Exhibit B - 2

#96273833v20

Certain information has been excluded from this agreement (indicated by “[\*\*\*]”) because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.



FINAL

**LEASE AGREEMENT**  
**DATED AS OF DECEMBER 27, 2022**

**Between**

**MASTRONARDI BERE A LLC,**  
**a Delaware limited liability company,**  
**AS LANDLORD**

**and**

**APPHARVEST BERE A FARM, LLC,**  
**a Delaware limited liability company,**  
**AS TENANT**

## BASIC LEASE INFORMATION

For convenience of the parties, certain basic provisions of this Lease are set forth herein, and are, together with any Exhibits and Schedules, expressly incorporated into the Lease. The provisions set forth herein are subject to the remaining terms and conditions of this Lease and are to be interpreted in light of such remaining terms and conditions.

### TERMS OF LEASE

### DESCRIPTION

#### **“Expiration Date”:**

The date that is one hundred and twenty (120) months after the Commencement Date; provided, however, the Expiration Date of this Lease shall be automatically extended to be the same date as the expiration of any Extension Period as to which an Extension Option is exercised under Section 1.4.

#### **“Facility”:**

That certain (a) approximately fifteen (15) production acre controlled environment agriculture facility located on the Site (together with buildings, structures, fixtures, equipment, systems and other improvements located on the Site), including without limitation (i) all equipment and systems as set forth on Schedule 1.1 and (ii) all equipment, systems and other assets owned or leased by Landlord that are now or hereafter located in, on or used in connection with the operations of such facility, including any equipment, fixtures and assets permanently affixed to or otherwise incorporated into such facility; (b) any ancillary facilities and equipment described on Schedule 1.1; and (c) all replacements, improvements, alterations, modifications and additions to the equipment, systems and assets described in the foregoing clauses (a) and (b), but excluding Tenant’s Personalty.

#### **“Leased Property”:**

The Site, the Facility, and such other assets and rights in connection therewith conveyed to Landlord pursuant to the PSA including, without limitation, all of Landlord’s right, title and interest in and to (i) tangible personal property owned by Landlord on the Site or within the Facility, (ii) all plans and specifications, architectural plans, controlled environment agricultural facility designs, engineering drawings, surveys, environmental and soil reports, and similar items in Landlord’s possession or control relating to the Site or the Facility, (iii) all contracts that constitute “Assumed Contracts” under the PSA, (iv) all warranties issued for the roof, equipment and components of the Facility, (v) to the extent transferrable, all Project Governmental Approvals

held by Landlord, (vi) all computer hardware, licenses for software, and applications, networks, systems and information technology equipment and all other intellectual property, (vii) all local, state and federal licenses, approvals, certifications and permits held by Landlord for the operation of the Facility and Site, and (viii) all water rights associated and/or appurtenant with the Facility or the Site, including riparian rights, and rights to groundwater, appropriation and water allocations, water well permits, consumptive use permits, water storage rights, drainage rights, water permits, water supply agreements and arrangements, and water stock benefitting the Facility or the Site.

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Marketing Agreement”:</b>       | That certain Marketing Agreement, dated March 28, 2019, between AppHarvest Operations, Inc., a Delaware corporation (“ <b>AppHarvest Parent</b> ”), an Affiliate of Tenant, and Mastronardi Produce Limited, a corporation incorporated pursuant to the laws of the Province of Ontario, Canada (“ <b>MPL</b> ”), an Affiliate of Landlord (as amended, modified or supplemented from time-to-time). |
| <b>“PSA”:</b>                       | That certain Purchase and Sale Agreement, of even date herewith, by and between Landlord, as purchaser, and Tenant, as seller.                                                                                                                                                                                                                                                                       |
| <b>“Security Documents”:</b>        | That certain Security Agreement, substantially in the form of <u>Exhibit E</u> , to be entered into by Landlord and Tenant on the Commencement Date, and any agreements, documents, financing statements, certificates and instruments entered into connection with the Security Agreement.                                                                                                          |
| <b>“Site”:</b>                      | That certain real property consisting of an approximately 40-acre parcel of land located in Madison County, Kentucky, together with the Facility and all rights and appurtenances pertaining to such property, as described on <u>Exhibit A</u> attached hereto.                                                                                                                                     |
| <b>“Transaction Documents”:</b>     | This Lease, the PSA, the Security Documents and any other agreements entered into between Landlord and Tenant (or any Affiliate of either Party) in connection with any of the foregoing.                                                                                                                                                                                                            |
| <b>“Term”:</b> ( <u>Article 1</u> ) | The period commencing on the Commencement Date and ending on the Expiration Date.                                                                                                                                                                                                                                                                                                                    |

|                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Option to Renew”:</b> <u>(Article 1)</u>    | Tenant shall have four (4) five (5) year options to renew at rent calculated in accordance with <u>Section 1.4</u> hereof.                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>“Base Rent”:</b> <u>(Article 2)</u>          | Beginning on the Commencement Date until the second (2nd) anniversary of the Commencement Date, a monthly amount equal to \$793,975.20.                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>“Lease Rate”:</b> <u>(Article 2)</u>         | 7.5% annual rate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>“Net Lease”:</b>                             | Landlord and Tenant acknowledge and agree that this is an “absolute triple net lease” and that Landlord shall receive the Base Rent during the Term, free from all charges, assessments, impositions, expenses and deductions of any and every kind or nature whatsoever relating to the Leased Property. Landlord shall have no obligations relating to the repair, maintenance or operation of the Leased Property, or any part thereof. Tenant shall be solely responsible for same.                                      |
| <b>“Prepaid Rent”:</b> <u>(Article 2)</u>       | An amount equal to \$19,055,404.88.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>“Permitted Use”:</b> <u>(Article 3)</u>      | The Leased Property shall be used in compliance with the Standards (as defined herein) and solely for the purposes of the operation and maintenance of a controlled environmental agriculture facility to produce and sell crops or other plant material (and associated and ancillary products) produced at the Facility, and for incidental uses related thereto, and for no other use or purpose, in each such case, to the extent Tenant remains in compliance with current zoning for the Site and all Applicable Laws. |
| <b>“Address of Tenant”:</b> <u>(Article 10)</u> | AppHarvest Berea Farm, LLC<br>500 Appalachian Way<br>Morehead, KY 40351<br>Attention: Jonathan Webb, CEO and Loren Eggleton, CFO<br>E-mail: [***]<br><br>With a copy to:<br><br>Cooley LLP<br>11951 Freedom Drive, Suite 1400<br>Reston, VA 20190<br>Attention: John G. Lavoie<br>E-mail: [***]                                                                                                                                                                                                                              |

**“Address of Landlord”:** (Article 10)

c/o Mastronardi Produce – USA, Inc.  
28700 Plymouth Road  
Livonia, Michigan 48150  
Attention: David Einsteadig, SVP and General Counsel  
E-mail: [\*\*\*]

and:

c/o Mastronardi Produce Limited  
2100 Road 4 East  
Kingsville, ON N9Y 2E5 Canada  
Attention: Richard Ball, CFO  
E-mail: [\*\*\*]

With a copy to:

Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, New York 10017  
Attention: Leonard Kreynin and Brian D. Hirsch  
E-mail: [\*\*\*]

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## LEASE AGREEMENT

This Lease Agreement (this "**Lease**"), dated as of December 27, 2022 (the "**Commencement Date**"), is made between MASTRONARDI BEREAL LLC, a Delaware limited liability company ("**Landlord**"), and APPHARVEST BEREAL FARM, LLC, a Delaware limited liability company ("**Tenant**").

### WITNESSETH

WHEREAS, Tenant is the prior owner of the Site and Tenant (or its Affiliates) constructed the Facility thereon and Tenant is the current operator of the Facility and shall remain the operator of the Facility, subject to the terms of this Lease;

WHEREAS, pursuant to the Marketing Agreement, AppHarvest Parent granted to MPL certain exclusive marketing rights with respect to certain controlled environment agriculture facilities operated by Affiliates of AppHarvest Parent, including the Facility, and both Landlord and Tenant derive substantial benefits from the parties' compliance with the Marketing Agreement during the entire term of this Lease;

WHEREAS, in furtherance of assuring AppHarvest Parent's ability to perform its obligations under the Marketing Agreement and pursuant to the PSA, Landlord purchased and acquired, the Site, the Facility and all Leased Property from Tenant, which acquisition was conditioned on Landlord and Tenant's execution of this Lease;

WHEREAS, upon and subject to all of the terms and conditions hereof, Landlord desires to lease the Leased Property to Tenant, and Tenant desires to lease the Leased Property from Landlord; and

WHEREAS, this Lease and the Marketing Agreement constitute a single and indivisible agreement between Landlord and Tenant, and neither Landlord nor Tenant would have entered into this Lease except as a single and indivisible agreement with the Marketing Agreement, and the rental herein and the price paid by Landlord under the PSA in its acquisition of the Leased Property was based on both the mutual benefits provided under the Marketing Agreement and the valuation of the Leased Property.

NOW, THEREFORE, for and in consideration of the premises hereof, the sums of money to be paid hereunder, and the mutual and reciprocal obligations undertaken herein, the parties hereto do hereby incorporate the above recitals and further covenant, stipulate and agree as follows:

### ARTICLE 1 LEASE OF SITE; TERM

1.1 Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Property for the Term. Landlord and Tenant acknowledge that Tenant is in possession of the Leased Property as of the Commencement Date and accepts the Leased Property in its "as is" condition with all faults. All of the terms and covenants of this Lease shall be effective as of the Commencement Date. Concurrent with Tenant's execution of this Lease, Tenant and Landlord shall execute, acknowledge and deliver a written agreement in the form attached hereto as Exhibit

D memorializing the Commencement Date, the Expiration Date, the original Term, and the commencement and termination dates of the Extension Periods if such are exercised.

1.2 As Is; No Representations. Tenant's lease of the Leased Property is on an "**AS IS WHERE IS, WITH ALL FAULTS**" basis. Tenant is the immediate past owner of the Leased Property and, therefore, Tenant's familiarity and knowledge of the condition of the Leased Property is vastly superior to that of Landlord. Landlord (nor any Affiliate or agent thereof) has not investigated and has not made any representation or warranty to Tenant whatsoever regarding (a) the condition or suitability of the Leased Property for the conduct of Tenant's business (including, without limitation, any utilities serving the Facility, any structural components of the improvements or the condition of any Facility system), (b) the restrictions that may affect the conduct of Tenant's business in, or Tenant's use of, the Site or the Facility, or any other rights or benefits under this Lease, (c) the suitability of the Leased Property for Tenant's intended Permitted Use, or (d) compliance with Environmental Laws at the Site and the Facility or any environmental conditions at, or Hazardous Materials on, under, above, emanating to or from, or having emanated to or from, the Site or the Facility. TENANT EXPRESSLY WAIVES ANY WARRANTY OF CONDITION OR OF HABITABILITY OR SUITABILITY FOR OCCUPANCY, USE, HABITATION, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, EXPRESS OR IMPLIED, RELATING TO THE LEASED PROPERTY. Tenant assumes full responsibility for all costs and expenses required to cause the Leased Property to comply with all Applicable Laws. Tenant warrants and represents as of the Commencement Date that Tenant has examined and approved all things concerning the Leased Property which Tenant deems material to Tenant's leasing and use of the Leased Property, and further acknowledges that Tenant shall be solely responsible for any and all actions, repairs, permits, approvals (including, but not limited to, Project Governmental Approvals) and costs required for the rehabilitation, renovation, use, occupancy and operation of the Leased Property in accordance with the terms of this Lease. "**Applicable Laws**" means all applicable present and future federal, state, municipal and local laws, codes, ordinances, rules and regulations of governmental authorities, committees, associations, or other regulatory committees, agencies or governing bodies having jurisdiction over the Leased Property or any portion thereof, Landlord or Tenant, including both statutory and common law and Environmental Laws. "**Environmental Laws**" means any applicable present and future federal, state and local laws, statutes, ordinances, rules, and regulations, as well as common law, relating to protection of human health, natural resources or the environment or governing the use, transport, or disposal of biological, bio-hazardous wastes, or radiological elements. The term "Environmental Laws" includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; Clean Air Act, 42 U.S.C. §§ 7401 et seq.; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 et seq.; Occupational Safety and Health Act, 29 U.S.C. §§ 65 et seq., and all other applicable federal, state and local laws, regulations, ordinances, rules, and orders that are equivalent or similar to the laws recited above, or otherwise relate to human health, natural resources or the environment, in each case together with their implementing regulations, guidelines, rules, or orders, and all state, regional, county,

municipal, and other local laws, regulations, ordinances, rules, and orders that are equivalent or similar to the federal and state laws recited above.

1.3 Holdover. If Tenant retains possession of any portion of the Leased Property after the Termination Date (as hereinafter defined) without Landlord's written consent, then Landlord shall be entitled to exercise all remedies that may be available under this Lease or at law or in equity, and Tenant shall (a) be a tenant at sufferance only, (b) be liable to perform all of the obligations of Tenant set forth in this Lease, and (c) (i) for the first ninety (90) days following the Termination Date, pay Base Rent at a rate of one hundred twenty-five percent (125%) of the monthly Base Rent in effect immediately prior to the Termination Date, and (ii) for each month thereafter, pay Base Rent at a rate of one hundred fifty percent (150%) of the monthly Base Rent in effect immediately prior to the Termination Date, prorated on a daily basis. If Tenant retains possession of any portion of the Leased Property for more than thirty (30) days following the Termination Date without Landlord's written consent, Tenant shall also pay to Landlord all damages, direct, consequential, or indirect sustained by Landlord or any Affiliate by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable. "**Termination Date**" means the date on which this Lease terminates for any reason, including the Expiration Date. The provisions of this Section 1.3 shall not operate as a waiver by Landlord of any right of re-entry provided in this Lease.

1.4 Extension Option.

1.4.1 Exercise of Extension Option. Tenant shall have four (4) successive options (each, an "**Extension Option**") to extend the Term of this Lease for a period of five (5) years each (each, an "**Extension Period**"), on the same terms and conditions in effect under this Lease immediately prior to the Extension Period, except that Base Rent shall be determined as set forth below and Tenant shall have no further right to extend the Term of this Lease after the end of the fourth (4th) Extension Period. If Tenant exercises an Extension Option, such extension shall apply to the entire Leased Property, and as a condition thereto, Tenant shall agree to extend the term of the Marketing Agreement for the entirety of the applicable Extension Period. Tenant may exercise an Extension Option only by giving Landlord irrevocable and unconditional written notice thereof (the "**Extension Notice**") not earlier than thirty-six (36) months and not later than eighteen (18) months prior to the commencement date of each applicable Extension Period and such Extension Period shall commence on the day immediately succeeding the expiration date of the preceding Term or the preceding Extension Period, as the case may be, and shall end at midnight Eastern Time on the last day of the applicable Extension Period. Such exercise shall, at Landlord's election, be null and void if any Event of Default shall have occurred and is continuing at the date of such notice or on the last day of the then-applicable Term. Except as provided in the foregoing sentence, upon delivery of the Extension Notice, Tenant shall be irrevocably bound to lease the Leased Property for the Extension Period. If Tenant shall fail to timely exercise the Extension Option in accordance with the provisions of this Section 1.4, or shall not be entitled to pursuant to the terms hereof, then the Extension Option (and all remaining Extension Options) shall terminate, and shall be null and void and of no further force and effect. If this Lease or Tenant's right to possession of the Leased Property shall terminate in any manner whatsoever before Tenant shall exercise the Extension Option, then immediately upon such termination the Extension Option shall simultaneously terminate and become null and void. Time is of the essence with regard to this Section 1.4.



1.4.2 Extension Period Base Rent Determination. The Base Rent starting on the commencement of each Extension Period and continuing for twelve (12) months thereafter will be equal to the greater of (i) the Base Rent rate for the last month of the immediately preceding portion of the Term, or (ii) an amount equal to one hundred percent (100%) of the Base Rent rate payable during the first month of the Initial Term, as increased by the percentage increase, if any, shown by the Consumer Price Index for All Urban Consumers for the South Region, All Items (base years 1982-1984 = 100) (the "**Index**") from the Commencement Date to the commencement of the applicable Extension Period. If such index is discontinued, CPI shall then mean the most nearly comparable index published by the Bureau of Labor Statistics or other official agency of the United States Government as determined by Landlord in its reasonable discretion.

1.5 General. Notwithstanding any provision of this Section to the contrary, the Extension Options shall be void, at Landlord's election, if (i) Tenant is in default hereunder, after any applicable notice and cure periods have expired, at the time Tenant elects to extend the Term or at the time the Term would expire but for such extension, (ii) the Marketing Agreement shall no longer be in full force and effect at the date of such notice or at the time the Term would expire but for such extension, or (iii) any Transfer has occurred under Article 5 of this Lease (other than a Permitted Transfer or a sublease(s) comprising less than twenty-five percent (25%) of the Facility to which Landlord has consented in accordance with Article 5 of this Lease).

1.6 Single Agreement.

1.6.1 The Parties acknowledge and agree that they have executed and delivered this Lease with the understanding that this Lease and the Marketing Agreement, and all other documents and agreements contemplated thereby (including the Transaction Documents), collectively form a single integrated agreement and transaction. Each of this Lease and the Marketing Agreement represent essential, necessary and interdependent components of a single transaction, and the economic and other terms under the Marketing Agreement and this Lease are part of the economic and other consideration given by both Landlord and Tenant under and in connection with this Lease and Marketing Agreement. All agreements comprising this single transaction are integrated and nonseverable for all purposes at law and in equity, including under Bankruptcy Laws (as hereinafter defined), and any breach of any one of such agreements shall be deemed a breach under all agreements governing this transaction, and shall constitute an Event of Default pursuant to Section 8.1(i) hereof. Tenant acknowledges that (i) Landlord would not enter into this Lease or the other Transaction Documents but for the economic and other benefits contemplated by the Marketing Agreement and (ii) the pricing and other terms set forth in this Lease and the other Transaction Documents would not be available if Tenant did not agree to performance under, and the continued effectiveness of, the Marketing Agreement, which is a condition to the grant of the leasehold to Tenant under this Lease and to Landlord's obligations hereunder. The parties intend that the provisions of this Lease and the Marketing Agreement shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create a single indivisible agreement and, in particular but without limitation, that *for purposes of any assumption, rejection or assignment of this Lease under the Bankruptcy Laws, this is a single indivisible and nonseverable lease dealing with one legal and economic unit which must be assumed, rejected or assigned as a whole* with respect to all (and only all) of the Lease and the Marketing Agreement. For the avoidance of doubt, nothing herein shall be deemed to constitute consent by Landlord to any proposed assumption, rejection or assignment of this Lease or the

Marketing Agreement in any bankruptcy proceeding. For purposes of this Lease, the term “**Bankruptcy Laws**” shall mean (i) title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended or replaced), or (ii) any other liquidation, conservatorship, bankruptcy, moratorium, arrangement, rearrangement, insolvency, dissolution, wind-up, restructuring, reorganization or similar debtor relief laws or statutes (including, for greater certainty, any laws or statutes in respect of the compromise of debts or a stay of proceedings) of the United States or any other applicable jurisdictions from time to time in effect and any successors to any of the foregoing, dealing with the relief of debtors or affecting the rights of creditors generally.

1.6.2 The Parties further acknowledge and agree that (a) this Lease is a “true lease” not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust arrangement, security arrangement or other financing or trust arrangement; and (b) none of the agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership or joint enterprise between Tenant and Landlord, to make them joint venturers, to make Tenant an Affiliate, agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for the debts, obligations, or losses of Tenant.

## **ARTICLE 2 RENT**

### **2.1 Base Rent and Additional Rent.**

2.1.1 Tenant shall pay to Landlord, without notice or demand and without deduction or set-off of any amount for any reason whatsoever, the annual Base Rent in advance, in equal monthly payments on or before the first day of each full calendar month during the Term. Base Rent as well as any other amounts payable by Tenant to Landlord under the terms of this Lease shall be paid by wire or electronic transfer of funds pursuant to directions provided to Tenant by Landlord.

2.1.2 If the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord on the Commencement Date the prorated Base Rent for the period from the Commencement Date until the end of the calendar month in which the Commencement Date occurs. Base Rent due for any partial calendar month at the end of the Term shall also be prorated and paid on the first day of such calendar month. Tenant shall pay to Landlord all items of Rent (as defined below), without deduction or offset and without notice or demand (except as specifically provided in this Lease in respect of Additional Rent (as defined below)), and Tenant shall deliver such payments to the payment address set forth in the Basic Lease Information, or to such other person, at such other place, or in such other manner as Landlord may designate by giving to Tenant Notice (as defined below) thereof. “**Additional Rent**” means all other amounts payable by Tenant to Landlord in accordance with this Lease, other than Base Rent. “**Rent**” means all amounts payable by Tenant to Landlord in accordance with this Lease, including, but not limited to Base Rent and Additional Rent.



### 2.1.3 Base Rent Increases.

(a) On each of the second (2nd), third (3rd), and fourth (4th) anniversaries of the Commencement Date, the Base Rent shall increase by two and one half percent (2.5%).

(b) On the fifth (5th) anniversary of the Commencement Date, the Base Rent shall increase to the greater of (i) one hundred two and one half percent (102.5%) of the Base Rent rate for the last month of the immediately preceding portion of the Term, or (ii) an amount equal to the product of (1) the percentage increase, if any, between the Index for the month immediately preceding such fifth (5th) anniversary of the Commencement Date and the Index for the first month of the Initial Term and (2) the Base Rent rate for the first month of the Initial Term, provided that such percentage increase shall not exceed twenty percent (20%). Landlord's failure to make the required calculations promptly shall not be considered a waiver of Landlord's rights to adjust the monthly Base Rent due, nor shall it affect Tenant's obligations to pay the increased Base Rent, subject to this Section 2.1.3(b). If the Index is changed so that the base year differs from that in effect on the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, the government index or computation with which it is replaced shall be used to obtain substantially the same result as if the Index had not been discontinued or revised.

(c) On each of the sixth (6th), seventh (7th), eighth (8th) and ninth (9th) anniversaries of the Commencement Date, the Base Rent shall increase by two and one half percent (2.5%) over the Base Rent in the immediately preceding month.

(d) On each anniversary of the commencement of any Extension Period, the Base Rent payable during such Extension Period (as calculated in accordance with Section 1.4 hereof) shall increase by two and one half percent (2.5%).

### 2.1.4 Rent Payment; Prepaid Rent.

(a) Rent and all other amounts becoming due from Tenant to Landlord under this Lease will be made in United States Dollars by ACH or wire transfer of immediately available funds prior to 5:00 p.m. Eastern Prevailing Time, on the date due in accordance with the terms hereof to the account specified in writing by Landlord from time to time. If Tenant fails to make any payment of Rent or any other sums or amounts to be paid by Tenant hereunder within five (5) days after the date such payment is due and payable, Tenant shall pay to Landlord an administrative late charge of three percent (3%) of the amount of such payment. In addition, any past due payment shall bear interest from the date such payment became due to the date of payment thereof by Tenant at a rate which is equal to the lesser of (i) ten percent (10%) per annum, or (ii) the maximum interest rate then allowable under Applicable Law. Such late charge and interest shall constitute Additional Rent and shall be due and payable with the next installment of Rent due hereunder.

(b) Upon Tenant's execution of this Lease, Tenant will pay and deliver to Landlord the Prepaid Rent set forth in the Basic Lease Information, which Landlord shall apply to the first twenty-four (24) months' Base Rent due and payable pursuant to the terms hereof. The Prepaid Rent is fully earned on receipt and is not refundable under any circumstances including, without limitation, upon (w) termination of the Lease following an Event of Default, (x) rejection of the Lease under Section 365 of the Bankruptcy Laws, (y) destruction of the Site or the Facility or any damage to either which impairs use, or (z) termination or frustration of the covenant of quiet enjoyment granted to the Tenant (other than by the willful or intentional act of Landlord). Moreover, Tenant acknowledges and agrees that (i) the Prepaid Rent does not constitute a "security deposit", and (ii) Landlord has no duty to sequester or hold the Prepaid Rent in trust and has the right to exercise unfettered dominion and control over the Prepaid Rent as its own property in which Tenant has no present or contingent interest of any type or nature (and therefore the Prepaid Rent shall not be considered property of the Tenant's estate in any bankruptcy case involving the Tenant).

**2.1.5 Marketing Agreement Rent Credit.**

(a) So long as no Event of Default is then continuing (including, but not limited to, Tenant's continued compliance with Section 3.7 hereof), Tenant shall be entitled to a credit to apply against the Rent due hereunder (such amount, the "**Rent Credit**") computed and applied in accordance with this Section 2.1.5 in an amount equal to twenty-five percent (25%) of the marketing fees received by MPL under the Marketing Agreement prior to the third (3rd) anniversary of the Commencement Date, with respect to Products (as defined in the Marketing Agreement) grown and/or otherwise produced at those certain vine crop facilities that are as of the Commencement Date owned by AppHarvest Parent (or Affiliates thereof) located in Morehead, KY, Richmond, KY, and Somerset, KY (each as more particularly described in the Marketing Agreement and as set forth on Schedule 2.1.5), as reduced by any and all costs incurred by MPL (or an Affiliate) in connection with the sale and distribution of the Products in accordance with the terms thereof. For clarity, the Rent Credit (i) only applies to the applicable percentage of marketing fees received for the facilities identified in Schedule 2.1.5 and does not include any other facilities or any non-vine crop facilities, including the Facility located upon the Site, and (ii) shall automatically terminate and become null and void upon the occurrence of any Transfer (including, but not limited to, a Transfer to a Permitted Transferee or otherwise permitted by the terms of Article 5).

(b) The Rent Credit shall be applied as follows: (i) between the second (2nd) and third (3rd) anniversaries of the Commencement Date, an amount equal to one twelfth (1/12th) of the total Rent Credit calculated between the Commencement Date and the second (2nd) anniversary of the Commencement Date shall be credited against each monthly Base Rent then-due hereunder; and (ii) between the third (3rd) and fourth (4th) anniversaries of the Commencement Date, an amount equal to one twelfth (1/12th) of the total Rent Credit calculated between the second (2nd) and third (3rd) anniversaries of the Commencement Date shall be credited against each monthly Base Rent then-due hereunder.

## 2.2 Expenses; Taxes.

2.2.1 Expenses. Tenant shall perform all obligations with respect to the maintenance, operation, repair and replacement of the Leased Property and shall pay directly for all costs and expenses incurred in connection therewith, including, but not limited to: all insurance, maintenance, repair and replacement of any improvements (including, without limitation, the Facility, the structural and nonstructural components of the Facility, the Facility systems, equipment (owned and maintained), the foundation, roof, walls, heating, ventilation, air conditioning, plumbing, electrical, mechanical, utility, irrigation, hydroponic, stormwater, wastewater, greenhouse (owned and maintained) and safety systems, paving and parking areas, roads and driveways); maintenance of exterior areas such as gardening and landscaping, stormwater, wastewater, basin, snow removal and signage; maintenance and repair of roof membrane, flashings, gutters, downspouts, roof drains, and waterproofing; painting; lighting; cleaning; refuse removal; security; utilities for, or the maintenance of, outside areas; Facility personnel costs; rentals or lease payments paid by Tenant for rented or leased personal property used in the operation or maintenance of the Facility or the Site; and fees for required licenses and permits, including in order to operate for the Permitted Use (including, but not limited to, all Project Documents and Project Governmental Approvals).

2.2.2 Taxes. Subject to Tenant's right to contest Taxes as set forth below, Tenant will pay directly to the appropriate taxing authorities all Taxes allocable to the Term in a timely manner and prior to when the same shall become due and payable. Landlord and Tenant shall cooperate to place all Taxes in the name of Tenant, however, if and to the extent any Taxes are billed to Landlord, then Tenant shall pay the same upon receipt of such bill from Landlord and provide Landlord with evidence of such payment promptly thereafter. In any event, Tenant shall pay all Taxes to the appropriate taxing authorities prior to the date due. "**Taxes**" means all real property taxes and other assessments on the Facility or the Site, including, but not limited to, real estate taxes, personal property taxes, transfer taxes, documentary stamps or taxes, fees, assessments and other charges of any kind or nature, whether general, special, ordinary, or extraordinary (without regard to any different fiscal year used by such governmental authority) that are levied in respect of this Lease or the Leased Property (or Landlord's interest therein), or in respect of any improvement, fixture, equipment, or other property of Landlord, real or personal, located at the Site, and used in connection with operation of the Site or the Facility. Taxes shall not include (i) Landlord's corporate franchise taxes, estate taxes, inheritance taxes or net income taxes, or (ii) transfer taxes or other taxes incurred in connection with Landlord's sale or lease of the Leased Property or any interest therein. Tenant shall furnish to Landlord, within thirty (30) days after the last day when any Tax must be paid by Tenant as provided in this Section 2.2.2, official receipt of the appropriate taxing authority or other proof satisfactory to Landlord, evidencing the payment thereof. Tenant shall have the right, at Tenant's sole cost and upon reasonable prior notice to Landlord, to initiate and prosecute (1) any proceeding for the purpose of contesting the assessed valuation of the Leased Property or any personal property for tax purposes in good faith, or (2) applications for Tax exemptions, discounts, or abatements pursuant to any governmental incentive program with respect to the Leased Property or any personal property in good faith; provided, that this right shall not be deemed or construed to relieve, modify or extend Tenant's obligation to pay any Taxes allocable to the Term in a timely manner and prior to when the same shall become due and payable and that prior to any contest pursuant to clause (1) above, Tenant (a) pays the Tax under protest, (b) obtains and maintains a stay of all proceedings for

enforcement and collection by posting a bond or other security required by Applicable Law, or (c) if Tenant lawfully withholds payments of any contested amounts of Taxes during the contest, Tenant has or establishes unrestricted cash reserves to be held by Landlord in an amount equal to 125% of (x) the amount of Tenant's obligations being contested plus (y) any additional interest, charge or penalty arising from such contest; provided, however, that Landlord shall (1) promptly release such reserve upon resolution of such contest, and/or (2) use such reserve to pay Taxes directly to the applicable taxing authority following resolution of such contest. Tenant shall provide Landlord with all notices received or sent to the taxing authorities, as well as regular updates relating to any such contest and/or application and afford Landlord an opportunity to participate in all such proceedings. Tenant shall indemnify and defend Landlord and save Landlord harmless from all losses, judgments, costs (including without limitation, attorneys' fees), liabilities and expenses incurred in connection with such proceedings and shall, promptly after the final determination of such contest and/or application, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, costs and expenses thereof or in connection therewith). Landlord shall have the right to (a) apply for Tax exemptions, discounts, or abatements pursuant to any governmental incentive program with respect to the Leased Property or any personal property in good faith, (b) contest or dispute any Taxes (or file an appeal related thereto), without Tenant's prior written consent, at Landlord's sole cost and expense, or (c) request that Tenant contest or dispute such Taxes (or file an appeal related thereto), in which event, Tenant, in Tenant's sole discretion, may agree to contest or dispute such Taxes, at Tenant's sole cost and expense. If an Event of Default occurs or if otherwise required by any Mortgagee or lender of Landlord, Landlord, at its option, may require Tenant to make monthly estimated payments to Landlord on account of Taxes. The monthly payments shall be one twelfth (1/12th) of the amount of Taxes due for the applicable year as reasonably estimated by Landlord and shall be payable as Additional Rent on or before the first day of each month during the Term, in advance; provided, that, Landlord shall have the right to revise such estimates from time to time. So long as no Event of Default is then continuing, any amounts received by Landlord pursuant to the immediately preceding sentence shall be disbursed to Tenant by Landlord for payment to the applicable taxing authority (or paid to the applicable taxing authority directly by Landlord) when directed by Tenant, accompanied by evidence of the amount due. Upon Tenant's request, Landlord shall provide Tenant with evidence of any such payments of Taxes made directly by Landlord. Tenant shall pay to Landlord, and Landlord shall collect from Tenant, all applicable sales and use taxes incurred in connection with the Lease. Tenant shall promptly provide any and all applicable exemption certificates or other evidence of exemption from sales and use taxes to Landlord. Landlord shall remit all collected sales and use taxes to the appropriate taxing authority as required by Law.

## 2.3 Net Lease.

2.3.1 Absolute Triple Net Lease. It is intended by the parties that this Lease be an absolute "triple net lease," imposing upon Tenant the obligation to pay all charges of every kind and nature in connection with the use, operation, management, maintenance, repair, and occupancy of the Leased Property, whether or not recited herein and whether foreseeable or unforeseeable, including, but not limited to, utilities, fees, costs, real estate taxes, sales and use taxes, all operation, management, maintenance, restoration, and repair costs associated with the Site, the Facility, and the improvements located thereon and costs of compliance with Environmental Laws. Tenant shall pay to Landlord, net throughout the Term, the Rent due hereunder free of any offset,



abatement, or other deduction whatsoever, without notice or demand. Except to the extent due to the gross negligence or willful misconduct of Landlord or any of Landlord's assignees, agents, servants, employees, invitees and contractors (or any of Landlord's assignees respective agents, servants, employees, invitees and contractors) (collectively, "**Landlord Parties**"; any of them, a "**Landlord Party**"), Tenant assumes the sole responsibility for the condition, use, operation, maintenance, management and compliance with Environmental Laws of the Site, and Landlord shall have no responsibility in respect thereof and shall have no liability for damage to Tenant's Personalty on any account or for any reason whatsoever. Notwithstanding the foregoing, except as expressly set forth in this Lease, Tenant shall not be required to pay, or reimburse Landlord for: (i) depreciation charges, penalties, premiums, interest and principal payments on mortgages and other debt costs, ground rental payments and real estate brokerage and leasing commissions incurred by Landlord; (ii) costs incurred for Landlord's general overhead and any property or asset management fee other than as expressly set forth in this Lease; (iii) costs of selling or financing any of Landlord's interest in the Leased Property; and (iv) costs incurred by Landlord which are reimbursed by property insurance proceeds actually received by Landlord where such proceeds result from a claim subject to the provisions of Section 6.2 below.

**2.3.2 Payments to Third Parties.** Landlord and Tenant recognize that there may be recurring payments to third parties, including governmental entities, for various items including inspections of storm water retention areas and pump stations, fees for storm water runoff, water rights, assessments for maintenance and repairs under Title Instruments (as defined below), and obligations under Project Documents or Project Governmental Approvals. Tenant is solely responsible for paying any and all fees or expenses imposed by third parties or governmental entities, including those that may be required to obtain, modify and maintain compliance with any permits, licenses and approvals required by Applicable Laws, including for the use of and operation at the Leased Property for the Permitted Use, or allocated to the Site or the Facility under any Title Instruments, Project Documents and Project Governmental Approvals). Tenant acknowledges that matters of the type contemplated by this Section may not be known to Landlord.

**2.3.3 Title Instruments.** In addition to the foregoing, during the term of this Lease, Tenant shall timely perform all obligations of the owner of the Site and the Facility under, and pay all expenses which the owner of the Site and the Facility may be required to pay in accordance with any declarations, covenants, conditions and restrictions or reciprocal easement agreements or any other documents or instruments that are of record now and affect the Site (or of record in the future if created or filed by or with the consent of Tenant) (referred to collectively herein as the "**Title Instruments**") and shall furnish Landlord evidence of payment thereof; provided, however, Tenant need not pay any debt service on loans that encumber the fee estate and that do not encumber Tenant's leasehold estate and Tenant need not pay any rent on any lease that is senior in priority to this Lease. Tenant promptly shall comply with all of the terms and provisions of all Title Instruments, including all insurance requirements, regardless of whether any such requirements exceed the requirements otherwise set forth in this Lease. Notwithstanding the foregoing, Landlord shall not enter into new Title Instruments or modify existing Title Instruments during the Term without Tenant's prior written consent, which may be withheld in Tenant's reasonable discretion; provided, however, that Tenant's prior written consent shall not be required with respect to (i) any financing obtained by Landlord secured by Landlord's interest in the Leased Property (or any Title Instruments reasonably necessary in connection therewith; provided that such Title Instruments entered into or modified without Tenant's prior consent shall not materially

increase Tenant's obligations or liabilities hereunder or adversely affect Tenant's rights arising under this Lease in any material respect), (ii) Title Instruments necessary to effectuate transfers to third-party purchasers of the Leased Property, or (iii) any new Title Instruments or the modification of existing Title Instruments that do not (x) materially and adversely affect Tenant's use or occupancy of the Leased Property or (y) impose any fees or costs that would be payable by Tenant unless Landlord agrees to pay such fees.

### ARTICLE 3 COVENANTS

3.1 Use and Operating Standards. Tenant shall use the Leased Property solely for the Permitted Use, in a manner consistent with similar controlled environment agriculture facilities, in compliance with the Standards. Tenant shall be solely responsible for the securing, modifying, maintaining, and compliance with any and all permits, licenses, and approvals required or that may be required or otherwise in effect for the Permitted Use (including, but not limited to, all Project Governmental Approvals) and under Environmental Laws in connection with Tenant's use and operation of the Leased Property. Tenant shall not commit, or allow to commit, any waste of or injury to the Leased Property or create, maintain or exacerbate any nuisance thereon or therefrom. Landlord agrees to reasonably cooperate with Tenant, at Tenant's sole cost and expense, in obtaining any permits, licenses and approvals required by Applicable Laws for the use of and operation at the Leased Property by Tenant for the Permitted Use, including, without limitation, by executing or joining in the execution of such applications and other documentation (the form and content of which shall be subject to Landlord's reasonable approval) in Landlord's name, solely as and because Landlord is the fee simple owner of the Leased Property, as may be necessary for obtaining such permits, licenses and approvals, all without cost or liability to Landlord. Tenant shall operate in a commercially reasonable manner and shall not exceed the density limit for the Facility under Applicable Laws. Tenant shall not commit waste or cause a public nuisance. For purposes of this Lease, "**Standards**" means (a) all Applicable Laws (as defined hereinafter); (b) Project Governmental Approvals; (c) this Lease and the other Transaction Documents; (d) the Project Documents; (e) the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970, as amended from time to time; (f) any effective warranties and guarantees relating to the Facility or any component thereof provided by any vendor, materialman, manufacturer, supplier, contractor, subcontractor, or other third party; (g) any written manufacturer's instructions, guidelines, or recommendations applicable to the Facility or any component thereof; (h) the requirements necessary to maintain the insurance policies required pursuant to Section 6.2 hereof; and (i) Prudent Industry Practices (including those related to food safety). For purposes of this Lease, "**Prudent Industry Practices**" means those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy, engaged in or approved by members of the controlled environment agriculture industry in North America for facilities of comparable size to the Facility, during the relevant time period, and shall include, at a minimum, those practices, methods, and acts necessary to comply with the Project Documents and the requirements of governmental authorities and Applicable Law. Prudent Industry Practices are not intended to require the optimum practice, method or act to the exclusion of all others, but rather to include the practices, methods, standards of care, skill, safety procedures and diligence generally accepted in the industry.

3.2 Compliance with Applicable Laws. Tenant shall comply with all Applicable Laws and any agreements between Tenant and third parties with respect to the Leased Property and Tenant's operation at the Facility and the Site. It is intended that the Tenant bear the sole risk of all present or future Applicable Laws, regulations and orders affecting the Leased Property, and the Landlord shall not be liable for their enforcement. Should there be any material noncompliance or alleged material noncompliance by Tenant with Applicable Laws or agreements between Tenant and third parties with respect to the Leased Property and Tenant's operation at the Facility and the Site, Tenant shall promptly notify Landlord in writing of such actual or alleged noncompliance, which notice shall include (i) documentation that such actual or alleged noncompliance has been fully addressed and eliminated or, (ii) if such actual or alleged noncompliance has not been fully addressed and eliminated, a schedule to fully and expeditiously address and eliminate such actual or alleged noncompliance. The giving of such notice shall not relieve Tenant of any liability to Landlord or others for such actual or alleged noncompliance. To ensure Tenant's compliance with Applicable Laws and Tenant's performance of Tenant's management, repair, maintenance, and compliance obligations hereunder, upon reasonable notice to Tenant and subject to and in accordance with Applicable Laws and reasonable confidentiality requirements pertaining to Tenant's operations (provided such requirements do not impair or delay Landlord's rights under this Section), Landlord may inspect or cause noninvasive independent third-party inspections of the facility and Tenant's operation to confirm compliance with Applicable Laws and Tenant's management, repair, maintenance, and compliance obligations hereunder, at Landlord's expense, except as otherwise provided in Section 3.3.6.

3.3 Hazardous Materials.

3.3.1 Tenant, and any of Tenant's assignees, sublessees, licensees, agents, servants, employees, invitees and contractors (or any of Tenant's assignees, sublessees and/or licensees respective agents, servants, employees, invitees and contractors) (collectively, "**Tenant Parties**"; any of them, a "**Tenant Party**") (a) shall not, and shall not permit at any time, the handling, use, manufacture, release, storage, or disposal of Hazardous Materials in or about any portion of the Site or the Facility in violation of Applicable Laws, (b) shall always manage, handle, use, store, and dispose of such Hazardous Materials in a safe manner, according to the Standards, and in compliance with Applicable Laws, and (c) shall at all times have any and all required permits, licenses and approvals required for or in connection with, the use and handling of Hazardous Materials at the Site and the Facility and at all times be in compliance with such required permits, licenses and approvals. "**Hazardous Materials**" means (a) any and all substances (whether solid, liquid or gas) defined, listed or otherwise classified or regulated as "biological compounds," "bio-hazardous wastes," "radiological elements," "hazardous wastes," "hazardous materials," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," "toxic pollutants," "solid wastes," or other similar designations in, or otherwise subject to regulation under Environmental Laws, and (b) any other substances, constituents or wastes that are deemed to have a negative impact on human health or the environment, whether or not naturally occurring, or that are subject to Environmental Law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D) waste aviation or motor vehicle fuel and their byproducts, (E) asbestos, (F) lead in water, paint or elsewhere, (G) radon, (H) Polychlorinated Biphenyls (PCBs), (I) urea formaldehyde, (J) volatile organic compounds (VOC), (K) total petroleum hydrocarbons (TPH), (L) benzene derivative (BTEX), (M) poly- and perfluoroalkyl substances and other emerging

contaminants, and (N) petroleum byproducts. Hazardous Materials further includes flammables, explosives, corrosive materials, radioactive materials, materials capable of emitting toxic fumes, hazardous wastes, toxic wastes or materials, and other similar substances, petroleum products and derivatives, and any substance subject to regulation by or under any Environmental Law. As between Landlord and Tenant, Tenant is deemed to be the operator of the Site and the Facility, the generator of any Hazardous Materials waste present at or generated at the Site or the Facility or as part of Tenant's operations, and the owner of all Hazardous Materials at the Site and the Facility at any and all times during the Term. On or before the expiration or earlier termination of this Lease, Tenant shall remove from the Site and the Facility all Hazardous Materials introduced to the Site and the Facility by Tenant, any other Party or any other party other than Landlord during the Term of the Lease, regardless of whether such Hazardous Materials are present at the Site and the Facility in concentrations which require removal under Applicable Laws. As used herein, the term "**Contamination**" means the presence of Hazardous Materials in the air, soil, surface and/or ground water in, on or under the Site, the Facility, and/or any adjacent property at levels above those permitted by applicable Environmental Laws.

Landlord acknowledges that it is not the intent of this Section 3.3 to prohibit Tenant from using the Leased Property for the Permitted Use. Tenant may operate its business according to the Standards so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all then applicable Environmental Laws, all Hazardous Materials at the Site and the Facility are used in the operation of Tenant's business, and such use is consistent with similar facilities engaged in the Permitted Use in the Commonwealth of Kentucky. Notwithstanding the foregoing, Tenant shall have no right to install any underground storage tanks at the Site or the Facility unless Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion.

3.3.2 Upon Landlord's request (not more than twice per year, unless Landlord has a reasonable belief that Tenant is not in compliance with this Section 3.3, a release or threatened release of Hazardous Materials has occurred, or in connection with a sale, financing, refinancing, or recapitalization of Landlord's interest in the Leased Property), Tenant shall deliver to Landlord true and correct copies of the following documents (the "**Haz Mat Documents**") relating to the Tenant's use, storage, handling, treatment, generation, release or disposal of Hazardous Materials, or if unavailable at that time, concurrent with the receipt from or submission to a governmental authority: permits; licenses, approvals; reports and correspondence; storage and management plans; notice of violations of any Applicable Laws; fire safety plans; spill response plans; plans relating to the installation of any storage tanks to be installed in or under the Site or the Facility (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion with respect to underground storage tanks); all closure plans or any other documents required by any and all governmental authorities for any storage tanks installed in, on or under the Site or the Facility for the closure of any such tanks; and a Surrender Plan (to the extent surrender in accordance with Section 3.3.7 cannot be accomplished in three (3) months). Tenant is not required, however, to provide Landlord with any portion(s) of the Haz Mat Documents containing proprietary information of a proprietary nature that, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities. It is not the intent of this Section to provide Landlord with information that could be detrimental to Tenant's business should such information become possessed by Tenant's competitors.



3.3.3 Except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord Parties, Tenant releases Landlord and Landlord Parties from and agrees to indemnify, defend and hold Landlord and Landlord Parties harmless for, from and against any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages and damages based upon diminution in value of the Leased Property, or the loss of, or restriction on, use of the Leased Property), expenses (including, without limitation, legal, consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or Contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses (i) that arise prior to, during, or after the Term, as a result of the presence, suspected presence, release, or suspected release of any Hazardous Materials in or into the environment, including the air, soil, surface water, or groundwater at, on, about, under, emanating to or from, having emanated to or from, or within the Site or the Facility, or any portion thereof caused or exacerbated by, or otherwise attributable to, Tenant or any other party (other than Landlord or Landlord Parties) prior to the date that Tenant vacates the Site and the Facility in the condition required following the termination or earlier expiration of the Term, or (ii) that arise prior to, during, or after the Term, as a result of the breach by Tenant of any of its obligations under this Section 3.3, including in each case, without limitation, the cost of assessment, containment and/or removal of any such Hazardous Materials, the reasonable and necessary cost of any actions taken in response to a release of any such Hazardous Materials so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with all or any portion of the Site and the Facility or the operation thereof (or any surrounding areas for which Tenant or Landlord has any legal liability or obligation) during the Term.

3.3.4 EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, LANDLORD LEASES AND WILL LEASE, AND TENANT TAKES AND WILL TAKE, THE SITE AND THE FACILITY IN AN ENVIRONMENTALLY "AS IS" CONDITION, AND TENANT ACKNOWLEDGES THAT LANDLORD HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE ENVIRONMENTAL CONDITION OF THE SITE AND THE FACILITY, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO FITNESS OF THE SITE AND THE FACILITY FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS, LATENT OR PATENT, ANY ENVIRONMENTAL CONDITION, KNOWN OR UNKNOWN, OR ANY AIR, SOIL, SOIL GAS, OR GROUNDWATER CONDITION, IT BEING AGREED THAT ALL RISKS AND LIABILITY INCIDENT TO ANY OF THE FOREGOING ARE TO BE BORNE BY TENANT.

3.3.5 Tenant hereby represents and warrants to Landlord that (i) neither Tenant nor any of its legal predecessors has been required by any prior landlord, lender or governmental authority at any time to take remedial action in connection with Hazardous Materials contaminating the natural environment, which contamination was caused or permitted by Tenant or such predecessor or resulted from Tenant's or such predecessor's acts, omissions, or use or

occupation of the property in question, and (ii) Tenant is not subject to any enforcement order issued, or regulatory proceedings or prosecution commenced, by any governmental authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any governmental authority).

3.3.6 Upon prior notice and using reasonable efforts to coordinate with Tenant, Landlord shall have the right but not the obligation to conduct annual tests (or at any time Landlord has a reasonable belief that Tenant is not in compliance with this Section 3.3) of the Site and the Facility including, without limitation, intrusive tests of the subsurface soil and/or ground water, to determine whether any Contamination of the Site or the Facility has occurred as a result of Tenant's use or occupation. Landlord shall pay the cost of such test of the Site or the Facility; provided, however, that if such tests show any Contamination of the Site or the Facility has occurred as a result of Tenant's use or occupation, Tenant shall pay the cost of such test. In connection with such testing, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such nonproprietary information concerning the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials in or about the Site or the Facility by Tenant or any Tenant Party as Landlord may reasonably request. If Contamination has occurred for which Tenant is liable under this Section 3.3, Tenant shall pay all costs to conduct such tests. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate any Contamination identified by such testing in accordance with all Environmental Laws. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord may have against Tenant.

3.3.7 Furthermore, upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Site and the Facility to Landlord free of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Facility or the Site by any person other than Landlord (collectively, "**Tenant's Hazardous Materials**") and released of any license, clearance or other authorization or requirement of any kind required to enter into and restore the Site and the Facility issued by any governmental authority having jurisdiction over the use, storage, handling, treatment, generation, release, disposal, removal or remediation of Hazardous Materials in, on or about the Site and the Facility. At least three (3) months prior to the surrender of the Site and the Facility or such earlier date as Tenant may elect to cease operations at the Facility and the Site, Tenant shall deliver to Landlord a narrative description of the actions proposed (or required by any governmental authority) to be taken by Tenant in order to surrender the Facility and the Site (including any Alterations permitted by Landlord to remain in the Site or the Facility) at the expiration or earlier termination of the Term, free from any residual impact from Tenant's Hazardous Materials and otherwise released for unrestricted use and occupancy (the "**Surrender Plan**"). Such Surrender Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of any Tenant Party with respect to the Site and the Facility, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of from the Site and the Facility, and shall be subject to the review and reasonable approval of Landlord's environmental consultant. In connection with the review and approval of the Surrender Plan, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such additional nonproprietary information concerning Tenant's Hazardous Materials as Landlord shall reasonably request. On or before such surrender, Tenant shall deliver to Landlord evidence that the approved Surrender Plan shall have been satisfactorily completed and Landlord shall have the

right, subject to reimbursement at Tenant's expense as set forth below, to cause Landlord's environmental consultant to inspect the Site and the Facility and perform such additional procedures, including without limitation intrusive subsurface testing of soil and/or ground water, as may reasonably be deemed necessary to confirm that the Site and the Facility are, as of the effective date of such surrender or early termination of the Lease, free from any Tenant's Hazardous Materials. Tenant shall reimburse Landlord, as Additional Rent, for the actual out-of-pocket expense incurred by Landlord for Landlord's environmental consultant to review the Surrender Plan and to visit the Site and the Facility and verify satisfactory completion of the same, which cost shall not exceed \$5,000 (which amount shall be increased by the same percentage as the Index as of each anniversary of the Commencement Date). Landlord shall have the unrestricted right to deliver such Surrender Plan and any report by Landlord's environmental consultant with respect to the surrender of the Site and the Facility to third parties on a need-to-know basis.

3.3.8 If Tenant shall fail to prepare or submit a Surrender Plan approved by Landlord, or if Tenant shall fail to complete the approved Surrender Plan, or if such Surrender Plan, whether or not approved by Landlord, shall fail to adequately address any Tenant's Hazardous Materials in, on or about the Site or the Facility, Landlord shall have the right to take such actions as Landlord may reasonably deem appropriate to assure that the Site and the Facility are surrendered free from any Tenant's Hazardous Materials, the cost of which actions shall be reimbursed by Tenant as Additional Rent.

3.3.9 Tenant shall promptly notify Landlord upon Tenant's receipt of (i) any written correspondence or communication from any person or entity regarding any Contamination or alleged violations of Environmental Law with respect to the Site and the Facility (or Tenant's operation thereof); (ii) written notifications of Tenant's alleged noncompliance with either the Federal or State Emergency Planning and Community Right to Know Acts; (iii) any change in Tenant's operations on the Site or the Facility that will materially enlarge or has the potential to materially enlarge Tenant's obligations or liabilities under Environmental Law; and (iv) any releases or suspected releases of any and all Hazardous Materials at, from or near the Site or the Facility. Tenant's obligations under this Section 3.3 shall survive the expiration or earlier termination of the Lease. During any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the removal from the Site and the Facility of any Hazardous Materials (including, without limitation, the release and termination of any licenses or permits restricting the use of the Leased Property and the completion of the approved Surrender Plan), Tenant shall continue to pay the full Rent in accordance with this Lease for any portion of the Site or the Facility not relet by Landlord in Landlord's sole discretion, which Rent shall be prorated daily.

### 3.4 Completion of the Tenant Required Work.

3.4.1 Tenant, at its sole cost and expense, hereby agrees to promptly diligently perform and complete or cause the performance and completion of all construction and other work necessary and appropriate to complete the work described on Schedule 3.4 (each work item specified, a "**Required Work Item**" and, collectively, the "**Tenant Required Work**") and in the manner required under this Lease, as reasonably determined by Landlord. Tenant and its Affiliates shall, and shall cause its and their subcontractors and its and their personnel to, use Prudent Industry Practices in compliance with the Standards to perform and complete the Tenant Required

Work (and the Required Work Items) on or prior to the dates specified on Schedule 3.4 for completion thereof. The Tenant Required Work (and any Required Work Item) shall become part of the realty constituting the Site and the Facility, and shall belong to Landlord and shall not be removed by Tenant. The descriptions, time frames, cost estimates and other information set forth in Schedule 3.4 may be modified and adjusted based on further review by Landlord and Tenant after the Effective Date, if and to the extent mutually agreed upon by the Parties.

3.4.2 Pursuant to the terms of the PSA, the Purchase Price (as defined in the PSA) is payable in two installments with the second installment (the “**Second Installment**”) being paid by Landlord to Tenant in periodic disbursements as reimbursement for costs and expenses incurred by Tenant in the performance of any Required Work Item and the Tenant Required Work in accordance with the terms of this Section 3.4. Tenant acknowledges and agrees that no portion of the Second Installment shall be earned by Tenant in its capacity as the Seller under the PSA or be due and payable by Landlord unless and only to the extent that the Second Installment (or portion thereof) is disbursed to Tenant as provided in this Section 3.4.

3.4.3 Upon Tenant’s determination that the Tenant Required Work is completed, Tenant shall deliver a notice to Landlord certifying to Landlord that the Tenant Required Work has been completed in accordance with the terms of this Lease (the “**Completion Notice**”), which Completion Notice shall include documentation sufficient for Landlord to evaluate and verify that the Tenant Required Work has been completed in accordance with the Standards and the requirements of this Lease. Within thirty (30) days following the date on which the Completion Notice is received, Landlord shall either (i) if Landlord agrees with the Completion Notice (which agreement shall not be unreasonably withheld, conditioned or delayed), countersign and deliver to Tenant a copy of the Completion Notice confirming Landlord’s determination that the Tenant Required Work has been completed, together with delivery of payment of the remaining portion of the Second Installment to Tenant, or (ii) if reasonable cause exists for Landlord objecting to Tenant’s conclusion, deliver written notice to Tenant that the Tenant Required Work has not been completed in compliance with this Lease and, accordingly, that the conditions for payment of the remaining portion of the Second Installment have not been satisfied. Any notice by Landlord pursuant to clause (ii) above shall state in reasonable detail Landlord’s basis for such determination and, if applicable, provide documentation and other materials supporting Landlord’s conclusion. Upon Tenant’s completion of required corrective measures to address any defects noted by Landlord, such that the Tenant Required Work is completed in accordance with this Lease, Tenant shall deliver a new Completion Notice to Landlord, and the procedure set forth in the first two (2) sentences of this Section 3.4.3 shall be repeated as necessary until the Tenant Required Work is completed as required under this Lease.

3.4.4 Notwithstanding anything to the contrary provided in this Section 3.4, the Second Installment will be paid by Landlord to Tenant in periodic disbursements (but not more frequently than twice per month) as Required Work Items are completed, until the entirety of the Second Installment has been paid to Tenant, or otherwise applied to costs with respect to the Tenant Required Work, subject to and in accordance with the terms of this Section 3.4. Within thirty (30) days following the Effective Date, Landlord and Tenant will negotiate in good faith reasonable and appropriate terms and conditions for the disbursements of the Second Installment as described herein. Such reasonable terms and conditions will provide for Tenant’s submission of requests for disbursements together with relevant information and materials (including, invoices,



plans, lien waivers and estimates of remaining work for the applicable Required Work Items) as may be reasonably necessary for Landlord's review and approval of such requests in its reasonable discretion.

3.4.5 In no event shall Landlord's confirmation that the Tenant Required Work had been completed limit Tenant's obligations hereunder with respect to the Facility, including maintenance, repairs and replacements thereof, and compliance with the Standards. Tenant acknowledges and agrees that completion of the Tenant Required Work and payment of all costs and expenses therefor (including any costs and expenses in excess of the Second Installment) shall be the sole responsibility of Tenant and that Landlord shall have no obligation to either complete the Tenant Required Work or to pay any costs in connection therewith (other than for disbursements of the Second Installment to Tenant in accordance with this Section 3.4). The foregoing shall apply as between Tenant and Landlord. Notwithstanding anything to the contrary contained in this Lease or any assignment of the construction contracts under the PSA, Tenant shall have all of the rights and obligations of the "Owner" under the construction contracts and Tenant shall have the right (i) to make claims against contractors performing the Tenant Required Work, (ii) to settle all such claims and (iii) retain all damages received from contractors, subject to the terms of the applicable construction contract and any settlement agreement concerning the same, without Landlord's consent; provided that the existence or pendency of any such claims shall not toll, suspend, delay or deter the time by which Tenant must perform any of its obligations or otherwise mitigate or excuse any failure by Tenant to perform any of its obligations with respect to the Tenant Required Work.

3.4.6 Notwithstanding the foregoing, if Tenant fails to complete any Required Work Item on or prior to the date specified on Schedule 3.4 for completion thereof, as such dates may be extended with Landlord's prior consent, which shall not be unreasonably withheld, conditioned or delayed, then at Landlord's option and without any obligation to do so, upon prior notice to Tenant, Landlord may proceed to perform work on such Required Work Item and the Second Installment shall be offset on a dollar-for-dollar basis for any actual and reasonable costs and expenses incurred by Landlord (or any Affiliate) in connection with Landlord's performance of any of the Tenant Required Work. In the event that Landlord completes all of the Tenant Required Work, the remaining balance of the Second Installment (reflecting the aforesaid offset for Landlord's costs and expenses), if any, shall be paid to Tenant. To the extent that the total costs and expenses incurred by Landlord to perform or complete the Tenant Required Work pursuant to this Section 3.4.6 exceed the Second Installment in its entirety, Tenant shall promptly reimburse Landlord in an amount equal to such excess, which amount shall constitute Additional Rent due hereunder.

### 3.5 Alterations.

3.5.1 Consent. Excluding Tenant Required Work (which is addressed in Section 3.4 above), Tenant may make any alterations, improvements, additions or changes to the Site and the Facility (collectively "Alterations") that meet all of the following criteria without first obtaining Landlord's Consent: (a) the Alterations are nonstructural, (b) the Alterations cost less than FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00) per project which amount shall be increased by the same percentage as the Index during the Term of this Lease; and (c) after the Alterations, the Facility will continue to be used for the Permitted Use (collectively,

Alterations meeting the criteria of (a)-(d), "**Minor Alterations**"). Any Alterations that are not Minor Alterations shall be subject to Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that Tenant shall not make any Alterations (including Minor Alterations) that either (x) reduce the net growing area or overall production capacity of the Facility or otherwise materially adversely affect the ability of the Facility to produce crops, or (y) materially adversely affect the ability of Tenant, AppHarvest Parent, or any other Affiliate of Tenant (as the case may be) to perform its obligations under this Lease or the Marketing Agreement, without Landlord's prior written approval, in Landlord's sole discretion. In no event shall Alterations include the Tenant Required Work, or any repairs, maintenance, replacements or restoration of the Facility, or any replacement of Parts in connection therewith, pursuant to the terms of this Lease. Except as expressly provided in Section 3.5.2, all Alterations shall become part of the realty constituting the Site and the Facility, and shall belong to Landlord and shall not be removed by Tenant. Tenant shall reimburse Landlord for any third-party expenses reasonably incurred by Landlord in connection with the review, inspection, and coordination of Tenant's plans for Alterations and Tenant's performance thereof. Tenant hereby agrees to provide copies of all plans of such Alterations, regardless of whether Landlord's consent is required. Tenant shall diligently and expeditiously complete any Alterations commenced. If any Alteration is anticipated to cost more than ONE MILLION 00/100 DOLLARS (\$1,000,000.00), Landlord shall have the right to require Tenant to post a performance or payment bond in connection with any work or service done or purportedly done by or for the benefit of Tenant. Tenant acknowledges and agrees that all such work or service is being performed for the sole benefit of Tenant and not for the benefit of Landlord. Landlord shall, at the time it provides its approval for a proposed Alteration, advise Tenant whether the Alteration, or any portion thereof, is a Required Removable, as defined in Section 4.3.3.

3.5.2 Title to Alterations. Title to any Alterations constituting expansions of the Facility, will vest pro rata in the person(s) who funded the Alterations without further act, in proportion to the amount of funds contributed for such Alteration. Any Alterations funded by Tenant shall not be deemed part of the Leased Property until the Termination Date, at which time Landlord may opt to (a) require the removal of such Alterations pursuant to Section 4.3.3, or (b) purchase the Alterations for a price equal to the fair market value thereof, taking into account the values ascribed to similar alterations to controlled environment agricultural facilities for the types of crops produced at the Facility, as agreed by Tenant and Landlord in their reasonable discretion. In no event shall the Alterations be removed by Tenant prior to the Termination Date, except as expressly provided herein. For purposes of this Lease, "**Trade Fixtures**" shall mean a piece of equipment placed on the Site owned by Tenant and used in Tenant's trade or business. For the avoidance of doubt, Trade Fixtures shall not include, without limitation, Facility systems and machinery, built-in cabinet work and/or purpose-built mezzanine space, HVAC units, air handling, electrical, mechanical and plumbing equipment and related ducts, shafts, and conduits, all exterior venting fume hoods, walk-in freezers and refrigerators, electrical panels and power back-up distribution systems and irrigation, gutter, screening, mobile gulley and hydroponic systems. The parties agree that Landlord will be treated for all purposes, including tax purposes, as the owner of (and will be the party entitled to claim depreciation or other cost recovery deductions for federal tax purposes with respect to) any Alterations, equipment, or personal property that were paid for, or reimbursed by, Landlord, and Tenant will be treated for all purposes, including tax purposes, as the owner of (and will be the party entitled to claim depreciation or other cost recovery deductions for federal tax purposes with respect to) any Alterations to the extent that the costs for such Alterations were

paid for by Tenant. Unless required to adopt a contrary position as a result of an administrative or judicial proceeding, the parties shall take no action inconsistent with, the intentions set forth in this paragraph. The parties will provide each other with such cooperation as is reasonably necessary to implement the intentions of this paragraph.

3.5.3 Liens. With respect to any Alterations, Tenant hereby agrees as follows: (a) Tenant shall not cause or permit any construction, mechanics' or other liens or encumbrances to be placed upon the Site or the Facility, or Tenant's leasehold interest hereunder, whether in connection with any work or service done or purportedly done by or for the benefit of Tenant, its subtenants, or any other party acting under or through Tenant, or otherwise (except, for the avoidance of doubt, liens under the Security Documents), (b) Tenant shall cause all Alterations to be constructed free of all liens, in accordance with all Applicable Laws and shall, upon Landlord's request, deliver lien waivers to Landlord in the form required by Applicable Law, (c) Tenant shall pay the costs of the Alterations and so that Landlord and the Leased Property will be protected against any loss from any mechanic's, materialmen's, or other liens, and (d) prior to the commencement of the construction of any Alterations, Tenant shall give to Landlord evidence of the insurance required by Section 6.2. Notwithstanding the foregoing or anything to the contrary in this Lease, Tenant may contest any lien if (i) such lien is the subject of a bona fide dispute in which Tenant is contesting the amount or validity thereof, (ii) Tenant notifies Landlord of such dispute, and (iii) such lien is fully bonded by Tenant to the reasonable satisfaction of Landlord and any Mortgagee. Tenant shall give Landlord notice at least fifteen (15) days prior to the commencement of any work in the Site, other than Tenant's Required Work and any Alterations that are purely cosmetic.

#### 3.5.4 Requirements.

(a) Prior to starting work on any Alterations, Tenant shall furnish Landlord with two (2) complete sets of professionally prepared working drawings (which shall include any architectural, structural, electrical, mechanical, computer system wiring, and telecommunication plans, which shall all be in CAD or other electronic format if requested by Landlord); names of contractors reasonably acceptable to Landlord; required permits and approvals; and evidence of contractor's and subcontractor's insurance in amounts reasonably required by Landlord and naming as additional insureds the Landlord, the managing agent for the Facility, and such other additional insured parties as Landlord may designate for such purposes.

(b) Any changes to the plans and specifications for Alterations (other than de minimis changes that do not affect the Facility's structure or mechanical systems, do not cause the cost of the Alterations to exceed \$500,000.00, and that otherwise would not require Landlord's consent to the Alterations pursuant to Section 3.5.1) must also be submitted to Landlord for its approval, which shall not be unreasonably withheld, conditioned or delayed (except as set forth herein). Prior to commencing Alterations, Tenant shall provide Landlord with a copy of the contract for the Alterations and evidence satisfactory to Landlord as to the existence of all necessary permits and/or other governmental or utility approvals required in connection therewith (to the extent not previously provided). Alterations shall be (i) constructed in a good and workmanlike manner, (ii) consistent with Prudent Industry Practices in substantial accordance with the

plans and specifications provided to Landlord prior to the commencement thereof, (iii) ensured by Tenant to not impair any Facility system, (iv) designed and performed in accordance with all Applicable Laws. Upon reasonable prior notice to Tenant, Landlord shall have the right to inspect any such work during normal working hours as it may deem necessary so long as such inspections do not interfere with Tenant's work (but Landlord shall not thereby assume any responsibility for the proper completion of the Alterations in accordance with the terms of this Lease, nor any liability arising from the improper performance thereof). Tenant shall reimburse Landlord for any actual and reasonable third-party expenses incurred by Landlord in connection with the review, inspection, and coordination of Tenant's plans for Alterations and Tenant's performance thereof.

**3.5.5 Construction Oversight Fee.** With respect to any Alterations requiring Landlord's consent under Section 3.5.1, Tenant shall pay Landlord a construction oversight fee ("**Construction Oversight Fee**") equal to the sum of three percent (3%) of total hard and soft project costs, provided that Landlord's obligations in connection with the Alterations are limited to oversight only and not direct management of the project. The Construction Oversight Fee shall be calculated based on hard and soft project costs for the Alterations that were approved by Landlord for the portion of work that has been performed and invoiced and shall be payable monthly in arrears concurrent with the approved hard and soft project costs for the Alterations during the applicable month.

**3.5.6 Completion.** Upon the completion of any Alterations, Tenant shall, to the extent applicable, promptly give to Landlord (a) a reproducible copy of the "as-built" plans (in CAD or other electronic format, if requested by Landlord) for such Alterations, (b) a certificate of completion executed on behalf of Tenant's architect and/or engineering certifying completion of such Alterations in accordance with the respective plans and specifications, (c) a copy of the certificate of occupancy issued by the applicable governmental authorities and other applicable municipal or local sign-offs and inspection reports with respect to such Alterations, (d) copies of any warranties or guarantees with respect to such Alterations, and (e) any other items reasonably required by Landlord for closing out the particular work in question. Landlord's approval of an Alteration shall not be deemed to be a representation by Landlord that the Alteration complies with Law or will not adversely affect any Facility system.

**3.6 Jeopardy of Insurance.** Tenant shall neither do nor omit to do anything that might result in the actual or threatened reduction or cancellation of or material adverse change in insurance carried by Landlord (if any), or Tenant on the Leased Property. If any such insurance is actually, or threatened to be, cancelled, reduced or materially adversely changed by an insurer as a result of the use or occupancy of the Leased Property or any article kept in or about the Site or the Facility or any act or omission of Tenant or any person for whom Tenant is in law responsible or any occupant of the Site, and if Tenant fails to remedy the condition or the use or occupancy giving rise to such actual or threatened cancellation, reduction or change within three (3) business days after notice thereof, Landlord may, without limiting its other remedies for the default, enter upon the Site and remedy the condition, use or occupancy giving rise to such actual or threatened cancellation, reduction or change, and Tenant shall pay to Landlord its cost of doing so within ten (10) days following invoice, plus an administrative fee equal to ten percent (10%) of such cost. Landlord shall not be liable for any damage to either the Facility or any property located on the Site as a result of such entry.



3.7 Marketing Agreement. At all times during the Term of this Lease, Tenant shall comply with (and cause its Affiliates, including but not limited to AppHarvest Parent, to comply with, as applicable) all material terms, provisions, and covenants applicable to it under the Marketing Agreement (or any replacement marketing agreement that is identical in all material respects to the Marketing Agreement).

3.8 Project Documents and Project Governmental Approvals.

3.8.1 (a) At all times during the Term of this Lease, at Tenant's sole cost, Tenant: (i) shall perform and comply with all agreements and contracts related to the use, operation, maintenance, or repair of the Facility, including, without limitation, (x) agreements for the supply of necessary utility services to the Facility (e.g., water, gas, electricity), or (y) a leases, or similar arrangements, with respect to Tenant's Personalty at the Facility, in each case except for the Transaction Documents (each item referred to in this clause (i), a "**Project Document**" and, collectively, the "**Project Documents**"); (ii) secure and comply with all permits, licenses, approvals, consents, orders, registrations, notices, determinations, privileges, franchises, memberships, certificates, entitlements and other authorizations filed with or issued by governmental authorities, including environmental, food health and safety, occupational health and safety, site plan approval, building permits, certificates of occupancy, and all amendments, modifications, supplements, general conditions and addenda thereto for the lease, use, operation, maintenance and repair of the Facility in accordance with the Standards (such approvals, each a "**Project Governmental Approval**" and, collectively, the "**Project Governmental Approvals**"); and (iii) arrange to have a continuous supply of water available to the Facility in volumes fully sufficient to support the Permitted Use pursuant to this Lease.

(b) Tenant hereby represents to Landlord that the Project Documents and Project Government Approvals set forth on Schedule 3.8 are in full force and effect and constitute all of the Project Documents and Governmental Approvals required for the operation of the Facility in accordance with the Standards.

3.8.2 Without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed, Tenant shall not and shall not permit its Affiliates to (i) cancel or terminate any Project Document or consent to the cancellation or termination of any Project Document, unless replaced by a new Project Document on substantially similar terms; (ii) surrender any Project Governmental Approval; (iii) sell, assign, sublease, or otherwise transfer (by operation of law or otherwise) any part of its interests, rights, or obligations in, to, or under any Project Document or Project Governmental Approval (other than to Landlord at the expiry of the Term or at such other time as mutually agreed to by the Parties); (iv) waive any material default under, or material breach of, any Project Document or waive, fail to enforce, forgive, compromise, settle, adjust or release any material right, interest, entitlement, howsoever arising, under, or in respect of, any such Project Document; (v) except in the ordinary course of Tenant's business operations at the Facility, (1) amend, supplement, renew, or modify any Project Document or Project Governmental Approval; or (2) enter into any new Project Document or apply for any Project Governmental Approval; or (vi) resolve any material dispute relating to any Project Document or Project Governmental Approval.

3.8.3 Landlord shall have the right (but not the obligation) to pay any amounts properly due and owing by Tenant under any of the Project Documents or the Project Governmental Approvals that, to Landlord's knowledge, are not subject to a valid dispute by Tenant. In the event that Landlord makes any such payments, the amounts paid by Landlord will become Additional Rent to be paid directly to Landlord by Tenant as part of the next payment of Additional Rent due hereunder.

3.8.4 In the event that Tenant enters into any Project Documents on or after the Commencement Date, Tenant shall cause such Project Document to permit assignment thereof by Tenant to Landlord or the owner of the Facility.

3.9 Security Documents. Tenant shall (i) perform and observe all of the covenants and obligations contained in each of the Security Documents to be performed and observed by it; (ii) maintain and comply in all respects with the terms of the Security Documents now or hereinafter in effect; and (iii) take all reasonable and necessary action to prevent the termination or cancellation of any Security Document.

3.10 Litigation. Excluding litigation or proceedings by Tenant against Landlord and any claims against contractors related to the Tenant Required Work (as set forth in this Lease), without the prior written consent of Landlord, Tenant will not commence or settle any litigation or proceeding (or any written threat or notice of the intention of any person to file or commence any litigation or proceeding) including any litigation or proceeding under Environmental Laws, concerning Landlord or the Leased Property, to the extent any such litigation or proceeding (i) involves a claim which equals or exceeds two hundred fifty thousand dollars (\$250,000.00), (ii) if determined adversely, would reasonably be expected to have a material adverse effect on Tenant, Landlord or the Leased Property, (iii) seeks injunctive or similar relief related to the Facility, or (iv) relates to the transactions contemplated by the Transaction Documents.

3.11 Sale of Assets. Without the prior written consent of Landlord, Tenant shall not sell, assign, lease, sublease, or otherwise transfer all or any portion of its rights or interests in, to, or under the Leased Property, or any other asset material to the use, operation, maintenance, or repair of the Facility, except (i) to Landlord on the expiry of the Term or at such other time as mutually agreed to by the Parties; (ii) in the ordinary course of operating, maintaining, and repairing the Facility; (iii) in connection with the transfer or removal of any obsolete, worn out, or surplus personal property so long as doing so does not impair the value or functionality of the Project or the ability of the Project to grow, harvest, and pack crops in accordance with the Standards; (iv) in connection with sales of crops produced from the Facility or associated products pursuant to the Project Documents; (v) in connection with the replacement of assets with assets of at least the same functional capability and warranties; (vi) in connection with any transaction permitted pursuant to Article 5; or (vii) to Landlord (or any Affiliate thereof) pursuant to the Security Documents.

3.12 Personalty and Personnel. Throughout the Term, Tenant shall procure and provide, at its sole cost and expense, all Personalty and personnel necessary for performance and completion of its obligations under this Lease. All contracts relating to the ownership or right to use the Personalty and agreements with respect to personnel shall be in the name of Tenant. Tenant shall ensure that all persons who perform or will perform any portion of Tenant's obligations

hereunder are qualified to perform such services and have all business and professional license certifications which may be required to comply with the Standards.

3.13 Notices. In addition to any other notice requirements herein, Tenant will furnish or cause to be furnished the following notices to Landlord, promptly upon receipt by Tenant or any Affiliate (or upon knowledge thereof):

(a) (1) copies of any termination notice, notice of an event of default, notice of breach under, a Project Document and (2) any proposed or executed amendments or modifications of any Project Document;

(b) copies of any written notice of force majeure under any Project Document;

(c) that a Project Governmental Approval has been cancelled, suspended, terminated or materially impaired;

(d) any cancellation or material change in the terms, coverage or amounts of any insurance policy required pursuant to Section 6.2.1 hereof;

(e) the commencement of any litigation, action, proceeding, or investigation, or of the threat of any litigation, action, proceeding, or investigation, against Tenant or the Leased Property by any person (including any governmental authority);

(f) copies of any material, written communications with any governmental authority with respect to the Leased Property;

(g) any matter which has, or could reasonably be expected to have, a material adverse effect on the operations of the Facility; and

(h) other information or documents relating to the operation and maintenance of the Facility or Tenant's ability to perform its obligations under the Transaction Documents as Landlord may reasonably request.

3.14 Production. Throughout the Term, Tenant shall use the Facility to grow, cultivate and otherwise produce leafy greens including herbs (or such other product as mutually agreed upon between Landlord and Tenant, the "**Berea Products**") in volumes of at least seventy-five percent (75%) of the volume consistent with the Forecast (as defined in the Marketing Agreement) applicable with respect to the Facility only; subject to adjustments in connection with a Force Majeure Event (as defined in the Marketing Agreement).

#### **ARTICLE 4 REPAIR AND MAINTENANCE; NO SERVICES**

4.1 Tenant Repair and Maintenance Obligations. The parties intend for this Lease to be absolutely triple net. Landlord shall have no obligation whatsoever to repair, replace or maintain any portions of the Leased Property. Tenant shall be responsible for all repairs, replacements and maintenance of the Leased Property, and shall repair, replace and maintain the

Leased Property in substantially the condition as exists as of the Commencement Date (and as it may be improved or altered thereafter), keep same in good order, condition and repair, and in compliance with Applicable Laws and the Standards, ordinary wear and tear and casualty excepted. Tenant shall further promptly replace, or cause to be replaced, all components of the Facility (including Trade Fixtures) (collectively, “Parts”) that may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. Tenant shall undertake any replacement of Parts in accordance with the Standards and in such a manner to preserve the estimated remaining economic useful life of the Facility (it being understood and agreed that the Tenant shall not delay maintenance, repairs, and improvements that would negatively impact such economic useful life of the Facility). Tenant shall ensure that all replacement Parts (excluding Trade Fixtures) will be free and clear of all liens and will be in as good operating condition as, and will have a value, utility, and remaining useful life equal to or better than, the replaced Parts assuming such replaced Parts were in the condition and repair required by the terms hereof; provided, that all repairs, replacements (including replacement Parts), and maintenance performed by Tenant shall be subject to the requirements in Section 3.5, except that Landlord’s prior written consent shall not be required.

4.2 Title to Maintenance, Repairs and Replacements. As between Tenant and Landlord, all Parts (excluding Trade Fixtures) at any time removed from the Facility (other than Parts constituting Tenant’s Personalty) shall remain the property of Landlord, no matter where located, until such time as such Parts are replaced by Parts that have been incorporated or installed in or attached to the Facility and that meet the requirements for replacement Parts specified in Section 4.1. Immediately upon any such replacement Part (excluding Trade Fixtures) and any maintenance and repair work becoming incorporated or installed in or attached to the Facility, without further act (i) title to such replacement Part and maintenance and repair work will thereupon vest in Landlord, (ii) such replacement Part and maintenance and repair work will become subject to this Lease and be deemed part of the Facility for all purposes hereof to the same extent as the Parts originally incorporated or installed in or attached to the Facility, and (iii) upon replacement thereof, title to any removed Part will vest in the Tenant, and such removed and replaced Part shall no longer be deemed a Part of the Facility.

4.3 Condition of Leased Property on Surrender.

4.3.1 On the Termination Date, Tenant shall give Landlord possession of the Leased Property (other than Tenant’s Trade Fixtures), in good, broom clean condition, free of all debris, excepting only ordinary wear and tear and damage that Tenant is not required to repair or restore under this Lease. On or prior to the Termination Date, Tenant shall also (a) remove all of Tenant’s furniture, Trade Fixtures, tools, consumables, supplies, goods, furnishings, equipment belonging to the Tenant, and other personal property (collectively, the “Personalty”), and (b) repair any damage caused by the removal of such Personalty. All of Tenant’s Personalty not so removed by Tenant, may be removed by Landlord and stored, at Tenant’s sole risk and expense, and in any event, Landlord shall not be responsible for the value, preservation, or safekeeping thereof. Tenant shall pay to Landlord, upon demand, all reasonable expenses so incurred by Landlord, including the cost of repairing any damage caused by removal and storing such Personalty. Any such Personalty not claimed by Tenant within thirty (30) days after Tenant’s surrender of the Leased Property shall, at Landlord’s option, be deemed either abandoned or



conveyed by Tenant to Landlord under this Lease without further payment or credit by Landlord to Tenant.

4.3.2 On the Termination Date, Tenant shall assign to Landlord: (a) all of its rights under the Project Documents, Project Governmental Approvals and all other associated rights (if/as applicable at such time) to the extent assignable, provided, however, that no such assignment and acceptance of the Project Governmental Approvals and Project Documents by Landlord shall relieve Tenant from its indemnification obligations hereunder for its actions or inactions on or prior to the Termination Date; and (b) all manufacturers' and contractors' warranties with respect to the Leased Property (including all fixtures therein or thereon but excluding Tenant's Trade Fixtures) to the extent assignable. Tenant shall use commercially reasonable efforts to obtain the consent of counterparties to the Project Documents and the Project Governmental Approvals, and the issuers of such warranties (which may include, in each case without limitation, the payment of an assignment fee), in each case to the extent that such consent is required for the assignment to Landlord. Tenant shall further deliver to Landlord all material records in its possession relating to the Leased Property, the Project Documents and the Project Governmental Approvals, including all payments and collections; and shall take any other actions that Landlord reasonably deems necessary to effectively transfer title to the Leased Property, Project Documents, and Project Governmental Approvals to Landlord. If Tenant shall fail to assign the same to Landlord within ten (10) days of the Termination Date as required by this Section 4.3.2, Tenant hereby irrevocably appoints Landlord as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record such documentation as Landlord may determine is reasonably necessary to assign the same.

4.3.3 Landlord, at the time required by Section 3.5.1, by written notice to Tenant may require Tenant, at Tenant's expense, to remove any Alterations that, in Landlord's reasonable judgment, are of a nature that are not customary improvements for controlled environment agriculture facilities and would require removal and repair costs that are materially in excess of the removal and repair costs associated with standard improvements for the Permitted Use ("**Required Removables**"). Required Removables may include, without limitation, raised floors, vaults, rolling file systems, structural alterations and modifications (including any slab penetrations) other than de minimis alterations and modifications associated with connection of other improvements to the structure of the Facility or relocation of demising walls provided that the same are otherwise consistent with similar facilities or buildings (as the case may be). Notwithstanding the foregoing, any fixtures or improvements existing within the Site on the Commencement Date and the Tenant's Required Work, shall not be deemed Required Removables. The Required Removables shall be removed by Tenant before the expiration or earlier termination of this Lease in accordance with this Section 4.3, unless otherwise directed by Landlord. The obligations of the Parties under this Section 4.3 shall survive termination or expiration of this Lease.

4.4 No Services and Utilities. Landlord shall not be obligated to furnish to the Site or the Facility any services (including, without limitation, janitorial services) or water, gas, electricity, air conditioning, flue gas, CO2, heat, septic, sewer, refuse collection, telephone or any other utility services, and Tenant shall contract directly with the providers of all services and utilities Tenant desires to receive at the Site or the Facility, at Tenant's sole cost and expense. Tenant shall have the right to add alternative electricity sources such as additional solar panels, the installation of which shall be subject to Section 3.4. Landlord is not responsible for the furnishing of, or any

interruption, diminishment or termination of, services or utilities, whether due to the application of Laws, the failure of any equipment, the performance of maintenance, repairs, improvements or alterations, or utility interruptions, and no such interruption, diminishment, or termination shall render Landlord liable to Tenant, give rise to an abatement of Rent, or relieve Tenant from the obligation to fulfill any covenant or agreement. Landlord shall in no event be required under any provision of this Lease or Applicable Law to maintain or repair or to make any alterations, rebuildings, replacements, changes, additions or improvements on or off the Site or the Facility during the Term of this Lease. Tenant acknowledges that it shall be responsible for providing and procuring all other services necessary to its operations in and on the Site or the Facility.

**ASSIGNMENT AND SUBLETTING**

5.1 General Prohibition on Transfers.

5.1.1 Transfers Generally. Tenant shall not, directly or indirectly, make a Transfer (as defined below), without Landlord's consent, except as expressly set forth in this Article 5, and any purported Transfer that does not comply with the provisions of this Article 5 shall, at Landlord's option, be deemed an Event of Default by Tenant and shall be voidable by Landlord. Landlord shall not unreasonably withhold, condition, or delay its consent to an assignment of this Lease or any sublet of the Leased Property, subject to the terms and conditions of this Article 5. Without limitation, it is agreed that Landlord's consent shall not be considered unreasonably withheld if the proposed Transferee (defined below) (a) is a governmental entity, (b) is incompatible with the character of occupancy of the Facility or the Site, (c) is an entity with which the payment for the sublease or assignment is determined in whole or in part based upon its net income or profits, (d) would not use the Facility for the Permitted Use, (e) is a direct competitor of Landlord or any of its Affiliates (as reasonably determined by Landlord), (f) would limit or otherwise adversely affect the rights and benefits to Landlord and its Affiliates under the Marketing Agreement, or (g) if there is any other reasonable ground not stated above for withholding consent.

As used herein:

(a) **"Transfer"** means any assignment, pledge, mortgage, charge, debenture (floating or otherwise), hypothecation, encumbrance, lien attaching to, collateral assignment, or other transfer of this Lease or the leasehold created hereby, or any sublet, license, or other transfer of any portion of the Leased Property, or any Interest Transfer (as defined below), in any case whether voluntarily, by operation of law, or otherwise, or permitting the Leased Property to be used or occupied by anyone other than Tenant.

(b) **"Transferee"** means the party to which a Transfer is made.

(c) **"Interest Transfer"** means if Tenant is a corporation, trust, partnership, limited liability company or other entity, (i) subject to Section 5.2, the direct or indirect transfer of a Controlling Interest or a majority of the voting stock, beneficial interest, partnership interests, membership interests or other ownership interests therein (whether at one time or in the aggregate) or (ii) the sale, mortgage, hypothecation, or pledge of more than 50% of Tenant's net assets. A **"Controlling Interest"** means the effective control over such entity.

5.1.2 **Consent Requests.** If Tenant desires to effect a Transfer and such Transfer requires Landlord's consent, then Tenant shall give to Landlord Notice thereof at least thirty (30) days, but not more than sixty (60) days, prior to the proposed effective date of the Transfer, which Notice shall include (a) the name and address of the proposed Transferee, (b) the relevant terms of the Transfer, (c) copies of financial reports and other relevant financial information for the proposed Transferee, (d) information regarding the nature of the business the proposed Transferee intends to operate in the Site and the Facility and how long the proposed Transferee has operated such business, (e) a fully executed copy of the proposed assignment, sublease, or other document to be used to effect the Transfer (the "**Transfer Document**"), and (f) payment to Landlord of One Thousand and No/100 Dollars (\$1,000.00) as a transfer review fee. In addition, Tenant shall reimburse Landlord for any third-party expenses reasonably incurred by Landlord in connection with the review, inspection, and coordination of Tenant's request for Landlord's consent to a Transfer, not to exceed \$5,000 per request (which amount shall be increased by the percentage increase in the Index from the Commencement Date).

5.1.3 **Permitted Transfer.** Notwithstanding anything in this Article 5 to the contrary, Tenant may assign its interest in this Lease or sublease all or any part of the Leased Property (each a "**Permitted Transfer**") to a Permitted Transferee (defined below) with notice to Landlord (delivered prior to the Transfer, or in the event Tenant is prohibited from doing so by Applicable Laws or contractual obligations, then as soon as reasonably practical) but without Landlord's prior written consent; provided, that (i) with respect to a Permitted Transfer involving an assignment of this Lease, the Permitted Transferee assumes this Lease by a written assumption agreement delivered to Landlord prior to the effective date of such Permitted Transfer (unless such prior delivery is prohibited by Applicable Laws, in which event Tenant shall deliver such assumption agreement as soon as allowed), (ii) the Permitted Transferee shall use the Leased Property only for the Permitted Use, (iii) the occurrence of a Permitted Transfer shall not waive Landlord's rights as to any subsequent Transfer, (iv) the credit worthiness of the Permitted Transferee (or any guarantor of the Permitted Transferee's obligations under this Lease) shall be sufficient (in Landlord's reasonable discretion) to satisfy Tenant's obligations under the Lease (including, but not limited to, the payment of Rent), (v) the Permitted Transferee shall expressly assume all of Tenant's obligations under this Lease, including, without limitation, all Tenant covenants and liabilities herein with respect to the Marketing Agreement (the form and content of such assumption shall be subject to Landlord's reasonable approval), and (vi) Tenant shall have given Landlord written notice at least thirty (30) days before such Transfer (unless such notice is prohibited by applicable Law, in which event Tenant shall give such notice within ten days following such Transfer, together with evidence of satisfaction of such requirements) (clauses (i) through (vi), collectively, the "**Transfer Conditions**").

As used in this Lease: (A) "**Affiliate**" means, with respect to any person, any other person: (i) which directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such person; or (ii) which, directly or indirectly, beneficially owns or holds 10% or more of any class of stock of or any other economic ownership interest in such person; (iii) 10% or more of the direct or indirect economic ownership of which is beneficially owned or held by such person; or (iv) a Successor corporation, limited liability company or other entity; (B) "**Successor**" means any (i) business entity in which or with which such specified person is merged or consolidated in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as Tenant's obligations under this

Lease are assumed by the Successor (and all other conditions above, including the Transfer Conditions, are satisfied), or (ii) the successor or surviving corporation or other entity in the event of a merger or consolidation of such specified person with another corporation, so long as Tenant's obligations under this Lease are assumed by the Successor; (C) "**Purchaser**" means any person or entity who or which acquires all or substantially all of the assets or equity interests of Tenant; (D) "**Permitted Transferee**" means an Affiliate, Successor or Purchaser which is not a direct competitor of Landlord or any of its Affiliates (as reasonably determined by Landlord); and (E) "**control**" means, with respect to any person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of stock or equity, by contract or otherwise; provided that the right of another person to participate in significant management decisions of the person in question shall not by itself constitute "Control" by such person nor shall it negate "Control" by the primary "Controlling" party (and the terms "Controlled" and "Controlling" have meanings correlative thereto).

5.2 Non-Transfers. For so long as Tenant is a wholly owned subsidiary of a corporation whose ownership equity is available through the free trade of shares of stock on nationally recognized stock exchanges or over-the-counter (OTC) markets that are subject to the oversight of the United States Securities and Exchange Commission, any transfer of Tenant's equity interests (or those of its Affiliates) whatsoever shall not be deemed a Transfer under this Lease and, for the avoidance of doubt, shall not require Landlord's consent.

5.3 Conditions to Effectiveness. As conditions precedent to any Transfer becoming effective and binding on Landlord:

5.3.1 except as otherwise specified herein, prior to the proposed effective date of the Transfer, Tenant shall give to Landlord a copy of the fully executed Transfer Document, which shall (i) be in form and substance reasonably acceptable to Landlord, and (ii) for an assignment of this Lease, contain Transferee's express assumption of Tenant's obligations under this Lease (unless such prior delivery is prohibited by Applicable Laws, in which event Tenant shall deliver such documents as soon as allowed); and

5.3.2 as of the proposed effective date of the Transfer, there shall exist no Event of Default.

5.4 Miscellaneous.

5.4.1 Notwithstanding any Transfer, permitted or otherwise, including without limitation a Permitted Transfer, (a) Tenant shall not be released and shall at all times remain directly, primarily, and fully responsible and liable for the payment of Rent and for compliance with all of the other obligations to be performed by Tenant under the terms, provisions and covenants of this Lease, and (b) if any Transferee defaults under this Lease, then Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee.

5.4.2 Landlord's consent to any sublease shall not be construed as or imply any agreement on Landlord's part not to disturb any subtenant's possession of the Leased Property upon an Event of Default by Tenant or upon any other termination of this Lease. Upon the



occurrence of an Event of Default, if all or any portion of the Leased Property is then subject to one or more subleases, then Landlord, in addition to any other remedies provided in this Lease or at law or in equity, may collect directly from the subtenants under such subleases all rents due and becoming due to Tenant or a Transferee under such subleases and apply such rent against any sums due to Landlord from Tenant under this Lease, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease.

## **ARTICLE 6 INDEMNIFICATION; RELEASE; INSURANCE**

### **6.1 Indemnification and Release.**

6.1.1 Indemnification of Landlord. To the extent permitted by Applicable Law, Tenant shall protect, indemnify, release, defend and hold Landlord (and the Landlord Parties) harmless from and against any and all Claims to the extent caused by or incurred by reason of: (a) any damage to any property (including the property of Landlord), or any injury (including death) to any person, occurring in, on, or about any portion of the Facility or the Site, except to the extent caused by or arising from the gross negligence or willful misconduct of Landlord or the Landlord Parties; (b) any Alterations, work, or other thing done by Tenant or any Tenant Parties in or about any portion of the Facility or the Site, or from transactions of Tenant concerning any portion of the Leased Property; (c) Tenant's failure to comply with any Applicable Laws and the Project Governmental Approvals; and (d) any breach or default by Tenant (or any of its Affiliates party to any Transaction Document) of any representation, covenant or other term of this Lease, the Marketing Agreement, the Project Documents, or any other Transaction Document; provided that Tenant shall not be obligated to so indemnify Landlord to the extent any such matter arises from, or is caused by, the willful misconduct or gross negligence of Landlord or the Landlord Parties. Tenant's agreement to indemnify, defend and hold the Landlord and the Landlord Parties (the "**Landlord Indemnitees**") harmless is conditioned upon the Landlord Indemnitees: (i) providing written notice to Tenant of any claim, demand or action arising out of the indemnified activities within thirty (30) days after Landlord has actual knowledge of such claim, demand or action, provided that the failure to so notify Tenant will not relieve Tenant of its obligations hereunder except to the extent such failure has actually materially prejudiced Tenant; (ii) permitting Tenant to assume full responsibility to investigate, prepare for and defend against any such claim or demand, subject to Landlord's reasonable approval of any counsel used in the defense of such claim or demand; (iii) assisting Tenant, at Tenant's expense, in the reasonable investigation of, preparation of and defense of any such claim or demand; and (iv) not settling such claim or demand that would result in a payment in excess of one hundred thousand dollars \$100,000.00 (individually or in the aggregate) without Tenants' prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

6.1.2 Indemnification of Tenant. To the extent permitted by Applicable Law, Landlord shall protect, indemnify, release, defend and hold Tenant (and the Tenant Parties) harmless from and against any and all Claims to the extent caused by or incurred by reason of the negligence or willful misconduct of any Landlord Party, or its employees, agents, invitees, licensees, contractors, subcontractors, materialmen, or suppliers on or about the Leased Property. Landlord's agreement to indemnify, defend and hold the Tenant and the Tenant Parties (the

“**Tenant Indemnities**”) harmless is conditioned upon the Tenant Indemnities: (i) providing written notice to Landlord of any claim, demand or action arising out of the indemnified activities within thirty (30) days after Tenant has actual knowledge of such claim, demand or action, provided that the failure to so notify Landlord will not relieve Landlord of its obligations hereunder except to the extent such failure has actually materially prejudiced Landlord; (ii) permitting Landlord to assume full responsibility to investigate, prepare for and defend against any such claim or demand, subject to Tenant’s reasonable approval of any counsel used in the defense of such claim or demand; (iii) assisting Landlord, at Landlord’s expense, in the reasonable investigation of, preparation of and defense of any such claim or demand; and (iv) not settling such claim or demand that would result in a payment in excess two hundred thousand dollars \$200,000.00 (individually or in the aggregate) without Landlord’s prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

6.1.3 Release. Tenant hereby releases Landlord and the Landlord Parties from any and all liability for any loss or claim, including all economic losses and all consequential and indirect losses, as a result of loss, damage or injury to the property and persons of Tenant and its employees, as a result of any occurrence in, upon or at the Site or the occupancy or use by the Tenant of the Site, including damage to the Facility (or loss of access thereto), whether or not such loss or claim may have arisen out of the acts, omissions or negligence of Landlord, the Landlord Parties or those for whom Landlord or the Landlord Parties are in law responsible.

## 6.2 Insurance.

6.2.1 Tenant’s Insurance. Tenant shall procure and maintain during the Term, at its sole cost and expense, a policy or policies of insurance protecting Landlord and Tenant against each of the following:

(a) Commercial general liability insurance with respect to the operations of Tenant insuring against bodily injury or death and property damage in amounts (i) not less than \$10,000,000 in the aggregate, (ii) not less than \$2,000,000 per occurrence and (iii) not less than \$10,000,000 of excess umbrella liability insurance. Such insurance shall contain separation of insured clauses and separation of insureds, with Landlord and any third party now or hereafter providing financing to Landlord where such third party has a security interest in the Site or the Facility under such financing shall be included as additional insureds. The amount of such commercial general liability insurance shall be increased from time to time as Landlord may reasonably determine. All such bodily injury and property damage insurance shall insure Tenant’s exposure with respect to the indemnity agreement as to personal injury or property damage contained in Section 6.1 herein.

(b) Insurance covering Tenant’s construction, alterations, additions or improvements permitted herein (other than the core and shell of the Facility and structural elements of other improvements), existing tenant improvements, trade fixtures and personal property, in an amount not less than 100% of their full replacement cost from time to time during the Term, providing protection on an all risk basis, with coverage commencing on or prior to the commencement of Tenant’s construction, for the repair or replacement of the property damaged or destroyed.

(c) Pollution Legal Liability that provides first party coverage for clean-up costs and third party coverage for bodily injury and property damage resulting from pre-existing and future contamination conditions, of at least Five Million Dollars (\$5,000,000.00) per pollution event; such coverage shall specifically include this lease as an insured contract.

(d) Property damage insurance covering the core and shell of the Facility and structural elements of other improvements situated upon the Site on a replacement cost basis against loss or damage as provided by the standard fire and extended coverage policy, including, without limitation, risks of direct physical loss as insured against under a special extended coverage endorsement in amounts and with a deductible determined by Landlord in its commercially reasonable discretion, boiler and machinery insurance on a repair or replace basis, and business interruption insurance for a period of not less than twelve (12) months. Such insurance is to follow the form of the real property "all risk" or "special form" coverage and is not to contain a co-insurance clause.

(e) The minimum limits of insurance required to be carried by Tenant shall not limit Tenant's liability. All policies of insurance to be provided by Tenant shall be issued by insurance companies, with general policy holder's rating of not less than A and a financial rating of not less than Class VIII as rated in the most current available "Best's" Insurance Reports, and admitted to do business in the Commonwealth of Kentucky. Such policies shall be issued in the name of Tenant, with Landlord, Landlord's managing agent, lenders, and any other party designated by Landlord ("**Additional Insured Parties**") included as an additional insured. Tenant's property insurance and any builder's risk policy carried by Tenant or its contractors shall identify Landlord or, at Landlord's direction, Landlord's lender, as a loss payee. The full replacement cost of improvements under Tenant's property insurance may be designated by Landlord in the good faith exercise of Landlord's judgment. In the event that Tenant does not agree with Landlord's designation, Tenant shall have the right to submit the matter to an insurance appraiser reasonably selected by Landlord and paid for by Tenant. The insurance appraiser shall submit a written report of his appraisal, and if said report discloses that the improvements are not insured as therein required, Tenant shall promptly obtain the insurance required. The policies provided by Tenant shall be for the mutual and joint benefit and protection of Landlord and Tenant, and certificates of insurance shall be delivered to the Landlord within ten (10) days after the Lease Commencement Date and, thereafter, within thirty (30) days after to the expiration of the term of each such policy. Upon Landlord's request, Tenant shall deliver to Landlord, in lieu of such certificates, copies of the policies of insurance required to be carried under this Section 6.2.1 showing that the Additional Insured Parties are named as additional insureds (with respect to the applicable policies). Tenant shall procure policies for all insurance required under this Lease for periods of not less than one (1) year and shall deliver to Landlord all policies or certificates of insurance with evidence of payment of all premiums for such period. Upon the expiration or termination of any such policy, renewal or additional policies shall be procured and maintained by the Tenant to provide the required coverage. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will provide Landlord with thirty (30) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance

(except in the event of non-payment of premium, in which case ten (10) days' written notice shall be given). Notwithstanding the foregoing, if the foregoing requirement that the insurance company provide prior notice to Landlord of cancellation or material change of the applicable policy cannot reasonably be obtained based on then-prevailing insurance industry practices, Tenant shall so advise Landlord of such unavailability and shall instead shall use reasonable efforts to cause its insurer to provide Landlord, and in any event Tenant shall provide Landlord with, notice of any such cancellation of any of Tenant's insurance policies. All of Tenant's commercial general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Tenant agrees that if, after the Commencement Date, Tenant does not take out and maintain the insurance required under this Section 6.2, Landlord may (but shall not be required to) procure, and thereafter maintain, said insurance on Tenant's behalf, and any costs or expenses incurred by Landlord in connection therewith, plus an administration fee of ten percent (10%) of the cost, shall promptly be paid by Tenant to Landlord as Additional Rent.

(f) Notwithstanding anything to the contrary, Tenant's obligation to carry the insurance described in this Section 6.2.1 may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by the Tenant, provided that (i) Landlord will be an additional insured thereunder as its interests may appear; (ii) the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance; and (iii) the requirements set forth herein are otherwise satisfied. In the event of any claims covered by Tenant's insurance, Tenant shall, within 10 days following Landlord's written request, provide Tenant with copies of the applicable insurance policies carried by Tenant pursuant to this Lease.

**6.2.2 Landlord's Insurance.** Landlord shall obtain and keep in force throughout the Term the following coverages in the following amounts: (a) commercial general liability insurance on an "occurrence" basis on the current ISO CG 00 01 occurrence form or its equivalent with a deductible reasonably acceptable to Landlord with a limit of not less than \$5,000,000 per occurrence, and (b) any such other insurance as Landlord's lender may require. Tenant shall provide Landlord with such information from time to time as Landlord may reasonably require in connection with Landlord's determination of the insurance required pursuant to clause (b), above.

**6.2.3 Release of Subrogation Rights.** Tenant and Landlord each hereby releases the other from liability and waives all right to recover against the other for any loss from perils insured against under their property insurance policies, including any extended coverage and special form endorsements to said policies; provided, however, this Section 6.2.3 shall be inapplicable if it would have the effect, but only to the extent that it would have the effect of invalidating any insurance coverage of Landlord or Tenant. Tenant and Landlord's property damage policies shall contain, if available, a waiver of subrogation clause.

**6.2.4 Insurance for Alterations.** During the performance of any Alterations by Tenant, (a) the insurance required under this Section 6.2 shall extend to all of Tenant's consultants and contractors (and subcontractors of any tier) and shall include injuries to persons and damage to property arising in connection with such Alterations and (b) Tenant shall also maintain such other insurance as Landlord may reasonably require, including all-risk builder's insurance, each



of which policies shall name Landlord and Landlord's lender as additional insureds and loss payees. Tenant shall give to Landlord copies of the policies of such insurance prior to commencing construction of such Alterations.

## **ARTICLE 7 THIRD PARTIES**

7.1 Subordination, Attornment and Nondisturbance. This Lease shall be automatically subject and subordinate at all times in right, title, interest, lien, encumbrance, priority and all other respects to any first priority mortgages or deeds of trust on, against, or affecting any portion of the Leased Property, or Landlord's interest or estate in any portion of the Leased Property, and to all renewals, modifications, consolidations, replacements, and extensions thereof (each, a "**Mortgage**"); provided that, as a condition precedent to such subordination, Tenant must receive a fully executed subordination, nondisturbance and attornment agreement, substantially in such commercially reasonable form as may be required by Landlord's Mortgagee (as hereinafter defined) (an "**SNDA**") from any current and future encumbrance holder (each, a "**Mortgagee**") with such changes as reasonably requested by Tenant. Landlord shall request an SNDA from each present and any future Mortgagee seeking to subordinate this Lease to the lien of its Mortgage and deliver the same to Tenant. In the event Mortgagee enforces its rights under the Mortgage, Tenant, at Mortgagee's option, will attorn to Mortgagee or its successor; provided, however, that, subject to the terms of any SNDA between Tenant and such Mortgagee (which shall govern in the event of any conflicts with the provisions of this Section 7.1), Mortgagee or its successor shall not be liable for or bound by (i) except for prepaid rent under Section 2.1.4(b) above, any payment of any Rent installment that may have been made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Landlord under this Lease (but Mortgagee, or such successor, shall be subject to the continuing obligations of Landlord under the Lease arising from and after such succession, but only to the extent of Mortgagee's, or such successor's, interest in the Leased Property as provided in Article 11), (iii) any then-exercisable credits, claims, setoffs or defenses that Tenant may have against Landlord, or (iv) any obligation to provide tenant improvements allowances or perform tenant improvements to be provided by Landlord hereunder.

7.2 Intentionally Omitted.

7.3 Sale of the Leased Property. Subject to the provisions of Article 11, if Landlord sells or conveys the Leased Property, such sale or conveyance shall release Landlord from any liability from and after such sale or conveyance upon any of the covenants or conditions, expressed or implied, contained in this Lease in favor of Tenant (to the extent such liability is expressly assumed by such transferee), excluding claims for successor Landlord's failure to apply the Prepaid Rent as provided in Section 2.1.4 if resulting from Landlord's failure to transfer the prepaid rent under Section 2.1.4(b) above to the successor-in-interest if the sale or conveyance occurs during the first twenty-four (24) months of the Term, and in such event, Tenant agrees to look solely to the successor-in-interest of Landlord in and to this Lease with respect to such liabilities that are incurred from and after such sale or conveyance.

7.4 Estoppel Certificates. Within ten (10) business days after Landlord's written request and without charge, Tenant shall execute and deliver to Landlord and any of Landlord's then existing or prospective lenders, investors, or purchasers of any portion of the Leased Property,

a certificate substantially in the form attached as Exhibit B, or in such other commercially reasonable form and containing such other factual information as Landlord or any such lenders, investors, or purchasers, may reasonably require. Any certificate delivered in accordance with this Section 7.4 may be relied upon by any such lender, investor, or purchaser. Within ten (10) business days after Tenant's request, Landlord shall execute and deliver to Tenant and any of Tenant's then existing or prospective lenders, investors, or purchasers, a statement in writing certifying that Tenant is in possession of the Leased Property under the terms of this Lease, that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and setting forth such modifications), stating the dates to which rent has been paid, and either stating that no defaults exist hereunder, or specifying each such default of which Landlord may have knowledge, and such other factual matters as may be reasonably requested by Tenant.

7.5 Liens. Tenant shall, within fifteen (15) business days of written notice of filing, discharge (either by payment or by filing of the necessary bond, insure over, or otherwise) any mechanic's, materialman's or other lien or encumbrance against any portion of the Leased Property that arises out of any payment due for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or for Tenant. If Tenant shall fail to so discharge such lien or encumbrance (either by payment or by filing of the necessary bond, insure over or otherwise) then, such failure shall be an Event of Default under this Lease and, in addition to any other right or remedy of Landlord, Landlord may discharge the same (either by payment or by filing of the necessary bond or otherwise), and any payment, costs and expenses incurred by Landlord in connection therewith, including reasonable attorneys' fees, shall be repaid together with interest thereon at the rate set forth in Section 2.1.4 from the date of payment. Notwithstanding the foregoing or anything to the contrary in this Lease, Tenant may contest any lien (and Landlord shall not discharge such lien at Tenant's expense for so long as Tenant is diligently pursuing such contest) if (i) such lien is the subject of a bona fide dispute in which Tenant is contesting the amount or validity thereof, (ii) Tenant notifies Landlord in writing of such dispute, (iii) Tenant has or establishes unrestricted cash reserves to in an amount equal to 125% of (x) the amount of Tenant's obligations being contested plus (y) any additional interest, charge or penalty arising from such contested lien and (iv) such lien is fully bonded by Tenant to the reasonable satisfaction of Landlord and any Mortgagee.

#### 7.6 Certain Tax Matters.

7.6.1 Tax Cooperation. Each Party shall (and shall cause its Affiliates to) provide such information to the other Party and its Affiliates as is reasonably requested to assist in preparing any return, report, statement, claim for refund, information return or other document (including any amendments thereto and any related or supporting information) filed or required to be filed with any governmental authority in connection with the determination, assessment, collection or administration of Taxes or the administration of any Applicable Law relating to Taxes (such documents being referred to as "**Tax Returns**"), and/or claiming any tax benefits.

7.6.2 Tax Returns. The Parties intend and agree that this Lease shall be treated as a lease of the Leased Property by Landlord (as owner thereof) to Tenant for all U.S. federal and applicable state and local income Tax purposes and Landlord (and not Tenant) shall be treated as the owner for U.S. federal income tax purposes of the Site and the Facility, other than in respect

of any Tenant Required Work or Alterations paid for by Tenant and not reimbursed to Tenant in accordance with the terms of this Lease. Landlord and Tenant acknowledge and agree that (i) the Prepaid Rent will result in prepaid rent within the meaning of Treasury Regulation Section 1.467-1(c)(3)(ii) and a Section 467 loan from Tenant to Landlord within the meaning of Treasury Regulation Section 1.467-4(a)(1); (ii) the yield on the Section 467 loan shall equal 110 % of the long-term applicable federal rate (as in effect on the Commencement Date), compounded semiannually; (iii) the monthly calculation of Base Rent (without regard to Prepaid Rent) shall be treated as a specific allocation of rent for purposes of Treasury Regulation Section 1.467-1(c)(2)(ii) and (iv) rent allocable to a specific period shall be determined under Treasury Regulation Section 1.467-2(c). Each Party shall, and shall cause their respective Affiliates to, file all Tax Returns in a manner consistent with this intent, and none of the Parties shall, nor shall they permit any Affiliate to, take any position on any Tax Return or in any Tax proceeding inconsistent with this intent.

7.6.3 Further Assurances. Each Party will promptly sign all documents reasonably requested by the other Party to give effect to the provisions of this Lease and any of the other Transaction Documents, and shall cooperate with respect to any communications or interactions with any governmental authority and/or any counterparty to a Project Document. Tenant agrees that it and its Affiliates shall, promptly upon request by Landlord, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such other security agreements, financing statements and continuations thereof, termination statements, notices of assignment, instruments of assignment, and other agreements as Landlord may deem reasonably necessary in order to more effectively: (i) lease the Leased Property to Tenant; or (ii) create or perfect Landlord's valid perfected first priority security interest in the collateral under the Security Documents.

## ARTICLE 8 EVENTS OF DEFAULT & REMEDIES

8.1 Events of Default. “**Event of Default**” means any of the following:

(a) Tenant fails to pay when due any Rent, and such failure continues for five (5) business days after Landlord delivers to Tenant Notice thereof; provided, however, Landlord shall not be required to provide prior notice of Tenant's failure to pay any recurring obligation to pay any Base Rent or any monthly payment of estimated Taxes (if applicable) more than twice during any twelve (12) month period, after which Tenant's failure to pay such amount shall be an Event of Default if Tenant fails to pay the amount when due and such failure continues for five (5) business days after the due date;

(b) except as otherwise set forth in Section 8.1(a) and Sections 8.1(c) through (n), Tenant (or its Affiliate, as applicable) fails to comply with (or cause to be complied with) any term, provision, or covenant of this Lease or any Transaction Document and such failure continues for thirty (30) days after Landlord gives to Tenant Notice thereof (but if such failure is curable but cannot reasonably be cured during such 30-day period, and if Tenant has commenced such cure promptly and in any case within such 30-day period and thereafter has diligently pursued such cure to completion, then such 30-day period shall be extended to ninety (90) days), provided, however, that upon Landlord's determination that Tenant's continuing failure to comply with any term,

provision, or covenant of this Lease or any Transaction Document beyond such 30-day period could reasonably be expected to have a material adverse effect on Landlord or the Facility, such extended cure period shall terminate immediately upon notice thereof from Landlord, and such continuing failure shall constitute an immediate Event of Default hereunder;

(c) Tenant fails to obtain and keep in force at all times any insurance required under this Lease;

(d) Tenant fails to deliver to Landlord, within fifteen (15) business days after Landlord gives Tenant Notice thereof, any Report, instrument or assurance required under this Lease;

(e) The filing by Tenant in any court pursuant to any statute or petition in bankruptcy or insolvency or for reorganization or arrangement for the appointment of a receiver or all of a portion of Tenant's property, including, without limitation, its leasehold interest in the Leased Property, the filing against Tenant of any such petition, or the commencement of a proceeding for the appointment of a trustee, receiver or liquidator for Tenant, or of any property of Tenant, or a proceeding by any governmental authority for the dissolution or liquidation of Tenant, if such proceeding shall not be dismissed or trusteeship discontinued within sixty (60) days of commencement of such proceeding or the appointment of such trustee or receiver; or the making by Tenant of an assignment for the benefit of creditors;

(f) Tenant's failure to cause to be released any mechanics liens filed against the Leased Property within twenty (20) days after the date Tenant is notified that the same shall have been filed or recorded, subject to Tenant's right to dispute liens as set forth in Section 7.5;

(g) Abandonment of the Facility or failure by Tenant to occupy and operate at least eighty five percent (85%) of the Facility for a period of three (3) consecutive business days or more for any reason other than restoration following a Casualty or Taking, MLA Force Majeure (as hereinafter defined), and temporary cessations in order to complete the Tenant Required Work, Alterations and repairs in accordance with and permitted by this Lease;

(h) Tenant's failure to provide an SNDA within the period required by Section 7.1 or Tenant's failure to provide a certificate within the time period required by Section 7.4 and such failure continues for five (5) business days after Landlord delivers to Tenant Notice thereof;

(i) The occurrence of an event of default under the Marketing Agreement, beyond any applicable notice and cure periods thereunder, due to the failure to perform any material covenants and agreements thereunder by AppHarvest Parent, Tenant or any of their Affiliates;

(j) If the Marketing Agreement shall (i) terminate or otherwise cease to be in full force and effect due to the failure by AppHarvest Parent, Tenant (or any Affiliate)



to perform (or cause to be performed) any material term, provision, or covenant of thereof, beyond any applicable notice and cure periods therein, or (ii) expire, terminate, or otherwise cease to be in full force and effect for any other reason and the Marketing Agreement is not promptly replaced by an agreement identical in all material respects to the Marketing Agreement; provided; however; that clause (ii) of this Section 8.1(j) shall not apply in the event that the Marketing Agreement shall terminate, expire or cease to be in effect due to either (x) the failure of MPL or Landlord (or any Affiliate thereof) to perform or comply with any material term, provision, or covenant of imposed on such party under the Marketing Agreement, beyond any applicable notice and cure periods therein, or (y) the exercise of any nonrenewal or early termination option under the Marketing Agreement by MPL or Landlord (or any Affiliate thereof);

(k) If any representation or warranty of Tenant set forth in this Lease is false in any material respect when made, or any Report (including any Financial Report), or certificate made or prepared by, under the control of or on behalf of Tenant or any of Affiliates, and furnished to Landlord pursuant to this Lease or any other Transaction Document shall contain an untrue or misleading statement of a material fact as of the date made; provided, however, that no Event of Default shall occur pursuant hereto, if (i) such untrue or misleading statement could not reasonably be expected to have a material adverse effect on Tenant, Landlord or the Leased Property, and (ii) Tenant updates such representation or warranty or Report in a manner reasonably acceptable to Landlord within thirty (30) days of the date on which Tenant receives notice of such untrue or misleading statement (from any source);

(l) If a material default by Tenant (or any Affiliate) under any Project Document shall have occurred and be continuing and such breach or default shall not be remediable or, if remediable, shall continue un-remedied for a period equal to the greater of thirty (30) days or the cure period provided under such Project Document;

(m) Any of the Security Documents shall cease to be valid and binding on Tenant or the collateral provided therein, or fails to provide the lien, security interest, rights, titles, interest, remedies, powers or privileges to Landlord intended to be created thereby and such failure continues for thirty (30) days after Landlord gives to Tenant Notice thereof (unless such failure is directly caused by any act or omission by Landlord);

(n) If, during any trailing four (4) week period the volume of Tenant's average production of Berea Products is less than seventy-five percent (75%) of the volume of Berea Products stipulated in the then-applicable Forecast with respect to the Facility for such four (4) week period, and such failure shall occur twice during any twelve (12) month period; subject to adjustments in connection with a Force Majeure Event under the Marketing Agreement; or

(o) Tenant performs a Transfer in violation of Article 5.

## 8.2 Remedies.

8.2.1 Upon Event of Default. Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any Notice or demand whatsoever (except as expressly provided herein), concurrently or consecutively and not alternatively (in addition to any other remedies available to Landlord at law or in equity), all of which remedies shall be distinct, separate and cumulative:

(a) Termination. Landlord may terminate this Lease upon notice to Tenant, in which event Tenant shall vacate the Site and the Facility immediately and deliver possession of the Leased Property to Landlord in the condition which Tenant is required to surrender the Leased Property at the expiration of the Term. Tenant hereby waives, relinquishes and releases for itself and for all those claiming under Tenant any right of occupancy of the Site and the Facility following termination of this Lease, and any right to redeem or reinstate this Lease by order or judgment of any court or by any legal process or writ under Applicable Laws, and if Tenant fails to do so, then Landlord may, after due process of law, enter upon and take possession of the Leased Property, and expel or remove Tenant and any other person who may be occupying the Facility, the Site, or any portion thereof, without being liable for prosecution or any claim or damages therefor. Upon termination of the Lease as provided in this Section, Landlord may recover from Tenant the following: (i) any unpaid rent which has been earned at the time of such termination; plus (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iii) the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, attorneys' fees, brokerage commissions and advertising expenses incurred, expenses of remodeling the Facility, the Site, or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; plus (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law. The term "rent" as used in this Section 8.2.1(a) shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others, including, without limitation, late charges and interest. Landlord shall have no obligation to relet the Leased Property or any part thereof and shall in no event be liable for failure to relet the Leased Property or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting. No such refusal or failure shall operate to relieve Tenant of any liability under this Lease. Tenant shall instead remain liable for all unpaid Rent and for all such expenses.

(b) Possession. Landlord may re-enter the Site and the Facility without terminating this Lease by Notice to Tenant and sublet the whole or any part thereof for the account of Tenant upon as favorable terms and conditions as the market will allow; provided, however, that Tenant shall have not less than thirty (30) days following such re-entry to remove Tenant's Personalty from the Facility and the Site. In the latter event (a) Landlord shall have the right to collect any Rent which may thereafter become due and

payable under such sublease and to apply the same first, to the payment of any expenses incurred by Landlord in dispossessing Tenant and in subletting the Leased Property, second, to the payment of the Rent herein reserved and to the fulfillment of Tenant's other covenants hereunder, and (b) Tenant shall be liable for amounts equal to the Rent as the same would under the terms of this Lease become due, less any amounts actually received by Landlord and applied on account of Rent as aforesaid. If Landlord does not elect to terminate this Lease due to any Event of Default, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover all Rent as it becomes due.

(c) Subleases of Tenant. Whether or not Landlord elects to terminate this Lease, Landlord may terminate any and all subleases, licenses, or other consensual arrangements of any kind for possession or occupancy of the Leased Property entered into by Tenant or any subtenant of Tenant, or may succeed to Tenant's or Tenant's subtenant's or licensee's interest in such subleases, licenses, or other arrangements. If Landlord elects to succeed to Tenant's or Tenant's subtenant's interest in any such subleases, licenses, or other arrangements, then as of the date of Notice by Landlord of such election (i) Tenant shall have no further right to, or interest in, the rent or other consideration receivable thereunder, and (ii) any sublessee, licensee, or other occupant of the Leased Property shall attorn to and recognize Landlord as its landlord.

(d) Right to Perform Tenant's Covenants. If Tenant shall at any time fail to pay any Taxes or to take out, pay for, maintain or deliver any of the insurance provided for in this Lease, or shall fail to make any other payment or perform any obligation under this Lease, and such failure continues beyond applicable notice and cure periods (or without any notice and right to cure where required to protect life or property), then Landlord may, without waiving or releasing Tenant from any obligations of Tenant in this Lease contained, pay any such Tax, effect any such insurance coverage and pay premiums therefor, and make any other payment or perform any other act which Tenant is obligated to perform under this Lease, in such manner and to such extent as Landlord shall, in its sole discretion, deem necessary. In exercising any such rights, Landlord may pay necessary and incidental costs and expenses including reasonable attorneys' fees. All sums so paid by Landlord and all necessary and incidental costs and expenses in connection with the performance of any such act by Landlord, together with interest thereon at the rate set forth in Section 2.1.4 above, shall be payable to Landlord on demand. If Landlord incurs any third-party expenses to cure a breach of any nonmonetary obligation of Tenant, Tenant shall also pay an administrative charge equal to ten percent (10%) of the cost of the work performed by Landlord. Landlord shall have no obligation to perform on Tenant's behalf and if Landlord does so, Landlord shall not be liable to Tenant for any damage resulting from its actions.

(e) Other Remedies. In addition to the remedies set forth in this Lease, Landlord shall have all other remedies provided by law or statute to the same extent as if fully set forth herein word for word (including, without limitation, the right to enforce Tenant's specific performance of each and every covenant, condition and other provisions of this Lease). No remedy herein conferred upon, or reserved to Landlord shall exclude any other remedy herein or by law provided, but each shall be cumulative.

8.2.2 Form of Payment Following Event of Default. Following the occurrence of a monetary Event of Default, Landlord shall have the right to require that any or all subsequent amounts paid by Tenant to Landlord under this Lease, whether relating to the Event of Default in question or otherwise, be paid in the form of wire transfer or immediately available funds, or by other means approved by Landlord, notwithstanding any prior acceptance by Landlord of payments from Tenant in any different form.

8.2.3 Mitigation of Damages. Except as required by Applicable Law, Landlord shall have no obligation to mitigate its damages. If Landlord is required by Applicable Law to mitigate its damages under this Lease, then (a) Landlord shall be required only to use reasonable efforts to so mitigate, which shall not exceed such efforts as commercial landlords generally use to lease similar premises in the vicinity of the Facility; (b) Landlord shall not be deemed to have failed to so mitigate if Landlord leases less than all of the Leased Property; and (c) Landlord's failure to so mitigate shall only reduce the Rent to which Landlord is entitled. Tenant acknowledges that Landlord's rejection of a prospective replacement tenant based on an offer of rentals below published rates for new leases of similar premises in the vicinity of the Facility at the time in question, or containing terms less favorable than those contained herein, shall not give rise to a claim by Tenant that Landlord failed to so mitigate.

8.2.4 Waiver of Right of Redemption. Tenant (for itself and all others claiming through Tenant) irrevocably waives and releases any rights under any law now or hereafter existing to redeem or reinstate this Lease or Tenant's right of occupancy of the Facility and the Site after termination of this Lease.

8.2.5 Reimbursement of Expenses. In the case of termination of this Lease pursuant to this Section 8.2, Tenant shall reimburse Landlord for all expenses arising out of such termination, including without limitation, all costs incurred in collecting amounts due from Tenant under this Lease (including legal fees, costs of litigation and the like); all expenses incurred by Landlord in attempting to relet the Leased Property or parts thereof (including advertisements, brokerage commissions, Tenant's allowances, costs of preparing space, and the like); and all Landlord's other reasonable expenditures necessitated by the termination. The reimbursement from Tenant shall be due and payable immediately from time to time upon notice from Landlord that an expense has been incurred, without regard to whether the expense was incurred before or after the termination.

8.2.6 Claims in Bankruptcy. Nothing herein shall limit or prejudice the right of Landlord to prove and obtain in a proceeding for bankruptcy, insolvency, arrangement or reorganization, by reason of the termination, an amount equal to the maximum allowed by a statute or Applicable Law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount is greater to, equal to, or less than the amount of the loss or damage that Landlord has suffered.

8.3 Landlord Default. If Landlord shall fail to perform any material obligation under this Lease required to be performed by Landlord, Landlord shall not be deemed to be in default hereunder nor subject to claims for damages of any kind, unless such failure shall have continued for a period of thirty (30) days after written notice thereof by Tenant or, if such failure is curable but cannot reasonably be cured during such 30-day period, such additional time as it would



reasonably take to cure. If Landlord shall fail to cure within the time permitted for cure herein, Landlord shall be liable to Tenant for those actual damages sustained by Tenant as a result of Landlord's default and Tenant shall also have the right to pursue injunctive relief against Landlord, to the extent available under Applicable Laws. Except as may be expressly provided in this Lease, in no event shall Tenant have the right to terminate the Lease nor offset damages against the Base Rent, nor shall Tenant's obligation to pay Base Rent or other charges under this Lease abate based upon any default by Landlord of its obligations under the Lease. In no event shall Landlord or any Landlord Party ever be liable to Tenant for loss of profits, loss of business, or punitive, special, exemplary, indirect or consequential damages suffered by Tenant from whatever cause.

8.4 Non-Waiver. The failure of Landlord to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that Landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein. The performance of each and every term, covenant, condition and agreement to be performed by Landlord pursuant to this Lease shall not be a condition precedent to Landlord's right to collect Rent or to enforce this Lease. Further, Landlord's acceptance of Rent shall not constitute a waiver by Landlord of (a) any preceding breach by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular Rent so accepted; or (b) any of Landlord's rights, including, without limitation, any rights Landlord may have to recover possession of the Leased Property or to sue for any remaining Rent owed by Tenant.

## ARTICLE 9 CASUALTY & CONDEMNATION

### 9.1 Casualty.

9.1.1 Generally. Subject to Section 9.1.2 below, if the Site or the Facility are damaged by fire, the elements or other casualty (collectively, a "**Casualty**"), Tenant shall promptly notify Landlord of the same. Except as expressly set forth below, this Lease shall not terminate in the event of damage to the Facility due to a Casualty, nor shall any other obligation of Tenant hereunder be abated or affected in any way. All repair and restoration work shall be started and completed as soon as practicable by Tenant at its sole cost and expense. If the insurance proceeds received in connection with any Casualty are insufficient to pay the entire cost of the work required to restore the Facility, Tenant shall be responsible for funding the deficiency to restore the Facility. Tenant shall immediately take such commercially reasonable action as is necessary to assure that the Facility (or any portion of the Leased Property) does not constitute a nuisance or otherwise present a health or safety hazard as required by Applicable Laws. Tenant shall not be entitled to any abatement of or reduction in Rent during or resulting from any Casualty affecting the Facility or any damage to or destruction of the Facility from any other cause whatsoever. Such restoration as required by this Section 9.1.1 shall be to substantially the same condition that existed immediately prior to the Casualty, except for modifications required by Applicable Law. Landlord and Tenant hereby waive the provisions of any Law relating to the matters addressed in this Section, and agree that their respective rights for damage to or destruction of the Facility shall be those specifically provided in this Lease, which shall constitute an express agreement between the parties with respect thereto, and Landlord and Tenant hereby agree that any Applicable Law with respect

to any rights or obligations concerning damage or destruction of leased or hired property, shall have no application to this Lease or to any damage or destruction to all or any part of the Facility.

9.1.2 Termination. If all or any material portion of the Facility shall be damaged by any Casualty which occurs during the last thirty six (36) months of the then-applicable Term and Tenant determines in its reasonable discretion that the Facility is not capable of being fully restored in all material respects on or prior to the later of (i) six (6) months following the date of such Casualty or (ii) the date that is twelve (12) months prior to the Expiration Date, Tenant shall have the right to terminate this Lease upon written notice Landlord within sixty (60) days after the Casualty, which notice by Tenant, shall be accompanied by detailed explanation of such determination by Tenant together with payment of all Rent due from Tenant to Landlord to the date of termination specified in such notice. Tenant, however, shall not have the right to terminate this Lease if the Casualty was caused by the negligence or intentional misconduct of Tenant or any Tenant Parties. As a condition to Tenant's option to terminate this Lease pursuant to this Section 9.1.2, Tenant shall (1) assign to Landlord all of Tenant's right, title and interest in and to any property insurance proceeds received or receivable in connection with such Casualty, together with any additional funds (as reasonably determined by Landlord) necessary to complete such restoration to the extent the insurance proceeds are insufficient, and (2) pay to Landlord an amount equal to Tenant's deductible under any insurance policy covering a Casualty to the Leased Property. The termination of this Lease pursuant to this Section 9.1.2 shall not relieve Tenant of its obligations under this Lease to reimburse Landlord for any deficiency amounts if the full restoration costs required with respect to any Casualty are not covered, either in whole or in part, by the insurance proceeds received. Nothing contained herein shall relieve Tenant of its obligations under this Article (or otherwise under this Lease) to repair and restore the Facility following a Casualty, even if such Casualty is not covered, either in whole or in part, by insurance or if the insurance proceeds are less than the costs necessary for such restoration.

9.1.3 No Abatement of Rent. If the Site or the Facility are damaged or destroyed by Casualty, then the Rent shall not be abated and Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the Site or the Facility, damage to Tenant's Personalty or to any Alterations, or any inconvenience occasioned by any damage, repair, or restoration.

9.1.4 Insurance Proceeds. In the event of a Casualty resulting in a loss payment for the Site or the Facility in an amount greater than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00), the proceeds of all insurance policies maintained by Tenant pursuant to the terms hereof shall be delivered to Landlord to be placed in a joint escrow account requiring joint signatures (or in another mutually acceptable escrow arrangement with Landlord's lender, if/as applicable) and shall be used by Tenant for the repair, reconstruction or restoration of the Site or the Facility (as applicable). Such proceeds shall be disbursed periodically by Landlord, subject to reasonable conditions for disbursement imposed by Landlord and upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction or restoration. Tenant shall, at the time of Landlord's receipt of the insurance proceeds and from time to time thereafter until said work shall have been completed and paid for, furnish Landlord with adequate evidence that at all times the undisbursed portion of the insurance proceeds, together with any funds made available by Tenant, is sufficient to pay for the repair, reconstruction or restoration in its entirety. Tenant shall obtain and make

receipted bills available to Landlord and, upon completion of said work, full and final waivers of lien. In the event of a casualty resulting in a loss payment for the Site or the Facility in an amount equal to or less than the amount stated above, the proceeds shall be paid to Tenant, and shall be applied by Tenant towards repair, reconstruction and restoration. Notwithstanding the foregoing, in the event that a Casualty occurs during the continuance of an Event of Default, without limiting any other obligations of Tenant hereunder, the One Million Dollar (\$1,000,000.00) threshold above shall be reduced to zero (\$0.00) and, accordingly, all insurance proceeds with respect to such Casualty shall be delivered to Landlord in accordance with the terms of this Section 9.1.4.

9.2 Waiver. Tenant (for itself and all others claiming through Tenant) irrevocably waives and releases its rights to make repairs at Landlord's expense. The provisions of this Lease, including this Section 9.2, constitute an express agreement between Landlord and Tenant with respect to any damage to, or destruction of, any portion of the Site or the Facility. Any law in respect of any rights or obligations concerning any such damage or destruction in the absence of an express agreement between the parties, and any other law relating to damage or destruction of leased premises, whether in effect on the date of this Lease or thereafter, shall have no application to this Lease or any damage or destruction of any part of the Site or the Facility.

9.3 Total Condemnation. If after the execution of this Lease and prior to the expiration of the Term, all or a significant portion of the Site or the Facility shall be permanently taken under power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking (collectively, a "**Taking**"), and if as a result of such Taking: (a) access to the Site or the Facility to and from the publicly dedicated roads adjacent to the Site as of the Commencement Date is permanently and materially impaired such that Tenant no longer has access to such dedicated road; (b) there is insufficient parking to operate the Facility under Applicable Laws and replacement parking cannot be constructed or provided elsewhere on the Site; or (c) the taking includes a portion of the Site or the Facility such that the remaining portions are unsuitable for the Permitted Use and the remaining portions of the Site cannot, in the reasonable opinion of a contractor mutually agreed upon by Landlord and Tenant, be restored to useful condition consistent with the Permitted Use within eighteen (18) months after the Taking (such event, a "**Total Condemnation**"), then, in such event:

9.3.1 Termination. On the date of the Total Condemnation, this Lease shall automatically terminate; provided, however, that Tenant's obligations under any indemnification provisions of this Lease and Tenant's obligation to pay Rent and all other monetary obligations (whether payable to Landlord or a third party) accruing under this Lease prior to the date of termination shall survive such termination. If the date of such Total Condemnation is other than the first day of a month, the Base Rent for the month in which such Total Condemnation occurs shall be apportioned based on the date of the Total Condemnation.

9.3.2 Award. Landlord shall be entitled to receive the entire award payable in connection with a Total Condemnation without deduction for any estate vested in Tenant by this Lease, and Tenant hereby expressly assigns to Landlord all of its right, title and interest in and to every such award and agrees that Tenant shall not be entitled to any such award or other payment for the value of Tenant's leasehold interest in this Lease; provided, however, that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's Personalty, loss

of goodwill, and for moving and relocation expenses (but only if such payment to Tenant does not reduce any award available to Landlord).

9.4 Partial Condemnation. In the event of a Taking which is not a Total Condemnation, neither party shall have the right to terminate this Lease and Tenant shall, using proceeds therefor from the condemning authority (provided that Landlord shall make available to Tenant all awards and proceeds from the condemning authority received by Landlord with respect to the Facility), proceed with restoration of the Site or the Facility (as applicable), at Tenant's sole expense, to substantially the same condition that existed prior to the Taking, except for modifications required by Applicable Law, and to the extent possible to make a functional unit of the remaining portion of the Site. In the event any partial taking materially affects Tenant's operations in the Facility for the Permitted Use, such that the Site no longer provides sufficient space for Tenant to carry out its business without material interference with the Permitted Use, then, commencing on the date on which Tenant's operations are materially affected, the Base Rent shall be abated in proportion to the square footage of the portion of the Facility taken. In such event, the proceeds of any condemnation award shall be made available to Tenant pursuant to this Section 9.4, such amounts shall be held in a joint escrow account to be applied to restoration of the Site and the Facility, subject to reasonable conditions for disbursement imposed by Landlord until the restoration has been completed and Tenant has been reimbursed for all the costs and expenses thereof. If the award is insufficient to pay for the restoration, Tenant shall be responsible for the remaining cost and expense of such restoration; provided, however, that Landlord shall use commercially reasonable efforts to obtain the highest possible the net award amount.

## **ARTICLE 10 MISCELLANEOUS**

10.1 Notices. Any notice, consent, demand, or other communication or document required or permitted to be given under this Lease or pursuant to any law ("**Notice(s)**"), shall be (a) in writing (except as otherwise provided in this Lease), (b) addressed to the intended recipient at its address set forth in the Basic Lease Information (provided that each of Landlord and Tenant may change its addresses for the giving of notices by giving written notice thereof to the other party), (c) sent by fully prepaid registered or certified United States Mail return receipt requested, or by any nationally recognized overnight courier service furnishing a written record of attempted or actual delivery, and (d) deemed to have been delivered upon actual delivery or rejection of delivery. Any Notice may be given by an attorney on behalf of Landlord or Tenant.

10.2 Certain Representations by Tenant. The representations and warranties of Tenant contained in this Section 10.2 are being made to induce Landlord to enter into this Lease, and Landlord has relied, and will continue to rely, upon such representations and warranties. Tenant represents and warrants to Landlord, as of the date of this Lease, as follows:

10.2.1 OFAC. Neither of Tenant, any wholly owned subsidiary of Tenant, nor, to Tenant's knowledge, any person holding (directly or indirectly) an interest of ten percent (10%) or greater in Tenant is (i) in violation of any OFAC Law or Regulation, the U.S. Patriot Act or Anti-Corruption Legislation, (ii) is named by any Executive Order (including the September 23, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or the United States Treasury Department as



a terrorist, "Specially Designated National and Blocked Person," or (iii) (to the Tenant's knowledge) acting, directly or indirectly, on behalf of any such person. To the Tenant's knowledge, the monies used in connection with this Lease and amounts committed with respect thereto, were not and are not derived from any activities that contravene any applicable OFAC Laws and Regulations, the U.S. Patriot Act, AML Legislation or Anti-Corruption Legislation, each as defined below. Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

10.2.2 AML/Anti-Corruption Legislation. As used herein, the term "**AML Legislation**" means United States anti-money laundering-related and anti-terrorism financing laws, regulations, and codes of practice applicable to the Tenant, its Affiliates, and their operations from time to time, including, any regulations, guidelines or orders thereunder. As used herein, the term "**Anti-Corruption Legislation**" means U.S. Foreign Corrupt Practices Act and similar anticorruption and anti-bribery laws of the United States. As used herein, the term "**OFAC Laws and Regulations**" means (i) any lists, laws, rules, sanctions and regulations maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, including the Trading with the Enemy Act, 50 U.S.C. App. § 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., the Iraq Sanctions Act, Pub. L. 101-513, Title V, §§ 586 to 586J, 104 Stat. 2047, the National Emergencies Act, 50 U.S.C. §§ 1601 et seq., the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1214-1319, the United Nations Participation Act, 22 U.S.C. § 287c, the International Security and Development Cooperation Act, 22 U.S.C. § 2349aa-9, the Nuclear Proliferation Prevention Act of 1994, Pub. L. 103-236, 108 Stat. 507, the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. §§ 1901 et seq., the Iran and Libya Sanctions Act of 1996, Pub. L. 104-172, 110 Stat. 1541, the Cuban Democracy Act, 22 U.S.C. §§ 6001 et seq., the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. §§ 6021-91, and the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1997, Pub. L. 104-208, 110 Stat. 3009-172; (ii) all regulations, executive orders, or administrative orders of any kind issued under these statutes, including 31 C.F.R., Subtitle B, Chapter V; and (iii) any other applicable United States civil or criminal federal or state laws, regulations, or orders that (1) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (2) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; or (3) are designed to disrupt the flow of funds to terrorist organizations, as all of the foregoing laws may be amended from time to time

10.2.3 Non-Contravention. To Tenant's knowledge, the execution and delivery of this Lease by Tenant and the consummation by Tenant of the transactions contemplated by this Lease will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or governmental authority, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Tenant or any agreement or instrument to which Tenant or any of its Affiliates is a party or by which Tenant or any of its Affiliates is bound or (iii) violate any Applicable Law relating to Tenant.

10.2.4 Suits, Judgments and Liens. Except as disclosed to Landlord in writing, there are no legal actions, suits or similar proceedings pending or threatened in writing against Tenant or the Leased Property.

10.2.5 Solvency. Tenant (i) is not and shall not be “insolvent” within the meaning of the Bankruptcy Laws as of the Closing Date, (ii) has not ceased to pay its undisputed debts as they become due in the ordinary course of business, (iii) has not filed or taken any action to file for protection or relief under the provisions of the Bankruptcy Laws, (iv) has not suffered or been threatened by creditors with, the involuntary application of any Bankruptcy Law, (v) has not sought, consented to or acquiesced in the appointment of any receiver, trustee, liquidator or other custodian of all or substantially all of its assets, (vi) has not suffered the attachment or other judicial seizure of all or substantially all of its assets, and (vii) has not made or taken any action to make a general assignment for the benefit of creditors. Tenant is not entering into the transactions described in this Lease with an intent to defraud any creditor or to prefer the rights of one creditor over any other.

10.2.6 Fair Market Value. The Base Rent and all other consideration provided by Tenant to Landlord under this Lease constitute fair market value and reasonable equivalent value and fair consideration for the transactions contemplated under this Lease and the Transaction Documents.

10.2.7 ERISA. (a) Tenant is not an employee benefit plan as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “plan” as defined in Code Section 4975, or any entity the assets of which constitute “plan assets” of one or more such plans for purposes of Title I of ERISA or Code Section 4975; (b) Tenant is not a “governmental plan” within the meaning of Section 3(32) of ERISA, and assets of Tenant do not constitute plan assets of one or more such plans; and (c) the transactions contemplated under this Lease do not and will not constitute a non-exempt prohibited transaction under ERISA.

10.3 Brokers. Each of Landlord and Tenant represents and warrants to the other that such party has not dealt with any broker or finder in connection with this Lease. Each party shall indemnify the other and hold it harmless from any cost, expense, or liability (including costs of suit and reasonable attorneys’ fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act or statement of the indemnifying party.

10.4 No Waivers. No provision of this Lease shall be deemed waived by either party unless expressly waived in a writing signed by the waiving party (and then only to the extent so expressly waived). No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and Landlord’s consent or approval respecting any action by Tenant shall not constitute a waiver of the requirement for obtaining Landlord’s consent or approval respecting any subsequent action. No act or thing done by Landlord or its agents during the Term shall be deemed a termination of this Lease, an acceleration of the Termination Date, or an acceptance of the surrender of the Leased Property, and no agreement to terminate this Lease, accelerate the Termination Date, or accept a surrender of the Leased Property shall be valid, unless expressly provided in a writing signed by Landlord. Acceptance of the full or any partial payment of Rent shall not be deemed Landlord’s waiver of any breach by Tenant of any provision of this Lease and Landlord’s acceptance of a lesser amount than the Rent due under this Lease shall not be deemed Landlord’s waiver of Landlord’s right to receive the full amount of Rent due, nor shall any endorsement or statement on any check or

payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such partial payment without prejudice to Landlord's right to recover the full amount of Rent due. Tenant acknowledges that this Section 10.4 imparts actual notice to Tenant that Landlord's acceptance of partial payment of Rent does not constitute a waiver of any of Landlord's rights, including any right Landlord may have to recover possession of the Leased Property. Forbearance by Landlord in enforcing one or more of the remedies provided in this Lease upon an Event of Default shall not be deemed a waiver of such Event of Default or of Landlord's right to enforce any such remedies with respect to such Event of Default or any subsequent Event of Default. Landlord's acceptance of any Rent or of the performance of any other provision of this Lease from any person other than Tenant, including any Transferee, shall not be deemed a waiver of Landlord's right to approve any Transfer in accordance with Article 5.

#### 10.5 Other Provisions.

10.5.1 Covenant of Quiet Enjoyment. Landlord covenants that Tenant, while no Event of Default has occurred and be continuing, shall peaceably and quietly have, hold, and enjoy the Leased Property for the Term without hindrance from Landlord, but not otherwise, subject to all matters of record and to the terms and provisions of this Lease.

10.5.2 Survival. Tenant understands and agrees that all terms and conditions of this Lease that require continued performance, compliance, or effect beyond the Termination Date (including, but not limited to, Tenant's obligations pursuant to Section 5.4 and Section 6.1 hereof) shall survive the Termination Date and shall be enforceable in the event of a failure to perform or comply.

10.5.3 Entire Agreement. This Lease, together with the Exhibits, contains all of the agreements of Landlord and Tenant in respect of this Lease and supersedes any previous negotiations. There have been no representations made by Landlord or any of Landlord's representatives, or understandings made between Landlord and Tenant, other than those set forth in this Lease and the Exhibits. This Lease may not be modified except by a written instrument duly executed by the party to be bound. Landlord and Tenant each represent to the other, that is has the individuals executing this Lease have been properly authorized by proper action of the Landlord and Tenant, as the case may be.

10.5.4 Execution in Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.5.5 Recording. Tenant shall not record this Lease. A short form memorandum of this Lease in the form attached hereto as Exhibit C, will be recorded and filed among the appropriate land records of Madison County, Kentucky, and the Tenant shall pay the recording costs and any fees or taxes associated therewith. In the event of a discrepancy between the provisions of this Lease and such short form memorandum thereof, the provisions of this Lease shall prevail.

10.5.6 Non-Discrimination. Tenant shall not (and Tenant shall not permit any person claiming through or under Tenant to) discriminate against or segregate any person or group

of persons on account of race, color, creed, sex, religion, marital status, ancestry, or national origin, whether in the use, occupancy, subleasing, transferring, or enjoyment of the Leased Property, or otherwise.

10.5.7 Costs and Attorneys' Fees. In any action or proceeding that Landlord or Tenant initiates against the other party declaratory or otherwise, arising out of this Lease, the unsuccessful party in such action or proceeding shall reimburse the prevailing party for its costs, including reasonable attorneys' fees (at trial and appellate levels). Each party shall also be entitled to recover its reasonable attorneys' fees and costs incurred in any bankruptcy action filed by or against the other party, including, without limitation, fees incurred seeking relief from the automatic stay, in connection with post-petition financing, inventory liquidation or going out of business sale, sale and lease assignment procedures, assumption or rejection of this Lease, in connection with a plan of reorganization or otherwise, due diligence in connection with any of the foregoing, in any adversary proceeding, and in the preparation and filing of any proof of claim whether such fees are incurred during settlement discussions, or related to formal and informal objections, at trial or in connection with any appeals

10.5.8 Intentionally Omitted.

10.5.9 Tenant Reporting. Tenant shall prepare, deliver, and maintain the following data and reports relating to the Facility (the "**Reports**") and Tenant shall make the Reports available to Landlord at the frequency or within the period as follows:

(a) On an ongoing basis, any reports required under Applicable Law, the Project Governmental Approvals, or the Project Documents, copies of which shall be submitted by Tenant to Landlord for Landlord's review and approval at least ten (10) Business Days prior to the deadline for submission to any governmental authority or counterparty to a Project Document;

(b) On an ongoing basis, any records required to be maintained pursuant to Applicable Law, the Project Documents, the Project Governmental Approvals, and Prudent Industry Practices and any other material records relating to Tenant's use, maintenance, and repair of the Facility;

(c) Promptly after the occurrence of any Casualty, a report summarizing such Casualty, corrective actions taken, and open issues;

(d) As frequently as may be required by Landlord upon at least five (5) days prior written notice, until the completion of construction of the Facility, reports describing, in reasonable detail, the progress made to date, including any assets installed or removed from the Facility and attaching copies of any reports or other material documents (including construction agreements, partial and full lien waivers, sworn statements and project summaries and schedules) provided by third parties hired in connection with such event to the extent such materials have not been delivered to Landlord as part of a prior report;

(e) As soon as available, and in any event no later than thirty (30) days after each calendar month, unaudited statements of income and cash flow of Tenant for

such calendar month and for the period from the beginning of the then-current fiscal year to the end of such fiscal quarter and the related balance sheet of Tenant as at the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, all prepared in accordance with generally accepted accounting principles (“GAAP”);

(f) As soon as available, and in any event no later than thirty (30) days after each fiscal quarter, unaudited statements of income and cash flow of Tenant for such fiscal quarter and for the period from the beginning of the then-current fiscal year to the end of such fiscal quarter and the related balance sheet of Tenant as at the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, all prepared in accordance with GAAP;

(g) As soon as available, and in any event no later than ninety (90) days after the end of each fiscal year, audited statements of income and cash flows of Tenant for such fiscal year and the related balance sheet of Tenant as at the end of such fiscal year and related financial statement footnote disclosures, setting forth in each case (to the extent applicable) in comparative form the corresponding figures for the preceding fiscal year, and accompanied by an opinion of an independent certified public accountant of recognized national standing reasonably acceptable to Landlord, which opinion shall state that such financial statements fairly present in all material respects the financial condition and the results of operations of Tenant as at the end of, and for, such fiscal year in accordance with GAAP (subject to normal year-end audit adjustments) (the items referred to in Section 10.5.8(e) – (g), each, a “**Financial Report**” and, collectively, the “**Financial Reports**”); and

(h) On an as-requested basis, any other records or reports relating to the Facility that Landlord reasonably requests.

#### 10.6 Interpretation.

10.6.1 Captions. The captions in this Lease are for convenience of reference and shall not define, increase, limit, or describe the scope or intent of any provision of this Lease.

10.6.2 Landlord and Tenant. The terms “Tenant” and “Landlord,” and any pronoun used in place thereof, shall indicate and include each of the parties’ and respective successors, executors, administrators, and permitted assigns, according to the context, provided that, for the purposes of any provisions indemnifying or waiving claims against, Landlord, the term “Landlord” shall also include Landlord’s present and future investment manager, and property management company, and all of their trustees, directors, officers, partners, beneficiaries, principals, members, managers, investors, stockholders, employees, Affiliates, agents, representatives, contractors (and subcontractors of any tier), successors and assigns.

10.6.3 Non-Exclusivity. Whenever the words “including,” “include,” or “includes” are used in this Lease, they shall be interpreted in a nonexclusive manner as though the words “without limitation” immediately followed the same. Any reference to “any part” or “any portion



of' the Leased Property or any other property shall be construed to refer to all or any part of the same.

10.6.4 Covenants Independent. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent.

10.6.5 Joint and Several Liability. In any case where either Landlord or Tenant consists of more than one person, the obligations of such party under this Lease shall be joint and several.

10.6.6 Time of the Essence. Time is of the essence of this Lease and all of its provisions, including, without limitation, obligations for the payment of money.

10.6.7 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law thereof or of any other jurisdiction that would result in the application of the Applicable Laws of any other jurisdiction; provided, however, that any matter in this Lease that must be governed by the internal laws of the Commonwealth of Kentucky to be enforceable shall be governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky. Tenant's obligation to pay Rent shall not be discharged or otherwise affected by any Applicable Law or regulation now or hereafter applicable to the Leased Property, or any other restriction on Tenant's use, or (except as expressly provided in this Lease) any Casualty or Taking, or any failure by Landlord to perform any covenant contained herein, or any other occurrence; and no termination or abatement remedy that is not expressly provided for in this Lease for any breach or failure by Landlord to perform any obligation under this Lease shall be implied or applicable as a matter of Applicable Law.

10.6.8 Successors and Assigns. Subject to the provisions of Article 5, the provisions of this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of Landlord and Tenant.

10.6.9 Submission. The submission of this Lease to Tenant or a summary of some or all of its provisions for examination does not constitute a reservation of or option for the Leased Property or an offer to lease, and no legal obligations shall arise with respect to the Leased Property or other matters herein unless and until such time as this Lease is executed and delivered by Landlord and Tenant and approved by the holder of any mortgage on the Site having the right to approve this Lease

10.6.10. Landlord Determinations. Except to the extent expressly provided herein, all judgments, determinations, or consents to be made by Landlord in accordance with the terms of this Lease (including, but not limited to, determinations as to the occurrence of any material adverse effect) shall be made by Landlord in its sole discretion, and shall be controlling.

10.7 Tenant's Signage. Tenant shall have the right to install such signage at or upon the Site or the Facility as permitted by Applicable Laws. Tenant, at its sole expense, shall maintain Tenant's signage in good condition and repair during the Term. Should Tenant's signage require maintenance or repairs as determined in Landlord's reasonable judgment, Landlord shall have the right to provide notice thereof to Tenant and Tenant shall cause such repairs and/or maintenance

to be performed within thirty (30) days after receipt of such notice from Landlord at Tenant's sole cost and expense. Should Tenant fail to perform such maintenance and repairs within the period described in the immediately preceding sentence, then, in addition to all of Landlord's other rights and remedies, Landlord may, but need not, perform the required maintenance and repairs, and Tenant shall pay Landlord the cost thereof, plus a fee for Landlord's oversight and coordination of such work equal to five percent (5%) of its cost, within thirty (30) days after receipt of Landlord's request for payment, together with reasonable, supporting backup documentation.

10.8 Jurisdiction; Waiver of Jury Trial.

EACH OF LANDLORD AND TENANT HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF MADISON, COMMONWEALTH OF KENTUCKY AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS. EACH OF LANDLORD AND TENANT ACCEPTS FOR ITSELF AND IN CONNECTION WITH THE LEASED PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

EACH OF LANDLORD AND TENANT, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOS THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANYWAY RELATING TO THIS LEASE. EACH OF LANDLORD AND TENANT ACKNOWLEDGES THAT THE PROVISIONS OF THIS SUBSECTION ARE A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS LEASE. NOTWITHSTANDING THE FOREGOING, EACH OF LANDLORD AND TENANT FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.6.7 AND THIS SECTION 10.8 SHALL NOT SUPERSEDE OR AFFECT IN ANY RESPECT THE GOVERNING LAW OR CHOICE OF FORUM STIPULATED IN ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT (OR ANY AFFILIATE OF EITHER PARTY).

10.9 Landlord Access. Landlord, its Affiliates, and their respective contractors and agents, subject to the terms of this Section 10.9, may, at any and all reasonable times during normal business hours (or during non-business hours, if Landlord so requests and Tenant consents), and upon at least two (2) business days' prior notice (which may be oral or by e-mail to the office manager or other Tenant-designated individual at the Site; but provided that no time restrictions shall apply or advance notice be required if a bona fide emergency with an immediate threat to property damage or personal injury necessitates immediate entry and any oral notice will be followed immediately by e-mail notice as provided above prior to entry), enter the Site and the Facility to (i) inspect the Leased Property and to determine whether Tenant is in compliance with its obligations hereunder, (ii) supply any service Landlord is required to provide hereunder, (iii) post notices of non-responsibility, (iv) inspect and make copies of records relating to (x) the Leased

Property and the Facility, including the operation and maintenance, and repair of the Facility, or (y) any Project Documents, including payments and collections, (v) discuss the Facility with the managers, officers, representatives, or professional consultants of Tenant, and (vi) show the Site and the Facility to current and prospective investors, lenders and purchasers; provided, however, that Landlord shall comply with Tenant's reasonable safety procedures and protocols with respect to the Site and the Facility, and with respect to portions of the Facility (if any) that are reasonably designated in writing by Tenant to Landlord as controlled or having restricted access (the "**Secure Access Areas**"), shall comply with Tenant's reasonable additional security and safety procedures and protocols related to such portions of the Site and the Facility, including only entering such designated Secure Access Areas when accompanied by a Tenant representative (provided further, that Tenant shall provide a Tenant representative to accompany Landlord upon written request from Landlord at least two (2) business days' in advance). Tenant shall keep and maintain at all times complete and accurate books and records regarding the maintenance and repair of the Facility and the Site, and upon the prior written request of Landlord, Tenant shall promptly furnish to Landlord, copies of all maintenance and repair records for the Site in Tenant's possession, including any maintenance or service contracts. In no event shall Tenant's Base Rent abate as a result of Landlord's activities pursuant to this Section; provided, however, that all such activities shall be conducted in such a manner so as to cause as little interference to Tenant as is reasonably possible. Landlord shall at all times retain keys, key cards and access codes with which to unlock all of the doors in the Site and the Facility. If an emergency necessitates immediate access to the Site or the Facility, Landlord may use whatever force is necessary to enter the Site and the Facility, and any such entry to the Site or the Facility shall not constitute a forcible or unlawful entry to the Site, the Facility, a detainer of the Site or the Facility, an eviction of Tenant from the Site or the Facility, or any portion thereof, or a violation of the provisions of this Section 10.9. Notwithstanding anything herein to the contrary, in the event Tenant notifies Landlord within one (1) business day (which may be oral or by email to the Landlord-designated individual) following Landlord's request for access that the proposed day and/or time for entry will cause a disruption to a planned event, meeting or other programming for Tenant, Landlord and Tenant shall cooperate with one another to identify a better date and/or time for Landlord's entry of the Site and the Facility. The foregoing terms of this Section 10.9 shall not supersede or limit in any respect any access provided to Landlord or any Affiliate thereof under the Marketing Agreement. To the extent that there is a conflict between the terms of this Section 10.9 and the terms of the Marketing Agreement, the terms of the Marketing Agreement shall apply.

10.10 Confidentiality. Except as expressly permitted pursuant to the terms of this Lease or any Transaction Document, each Party (a "**Recipient**") agrees to use commercially reasonable efforts to maintain the confidential nature of, and shall not use or disclose (i) the terms and provisions of this Lease, and (ii) all information received by or in the possession of Party relating to the other Party's business (other than information relating specifically to the Facility) which is either nonpublic, confidential or proprietary (such information, the "**Confidential Information**") of the other Party or the other Party's Affiliates (a "**Disclosing Party**") without first obtaining such Disclosing Party's prior written consent; provided, however, that nothing in this Section 10.10 shall require any Recipient to obtain any consent of any Disclosing Party in connection with (and each Disclosing Party hereby authorizes each Recipient to freely disclose any financial information or Confidential Information with respect to such Disclosing Party or any Transaction Document without such Disclosing Party's consent, to the extent otherwise required, in connection with): (a) exercising any of a Recipient's rights under the Transaction Documents, including those



exercisable upon the occurrence of an Event of Default; (b) providing information about Tenant or any Transaction Document or the parties thereto to any Mortgagee or prospective mortgagee providing financing secured by Landlord's interest in the Leased Property (or any agent thereof); (c) any situation in which any Recipient is required by Applicable Law or any governmental authority to disclose information (provided that such person uses commercially reasonable efforts to maintain confidentiality of the information disclosed and notifies the Disclosing Party in advance of any such disclosure); (d) providing information to legal counsel to any Recipient in connection with the transactions contemplated by any of the Transaction Documents (if such Recipient informs such counsel of the confidential nature of such information and requires that it be kept confidential except as permitted herein); (e) providing information to independent accountants, auditors or other expert consultants retained by any Recipient (if such Recipient informs such auditors or consultants of the confidential nature of such information and requires that it be kept confidential except as permitted herein); (f) providing information to such Recipient's officers, directors, members, managers and employees (if such Recipient informs such officers, directors, members, managers and employees of the confidential nature of such information and requires that it be kept confidential except as permitted herein); (g) providing information to Affiliates of Recipient and the respective officers, directors, members, managers, employees, investors and lenders of such Affiliates (if such Recipient informs such Affiliates and such other persons of the confidential nature of such information and requires that it be kept confidential except as permitted herein); (h) any information that is in or becomes part of the public domain otherwise than through a wrongful act of any Recipient or any employees or agents thereof or other persons to whom Confidential Information is disclosed under any of clauses (b), (c), (d), (e), (f) and (g) of this Section 10.10; (i) any information that is in the possession of any Recipient prior to receipt thereof from the Disclosing Party or any other person known to any Recipient to be acting on behalf of the Disclosing Party; (j) any information that is independently developed by any Recipient; and (k) any information that is disclosed to any Recipient by a third party that is not known or reasonably suspected by such Recipient to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, Disclosing Party, with respect to such information. The foregoing terms of this Section 10.10 shall not supersede or limit in any respect the terms and provisions contained in other agreements with respect to Confidential Information between Tenant and Landlord and their respective Affiliates. To the extent that there is a conflict between the terms of this Section 10.10 and the terms of such other agreements regarding Confidential Information the terms of such other agreements shall apply.

10.11 No Merger of Title. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) the fee estate in the Site, except as may expressly be stated in a written instrument duly executed and delivered by the appropriate person, or (c) a beneficial interest in Landlord.

10.12 Force Majeure. If either party is in any way delayed or prevented from performing any of its obligations under this Lease (other than the payment of Rent by Tenant) due to any MLA Force Majeure, then the time for performance of such obligation shall be excused for the period of such delay or prevention and extended for a period equal to the period of such delay, interruption or prevention, provided that the affected party shall give such notice to the other within five (5) business days following the commencement of such MLA Force Majeure. An "MLA Force

**Majeure**” shall mean any event circumstance, or combination of events or circumstances (including a fire, act of God, governmental act or failure to act, strike, or labor dispute), that (i) arises after the Commencement Date, (ii) was not caused by and is beyond the reasonable control of the Party claiming the occurrence of a force majeure, (ii) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the occurrence of a force majeure, and (iii) the Party claiming the occurrence of a force majeure can demonstrate that such event is the cause of a delay in or prevents performance or the meeting of an obligation of such Party under this Lease. Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute an MLA Force Majeure: (i) any labor or manpower shortages; (ii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable MLA Force Majeure causing such condition; (iii) events that affect the cost of equipment or materials; (iv) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (v) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from closure of roads or other transportation routes by a governmental authority; (vi) any variance in temperature at the Site; (vii) any climactic conditions at the Site that do not materially interfere with the operation of the Facility; (viii) actions of a governmental authority in respect of or in relation to or resulting from Tenant’s compliance or non-compliance with Applicable Laws; (ix) any failure by Tenant to obtain or maintain any Project Governmental Approval it is required to obtain or maintain hereunder, unless such failure is solely caused by an MLA Force Majeure; (x) the imposition by a governmental authority of any import tariff, customs duties, price supports or similar taxes or fees, including any change in any Applicable Law that results in, or causes an increase in, or imposition of, any costs, tariffs, duties, quotas, tariff rate quotas, fines, penalties, fees, minimum pricing or other restrictions related to the importation of equipment into the United States; and (xi) any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor or other personnel of Tenant.

## **ARTICLE 11 LIMITATION OF LIABILITY**

11.1 Landlord’s Liability. Tenant agrees to look only to Landlord’s interest in the Leased Property for satisfaction of any claim against Landlord hereunder or under any other instrument related to the Lease (including any separate agreements among the parties and any notices or certificates delivered by Landlord) and not to any other property, funds, or assets of any Landlord Party, any Affiliate thereof, or any director, officer, general partner, shareholder, limited partner, beneficiary, employee, attorney, consultant, contractor or agent of any Landlord Party. If Landlord transfers its interest in the Leased Property, then from and after each such transfer Tenant shall look solely to the interests in the Leased Property of Landlord’s transferees for the performance of all of the obligations of Landlord hereunder (or under any related instrument). The obligations of Landlord shall not be binding on any direct or indirect partners (or members, trustees, or beneficiaries) of Landlord or of any successor, individually, but only upon Landlord’s or such successor’s interest described above. Further, if Landlord is, or one of the parties comprising Landlord is, or the Lease is assigned to, a real estate investment trust (“**REIT**”), the parties acknowledge and agree that the obligations of the REIT hereunder and under all documents delivered pursuant hereto (and all documents to which the Lease may be pursuant) or which give effect to, or amend or supplement, the terms of the Lease are not personally binding upon any trustee thereof, any registered or beneficial holder of units (a “**Unitholder**”) or any annuitant under

a plan of which a Unitholder acts as a trustee or carrier, or any officers, employees or agents of the REIT and resort shall not be had to, nor shall recourse or satisfaction be sought from, any of the foregoing or the private property of any of the foregoing.

11.2 Assignment of Rents.

11.2.1 With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage on property that includes the Leased Property, Tenant agrees that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder unless such holder shall, by notice sent to Tenant, specifically otherwise elect and, except as aforesaid, such holder shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Leased Property. In addition, Tenant shall, at Landlord's cost and expense, execute and deliver (or cause to be executed and delivered, as applicable) to Landlord any other commercially reasonable and standard instruments and documents reasonably requested by Landlord in connection with any such assignment, and shall otherwise cooperate reasonably with Landlord in connection with any such assignment at no cost to Tenant.

11.2.2 In no event shall the acquisition of Landlord's interest in the Leased Property by a purchaser that, simultaneously therewith, leases Landlord's entire interest in the Leased Property back to the seller thereof be treated as an assumption by operation of Law or otherwise, of Landlord's obligations hereunder, but Tenant shall look solely to such seller-lessee, and its successors from time to time in title, for performance of Landlord's obligations hereunder. In any such event, this Lease shall be subject and subordinate to the lease to such purchaser. For all purposes, such seller-lessee, and its successors in title, shall be the Landlord hereunder unless and until Landlord's position shall have been assumed by such purchaser-lessor.

11.2.3 Except as provided in Section 11.2.2, in the event of any transfer of title to the Leased Property by Landlord, the transferring Landlord shall thereafter be entirely freed and relieved from the performance and observance of all covenants and obligations hereunder, and Tenant shall only look to any subsequent party becoming Landlord hereunder the same. Tenant hereby agrees to enter into such agreements or instruments as may, from time to time, be requested in confirmation of the foregoing.

**(SIGNATURES APPEAR ON NEXT PAGE)**

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease on the day and year first above written.

**LANDLORD**

**MASTRONARDI BEREALLC**, a Delaware limited liability company

By:   
Name: Paul Mastronardi  
Title: President and Chief Executive Officer

**TENANT**

**APPHARVEST BEREALLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease on the day and year first above written.

**LANDLORD**

**MASTRONARDI BEREALLC, a**  
Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**TENANT**

**APPHARVEST BEREAFARM, LLC, a**  
Delaware limited liability company

By: AppHarvest Operations, Inc., a Delaware  
public benefit corporation  
Its: Sole Member

By: /s/ Loren Eggleton

Name: Loren Eggleton  
Title: Chief Financial Officer

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE SITE**

Being all of that certain tract, containing 40.0 acres, as shown on the Minor Plat of BEREAL INDUSTRIAL DEVELOPMENT AUTHORITY, Menelaus Rd./Farristown Industrial Dr., 1000 Farristown Industrial Drive, Berea, Madison County, Kentucky 40403, of record in Plat Book 29, Page 158, in the Madison County Clerk's Office.

Being the same property acquired by Mastronardi Berea LLC, a Delaware limited liability company, by Special Warranty Deed dated December \_\_, 2022 and recorded simultaneously herewith in Deed Book \_\_\_\_, Page \_\_\_\_, in the Madison County Clerk's Office.

Property address: 1000 Farristown Industrial Road, Berea, Kentucky (Madison County)  
Parcel ID No.: 0060-0000-0007-01



**AMENDMENT TO  
EMPLOYMENT AGREEMENT**

This **AMENDMENT TO EMPLOYMENT AGREEMENT** (the “*Amendment*”) is entered into this 20th day of February 2023 (the “*Effective Date*”), by and between **LOREN EGGLETON** (the “*Employee*”) and **APPHARVEST, INC.** (the “*Company*”).

**RECITALS**

A. The Company and the Employee have entered into that certain Employment Agreement dated as of December 11, 2020 (the “*Employment Agreement*”).

B. The Company and the Employee desire to amend the Employment Agreement as provided in this Amendment.

**AGREEMENT**

The parties agree to the following:

**1. Amendment to Subsections 6.1(b)(i) and (ii).** Subsections 6.1(b)(i) and (ii) of the Employment Agreement are hereby amended and replaced in their entirety as follows:

(i) The Company will pay Employee an amount equal to Employee’s then current Base Salary for twelve (12) months, less all applicable withholdings and deductions, and paid in equal installments beginning on the Company’s first regularly scheduled payroll date following the Release Effective Date (as defined below), with the remaining installments occurring on the Company’s regularly schedule payroll dates thereafter.

(ii) If Employee timely elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“*COBRA*”), for Employee and Employee’s dependents under the Company’s group health plans following such termination, then the Company shall pay the COBRA premiums necessary to continue Employee’s and his covered dependents’ health insurance coverage in effect for Employee (and Employee’s covered dependents) on the termination date until the earliest of: (i) twelve (12) months following the termination date; (ii) the date when Employee becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment; or (iii) the date Employee ceases to be eligible for COBRA continuation coverage for any reason, including plan termination (such period from the termination date through the earlier of (i)-(iii), (the “*COBRA Payment Period*”). Notwithstanding the foregoing, if at any time the Company determines that its payment of COBRA premiums on Employee’s behalf would result in a violation of applicable law (including, but not limited to, the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of paying COBRA premiums pursuant to this Section, the Company shall pay Employee on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA premium for such month, subject to applicable tax withholding, for the remainder of the COBRA Payment Period. Nothing in this Agreement shall deprive Employee of his rights under

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COBRA or ERISA for benefits under plans and policies arising under his employment by the Company.

**2. No Other Amendments.** Except as modified or amended in this Amendment, no other term or provision of the Employment Agreement is amended or modified in any respect. The Employment Agreement, and this Amendment, set forth the entire understanding between the parties with regard to the subject matter hereof and supersedes any prior oral discussions or written communications and agreements. This Amendment cannot be modified or amended except in writing signed by the Executive and an authorized officer of the Company.

The parties have executed this Amendment to Employment Agreement on the day and year first written above.

**APPHARVEST, INC.**

By: /s/ Johathan Webb  
Name: Jonathan Webb  
Title: CEO

Employee:

/s/ Loren Eggleton  
**Loren Eggleton**



## RETENTION BONUS AGREEMENT

This Retention Bonus Agreement (the “**Agreement**”), dated as of February 20, 2023, is made and entered into by and between AppHarvest, Inc. (the “**Company**”) and Loren Eggleton (“**Executive**”) (collectively, the “**Parties**”).

WHEREAS, the Company desires to continue to employ Executive through, and to motivate Executive to assist in achieving, the consummation of a strategic transaction, whether through the issuance and sale of equity securities of the Company in a bona fide financing transaction, the sale of an asset or assets of the Company or its subsidiaries or the consummation of a Change in Control (as defined in the Company’s 2021 Equity Incentive Plan) or a similar transaction that is determined by the Board of Directors of the Company (the “**Board**”) or the Compensation Committee of the Board, in its reasonable discretion, to constitute a “Transaction” for the purposes of this Agreement (the “**Transaction**,” and the date of the closing of such Transaction, the “**Transaction Date**”).

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the adequacy and sufficiency of which are hereby acknowledged, the Company and Executive agree as follows:

1. The Company agrees to pay Executive the Transaction Bonus (as defined below) less applicable withholding and deductions, within sixty (60) days following the Transaction Date, so long as Executive: (i) remains continuously employed by the Company through the Transaction Date, except as set forth herein; and (ii) delivers to the Company an executed general release of claims in favor of the Company in a form presented by the Company (the “**Release**”) within the timeframe provided by the Company and allows such Release to become effective in accordance with its terms. In all cases, the Release must become effective and irrevocable in order for Executive to be eligible to receive the Transaction Bonus. For purposes of this Agreement, “**Transaction Bonus**” means: (i) \$300,000 if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$75 million but less than \$100 million; (ii) \$600,000 if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$100 million but less than \$125 million; (iii) \$900,000 if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$125 million but less than \$150 million; or (iv) \$1.2 million if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$150 million. The amount of the bonus will be calculated using straight line interpolation for gross proceed levels between the above-referenced tiers (e.g., if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of \$87.5 million, the Transaction Bonus would be \$450,000).

2. If Executive’s employment terminates for any reason prior to the Transaction Date, no Transaction Bonus shall be paid unless (i) such termination was by the Company without Cause or by Executive with Good Reason (each as defined in the Employment Agreement between Executive and the Company dated December 11, 2020, as amended (the “**Employment Agreement**”)) in the three month period preceding the Transaction Date, and (ii) Executive fully complies with the obligations set forth in Section 6.1(c) of the Employment Agreement.

3. The Parties agree that this Agreement is for the sole purpose of providing a Transaction Bonus to Executive. This Agreement does not constitute an employment contract between Executive and the Company for any specific time period and does not in any way alter Executive’s status as an at-will employee. By signing this Agreement, Executive expressly acknowledges that Executive’s employment can be terminated at any time, by Executive or Company, with or without a reason.

4. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Kentucky, without reference to its conflict of laws rules.

5. This Agreement shall be binding upon the parties hereto. Nothing contained in this Agreement shall permit the assignment by Executive of any of Executive’s rights or obligations hereunder, and such assignment by Executive is expressly prohibited. The Company may assign this Agreement to an entity affiliated or related to the Company.

6. If any term or provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7. None of the provisions of this Agreement shall be considered waived except when set forth in writing and signed by the parties hereto.

8. This Agreement constitutes the entire understanding of the parties with regard to the Company’s provision of a Retention Bonus to Executive. This Agreement supersedes all prior and contemporaneous discussions, representations, correspondence or agreements, whether oral or written, pertaining to the Retention Bonus. All other agreements with regard to Executive’s employment shall remain in full force and effect. Any modifications to this Agreement shall be in writing and signed by both parties.

9. The parties have each reviewed this Agreement and understand the terms and conditions hereof. Each party has entered into this Agreement voluntarily and knowingly and without coercion or duress.

10. Notwithstanding any other provision herein, the parties intend that payments under this Agreement shall be exempt from (and if not exempt from, comply with) Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance promulgated thereunder (collectively, “**Section 409A**”) and this Agreement shall be interpreted accordingly. Executive shall be solely responsible for the tax consequences with respect to all amounts payable under this Agreement.

11. In the event that the payments and benefits (the “**Payments**”) paid or provided to Executive under the Agreement or otherwise (a) constitute “parachute payments” within the meaning of Section 280G of the Code (“**Section 280G**”), and (b) would be subject to the excise tax imposed by Section 4999 of the Code (“**Section 4999**”), then the Payments shall be either, as agreed to between the parties, (x) delivered in full, or (y) delivered as to such lesser extent which would result in no portion of the Payments being subject to excise tax under Section 4999, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Executive on an after-tax basis, of the greatest amount of the Payments, notwithstanding that all or some portion of the Payments may be taxable under Section 4999.

Dated:

**Executive**

/s/ Loren Eggleton  
Loren Eggleton

Dated:

**Company**

By: /s/ Jonathan Webb  
Name: Jonathan Webb  
Title: Chief Executive Officer

**AMENDMENT TO  
RETENTION BONUS AGREEMENT**

This **AMENDMENT TO RETENTION BONUS AGREEMENT** (the “*Amendment*”) is entered into this 14th day of March 2023 (the “*Effective Date*”), by and between **LOREN EGGLETON** (the “*Employee*”) and **APPHARVEST, INC.** (the “*Company*”).

**RECITALS**

A. The Company and the Employee have entered into that certain Retention Bonus Agreement effective as of February 20, 2023 (the “*Retention Bonus Agreement*”).

B. The Company and the Employee desire to amend the Retention Bonus Agreement as provided in this Amendment.

**AGREEMENT**

The parties agree to the following:

**1. Amendment to Recital.** The second paragraph is hereby amended and replaced in its entirety as follows:

“WHEREAS, the Company desires to continue to employ Executive through, and to motivate Executive to assist in achieving, the consummation of a strategic transaction, whether through the issuance and sale of equity securities of the Company in a bona fide financing transaction, the sale of an asset or assets of the Company or its subsidiaries or the consummation of a Change in Control (as defined in the Company’s 2021 Equity Incentive Plan) or a similar transaction that is determined by the Board of Directors of the Company (the “**Board**”) or the Compensation Committee of the Board, in its reasonable discretion, to constitute a “Transaction” for the purposes of this Agreement (the “**Transaction**,” and the date of the closing of such Transaction, the “**Transaction Date**”).”

**2. Amendment to Section 1.** Section 1 is hereby amended and replaced in its entirety as follows:

“The Company agrees to pay Executive the Transaction Bonus (as defined below) less applicable withholding and deductions, within sixty (60) days following the Transaction Date, so long as Executive: (i) remains continuously employed by the Company through the Transaction Date, except as set forth herein; and (ii) delivers to the Company an executed general release of claims in favor of the Company in a form presented by the Company (the “**Release**”) within the timeframe provided by the Company and allows such Release to become effective in accordance with its terms. In all cases, the Release must become effective and irrevocable in order for Executive to be eligible to receive the Transaction Bonus. For purposes of this Agreement, “**Transaction Bonus**” means: (i) \$300,000 if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$75 million but less than \$100 million; (ii) \$600,000 if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$100 million but less than \$125 million; (iii) \$900,000 if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$125 million but less than \$150 million; or (iv) \$1.2 million if the Transaction results in gross proceeds to the Company or its stockholders, as applicable, of at least \$150 million. The amount of the bonus will be calculated using straight line interpolation for gross proceed levels between the above-referenced tiers (e.g., if the Transaction

results in gross proceeds to the Company or its stockholders, as applicable, of \$87.5 million, the Transaction Bonus would be \$450,000).”

**3. Amendment to Section 2.** Section 2 is hereby amended and replaced in its entirety as follows:

“If Executive’s employment terminates for any reason prior to the Transaction Date, no Transaction Bonus shall be paid unless (i) such termination was by the Company without Cause or by Executive with Good Reason (each as defined in the Employment Agreement between Executive and the Company dated December 11, 2020, as amended (the “Employment Agreement”)) in the three month period preceding the Transaction Date, and (ii) Executive fully complies with the obligations set forth in Section 6.1(c) of the Employment Agreement.”

**4. Additional Section.** The following is hereby added as Section 11:

“In the event that the payments and benefits (the “**Payments**”) paid or provided to Executive under the Agreement or otherwise (a) constitute “parachute payments” within the meaning of Section 280G of the Code (“**Section 280G**”), and (b) would be subject to the excise tax imposed by Section 4999 of the Code (“**Section 4999**”), then the Payments shall be either, as agreed to between the parties, (x) delivered in full, or (y) delivered as to such lesser extent which would result in no portion of the Payments being subject to excise tax under Section 4999, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Executive on an after-tax basis, of the greatest amount of the Payments, notwithstanding that all or some portion of the Payments may be taxable under Section 4999.”

**5. No Other Amendments.** Except as modified or amended in this Amendment, no other term or provision of the Retention Bonus Agreement is amended or modified in any respect. The Retention Bonus Agreement, and this Amendment, set forth the entire understanding between the parties with regard to the subject matter hereof and supersedes any prior oral discussions or written communications and agreements. This Amendment cannot be modified or amended except in writing signed by the Executive and an authorized officer of the Company.

The parties have executed this Amendment to Retention Bonus Agreement on the day and year first written above.

**APPHARVEST, INC.**

By: /s/ Jonathan Webb  
Name: Jonathan Webb  
Title: CEO

**Employee:**

/s/ Loren Eggleton  
Loren Eggleton



**NOTE AND LOAN AGREEMENT**

Up to \$30,000,000.00

**THIS NOTE AND LOAN AGREEMENT** (this “**Note**”) dated as of October 24, 2022, is made by APPHARVEST BEREAFARM, LLC, a Delaware limited liability company (“**Maker**”), as follows:

**FOR VALUE RECEIVED**, Maker, promises to pay to the order of MASTRONARDI PRODUCE-USA, INC., a Michigan corporation (together with its successors and assigns, “**Payee**”), with an address at 28700 Plymouth Road, Livonia Michigan 48150, or at such other place as may be designated in writing by the holder of this Note, the principal sum of up to THIRTY MILLION AND 00/100 DOLLARS (\$30,000,000.00) or so much thereof as shall have been advanced pursuant to this Note, in lawful money of the United States of America, together with interest thereon from the date hereof, payable on the terms and at the Interest Rate as set forth herein. Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in that certain Mortgage and Assignment of Leases and Rents and Security Agreement and Fixture Filing dated as of the date hereof made by Maker in favor of Payee (the “**Mortgage**”), securing this Note and encumbering that certain real property commonly known as the AppHarvest Berea Farm and Facility located at 1000 Farristown Industrial Road, Berea, Kentucky (Madison County).

**IT IS HEREBY EXPRESSLY ACKNOWLEDGED AND AGREED THAT:**

1. **Advances.** Except as expressly and specifically set forth herein, Payee has no obligation or other commitment to loan any funds to Maker or otherwise make disbursements to Maker. Advances under this Note shall be made as follows:

(a) On the date hereof, Payee shall advance to Maker Fifteen Million and 00/100 Dollars (\$15,000,000.00).

(b) Provided that no Event of Default has occurred and the conditions set forth in Section 6 below are satisfied, on November 21, Payee shall advance to Maker Fifteen Million and 00/100 Dollars (\$15,000,000.00).

(c) All sums advanced pursuant to this Note shall be deemed advances of the Loan and shall be evidenced by this Note and secured by the Mortgage. Any amount borrowed and repaid hereunder may not be re-borrowed.

2. **Payments.** Payments under this Note shall be due and payable as follows:

(a) Payments of interest only in arrears on the first (1<sup>st</sup>) day of each calendar month, commencing on November 1, 2022 and continuing on the first (1<sup>st</sup>) day of each calendar month thereafter with a final payment on December 19, 2022 (as such date may be extended pursuant to and in accordance with Section 11 hereof, the “**Maturity Date**”), each such date being referred to herein as a “**Payment Date**”. Notwithstanding any provision in this Note to the contrary, prior to the Maturity Date, in lieu of paying in cash the interest accrued to any Payment Date, any accrued but unpaid interest shall be capitalized and added as of such Payment Date to the principal amount of this Note (the “**PIK Amount**”). Such PIK Amount shall bear interest from the applicable Payment Date at the Interest Rate and be payable in the same manner as in the case of the original principal amount of this Note and shall otherwise be treated as principal of this Note for all purposes. From and after each Payment Date, the principal amount of this Note shall, without further action on the part of Maker or Payee be deemed to be increased by the PIK Amount so capitalized and added to principal in accordance with the provisions hereof.



(b) On the Maturity Date, all outstanding principal (including PIK Amounts), together with all accrued and unpaid interest, and any other sums payable under the Loan Documents (as such term is defined in the Mortgage).

(c) This Note may be prepaid (whether as a result of optional prepayment, default or otherwise) in whole or in part in accordance with the following provisions: (i) Maker shall provide Payee with at least three (3) business days' notice and (ii) Maker shall pay Payee all outstanding principal, together with all accrued and unpaid interest, and any other sums payable under the Loan Documents. Upon acceptance of any proffered prepayment, all amounts due under this Note and the Mortgage shall be irrevocably due and payable in full on such date as if such date were the Maturity Date. Payment at maturity or upon prepayment shall be made by wire transfer and received in Payee's bank account at or before 3:00 P.M. on a day on which both state and federally chartered banks are open for business in New York City. Payment shall include interest computed to and including the date of payment receipt.

3. Interest. The interest rate in effect on any date for the period beginning on the date hereof through and including the date that this Note is paid in full, shall be equal to seven and one-half percent (7.5%) per annum (the "Interest Rate"). Notwithstanding the foregoing, if any payment due hereunder (including, but not limited to, the entire principal balance under this Note if accelerated or otherwise matured) is not paid when due, or if any other Event of Default shall have occurred and be continuing, then the entire outstanding principal balance of this Note shall bear interest at a per annum rate equal to the Default Rate, from the due date of such payment to and including the date when paid, or from the occurrence of the default giving rise to the other Event of Default to and including the earlier of (i) the date on which the indebtedness evidenced hereby has been repaid in full, or (ii) the date on which such Event of Default shall have been cured, as the case may be. "Default Rate" shall mean a rate of interest equal to the lesser of twelve and one-half percent (12.5%) per annum or the maximum legal rate at the time any such interest is to be calculated. All interest due hereunder shall be calculated on the basis of a three-hundred sixty (360) day year for the actual number of days elapsed.

4. Miscellaneous Terms.

(a) The principal sum evidenced by this Note shall become due on the happening of any default or event by which, under the terms of the Mortgage, said principal sum may or shall become due and payable; also, that all of the covenants, conditions and agreements contained in the Mortgage are hereby made part of this instrument.

(b) Presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment are hereby waived.

(c) It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Payee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this paragraph shall control every other covenant and agreement in this Note and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note, or if Payee's exercise of the option to accelerate the Maturity Date, or if any prepayment results in Maker having paid any interest in excess of that permitted by applicable law, then it is Payee's express intent that all excess amounts theretofore collected by Payee shall be credited on the principal balance of this Note and the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest

amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Payee for the indebtedness evidenced by this Note shall be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the indebtedness evidenced by this Note does not exceed the maximum lawful rate from time to time in effect and applicable to such indebtedness.

(d) This Note is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York without regard to the principles of conflicts of law of such State. No defense given or allowed by the laws of any other state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New York. Maker irrevocably submits to the jurisdiction of the state and federal courts sitting in the State of New York and waives any objection to said venue.

(e) THE MAKER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY THE PAYEE ON THIS NOTE, ANY AND EVERY RIGHT IT MAY HAVE TO (I) A TRIAL BY JURY, AND (II) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING IN WHICH THERE IS A JURY TRIAL OR IN WHICH A JURY TRIAL IS REQUIRED. THE MAKER ACKNOWLEDGES THAT THE FOREGOING WAIVER IS INFORMED AND FREELY GIVEN.

(f) This Note may not be changed or terminated orally.

5. Conditions to Closing. The initial advance hereunder shall be made to Maker on the date hereof upon satisfaction of all of the following conditions (the “Initial Funding Conditions”):

(a) Loan Documents. Payee shall have received and approved fully executed originals of the Loan Documents.

(b) UCC Searches. Payee shall have received Federal, state and local tax and judgment lien searches and searches of the appropriate Uniform Commercial Code filing offices showing no Liens affecting the Mortgaged Property or Maker, other than the Permitted Encumbrances.

(c) Insurance. Payee shall have received original copies of the insurance certificates required under the Mortgage, showing that all such insurance is in effect, satisfactory to Payee in its sole but reasonable discretion, together with evidence of the payment of all premiums payable for the existing policy period.

(d) Formation, Authority and Good Standing Documents. Payee shall have received and approved the following items: (i) evidence of the due organization or incorporation and good standing of Maker (and its constituents), as certified by the Secretary of State of such party's State of organization or incorporation, the Secretary of State of the State where the Mortgaged Property is located and any other jurisdiction where such party is required to qualify to do business and maintain its good standing therein; (ii) true, correct and complete copies of all organizational documents of Maker (and its constituents); and (iii) evidence of the due authorization of this transaction by, including, without limitation, corporate, partnership or limited liability company resolutions specifically authorizing this transaction and incumbency certificates with original specimen signatures for the officers signing the Loan Documents.

(e) Title Insurance Policy. Payee shall have received and approved the Title Insurance Policy, insuring that Payee has a valid and perfected first Lien as of the date hereof on the Mortgaged Property, with respect to the Mortgage,

(f) Opinions of Maker's Counsel. Prior to Closing, Payee shall have received and approved legal opinions from Maker's counsel, whose identity must be reasonably satisfactory to Payee, addressing corporate, partnership and limited liability organization, authority and good standing, the enforceability of the Loan Documents and such other matters which Payee may reasonably request in form and substance reasonably acceptable to Payee, and subject to typical carve-outs and exclusions.

(g) Marketing Agreement. The recordation of a memorandum of agreement ("**Memorandum of Marketing Agreement**") against the Mortgaged Property for the Purchase & Marketing Agreement between AppHarvest, Inc. and Mastronardi Produce Limited ("**Marketing Agreement**") that runs with the land and is binding on successor owners and/or occupants of the Mortgaged Property.

(h) Exclusivity Agreement. The execution of an exclusivity agreement with Maker granting Payee and its affiliates exclusivity for 30 days with respect to any sale-leaseback of the Mortgaged Property ("**Sale Leaseback**") subject to the right of first refusal granted to Equilibrium Sustainable Foods, LLC ("**EQ**") pursuant to that certain Right of First Refusal Agreement dated as of May 13, 2019 between EQ and AppHarvest, Inc. (as amended and assigned, the "**ROFR Agreement**").

(i) Cash Flow Forecast. Payee shall have received and approved the initial Cash Flow Forecast.

(j) Budget and Schedule. Payee shall have received and approved the Berea Project Budget and Schedule.

(k) Patriot Act. Payee shall have received all documents and information deemed necessary by Payee to comply with Section 326 of the Patriot Act and regulations promulgated pursuant to such law.

6. Conditions on Future Advances. Future advances hereunder shall be made to Maker as provided herein and shall be subject to upon satisfaction of the following conditions precedent (the "**Subsequent Funding Conditions**"):

(a) Initial Funding Conditions. The completion or continued completion of the Initial Funding Conditions.

(b) Performance; No Default. Maker shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such disbursement, and on the date of such disbursement there shall exist no Event of Default.

(c) Cash Flow Forecast. Payee shall have approved an updated Cash Flow Forecast.

(d) Representations and Warranties. The representations and warranties made by Maker in the Loan Documents shall be true and correct in all material respects on the date on which made (or if made solely with reference to a specific date, as of the date when originally made) and shall also be true and correct as if remade on the applicable advance date; provided that Maker shall be permitted to update such representations and warranties in writing so long as such

update is not the result of any breach of a covenant of Maker under the Loan Documents and does not disclose any Event of Default by Maker.

(e) Title Insurance. Payee shall have received and approved a date-down endorsement to the Title Insurance Policy, insuring that Payee has a valid and perfected first Lien as of the date the advance is to be made, with respect to the Mortgage.

(f) Survey. Payee shall have received an ALTA survey, which shall be reasonably acceptable to Payee and prepared and be certified to the Title Company, Payee and their respective successors and assigns, in accordance with a survey certification reasonably acceptable to Payee.

(g) Costs and Expenses. Payee (and its affiliates) shall have received payment of (i) all outstanding invoices payable by Maker or its affiliates, including, without limitation, those for plant material due to Mastronardi Berryworld America LLC and (ii) all costs of Payee's attorney, advisors and consultants.

(h) Further Documents. Payee shall have received such other documents and further approvals, opinions, documents and information as Payee or its counsel may have reasonably requested, including the Loan Documents, in form and substance reasonably satisfactory to Payee and its counsel.

7. Use of Proceeds. The proceeds of this Note may be used by Maker for general corporate purposes in the ordinary course of business, consistent with the Cash Flow Forecast, provided that in no event will proceeds of this Note be used to pay any dividends or make any distribution on account of or redeem, retire or purchase any capital stock.

8. Reporting.

(a) On each Tuesday of each calendar week after the date hereof, Maker shall deliver to Payee a cash flow reporting which compares actual results to the cash flow forecast of Maker, its parents, subsidiaries and affiliates (the "**Cash Flow Forecast**") on a line item basis including written descriptions of any material variances. Failure to deliver such cash flow comparisons and descriptions shall be an immediate Event of Default hereunder; provided, however, Maker shall have the one-time right to cure such failure by delivering such cash flow comparisons and descriptions within one (1) business day of when such cash flow comparisons and descriptions are otherwise due.

(b) Every four calendar weeks after the date hereof, Maker shall deliver an updated Cash Flow Forecast for the subsequent 13-week period, which such Cash Flow Forecast shall be subject to Payee's approval, not to be unreasonably withheld. Failure to deliver the Cash Flow Forecast shall be an immediate Event of Default hereunder. The initial Cash Flow Forecast approved by Payee is attached hereto as Exhibit A.

(c) At any time and from time to time, within two (2) business days of written request by Payee, Maker shall furnish to Payee such other reasonable financial statements for the Mortgaged Property as Payee may reasonably request.

9. Construction.

(a) Maker shall make, or cause to be made, all contracts and do or cause to be done all things reasonably necessary for constructing and completing the Berea Project, in accordance with all material respects the Berea Project Budget and Schedule, subject to Force Majeure Delay, in a good and workmanlike manner and in accordance with Prudent Industry Practices. To the extent that the Berea Project Costs exceed the Loan proceeds, Maker shall timely

pay such Berea Project Costs needed to complete construction of the Berea Project. Payee acknowledges that the construction for the Berea Project is underway pursuant to the Berea Project Plans and Specifications approved by the City of Berea.

(b) **“Berea Project”** shall mean the 40.0 acre controlled environment agricultural facility located in Berea, Kentucky owned by Maker, as described in the Mortgage.

(c) **“Berea Project Budget and Schedule”** shall mean the budget of for all Berea Project Costs and a detailed project schedule for the Berea Project. Maker represents and warrants to Payee that (i) attached hereto as Exhibit B is a true, correct and complete copy of the Berea Project Budget and Schedule showing among other things, the project schedule of construction, the Berea Project Costs incurred to date, the Berea Project Costs projected to complete the Berea Project in accordance with the Berea Project Plans and Specifications and (ii) to Borrower’s best information and belief, the project schedule of construction can be met as set forth thereunder, subject to Force Majeure Delay.

(d) **“Berea Project Costs”** means all costs and expenses incurred in constructing the Berea Project as set forth in the Berea Project Budget and Schedule. Berea Project Costs shall not include any costs of operating the Berea Project.

(e) **“Berea Project Plans and Specifications”** means the detailed plans and specifications and/or project manual(s) for the construction of the Berea Project, which are approved by Payee, including any shop or field drawings made in furtherance thereof, together with any changes made therein which are permitted under the terms of the Loan Documents.

(f) **“Force Majeure Delay”** shall mean any delays experienced by Maker in the construction process with respect to the Berea Project to the extent such are legitimately caused by strikes, lockouts or other labor disputes, fire, windstorm, hurricane, tornado, earthquake, natural disaster, flooding or other casualty, acts of God, rioting or other civil disturbance, acts of war or acts of terrorism, adverse weather conditions of atypical severity, duration or frequency, or unforeseeable regulatory/code changes from any Governing Authority arising after the date hereof.

(g) **“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 and operators of controlled environment agriculture facilities in United States which are of similar size, type, and location to the Mortgaged Property. “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.

10. Marketing Agreement. The Memorandum of Marketing Agreement shall not be terminated without the prior written consent of Payee unless the Marketing Agreement is terminated in accordance with the terms and provisions therein. The provisions of this Section 10 shall survive the termination of this Note and the repayment in full of the Loan.

11. Extension of Maturity Date. Maker shall have the option to extend the term of the Loan beyond the initial Maturity Date for two (2) successive terms (the **“Extension Option”**) of thirty (30) days each (each, an **“Extension Period”**) to (i) January 18, 2023 if the first Extension Option is exercised and (ii) February 17, 2023 if the second Extension Option is exercised (each such date, the **“Extended Maturity Date”**) upon satisfaction of the following terms and conditions (in each case as determined by Payee):

(a) Funding Conditions. The completion or continued completion of the Initial Funding Conditions and Subsequent Funding Conditions.

(b) Performance; No Default. Maker shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such disbursement, and on the date of such disbursement there shall exist no Event of Default.

(c) Notice. Maker shall notify Payee of its irrevocable election to extend the Maturity Date as aforesaid not earlier than thirty (30) days and no later than three (3) business days prior to the applicable Maturity Date.

(d) Cash Flow Forecast. Payee shall have approved an updated Cash Flow Forecast.

(e) Sale Leaseback. On or before November 19, 2022, Maker shall have agreed to the material terms for a Sale Leaseback transaction with Payee, its affiliate or another third party.

(f) EQ ROFR. On or before November 19, 2022, Maker (or its affiliate) shall have delivered the Offer Notice (as defined in the ROFR Agreement) to EQ.

(g) Further Documents. Payee shall have received such other documents and further approvals, opinions, documents and information as Payee or its counsel may have reasonably requested, including the Loan Documents, in form and substance reasonably satisfactory to Payee and its counsel.

All references in this Agreement and in the other Loan Documents to the Maturity Date shall mean the applicable Extended Maturity Date in the event an Extension Option is exercised.

12. Press Releases. Neither Maker nor Payee shall issue any press release or similar public statement with respect to the transactions contemplated hereby or the other Loan Documents or the Sale Leaseback or EQ ROFR without the prior consent of the other party; provided, however, that no such consent shall be required if such press release is required pursuant to any regulations promulgated by the New York Stock Exchange or other public exchange for the sale and purchase of securities, provided that prior written notice shall be given to the other party of such press release and such press release shall not identify Payee or its affiliates.

[Signature(s) follow.]

IN WITNESS WHEREOF, Maker and Payee have duly executed this Note as of the day and year first above set forth.

**MAKER:**  
APPHARVEST BEREAFARM, LLC, a Delaware limited liability company

By: /s/ Loren Eggleton  
Name: Loren Eggleton  
Title: Chief Financial Officer

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ of APPHARVEST BEREAFARM, LLC, a Delaware limited liability company on behalf of said company.

[NOTARIAL SEAL]

Notary:  
Print Name:\_\_\_\_  
Notary Public, State of  
My Commission Expires:  
Commission Number:

**PAYEE:**

MASTRONARDI PRODUCE-USA, INC.,  
a Michigan corporation

By: /s/ David Einsteadig  
Name: David Einsteadig  
Title: Secretary



**EXHIBIT A**  
**Cash Flow Forecast**

[\*\*\*]

Certain information has been excluded from this agreement (indicated by "[\*\*\*]") because such information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

## **EXHIBIT B**

### **Berea Project Budget and Schedule**

[\*\*\*]

APPHARVEST, INC.  
List of Subsidiaries

| Subsidiary                    | Jurisdiction |
|-------------------------------|--------------|
| AppHarvest Operations, Inc.   | Delaware     |
| AppHarvest Morehead Farm, LLC | Delaware     |
| AppHarvest Richmond Farm, LLC | Delaware     |
| AppHarvest Berea Farm, LLC    | Delaware     |
| AppHarvest Pulaski Farm, LLC  | Delaware     |
| AppHarvest Technology, Inc.   | Delaware     |

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-3 No. 333-266502) of AppHarvest, Inc.,
- (2) Registration Statement (Form S-3 No. 333-252964) of AppHarvest, Inc.,
- (3) Registration Statement (Form S-3 No. 333-261679) of AppHarvest, Inc., and
- (4) Registration Statement (Form S-8 No. 333-255068) pertaining to the AppHarvest, Inc. 2018 Equity Incentive Plan, the AppHarvest, Inc. 2021 Equity Incentive Plan, and the AppHarvest, Inc. 2021 Employee Stock Purchase Plan;

of our report dated March 10, 2023, with respect to the consolidated financial statements of AppHarvest, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2022.

/s/ Ernst & Young LLP

Louisville, Kentucky  
March 10, 2023

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jonathan Webb, certify that:

1. I have reviewed this Annual Report on Form 10-K of AppHarvest Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: March 15, 2023

By: /s/ Jonathan Webb  
 Jonathan Webb  
 Chief Executive Officer, and Chairperson  
 (Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Loren Eggleton, certify that:

1. I have reviewed this Annual Report on Form 10-K of AppHarvest Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date:

March 15, 2023

By: /s/ Loren Eggleton

Loren Eggleton

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Jonathan Webb, Chief Executive Officer of AppHarvest, Inc. (the “Company”), and Loren Eggleton, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, to which this Certification is attached as Exhibit 32.1 (the “Annual Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**In Witness Whereof**, the undersigned have set their hands hereto as of the 15th day of March, 2023.

/s/ Jonathan Webb

Jonathan Webb  
Chief Executive Officer

/s/ Loren Eggleton

Loren Eggleton  
Chief Financial Officer

This certification accompanies the Annual Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of AppHarvest, Inc. under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Annual Report), irrespective of any general incorporation language contained in such filing.