UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
KATERRA INC., *et al.*,[1]	§	Case No. 21-31861 (DRJ)
Debtors.	§	(Jointly Administered)

NOTICE OF SELECTION OF STALKING HORSE BIDDER FOR TRACY, CA FACILITY AND RELATED ASSETS

PLEASE TAKE NOTICE that on July 6, 2021, the United States Bankruptcy Court for the Southern District of Texas (the "Court") entered the *Order (I) Approving Bidding Procedures for the Sale of the Debtors' Assets, (II) Approving Bid Protections, (III) Scheduling Certain Dates with Respect Thereto, (IV) Approving the Form and Manner of Notice Thereof, and (V) Approving Contract Assumption and Assignment Procedures,* [Docket No. 370] (the "Bidding Procedures Order").[2]

PLEASE TAKE FURTHER NOTICE that on July 22, 24, and 25, 2021, consistent with the Bidding Procedures Order, the Debtors filed notices modifying certain dates and deadlines with respect to the sale of the Tracy, CA facility, including the deadline to designate a Stalking Horse Bidder [Docket Nos. 674, 692, 695, and 696].

PLEASE TAKE FURTHER NOTICE that in accordance with paragraphs 9–11 of the Bidding Procedures Order, the Debtors selected VBC Tracy LLC to act as the Stalking Horse Bidder for the Tracy, California Facility and related assets, substantially on the terms of and in accordance with the Stalking Horse Agreement attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE THAT consistent with the Bidding Procedures Order, the Stalking Horse Agreement provides for, among other things, (a) a Breakup Fee equal to 3% of the Purchase Price, and (b) an Expense Reimbursement provision for the reasonable, actual, and documented out-of-pocket expenses of the Stalking Horse Bidder in an aggregate amount not to exceed $300,000.

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1 A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://cases.primeclerk.com/katerra. The location of Debtor Katerra Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 9305 East Via de Ventura, Scottsdale, Arizona 85258.

2 Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order or the Stalking Horse Agreement, as applicable.

PLEASE TAKE FURTHER NOTICE THAT any objection to the designation of the Stalking Horse Bidder or to the Bid Protections set forth herein and in the Stalking Horse Agreement (a "Stalking Horse Objection") shall be filed no later than August 2, 2021 (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that, if a timely Stalking Horse Objection is filed, the proposed designation of the Stalking Horse Bidder and Bid Protections provided for under the Stalking Horse Agreement shall not be deemed approved unless approved by separate order of the Court.

PLEASE TAKE FURTHER NOTICE that, if no Stalking Horse Objection is timely filed and served, the Bid Protections with respect to such Stalking Horse Bidder shall be deemed approved without further order of the Court upon the expiration of the Objection Deadline, and shall be payable in accordance with, and subject to the terms of, the Stalking Horse Agreement.

PLEASE TAKE FURTHER NOTICE that the Debtors and the Stalking Horse Bidder reserve all of their rights to amend, modify, change, revise, or otherwise alter in any respect the Stalking Horse Agreement in accordance with the terms of the Stalking Horse Agreement and the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases are available: (a) free of charge upon request to Prime Clerk LLC (the notice and claims agent retained in these chapter 11 cases) by (i) calling (877) 329-1824 (Toll Free) or +1 (347) 532-7909 (International); or (ii) visiting the Debtors' restructuring website at https://cases.primeclerk.com/katerra; or (b) for a fee via PACER by visiting http://www.txs.uscourts.gov.

[*Remainder of page intentionally left blank.*]

Houston, Texas
July 28, 2021

/s/ Matthew D. Cavenaugh

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Certificate of Service

I certify that on July 28, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ *Matthew D. Cavenaugh*
Matthew D. Cavenaugh

Exhibit A

Stalking Horse Agreement

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

DATED AS OF JULY 27, 2021

BY AND AMONG

VBC TRACY LLC,

KATERRA INC.

AND

KATERRA CONSTRUCTION LLC

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of July 27, 2021, by and among VBC Tracy LLC, a Delaware limited liability company ("Purchaser"), Katerra Inc., a Delaware corporation (the "Company"), and Katerra Construction LLC, a Delaware limited liability company and wholly owned subsidiary of the Company ("Katerra Construction", and together with the Company, collectively, "Sellers" and each, a "Seller"). Purchaser and each Seller are referred to herein individually as a "Party" and collectively as the "Parties". Capitalized terms used herein shall have the meanings set forth herein or in Article XI.

RECITALS

WHEREAS, on June 6, 2021 the Company and its Subsidiaries, including Katerra Construction, filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Bankruptcy Court"), which cases are jointly administered for procedural purposes as *In re Katerra Inc.., et al.*, case number 21-31861 (DRJ) (collectively, the "Bankruptcy Case");

WHEREAS, prior to filing voluntary petitions in the Bankruptcy Case, Sellers designed and built a highly automated production facility located at the Acquired Leased Real Property (the "Facility"), and Sellers (among their various businesses) engaged in (a) the design and manufacture of building components, including wall panels, floor systems, roof trusses, windows, cabinets, countertops, finishes and other components at the Facility (along with the Facility and the operation thereof, collectively, the "Building Components Business") and (b) the development and operation of a building platform known as "K3" focused on the design, construction and assembly of multifamily real estate projects through the use of modular building components (the "K3 Business", and together with the Building Components Business, collectively, the "Businesses" and each, a "Business"); and

WHEREAS, Purchaser desires to purchase and take delivery of the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers desires to sell, convey, assign, transfer, and deliver to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court (together, the "Bankruptcy Rules"), all on the terms and subject to the conditions set forth in this Agreement and the Sale Order and subject to, among other things, entry of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements set forth herein, and intending to be legally bound hereby, Purchaser and Sellers hereby agree as follows.

ARTICLE I

PURCHASE AND SALE OF THE ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Acquired Assets. Pursuant to sections 105, 363, 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Sale Order, at the Closing, each Seller shall sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from each Seller, all of such Seller's right, title and interest in, to and under the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances (provided, however, that for this purposes, Permitted Encumbrances shall not include clause (i) of the definition to the extent attributable to any Tax that is not an Assumed Liability). "Acquired Assets" means only the following assets of the applicable Seller and, in all cases, excluding any of the Excluded Assets:

(a) the leased real property listed on Schedule 1.1(a) (the "Acquired Leased Real Property"), including, the Lease, any Leasehold Improvements and all fixtures, improvements, and appurtenances thereto and Tenant Made Alterations (as defined in the Lease);

(b) the Contracts listed on Schedule 1.1(b), including (i) all Intellectual Property Agreements exclusively used in, held for use exclusively in, or that exclusively pertain to either Business, (ii) all Intellectual Property Agreements necessary for the operation of either Business and that are primarily used in or held for use primarily in either Business and (iii) the Lease (all of the foregoing described in this clause (b), collectively, the "Assigned Contracts"), subject to Section 1.5(c);

(c) the assets, properties and rights listed on Schedule 1.1(c);

(d) all inventory, merchandise, finished goods, raw materials, works in progress, packaging, supplies, parts and other inventories (including the items listed on Schedule 1.1(d)) located at the Acquired Leased Real Property or exclusively for consumption or use in either Business regardless of where located, but in each case, excluding those items listed on Schedule 11.1(w);

(e) (i) all Intellectual Property Assets exclusively used in, held for use exclusively in, or that exclusively pertain to either Business, (ii) all Intellectual Property Assets necessary for the operation of either Business and that are primarily used in or held for use primarily in either Business, (iii) all of each Seller's rights in Licensed Intellectual Property exclusively used in, held for use exclusively in, or that exclusively pertain to either Business, (iv) all of each Seller's rights in Licensed Intellectual Property necessary for the operation of either Business and that is or are primarily used in, held for use primarily in or that primarily pertain to either Business, and (v) all other Intellectual Property Assets and Licensed Intellectual Property (and rights therein) set forth on Schedule 1.1(e);

(f) the Permits set forth on Schedule 1.1(f) and all other Permits exclusively used in, held for use exclusively in, or that exclusively pertain to either Business (in each case to the extent transferable without the consent of any Governmental Body);

(g) all equipment, machinery, furniture, fixtures, tools, dies, jigs, patterns, molds, supplies, office equipment, computers, tablets, hardware, information technology infrastructure, telephones, motor vehicles, trailers and other rolling stock, and all other tangible personal property of any kind (including the items listed on Schedule 1.1(g)) (i) located at the Acquired Leased Real Property or (ii) exclusively used in, held for use exclusively in, or that exclusively pertain to either Business regardless of where located, but in each case, excluding those items listed on Schedule 11.1(w);

(h) all leasehold interests and leasehold improvements created by all leases (including capitalized leases) for personal property (including those items listed on Schedule 1.1(h)) (i) located at the Acquired Leased Real Property or (ii) exclusively used in, held for use exclusively in, or that exclusively pertain to either Business regardless of where located, but in each case, excluding those items listed on Schedule 11.1(w);

(i) all causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), and all proceeds thereof, in each case, to the extent exclusively related to either Business, any other Acquired Assets or the Assumed Liabilities, along with all rights and interests to the extent necessary or appropriate for Purchaser to effectively prosecute, defend or obtain the benefits of the foregoing; provided that with respect to any Claims, rights, lawsuits, rights of recovery, objections, causes of action, avoidance actions and similar rights of any Seller arising under or pursuable through Chapter 5 of the Bankruptcy Code (whether or not asserted as of the Closing Date) (including the proceeds thereof and all rights and interests necessary or appropriate for Purchaser to effectively prosecute, defend or obtain the benefits thereof, collectively, the "Avoidance Actions"), only those Avoidance Actions relating to the Persons set forth on Schedule 1.1(i) and those Persons who are party to an Assigned Contract shall be deemed Acquired Assets (collectively, the "Acquired Avoidance Actions");

(j) all rights under warranties, indemnities, and all similar rights against third parties to the extent related to either Business, any other Acquired Assets or the Assumed Liabilities;

(k) all security deposits, utility deposits, and other deposits to the extent exclusively related to either Business, any other Acquired Assets or the Assumed Liabilities, except for any cash disbursements made by Barclays Bank plc ("Barclays") upon cancellation of the letter of credit issued by Barclays on behalf of the Company to satisfy the Company's security deposit obligations under the Lease (not to exceed $2,100,000);

(l) all (i) rights in connection with prepaid expenses to the extent exclusively related to either Business, any other Acquired Assets or the Assumed Liabilities, and (ii) all rights in and to (A) prepayments, overpayments or credits of real or personal property Taxes made by or relating to Sellers for the Acquired Assets but only to the extent actually taken into account in clause (y) of the calculation of Real and Personal Property Tax Adjustment and (B) non-Income Tax refunds, non-Income Tax assets and other non-Income Tax attributes, in each case, to the

extent attributable to or arising out of the Acquired Assets or either Business for any period (or portion thereof) from and after the Closing;

(m) all books and records, including blueprints, plans, drawings and other technical papers (including all plans, drawings, as-builts, property reports, surveys and similar items relating to the Acquired Leased Real Property and the Leasehold Improvements), maintenance and asset history records and Occupational Safety and Health Administration and Environmental Protection Agency files, employee handbooks, employee rosters, workers' compensation records, payroll and employee benefits, in each case, to the extent primarily related to either Business, any other Acquired Assets or the Assumed Liabilities and not primarily used in or utilized by another business of either Seller or any of their respective Affiliates; and

(n) all other assets, properties and rights (i) located at the Acquired Leased Real Property, (ii) exclusively used in, held for use exclusively in, or that exclusively pertain to either Business, or (iii) necessary for the operation of either Business and that are primarily used in or held for use primarily in either Business.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Sellers be deemed to sell, transfer, assign, or convey, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets.

1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and in the Sale Order, effective as of the Closing, in addition to the payment of the Cash Payment in accordance with Section 2.1, Purchaser shall irrevocably assume from each Seller (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms) the following (and only the following) liabilities and obligations (collectively, the "Assumed Liabilities"):

(a) all liabilities and obligations of Sellers for payment and performance under the Assigned Contracts by which any Seller is bound as of the Closing, but, except with respect to any Cure Costs expressly assumed by Purchaser pursuant to Section 1.3(b), only to the extent such obligations (i) relate to payment or performance for the period beginning from and after the Closing and (ii) do not arise from or relate to any actual or alleged breach of contract, breach of warranty, violation of law, tort, infringement, failure to perform, improper performance, default or any Action, in each case with respect to this clause (ii), arising as of, or related to the period prior to, Closing;

(b) all Cure Costs;

(c) (1) all accrued but unpaid Taxes (other than Income Taxes of Seller) to the extent attributable to or arising out of the conduct of the Acquired Assets by Purchaser for any period (or portion thereof) from and after the Closing, (2) all accrued but unpaid real and personal property Taxes to the extent attributable to or arising out of the conduct of the Acquired Assets by Purchaser for any period (or portion thereof) from and after the Closing, (3) all accrued but unpaid real or personal property Taxes to the extent attributable to or arising out of the conduct of the Acquired Assets to the extent attributable to the pre-Closing portion of any applicable Straddle

Period, but only to the extent actually taken into account in clause (x) of the calculation of Real and Personal Property Tax Adjustment, and (4) any Transfer Taxes under Section 9.1; and

(d) all liabilities set forth on Schedule 1.3(d).

1.4 Excluded Liabilities. Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, Sellers or relating to the Acquired Assets, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Closing, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the "Excluded Liabilities") and such Excluded Liabilities shall be retained by and remain the Liabilities of Seller. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities (i) for Taxes of Sellers (or any member or Affiliate of Sellers) for any taxable period, other than any Taxes specifically included as an Assumed Liability pursuant to Section 1.3(c) and (ii) of Sellers for the Taxes of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise);

(b) all current Liabilities, including all accounts payable and trade payables existing on the Closing Date (including, for the avoidance of doubt, (i) invoiced accounts payable and (ii) accrued but uninvoiced accounts payable), of Sellers;

(c) other than with respect to Cure Costs expressly assumed by Purchaser pursuant to Section 1.3(b), all Liabilities owed to vendors and customers that are provided goods or services to, or purchased products or services from, the Company prior to the Closing;

(d) other than with respect to Cure Costs expressly assumed by Purchaser pursuant to Section 1.3(b), all Liabilities arising under section 503(b)(9) of the Bankruptcy Code;

(e) all Liabilities of Sellers arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers, and any other Person;

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

(g) all Liabilities in respect of any pending or threatened Action arising out of, relating to, or otherwise in respect of the operation of either Business prior or the Acquired Assets to the extent such Action relates to such operation on or prior to the Closing Date;

(h) all product Liability or similar claim for injury to a Person or property that arises out of or is based upon any express or implied representation, warranty, agreement, or guaranty made by each Seller, or by reason of the improper performance or malfunctioning of a

product, improper design or manufacture, failure to adequately package, label, or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller;

(i) all recall, design defect, or similar claims of any products manufactured or sold or any service performed by Sellers prior to the Closing;

(j) all Liabilities of Sellers arising under or in connection with any employee benefit plan providing benefits to any present or former employee of Sellers and all Liabilities of Sellers for any present or former employees, officers, directors, retirees, independent contractors, or consultants of Sellers, including any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, or employee deferred compensation, including stock option plans, grants, and agreements, severance, retention, termination, or other payments;

(k) all Liabilities for injury to a Person that arises out of or related to the operation of either Business prior to the Closing, including any loss, damage, or injury sustained by any present or former employee or independent contractor of Sellers or any other Person while engaging in manufacturing, engineering or similar activities in connection with any Acquired Asset prior to the Closing;

(l) all Liabilities to indemnify, reimburse, or advance amounts to any present or former officer, director, employee, agent or other Person of Sellers (including with respect to any breach of fiduciary obligations by same);

(m) all Liabilities under any Contracts (a) that are not validly and effectively assigned to Purchaser pursuant to this Agreement; or (b) to the extent such Liabilities arise out of or relate to a breach (excluding Cure Costs assumed by Purchaser pursuant to, and subject to the limitations set forth in, Section 1.3(b)) by Sellers of such Contracts prior to the Closing;

(n) all Liabilities associated with debt, loans, or credit facilities of Seller;

(o) other than with respect to Cure Costs, all Liabilities arising or accruing under the Lease prior to the Closing Date; and

(p) all Liabilities arising out of, in respect of, or in connection with the failure by Sellers or any of its Affiliates to comply with any Law or Order.

1.5 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. Sellers shall provide timely and proper written notice of the Sale Order to all parties to any executory Contracts or unexpired leases to which either Seller is a party that are Assigned Contracts and take all other actions reasonably necessary to cause such Contracts to be assumed by Sellers and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code to the extent that such Contracts are Assigned Contracts at Closing. The Sale Order shall provide that as of and conditioned on the occurrence of the Closing, Sellers shall assign or cause to be assigned to Purchaser, as applicable, the Assigned Contracts, each of which shall be identified by the name or appropriate description

and date of the Assigned Contract (if available), the other party to the Assigned Contract and the address of such party for notice purposes, a notice filed in connection with the Sale Order or a separate motion for authority to assume and assign such Assigned Contracts. Such notice shall also set forth Sellers' good faith estimate of the amounts necessary to cure any defaults under each of the Assigned Contracts as determined by Sellers based on Sellers' books and records or as otherwise determined by the Bankruptcy Court. At the Closing, Seller shall, pursuant to the Sale Order assume and assign to Purchaser (the consideration for which is included in the Purchase Price), all Assigned Contracts that may be assigned by any such Seller to Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, subject to adjustment pursuant to Section 1.5(b). At the Closing, Purchaser shall (i) pay Cure Costs subject to Section 1.3(b) and (ii) assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Assigned Contract pursuant to section 365 of the Bankruptcy Code.

(b) Excluding or Adding Assigned Contracts Prior to Closing. Purchaser shall have the right to notify Sellers in writing of any Assigned Contract that it does not wish to assume or a Contract to which Sellers is a party that Purchaser wishes to add as an Assigned Contract up to the Closing Date, and (i) any such previously considered Assigned Contract that Purchaser no longer wishes to assume shall be automatically deemed removed from the Schedules related to Assigned Contracts and automatically deemed added to the Schedules related to Excluded Contracts, in each case, without any adjustment to the Purchase Price, and (ii) any such previously considered Excluded Contract that has not been rejected by Sellers that Purchaser wishes to assume as an Assigned Contract shall be automatically deemed added to the Schedules related to Assigned Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by Sellers to sell and assign to Purchaser, in each case, without any adjustment to the Purchase Price and with any Cure Costs associated therewith paid by Purchaser. Purchaser shall be solely responsible for the payment, performance and discharge when due of the liabilities and obligations under the Assigned Contracts that relate to payment or performance for the period beginning from and after the Closing, in each case, as set forth in, and subject to the terms of, Section 1.3(a).

(c) Non-Assignment. Notwithstanding the foregoing, a Contract and Permit shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract or Permit (i) is rejected by Sellers or terminated by Sellers or any other party thereto, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract or Permit hereunder and is not continued or otherwise extended upon assumption or (ii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Sellers' rights under such Contract or Permit, and such Consent or Governmental Authorization has not been obtained prior to such time as it is to be assumed by Purchaser as an Assigned Contract or Permit hereunder. In addition, a Permit shall not be assigned to, or assumed by, Purchaser to the extent that such Permit requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Sellers' rights under such Permit, and no such Consent or Governmental Authorization has been obtained prior to the Closing. In the event that any Assigned Contract or Permit is deemed not to be assigned pursuant to clause (ii) of the first sentence of this Section 1.5(c), the Closing shall nonetheless take place subject to the terms and conditions set forth herein

and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six (6) months following the Closing (or the remaining term of such Contract or Permit or the closing of the Bankruptcy Case, if shorter), Sellers and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser any or all of Sellers' rights and obligations with respect to any such Assigned Contract or Permit, under which (1) Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Sellers or their Affiliates) under such Assigned Contract or Permit with respect to which the Consent and/or Governmental Authorization has not been obtained and (2) Purchaser shall assume any related burden (including the amount of any related Tax benefit obtained by Sellers or their Affiliates) and obligation (including performance) with respect to such Assigned Contract or Permit. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Assigned Contract or Permit after the Closing, such Assigned Contract or Permit shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement, the Sale Order and the Bankruptcy Code.

ARTICLE II

CONSIDERATION; PAYMENT; CLOSING

2.1 Consideration; Payment.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets (and otherwise with respect to the transactions contemplated hereunder) shall be (i) a cash payment of $21,250,000.00 *minus* the Real and Personal Property Tax Adjustment (the "Cash Payment"), and (ii) the assumption of the Assumed Liabilities.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to the Company the Cash Payment *less* the Deposit *less* the Prorations (the "Closing Date Payment"). The Closing Date Payment and any payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party at least two (2) Business Days prior to the date such payment is to be made.

2.2 Deposit.

(a) Purchaser will make an earnest money deposit (the "Deposit") into escrow with the Escrow Agent in the amount of ten percent (10%) of the Cash Payment by wire transfer of immediately available funds not later than three (3) Business Days following the date hereof. The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any of Sellers or Purchaser and shall be applied against payment of the

Purchase Price on the Closing Date. At the Closing, the Deposit shall be delivered to Sellers and credited toward payment of the Purchase Price.

(b) If this Agreement has been validly terminated by the Company pursuant to Section 8.1(d) or 8.1(f) (or by Purchaser pursuant to Section 8.1(c), in circumstances where the Company would be entitled to terminate this Agreement pursuant to Section 8.1(d) or 8.1(f)) (each, a "Purchaser Default Termination") then within three (3) Business Days after the date of such termination, Sellers shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit to the Company.

(c) If this Agreement has been terminated by any Party other than as contemplated by Section 2.2(b), then within three (3) Business Days after the date of such termination and, at Purchaser's request, Sellers shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit to Purchaser.

(d) The Parties agree that the Company's right to retain the Deposit, as set forth herein, is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Sellers for its efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision, and in respect of Purchaser's breach and such payment of the Deposit shall constitute the sole and exclusive remedy of each Seller in the event of a Purchaser Default Termination in lieu of all other rights and remedies which each Seller may have against Purchaser or any member of the Purchaser Group at law or in equity or otherwise, all of which each Seller hereby expressly waives; provided that the foregoing shall not limit any Person's obligations under the Confidentiality Agreements; provided, further, that this Section 2.2(d) shall not limit Sellers' right to require specific performance of Purchaser's obligations to consummate the transactions contemplated herein pursuant to Section 10.12 in the event this Agreement has not been terminated.

2.3 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") will take place by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at the offices of Kirkland & Ellis LLP, located at 300 North LaSalle Street, Chicago, Illinois 60654) at 10:00 a.m. Central Time on the second (2nd) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing), or at such other place and time as the Parties may agree. The date on which the Closing actually occurs is referred to herein as the "Closing Date".

2.4 Closing Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver to Purchaser:

(a) a copy of the Sale Order, as entered by the Bankruptcy Court;

(b) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of the Company certifying that the conditions set forth in Sections 7.2(a) and 7.2(b) have been satisfied;

(c) a customary bill of sale and assignment and assumption agreement in form and substance reasonably agreeable to Purchaser and Sellers (the "Bill of Sale"), duly executed by Sellers, evidencing the assignment and assumption by Purchaser of the Assigned Contracts, the Assumed Liabilities and the Intellectual Property Assets included in the Acquired Assets, and the transfer of the tangible personal property included in the Acquired Assets to Purchaser;

(d) a customary assignment agreement to assign the Intellectual Property Assets included in the Acquired Assets in form and substance reasonably agreeable to Purchaser and Sellers (the "IP Assignment Agreement"), duly executed by Sellers, effecting the assignment to and assumption by Purchaser of the Intellectual Property Assets included in the Acquired Assets;

(e) an IRS Form W-9, completed and duly executed by Sellers; provided that in no event shall Sellers' failure to provide such form be deemed to be a failure of any condition set forth in Section 7.1 or 7.2 to have been met and Purchaser's sole remedy of any such failure shall be to withhold Taxes under Section 1445 of the Code from the consideration otherwise payable to Sellers hereunder in accordance with Section 2.6;

(f) instructions to the Escrow Agent to deliver the Deposit to the Company;

(g) to the extent necessary for the operation of the Businesses by Purchaser after the Closing and required by Purchaser, a customary Transition Services Agreement in form and substance reasonably agreeable to the Parties (the "TSA"), duly executed by Sellers and their respective applicable Affiliates, pursuant to which Sellers and their respective applicable Affiliates make available to Purchaser certain services and the benefits of any assets, properties or rights held by any Seller or any of their respective Affiliates (or their respective assignees) that have been used in, and are reasonably necessary for the operation of, either Business, on customary terms, at no cost to Sellers and for a term not exceeding one year;

(h) evidence reasonably satisfactory to Purchaser of payment in full by Sellers (including any penalties, interest or other sums due on account thereof) of all amounts payable under that certain Promissory Note, dated as of August 26, 2020, by the Company payable to Prologis Tracy LLC and that certain; and

(i) all other instruments of transfer, assumption, filings, or documents, reasonably requested by Purchaser in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to this Agreement.

2.5 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) the Company:

(a) the Cash Payment;

(b) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied; and

(c) the Bill of Sale, IP Assignment Agreement and, to the extent necessary and required by Purchaser, the TSA, in each case duly executed by Purchaser.

2.6 Withholding. Notwithstanding anything contained in this Agreement to the contrary, Purchaser shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement to the extent required under the Code or any provision of state, local or foreign Tax Law. Except in connection with a failure of any Seller to provide an IRS Form W-9 pursuant to Section 2.4(e), Purchaser shall use commercially reasonable efforts to provide Sellers (a) with reasonable advance notice of the intent to deduct and withhold, which shall include a copy of the calculation of the amount to be deducted and withheld and any provision of applicable U.S. federal, state, local or non-U.S. Law pursuant to which such deduction or withholding is required; and (b) a reasonable opportunity to provide forms or other evidence that would exempt such amounts from withholding (or reduce such withholding). To the extent that amounts are so deducted or withheld and timely paid over to the appropriate Governmental Body, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made. Purchaser and Sellers shall cooperate in good faith to reduce or otherwise eliminate any such withholding obligation to the extent permitted by applicable Law.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF EACH SELLER

Except as set forth in the Schedules delivered by the Company concurrently herewith, each Seller represents and warrants to Purchaser that the statements contained in this Article III are true and correct as of the date hereof and as of the Closing Date.

3.1 Organization and Qualification. Each Seller (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the State of Delaware, (b) has all requisite power and authority to own, operate and lease the properties and assets now owned, operated or leased by such Seller and to carry on its businesses as now conducted, subject to the provisions of the Bankruptcy Code, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to be material to the Businesses, the Acquired Assets and the Assumed Liabilities, taken as a whole.

3.2 Authorization of Agreement. The execution, delivery, and performance of this Agreement by each Seller and the Ancillary Documents to which such Seller is a party, the performance of the obligations of such Seller contemplated hereunder and thereunder and the consummation by such Seller of the transactions contemplated hereby and thereby, subject to requisite Bankruptcy Court approvals, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational

proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement by such Seller and the Ancillary Documents to which such Seller is a party, the performance of the obligations of such Seller contemplated hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby. Subject to requisite Bankruptcy Court approvals, this Agreement and each of the Ancillary Documents to which such Seller is a party have been duly and validly executed and delivered by such Seller, and, assuming this Agreement is a valid and binding obligation of Purchaser, this Agreement constitutes a valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as limited by the application of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other Laws relating to or affecting creditors' rights or general principles of equity (whether considered in a proceeding in equity or at law) (the "Enforceability Exceptions").

3.3 Conflicts; Consents.

(a) Except as set forth on Schedule 3.3(a) and assuming that (y) requisite Bankruptcy Court approvals are obtained, and (z) the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 3.3(b) are made, given or obtained (as applicable), the execution, delivery and performance by each Seller of this Agreement and the Ancillary Documents to which such Seller is a party, and the consummation by such Seller of the transactions contemplated hereby and thereby, do not and will not: (i) violate the certificate (or articles) of incorporation, the bylaws, the certificate of formation, limited liability company agreement or equivalent organizational documents of any Seller; (ii) violate any Law applicable to any Seller or by which any property or asset of the Company is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of Sellers under, any material Contract or material Permit; except, in each case, for any such violations, breaches, defaults or other occurrences that are not material to the Acquired Assets taken as a whole.

(b) Except as set forth on Schedule 3.3(b), (i) each Seller is not required to file, seek or obtain any notice, authorization, approval, Order, permit, or consent of or with any Governmental Body in connection with the execution, delivery and performance by such Seller of this Agreement or any Ancillary Documents to which such Seller is a party or the consummation by such Seller of the transactions contemplated hereby and thereby, except (x) requisite Bankruptcy Court approvals and (y) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, is not material to the Acquired Assets taken as a whole, and (ii) to the knowledge of the Company, there is no Contract binding upon any Seller requiring a consent or other action by any Person as a result of the execution, delivery and performance of this Agreement (except to the extent the Bankruptcy Code overrides such provision).

3.4 Title to Acquired Assets.

(a) Subject to requisite Bankruptcy Court approvals and except as a result of the commencement of the Bankruptcy Case, (i) Sellers have good, valid, marketable and undivided

title to the Acquired Assets and, (ii) as of the Closing Date and subject to the entry of the Sale Order, Purchaser will acquire good, valid, marketable and undivided title in and to the Acquired Assets, in each case of clause (i) and (ii), free and clear of all Encumbrances, except for Permitted Encumbrances, other than any failure(s) of any of the foregoing that is not material to the Acquired Assets (taken as a whole) or that would render the Purchaser unable to operate either of the Businesses (other than for lack of personnel) after the Closing.

(b) The Acquired Assets constitute all of the assets, properties and rights that are used or held for use in, or are otherwise necessary for the operation of, the Businesses. All of tangible personal property located at the Acquired Leased Real Property constitutes Acquired Assets. All leased tangible personal property included in the Acquired Assets is set forth in Schedule 3.4(b).

(c) No Seller Party other than a Seller (i) owns any material asset, property or right, whether tangible or intangible, which is or has been used in, or is otherwise necessary for the operation of, either Business, (ii) is a party to any Assigned Contract, or (iii) provides services or resources to any Seller that are material to either Business or is dependent on any material services or resources provided by any Seller pursuant to either Business. To the knowledge of Sellers, no Acquired Asset is or has been used exclusively or primarily by any Seller Party in the conduct of any of its businesses or operations, other than the Businesses.

3.5 Permits; Compliance with Laws. Except as set forth on Schedule 3.5, each Seller (a) has at all times been and is in compliance, in all material respects, with all applicable Laws with respect to the ownership and operation of the Acquired Assets and operation of the Businesses, and during the prior two (2) years, none of Sellers has received any notice of any Action, and to the knowledge of the Company, no such Action has been threatened, against it alleging any failure to comply in any material respect with any such Laws, and (b) the Company and each of its Subsidiaries hold all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Bodies necessary for the lawful ownership and operation of the Acquired Assets and operation of the Businesses (collectively, "Permits"), except in each case as would not reasonably be expected to be material to the Acquired Assets. Schedule 1.1(f) sets forth a complete and correct list of all Permits required to conduct and operate the Businesses and Acquired Assets as conducted and operated by each Seller on the date hereof. To the knowledge of the Company, no investigation or Action by any Governmental Body with respect to the Businesses, Acquired Assets, Assumed Liabilities or Permits is pending or threatened, and during the prior two (2) years, none of Sellers has received any written notice of any such investigation or Action or any notice of violation of any Permit, and, to the knowledge of the Company, no Action is threatened by any Governmental Body seeking the revocation, limitation or non-renewal of any such Permit, except, in each case, for any such investigation or Action that would not reasonably be expected to be material to the Acquired Assets.

3.6 Brokers. Except as set forth on Schedule 3.6, there is no investment banker, broker, finder or other such intermediary that has been retained by, or has been authorized to act on behalf of, any Seller and is entitled to a fee or commission in connection with the transactions contemplated by this Agreement from any Seller.

3.7 Intellectual Property.

(a) Schedule 3.7(a) sets forth an accurate and complete list of all Intellectual Property Assets for which each Seller has received or applied for a registration or issuance.

(b) Schedule 3.7(b) sets forth all Intellectual Property Agreements to which each Seller is a party.

(c) All Intellectual Property Assets included in the Acquired Assets are owned solely and exclusively by Sellers, and such ownership will be, as of the Closing, free and clear of any Encumbrances, except for Permitted Encumbrances.

(d) None of Sellers has received notice from any Person claiming that the operation of the Acquired Assets or any Intellectual Property Asset or Licensed Intellectual Property included in the Acquired Assets infringes, misappropriates, or otherwise violates any Intellectual Property of any Person or constitutes unfair competition or trade practices under the Laws of any jurisdiction (nor to the knowledge of the Company is there any basis therefor). There are no Intellectual Property Agreements between any Seller and any third Person with respect to any Intellectual Property Asset or Licensed Intellectual Property included in the Acquired Assets under which there is any dispute.

3.8 Contracts.

(a) Schedule 3.8 lists the following Contracts to which each Seller is a party or by which such Seller is bound and that are currently in effect (or by which the Acquired Assets may be bound or affected) (all Contracts listed or required to be listed herein, whether or not disclosed on Schedule 3.8, are referred to as "Material Contracts") as of the date of this Agreement:

(i) all Contracts under which each Seller leases personal property in connection with the Acquired Assets or either Business;

(ii) all Contracts with any material supplier of either Business;

(iii) all Contracts related to either Business with any Governmental Body;

(iv) all Intellectual Property Agreements that are material to either Business, taken as a whole; and

(v) all Contracts that are Assigned Contracts.

(b) Each Seller has delivered to Purchaser true and complete copies of such Material Contracts and any and all amendments, modifications, supplements, exhibits and restatements thereto and thereof; provided that to the extent such Material Contracts have not been delivered to Purchaser on or prior to the date hereof, each Seller shall deliver to Purchaser true and complete copies of such Material Contracts prior to the Closing.

(c) Except as a result of the filing of the Bankruptcy Case, each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of each Seller, as applicable and of the other parties thereto, enforceable against them in accordance with such

Material Contract's terms and, upon consummation of the transactions contemplated hereby, shall continue in full force and effect regardless of notice or the lapse of time without default, penalty or other adverse consequence. Except as set forth on Schedule 3.8, there has not been any default, breach or violation by any Seller under any Material Contract, nor, to the knowledge of the Company, has there been any default, breach or violation by any other party to any Material Contract. Except as set forth on Schedule 3.8, no party to any of the Material Contracts has exercised any termination rights with respect thereto, and no party has given notice of any significant dispute with respect to any Material Contract.

(d) Notwithstanding the foregoing, and for the avoidance of doubt, no Contract that (i) prior to the date hereof, has been terminated by the parties to such Contract, expired in accordance with its terms or been fully performed or (ii) does not have a value equal to or greater than $50,000.00, shall be considered to be included in the definition of "Material Contracts," and, therefore, does not need to be listed on Schedule 3.8.

3.9 Real Property.

(a) The Acquired Leased Real Property constitutes all of the real property used by each Seller in connection with the operation of either Business.

(b) To the knowledge of the Company, none of the Acquired Leased Real Property is subject to an eminent domain or condemnation proceeding.

(c) Each Seller has delivered (or otherwise made available through the Company's datasite) to the Purchaser a correct and complete copy of the Lease, together with all amendments thereto. The Lease has not been modified, amended or supplemented except as set forth in the first amendment thereto dated as of August 7, 2019, the second amendment thereto dated as of March 2020 and the third amendment thereto dated as of August 27, 2020.

(d) The Company has good and valid leasehold interest in the real property conveyed by Lease. The Lease is in full force and effect and is valid and enforceable in accordance with its terms. None of Sellers has received any notice of any default, violation or breach by any Seller under the Lease that is currently in effect and eligible to be assumed by Purchaser. Except as a result of the filing of the Bankruptcy Case, there has been no default under or breach or violation of the Lease by any Seller.

3.10 Environmental.

(a) The Acquired Assets and the Businesses are, and since January 1, 2020 have been, in compliance in all material respects with applicable Environmental Laws. None of Sellers has received, with respect to the Businesses, the Acquired Assets or the Assumed Liabilities, any written communication alleging that any Seller or any of the Acquired Assets currently is not or was not in material compliance with or is materially liable or potentially materially liable under applicable Environmental Laws or Permits required by Environmental Laws, which allegation remains unresolved.

(b) The Businesses hold, and Sellers own, all Permits materially required under applicable Environmental Laws for the operation of the Businesses and the Acquired Assets, in each case, subject to expiration as set forth on Schedule 1.1(f).

(c) There are no Actions pending or, to the knowledge of the Company, threatened against or affecting the Acquired Assets or the Businesses related to material liabilities arising under Environmental Laws.

(d) There are no and have not been any Hazardous Materials used, generated, treated, stored, transported, disposed of, handled or otherwise existing on, under or about the Acquired Leased Real Property, nor has there been any Release of any Hazardous Materials therefrom, in each case in material violation by the Sellers (with respect to the Acquired Assets) of, or which could be the basis of material liability or material obligation of the Sellers (with respect to the Acquired Assets) under, Environmental Laws.

(e) None of Sellers has received any written notice or request for information from any Person with respect to any potential or actual material liability for cleanup or environmental remediation associated with the Acquired Assets thereof, which liability remains unresolved.

3.11 Actions.

(a) Except as set forth in Schedule 3.11, there are no Actions pending or, to the knowledge of the Company, threatened by or against any Seller or any of its respective stockholders or members relating to or affecting either Business, the Acquired Assets, or the Assumed Liabilities.

(b) Except as a result of the filing of the Bankruptcy Case, there are no outstanding Orders and no unsatisfied judgments, penalties, or awards against, relating to, or affecting either Business.

3.12 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (it being understood that Purchaser and the Purchaser Group have relied only on such express representations and warranties) and fraud by any Person, Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that neither any Seller nor any other Person on behalf of any such Seller makes, and neither Purchaser nor any member of the Purchaser Group has relied on, the accuracy or completeness of any express or implied representation or warranty with respect to the Company or any of its Subsidiaries, the Acquired Assets or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any projections, any confidential information memorandum or similar document, or in any diligence materials, including in any dataroom or datasite or elsewhere) to Purchaser or any of its Affiliates or Advisors on behalf of the Company or any of its Affiliates or Advisors. Without limiting the foregoing, except for fraud by any Person, neither the Company nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting

from the distribution to Purchaser or any of its Affiliates or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors or any discussions with respect to any of the foregoing information.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Company as follows as of the date hereof.

4.1 Organization and Qualification. Purchaser (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite power and authority to own and operate its properties and to carry on its businesses as now conducted, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby.

4.2 Authorization of Agreement. The execution, delivery and performance of this Agreement by Purchaser, and the consummation by Purchaser of the transactions contemplated hereby, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement by Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser, and, assuming this Agreement is a valid and binding obligation of each Seller, this Agreement constitutes a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as limited by the Enforceability Exceptions.

4.3 Conflicts; Consents.

(a) Except as set forth on Schedule 4.3(a) and assuming that the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 4.3(b) are made, given or obtained (as applicable), the execution, delivery and performance by Purchaser of this Agreement and the consummation by Purchaser of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of Purchaser; (ii) violate any Law applicable to Purchaser or by which any property or asset of Purchaser is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance on any property or asset of Purchaser under, any material Contract; except, in each case, for any such violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated hereby.

(b) Except as set forth on Schedule 4.3(b), Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation by Purchaser of the transactions contemplated hereby, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated hereby.

4.4 Financing.

(a) Purchaser has received the debt commitment letter attached hereto as Exhibit A (the "Debt Commitment Letter"), which is a legal, valid, binding and enforceable obligation of the parties thereto and enforceable by Purchaser (subject to the Enforceability Exceptions), and pursuant to which the issuing financing party has committed, on the terms and subject to the conditions set forth therein, to provide debt financing in the amount set forth therein (the "Financing"). The Debt Commitment Letter is in full force and effect as of the date of this Agreement. As of the date of this Agreement, the Debt Commitment Letter has not been amended or modified, and no such amendment or modification is contemplated (provided, that the addition of additional investors, lenders agents, or similar entities, in each case, without reducing the commitments set forth in the Debt Commitment Letter or expanding the conditions with respect thereto shall not constitute an amendment or modification of the Debt Commitment Letter), and the commitment set forth in the Debt Commitment Letter has not been withdrawn or rescinded in any respect, and to the knowledge of Purchaser, no withdrawal or rescission is contemplated. There are no conditions precedent or other contingencies related to the funding of the Financing or any contingencies that would permit the Debt Financing Sources to reduce the total amount of Financing below the amount necessary to satisfy Purchaser's obligations at the Closing other than the conditions set forth in the Debt Commitment Letter. Assuming the satisfaction of the conditions set forth in Section 7.1 and Section 7.2 and the satisfaction of the conditions in Exhibit B of the Debt Commitment Letter, the aggregate net proceeds of the Financing will be sufficient to enable Purchaser to consummate the transactions contemplated by this Agreement and the Ancillary Documents to be consummated at the Closing, including the payment of all amounts required to be paid at the Closing pursuant to this Agreement and the payment of all fees and expenses in connection therewith required to be paid by it at the Closing. As of the date hereof, there are no side letters or other agreements, contracts or other arrangements relating to the Financing. As of the date hereof, no event has occurred or circumstance exists that, with or without notice, lapse of time or both, would or would reasonably be expected to: (x) constitute a default or breach (other than a breach having *de minimis* consequences) on the part of Purchaser or, to the knowledge of Purchaser, any other party thereto, under the Debt Commitment Letter; (y) constitute or result in a failure to satisfy a condition on part of Purchaser or, to Purchaser's knowledge, any other party thereto, under the Debt Commitment Letter; or (z) result in the amount required to render Purchaser unable to satisfy Purchaser's obligations on the Closing Date.

(b) Purchaser acknowledges that its obligations set forth herein are not contingent or conditioned upon any Person's ability to obtain or have at the Closing sufficient funds necessary for the payment of the Cash Payment in cash or for Purchaser to perform its respective obligations with respect to the transactions contemplated hereby.

4.5 Brokers. All of whose fees and expenses will be borne solely by Purchaser, there is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

4.6 No Litigation. There are no Actions pending or, to Purchaser's knowledge, threatened against or affecting Purchaser that will materially and adversely affect Purchaser's performance under this Agreement or the Purchaser's ability to consummate the transactions contemplated by this Agreement.

4.7 No Additional Representations or Warranties. Except for the representations and warranties expressly contained in this Article IV (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (it being understood that each Seller and the Seller Parties have relied only on such express representations and warranties), each Seller acknowledges and agrees, on its own behalf and on behalf of the Seller Group, that neither Purchaser nor any other Person on behalf of Purchaser makes, and neither any Seller nor any member of the Seller Group has relied on, any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to any Seller by Purchaser or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any projections, any confidential information memorandum or similar document, or in any diligence materials, including in any dataroom or datasite or elsewhere) to any Seller or any of its Affiliates or Advisors on behalf of Purchaser or any of its Affiliates or Advisors. Without limiting the foregoing, neither Purchaser nor any other Person will have or be subject to any Liability whatsoever to any Seller, or any other Person, resulting from the distribution to any Seller or any of its Affiliates or Advisors, or any Seller's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to any Seller or any of its Affiliates or Advisors or any discussions with respect to any of the foregoing information.

ARTICLE V

BANKRUPTCY COURT MATTERS

5.1 Bankruptcy Actions.

(a) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII and (ii) the Closing Date, the Company shall use reasonable best efforts to obtain entry by the Bankruptcy Court of the Sale Order.

(b) Purchaser shall promptly take all actions as are reasonably requested by the Company to assist in obtaining the Bankruptcy Court's entry of the Sale Order and any other Order reasonably necessary in connection with the transactions contemplated by this Agreement as promptly as practicable, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court and making such employees and representatives of Purchaser and its Affiliates available to testify before the Bankruptcy Court for

the purposes of, among other things providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code.

(c) Each of Sellers and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the transactions contemplated by this Agreement and (ii) keep the other reasonably apprised of the status of material matters related to the transactions contemplated by this Agreement, including, upon reasonable request promptly furnishing the other with copies of notices or other communications received by any Seller from the Bankruptcy Court or any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

(d) Each Seller's obligations under this Agreement and in connection with the transactions contemplated hereby and thereby are subject to entry of and, to the extent entered, the Sale Order. Nothing in this Agreement shall require any Seller to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

5.2 Cure Costs. Subject to the entry of the Sale Order and Section 1.3(b), Purchaser shall, on or prior to the Closing (or, in the case of any Contract that is to be assigned following the Closing, on or prior to the date of such assignment), pay the Cure Costs and cure any and all other defaults and breaches under the Assigned Contracts so that such Assigned Contracts may be assumed by Sellers and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement. Purchaser and Sellers shall reasonably cooperate and agree (such agreement not to be unreasonably withheld) with respect to all final resolved Cure Costs prior to any Party making a payment related thereto. Any proposed Assigned Contract that is not cured by Purchaser shall be an Excluded Contract (unless otherwise agreed by Purchaser and the applicable contract counterparty; provided that any such agreements shall not allow for recourse against the Sellers). Schedule 5.2 sets forth a good faith estimate as of the date hereof of the Cure Costs in respect of each Assigned Contract.

5.3 Sale Order. The Sale Order shall, among other things, (a) approve, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by each Seller of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Permitted Encumbrances), and (iii) the performance by each Seller of its obligations under this Agreement; (b) find that Purchaser is a "good faith" buyer within the meaning of section 363(m) of the Bankruptcy Code and grant Purchaser the protections of section 363(m) of the Bankruptcy Code; (c) find that Purchaser is not the successor of any Seller; (d) find that Purchaser has not, de facto, or otherwise, merged with or into any Seller; (e) find that Purchaser is not a mere continuation or substantial continuation of any Seller or its enterprise(s); and (f) find that Purchaser shall not be liable for any acts or omissions of any Seller in the conduct of either Business or arising under or related to the Acquired Assets other than as set forth in this Agreement.

5.4 Bidding Procedures Order. The terms of this Agreement shall be subject in all respects, including for the avoidance of doubt, with respect to any backup bidder requirements, to the Bidding Procedures Order.

ARTICLE VI
COVENANTS AND AGREEMENTS

6.1 Conduct of Each Seller.

(a) From the date hereof until the earlier of the termination of this Agreement and the Closing, except (w) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (x) as required by applicable Law, (y) as otherwise required by or reasonably necessary to carry out the terms of this Agreement or as set forth on Schedule 6.1 or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller shall not:

(i) sell, assign, license, transfer, convey, lease, surrender, relinquish or otherwise dispose of any Acquired Asset or reject any Assigned Contract;

(ii) move or remove, or permit to be moved or removed, any Acquired Asset from or at the Acquired Leased Real Property or move, place or locate, or permit to be moved, placed or located, any Excluded Asset from or at the Acquired Leased Real Property;

(iii) permit, offer, agree or commit to subject any portion of the Acquired Assets to any Encumbrance, directly or indirectly, except for Permitted Encumbrances already existing prior to the date of this Agreement;

(iv) authorize or enter into any Contract, arrangement, or commitment, in each case, to the extent exclusively relating to or that materially impacts either Business or the Acquired Assets;

(v) abandon, cancel, permit to lapse or otherwise dispose of or forfeit to the public any rights in, to or for the use of any Intellectual Property Assets that are part of the Acquired Assets or any Intellectual Property licensed to it that are part of the Acquired Assets;

(vi) (A) sell, license exclusively or on a preferential basis or assign to any Person or enter into any Contract to sell, license exclusively or on a preferential basis or assign to any Person any rights to any Intellectual Property Assets that are part of the Acquired Assets; (B) license or otherwise grant any rights in, to or under any Intellectual Property Assets that are part of the Acquired Assets; (C) amend, modify or extend any Intellectual Property Agreement that is an Assigned Contract; or (D) grant a release, immunity or covenant not to sue under any Intellectual Property Asset or Licensed Intellectual Property that are part of the Acquired Assets;

(vii) undertake or approve any renovation or rehabilitation of the Acquired Leased Real Property;

(viii) acquire any material properties or assets that would be Acquired Assets;

(ix) cancel or compromise any debt or Claim or waive or release any right of any Seller that constitutes an Acquired Asset;

(x) resolve any Liability that would be an Assumed Liability other than Ordinary Course payments to vendors and suppliers;

(xi) transfer, to the extent that following such transfer such amounts would be treated as Excluded Assets, any security deposits, prepaid rentals, unbilled charges, fees, deposits, cash, cash equivalents or negotiable instruments, in each case constituting Acquired Assets;

(xii) satisfy any Excluded Liability with an Acquired Asset;

(xiii) make, change or revoke any material Tax election; change an annual accounting period with respect to material Taxes; adopt or change any accounting method with respect to Taxes; file any amended material Tax Return; enter into any closing agreement with respect to material Taxes; settle or compromise any material Tax claim or assessment; or consent to any extension or waiver of the limitation period after the Closing Date applicable to any claim or assessment with respect to material Taxes, in each case, to the extent such action would reasonably be expected to adversely affect the Acquired Assets in a period after the Closing; or

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

(b) From the date hereof until the earlier of the termination of this Agreement and the Closing, except (w) for any limitations on operations imposed by the commencement of the Company's chapter 11 cases and wind down of their estates, Bankruptcy Court or the Bankruptcy Code, (x) as required by applicable Law, (y) as otherwise required by or reasonably necessary to carry out the terms of this Agreement or as set forth on Schedule 6.1, or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller shall:

(i) maintain the current status of the Acquired Assets as of the date hereof and preserve intact the Acquired Assets;

(ii) pay all undisputed post-petition bills and invoices for post-petition goods or services promptly when due (including any post-petition lease payments and additional rent payments with respect to the Acquired Leased Real Property) through the Closing Date;

(iii) use its commercially reasonable efforts to keep and maintain possession of and compliance with the terms of all Permits required by Law or used in, held for use in, or otherwise necessary for the operation of either Business, including the Permits set forth on Schedule 1.1(f), including by taking all actions and submitting all

payments, applications, and filings necessary to renew any such Permit due to expire at any time before the Closing Date;

(iv) protect, defend and maintain the validity and enforceability of all Intellectual Property Assets included in the Acquired Assets and all Licensed Intellectual Property exclusively licensed to it and included in the Acquired Assets, including by taking all actions and timely submitting all payments and filings due before the Closing Date; and

(v) maintain insurance coverage with financially responsible insurance companies substantially similar in all material respects to the insurance coverage maintained by such Seller on the date hereof.

Nothing contained in this Agreement is intended to give Purchaser or its affiliates, directly or indirectly, the right to control or direct the business of Sellers prior to the Closing.

6.2 Access to Information.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement pursuant to Article VIII), the Company will provide Purchaser and its authorized Advisors with reasonable access in accordance with the Bidding Procedures Order and upon reasonable advance notice and during regular business hours to the Acquired Assets and either Business, including books and records of the Company and its Subsidiaries with respect to either Business, any Acquired Asset or Assumed Liability and offices, warehouses or other facilities of or relating to either Business, and to officers and other employees of Sellers for the purposes of evaluating the Acquired Assets and either Business, in order for Purchaser and its authorized Advisors to access such information regarding the Acquired Assets as Purchaser reasonably deems necessary in connection with effectuating the transactions contemplated by this Agreement; provided that (i) such access will occur in such a manner as the Company reasonably determines to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement, (ii) such access is permitted in accordance with the Bidding Procedures Order and the Bankruptcy Case, (iii) all requests for access will be directed to Houlihan Lokey, Inc. or such other Person(s) as the Company may designate in writing from time to time and (iv) nothing herein will require the Company to provide access to, or to disclose any information to, Purchaser if such access or disclosure (A) would cause significant competitive harm to the Company or any of its Subsidiaries if the transactions contemplated by this Agreement are not consummated, (B) would require the Company or any of its Subsidiaries to disclose any financial or proprietary information of or regarding the Affiliates of the Company or otherwise disclose information regarding the Affiliates of the Company that the Company deems to be commercially sensitive, (C) would waive any legal privilege or (D) would be in violation of applicable Laws or the provisions of any material agreement to which the Company or any of its Subsidiaries is a party; provided that, in the event that the Company withholds access or information in reliance on the foregoing clause (C) or (D), the Company shall provide (to the extent possible without waiving or violating the applicable legal privilege or Law) notice to Purchaser that such access or information is being so withheld and shall use commercially reasonable efforts to provide such access or information in a way that would not risk waiver of such legal privilege or applicable Law.

(b) The information provided pursuant to this Section 6.2 will be used solely for the purpose of effecting the transactions contemplated hereby, and will be governed by all the terms and conditions of the Confidentiality Agreements. Purchaser will, and will cause its Affiliates and Advisors to, abide by the terms of the Confidentiality Agreements with respect to such access and any information furnished to Purchaser or any of its Affiliates or Advisors. The Company makes no representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and Purchaser may not rely on the accuracy of any such information, in each case, other than the Express Representations.

(c) Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, noteholder or other material business relation of the Company or its Subsidiaries prior to the Closing with respect to the Company, its Subsidiaries, their business or the transactions contemplated by this Agreement without the prior consent of the Company for each such contact, which consent shall not be unreasonably delayed, withheld or conditioned; provided that, notwithstanding anything to the contrary contained in this Agreement or the Confidentiality Agreements, Purchaser and each member of the Purchaser Group shall be permitted to contact and negotiate, communicate, deal with and enter into agreements with any Person that has or had a relationship with either Business or any counterparty to any Assigned Contract, any Intellectual Property Agreement or any Contract that could become an Assigned Contract pursuant to Section 1.5(b) and Sellers shall cooperate with Purchaser in connection with Purchaser negotiating and entering into such agreements; provided that, Purchaser Group shall provide Sellers with reasonable advance written notice of any such contact and a reasonable opportunity to participate in any discussion or other communications (written or oral) with such Persons, including, without limitation, by keeping Sellers' counsel copied on all electronic and other written communications.

6.3 Regulatory Approvals.

(a) The Company will, will cause its Subsidiaries and direct its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by the Company under any applicable Laws for the consummation of the transactions contemplated by this Agreement, including the sale and assignment of the Acquired Assets, and obtain, at no cost to Purchaser (other than Cure Costs payable at or after the Closing pursuant to Section 1.3(b)), such consents, waivers or approvals of any third party or Governmental Body required for the consummation of the transactions contemplated hereby, (ii) cooperate with Purchaser in exchanging such information and providing such assistance as Purchaser may reasonably request in connection with the foregoing and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with such filings and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances in connection with such filings. Sellers shall take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby.

(b) Purchaser will, and will cause its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by any member of the Purchaser Group under any applicable Laws for the consummation of the transactions contemplated by this Agreement, including the sale and assignment of the Acquired Assets, (ii) cooperate with the

Company in exchanging such information and providing such assistance as the Company may reasonably request in connection with all of the foregoing, and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with such filings and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances. Purchaser shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby.

6.4 Reasonable Efforts; Cooperation.

(a) Subject to the other terms of this Agreement provisions hereof, each Party shall, and shall cause its Advisors to, use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable and the closing conditions set forth in Article VII to be satisfied, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party and its Advisors in connection with any step required to be taken as a part of its obligations hereunder. Except with respect to Cure Costs, the "reasonable best efforts" of the Company or Purchaser, as applicable, will not require the Company or Purchaser, as applicable, or any of their respective Subsidiaries, Affiliates or Advisors to expend any money to remedy any breach of any representation, to commence any Action, or warranty or to waive or forego any right, remedy or condition hereunder.

(b) The obligations of the Company pursuant to this Agreement, including this Section 6.4, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case) and each Seller's obligations as a debtor-in-possession to comply with any order of the Bankruptcy Court (including the Sale Order) and each Seller's duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

6.5 Notification of Certain Matters.

(a) Sellers will promptly notify Purchaser of, and furnish Purchaser any information it may reasonably request with respect to: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body pertaining directly to the transactions contemplated by this Agreement; (iii) the receipt of a Qualified Bid (as defined in the Bidding Procedures Order); (iv) any Actions relating to or involving or otherwise affecting any Seller or its Affiliates that relate to the transactions contemplated by this Agreement; and (v) promptly upon discovery thereof, any variances from, or the existence or occurrence of any event, fact or circumstance that would reasonably be expected to cause, (x) any breach or inaccuracy of any representation or warranty contained in this Agreement at any time prior to the Closing that would reasonably be expected to cause the conditions set forth in Article VII not to be satisfied, (y) any other conditions to Purchaser's obligations to consummate the transactions contemplated by this Agreement or by any Ancillary Document not to be fulfilled, or (z) directly or indirectly, any Material Adverse Effect. If the subject matter of any such notification required by the previous sentence requires any change

in the Schedules, the Company shall deliver to Purchaser prior to the Closing a supplement to such Schedule to Article III (the "Updated Schedules") with such change; provided that in no event will any Updated Schedule (i) serve to amend, supplement or modify the Schedules for purposes of Article VII or Article VIII, (ii) be deemed to cure any breach of any representation, warranty covenant or agreement or to satisfy any condition or (iii) limit or otherwise affect the remedies available hereunder to the party receiving such notice or Updated Schedules (for the avoidance of doubt, no supplement contained in any Updated Schedules shall be deemed to be a Seller material breach, including for purposes of Section 8.1(d), unless such supplement would result in or cause the conditions set forth in Section 7.2(a) not to be satisfied at the time of Closing); provided further that if the Closing occurs, the Updated Schedules will be considered and deemed to be part of the Schedules for all purposes under this Agreement, and each reference in this Agreement to a particular Schedule will mean such Schedule in, or as updated by, the Updated Schedules. Notwithstanding the foregoing, until the Closing, each Seller shall use its respective best efforts to review and update the Schedules to this Agreement and to discover any variances from, or the existence or occurrence of any event, fact or circumstance that would require the Schedules to this Agreement to be updated.

(b) Purchaser will promptly notify Sellers of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body pertaining directly to the transactions contemplated by this Agreement; (iii) any Actions relating to or involving or otherwise affecting Purchaser or its Affiliates that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.6 or that relate to the transactions contemplated by this Agreement; and (iv) any breach or inaccuracy of any representation or warranty contained in this Agreement at any time during the term hereof that would reasonably be expected to cause the conditions set forth in Article VII not to be satisfied; provided that the delivery of any notice pursuant to this Section 6.5(b) will not limit the remedies available to Sellers under or with respect to this Agreement.

6.6 Further Assurances. From time to time, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

6.7 Insurance Matters. Purchaser acknowledges that, upon Closing, all insurance coverage provided in relation to the Acquired Assets that is maintained by the Company or any of its Affiliates (whether such policies are maintained with third party insurers or with Sellers or its Affiliates) shall cease to provide any coverage with respect to the Acquired Assets and no further coverage shall be available to Purchaser or the Acquired Assets under any such policies.

6.8 Receipt of Misdirected Assets. From and after the Closing, if any Seller or any respective Affiliates of any Seller receives any right, property or asset that is an Acquired Asset, such Seller shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser

held in trust by such Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks, or other documents) to such Seller, and such asset will be deemed the property of such Seller held in trust by Purchaser for such Seller until so transferred. From and after the Closing, if Purchaser or either Seller discover that any asset previously deemed an Excluded Asset should have been included as an Acquired Asset, and each of Purchaser and the applicable Seller agree as to this classification, the applicable Seller shall promptly transfer such asset to Purchaser.

6.9 Acknowledgments.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it has conducted to its full satisfaction an independent investigation and verification of the business, condition, operations, liabilities, and prospects of the Company with respect to the Acquired Assets and the Assumed Liabilities, and, in making its determination to proceed with the transactions contemplated by this Agreement, Purchaser and the Purchaser Group have relied solely on the results of the Purchaser Group's own independent investigation and verification and have not relied on, are not relying on, and will not rely on, Sellers, any Subsidiary, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in any dataroom, any information presentation, or any projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or any other Seller Party, or any failure of any of the foregoing to disclose or contain any information, except for the representations and warranties made by each Seller to Purchaser in Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Representations") (it being agreed that Purchaser and the Purchaser Group have relied only on the Express Representations). Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser or any member of the Purchaser Group may rely in connection with the transactions contemplated by this Agreement; and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (1) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Representations) including in any dataroom, information presentation, projections, meetings, calls or correspondence with management of the Company and its Subsidiaries, any of the Seller Parties or any other Person on behalf of the Company, its Subsidiaries or any of the Seller Parties or any of their respective Affiliates or Advisors and (2) any other statement relating to the historical, current or future business, condition, results of operations, assets, liabilities, properties, contracts, and prospects of the Company or any of its Subsidiaries, or the quality, quantity or condition of the Company's or its Subsidiaries' assets, are, in each case, specifically disclaimed by the Company, on its behalf and on behalf of the Seller Parties, and Sellers. Purchaser, on its own behalf and on behalf of the Purchaser Group: (x) disclaims reliance on the items in clause (ii) in the immediately preceding sentence and (y) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, except

for fraud by any Person, Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that neither the Company, nor any other Person (including the Seller Parties), has made, is making or is authorized to make, and Purchaser, on its own behalf and on behalf of the Purchaser Group, hereby waive, all rights and claims it or they may have against any Seller Party with respect to the accuracy of, any omission or concealment of, or any misstatement with respect to, (A) any potentially material information regarding the Company, its Subsidiaries or any of their respective assets (including the Acquired Assets), Liabilities (including the Assumed Liabilities) or operations and (B) any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a particular purpose, or condition of the Company's or its Subsidiaries' business, operations, assets, liabilities, prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Representations.

(b) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it will not assert, institute, or maintain, and will cause each member of the Purchaser Group not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.9, including any such Action with respect to the distribution to Purchaser or any member of the Purchaser Group, or Purchaser's or any member of the Purchaser Group's use, of the information, statements, disclosures or materials in any information presentation, dataroom, or projections or any other information, statements, disclosures, or materials, in each case whether written or oral, provided by them or any other Seller Party or any failure of any of the foregoing to disclose any information.

(c) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that the covenants and agreements contained in this Section 6.9 (i) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing in accordance with their terms; and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this Section 6.9, Sellers would not enter into this Agreement.

(d) Each Seller acknowledges and agrees, on its own behalf and on behalf of its Seller Parties, that, in making its determination to proceed with the transactions contemplated by this Agreement, each Seller and its Seller Parties have relied solely on the results of the Seller Parties' own independent investigation and verification and have not relied on, are not relying on, and will not rely on, Purchaser, any Affiliate of Purchaser, any information, statements, disclosures, documents, projections, forecasts or other material made available to any Seller or any of its respective Affiliates or Advisors in any dataroom, any information presentation, or any projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or any other member of the Purchaser Group, or any failure of any of the foregoing to disclose or contain any information, except for the representations and warranties made by Purchaser to Sellers in Article IV (as qualified by any schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Purchaser Representations") (it being agreed that each Seller and its respective Seller Parties have relied only on the Express Purchaser Representations). Each Seller acknowledges and agrees, on its own behalf and on behalf of its respective Seller Parties, that (i) the Express Purchaser Representations are the sole and exclusive representations, warranties and statements of any kind made to any Seller or any of its respective

Seller Parties and on which each Seller or any of its respective Seller Parties may rely in connection with the transactions contemplated by this Agreement; and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (1) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Purchaser Representations) including in any dataroom, information presentation, projections, meetings, calls or correspondence with management of Purchaser or any of its Affiliates, any member of Purchaser Group or any other Person on behalf of Purchaser, its Affiliates or any member of Purchaser Group or any of their respective Affiliates or Advisors and (2) any other statement relating to the historical, current or future business, condition, results of operations, assets, liabilities, properties, contracts, and prospects of Purchaser or any of its Affiliates are, in each case, specifically disclaimed by Purchaser, on its behalf and on behalf of each member of the Purchaser Group. Each Seller, on its own behalf and on behalf of the Seller Parties: (x) disclaims reliance on the items in clause (ii) in the immediately preceding sentence and (y) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, except for fraud by any Person, each Seller acknowledges and agrees, on its own behalf and on behalf of its respective Seller Parties, that neither Purchaser, nor any other Person (including each member of the Purchaser Group), has made, is making or is authorized to make, and each Seller, on its own behalf and on behalf of each Seller Party, hereby waive, all rights and claims it or they may have against any member of the Purchaser Group with respect to the accuracy of, any omission or concealment of, or any misstatement with respect to, (A) any potentially material information regarding Purchaser or its Affiliates and (B) any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a particular purpose, or condition of Purchaser or its Affiliates' business, operations, financing, assets, liabilities, prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Purchaser Representations.

(e) Each Seller acknowledges and agrees, on its own behalf and on behalf of its respective Seller Parties, that it will not assert, institute, or maintain, and will cause each Seller Party not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.9, including any such Action with respect to the distribution to each Seller or any of its respective Seller Parties, or each Seller's or any of its respective Seller Parties' use, of the information, statements, disclosures or materials in any information presentation, dataroom, or projections or any other information, statements, disclosures, or materials, in each case whether written or oral, provided by them or any other member of Purchaser Group or any failure of any of the foregoing to disclose any information.

(f) Each Seller acknowledges and agrees, on its own behalf and on behalf of its respective Seller Parties, that the covenants and agreements contained in this Section 6.9 (i) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing in accordance with their terms; and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this Section 6.9, Purchaser would not enter into this Agreement.

6.10 No Right to Employment. Nothing herein shall be deemed to create any right to employment or continued employment or to a particular term or condition of employment with

Purchaser or any of its Affiliates and nothing herein shall be construed to create any third-party beneficiary right in any employee or other Person other than the Parties to this Agreement.

6.11 Casualty. If, between the date of this Agreement and the Closing, any of the Acquired Assets shall be destroyed or damaged by fire, earthquake, hurricane, flood, explosion, storm surge, natural disaster, other casualty or any other cause or act of god (each a "Casualty"), then Purchaser (a) may acquire such Acquired Assets on an "as is" basis, without any adjustment to the Purchase Price, and take an assignment from Sellers of an amount of insurance proceeds payable to Sellers in respect of the applicable Casualty, up to the amount of the Cash Payment, with the remainder going with the Company or its Affiliates or (b) in the event that the applicable Casualty would have a Material Adverse Effect, terminate this Agreement and the transactions contemplated hereby.

6.12 Confidentiality; Use of Acquired Assets.

(a) As of the Closing, Purchaser's obligations under the Confidentiality Agreement related to non-use, non-disclosure and return or destruction of Evaluation Material (as defined in the Confidentiality Agreement) exclusively related to the Acquired Assets and the Assumed Liabilities shall terminate. All other provisions of the Confidentiality Agreement shall remain in full force and effect in accordance with their terms, including, without limitation, Purchaser's, or any other Person's, obligations under the Confidentiality Agreements with respect to Evaluation Material that is not exclusively related to the Acquired Assets and Assumed Liabilities.

(b) From and after the Closing, Sellers shall, and shall cause its Subsidiaries and direct the other Seller Parties to, hold in confidence all Evaluation Material (as defined in the applicable Confidentiality Agreement as if such party were the receiving party under such Confidentiality Agreement) and any and all other information, whether written or oral, concerning either Business or provided to or retained by them in connection with this Agreement. If Sellers or any the Seller Parties are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Sellers shall (to the extent reasonably practicable and legally permissible) promptly notify Purchaser in writing (email being sufficient) so that Purchaser may seek at its own cost and expense an appropriate protective order and Sellers shall disclose only that portion of such information which Sellers is advised by its counsel is legally required to be disclosed and to such Persons to whom disclosure is required; provided, however, that Sellers shall, at the request of Purchaser, use commercially reasonable efforts to obtain at Purchaser's cost and expense an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information and cooperate to a commercially reasonable extent with Purchaser's efforts to obtain such protective order or such other reasonable assurances. Notwithstanding anything in this Section 6.12 to the contrary, unless disclosure is required by applicable Law, the confidentiality of any trade secrets of the operation of the Acquired Asset shall be maintained by Sellers and the Seller Parties for so long as such trade secrets continue to be entitled to protection as trade secrets under applicable Law.

(c) Each Seller shall cease to make use of any Acquired Assets after the Closing.

6.13 Intellectual Property. Without limiting any other provision of this Agreement, prior to, on and after the Closing Date, Sellers shall cooperate with Purchaser, without any further consideration, (a) to obtain, execute and deliver, or use best efforts to obtain, execute and deliver to Purchaser, or cause to be executed and delivered, all instruments, including any instruments of conveyance, assignment and transfer as Purchaser may reasonably request, (b) to make, or cause to be made, all filings with, and to obtain, or cause to be obtained, all consents of any Governmental Body or any other Person under any Permit, license, agreement, indenture or other instrument, and (c) to take, or cause to be taken, all such other actions Purchaser may reasonably request from time to time in order to effectuate the provisions and purposes of this Agreement and any and all transfers of Intellectual Property pursuant to this Agreement and the Ancillary Agreements. In the event the Purchaser (or its designee) is unable for any reason, after reasonable effort, to secure any Seller's signature on any document needed in connection with the actions specified in this paragraph, each Sellers hereby irrevocably designate and appoint Purchaser and its duly authorized officers and agents as such Seller's agent and attorney in fact, which appointment is coupled with an interest, to act for and in such Seller's behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by such Seller.

6.14 Financing.

(a) Sellers shall use reasonable best efforts to provide, and shall use reasonable best efforts to cause their respective representatives to provide such cooperation as is reasonably requested by Purchaser in connection with the arrangement of the Financing. Such cooperation shall consist of the Sellers using their reasonable best efforts to: make appropriate officers reasonably available for participation in a reasonable number of meetings, conference calls and due diligence sessions, in each case, upon reasonable advance notice and at mutually agreeable dates and times; provided that, notwithstanding the foregoing, the Sellers and their Affiliates shall only be obligated to deliver such financial statements and information to the extent they may be reasonably obtained from the books and records of the Sellers without undue effort or disruption; provided, further, that the Sellers shall not be required to provide (x) any pro forma financial statements or pro forma information or projections or (y) any information relating to, or based on, all or any component of the Financing or any other debt or equity offering; provided that nothing in this Agreement will require (1) such cooperation to the extent it would interfere unreasonably with the business or operations of the Sellers or waive any attorney-client privilege, attorney-client work product, confidentiality or other privilege or protection, (2) any Seller to deliver (i) any financial statements or (ii) any legal opinion, accountant comfort letter or similar certification or any certificate as to valuation or solvency by any Seller, or any Business, or (3) that any Seller or any Business (A) take any action that conflicts with or violates, or would reasonably be expected to conflict with or violate, in any material respect any of their organizational documents or any applicable Laws or results in the contravention of, or would reasonably be expected to result in a violation or breach of, or default under, any Law, this Agreement or any material contract, (B) take any action to incur or that could reasonably expected to result in any Sellers Party incurring personal cost, expense or liability with respect to any matters related to the Financing, (C) take any action that would reasonably be expected to cause any condition to Closing set forth in this Agreement to fail to be satisfied or otherwise cause any requirement of this Agreement to fail to be satisfied or otherwise cause any breach of this Agreement that would provide Purchaser the right to terminate this Agreement, or (D) incur any liability (or cause its directors, officers or

employees to incur any liability) or enter into any commitment or agreement under the Financing. Notwithstanding anything in this Section 6.14 or elsewhere in this Agreement to the contrary, (x) in no event will any Seller or Business be required to bear any cost or expense, pay any fee, incur any liability, give any indemnity or enter into any commitment or agreement in connection with the Financing effective prior to the Closing and (y) Purchaser affirms and agrees that it is not a condition to the Closing or to any of its obligations under this Agreement that Purchaser (or any of the Sellers or Businesses) obtain financing for or related to any of the transactions contemplated by this Agreement. Purchaser will promptly upon any request by any Seller or any Business reimburse the Sellers for all reasonable and documented out-of-pocket fees, costs and expenses (including fees and expenses of counsel) incurred by any Seller Party in connection with the cooperation required by Section 6.14.

(b) Purchaser will, and will use its reasonable best efforts to cause its Affiliates, to (i) take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to obtain the Financing on the terms and conditions described in the Debt Commitment Letter on a timely basis and consummate the Financing on or prior to the Closing Date, including satisfying or seeking a waiver of, on a timely basis, all conditions applicable to Purchaser and its Affiliates obtaining the Financing set forth in the Debt Commitment Letter that are within Purchaser's or its Affiliates' control, (ii) negotiate, enter into and borrow under definitive financing agreements with respect to the Financing on the terms and conditions contained in the Debt Commitment Letter or on other terms and conditions not materially less favorable to Purchaser (or on other terms reasonably acceptable to Purchaser that would not reasonably be likely to make funding less likely to occur when required and in the amount required on the Closing Date) (the "Financing Agreements"), (iii) maintain in effect the Debt Commitment Letter without amendment other than those approved by Sellers in writing or amendments that would not or would not reasonably be expected to (a) expand the conditions precedent, or impose new or additional conditions or contingencies, to the Financing, (b) reduce the amount of the Financing below the amount required for Purchaser to satisfy Purchaser's obligations at the Closing Date, (c) prevent, impede or delay the availability of or consummation of the Financing on the Closing Date or (d) adversely impact the ability of Purchaser or any of its Affiliates to enforce the Debt Commitment Letter, (iv) pay any and all commitment fees or other fees in connection with the Debt Commitment Letter that are required to be paid by it on or prior to the Closing Date, (v) comply with its covenants and other obligations under the Debt Commitment Letter and the Financing Agreements, (vi) enforce its rights under the Debt Commitment Letter, and (vii) consummate the Financing at or prior to the Closing Date, including by causing the financing sources under the Debt Commitment Letter to fund the Financing.

(c) If any portion of the Financing necessary for Purchaser to satisfy Purchaser's obligations at the Closing Date for any reason becomes unavailable (other than by reason of a breach of this Agreement by the Sellers) on the terms and conditions (including any applicable "flex" terms) in the Debt Commitment Letter, then Purchaser will (A) promptly notify the Sellers of such unavailability and (B) use its reasonable best efforts to obtain, as promptly as practicable following the occurrence of such event but in no event later than the Closing Date, alternative financing in an amount such that the aggregate amount of the Financing is not reduced below the amount as is necessary for Purchaser to satisfy its obligations under this Agreement, with conditions in the aggregate not materially less favorable to Purchaser than the conditions contained in the Debt Commitment Letter (the "Alternative Financing"). In such event, (x) any

reference in this Agreement to the "Financing" will mean the Alternative Financing and (y) any reference in this Agreement to the "Debt Commitment Letter" will be deemed to include the commitment letter and related fee letter for the Alternative Financing. Without the prior written consent of the Sellers, Purchaser and its Affiliates will not terminate, amend, modify or waive, or agree to terminate, amend, modify or waive, the Debt Commitment Letter or the Financing, except amendments to the Debt Commitment Letter that would not or would not reasonably be expected to (i) expand the conditions precedent, or impose new or additional conditions or contingencies, to the Financing, (ii) reduce the amount of the Financing below the amount required for Purchaser to satisfy Purchaser's obligations at the Closing Date, (iii) prevent, impede or delay the availability of or consummation of the Financing on the Closing Date or (iv) adversely impact the ability of Purchaser or any of its Affiliates to enforce the Debt Commitment Letter. For the avoidance of doubt, it is understood that, subject to the limitations set forth in this Section 6.14 and in the Debt Commitment Letter, Purchaser may amend or replace the Debt Commitment Letter to add or replace additional Lenders, lead arrangers, syndication agents or similar entities or reallocate commitments or reassign titles so long as the aggregate amount of the Financing is not reduced below the amount as is necessary for Purchaser to satisfy Purchaser's obligations at the Closing Date and any such amendment or replacement could not reasonably be expected to delay or prevent the Closing or add additional conditions to funding of the Financing. Purchaser promptly will give the Sellers written notice of any breach in any material respect by any party to any of the Debt Commitment Letter (or commitments for any Alternative Financing, if any) of which Purchaser becomes aware or any termination of the Debt Commitment Letter (or commitments for any Alternative Financing, if any) of which Purchaser becomes aware. Purchaser will use reasonable best efforts to keep the Sellers reasonably informed on a current basis of the status of its efforts to arrange the Financing (or Alternative Financing, if any) and to satisfy the conditions thereof, including advising and updating the Sellers, in a reasonable level of detail, with respect to status, proposed closing date and material terms of the definitive documentation related to the Financing, and, upon request of the Sellers, providing copies of then current drafts of the primary definitive documents related to the Financing. Furthermore, as promptly as practicable, Purchaser will use reasonable best efforts to provide any information reasonably requested by the Company relating to any circumstance referred to in this Section 6.14.

ARTICLE VII

CONDITIONS TO CLOSING

7.1 Conditions Precedent to the Obligations of Purchaser and Sellers. The respective obligations of each Party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by each Seller and Purchaser) on or prior to the Closing, of each of the following conditions:

(a) No court or other Governmental Body has issued, enacted, entered, promulgated or enforced any Law or Order (that is final and non-appealable and that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement; and

(b) the Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not be stayed, modified or vacated.

7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing, of each of the following conditions:

(a) the representations and warranties made by each Seller in Article III shall be true and correct as of the Closing Date (disregarding all qualifications or limitations as to "materiality" or "Material Adverse Effect" and words of similar import set forth therein), as though such representations and warranties had been made on and as of the Closing Date (except that representations and warranties that are made as of a specified date need be true and correct only as of such date), except where the failure of such representations and warranties to be true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that the representations and warranties set forth in Sections 3.1, 3.2, 3.3 and 3.6 shall be true and correct in all respects on and as of the Closing Date with the same effect as though made at and as of the Closing Date.

(b) Each Seller shall have performed and complied with in all material respects all of the covenants and agreements required to be performed by such Seller under this Agreement and each of the Ancillary Documents at or prior to the Closing;

(c) Each Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.4 (and for the avoidance of doubt, Sellers shall (i) subject to clause (ii) immediately below, transfer, assign, convey and deliver all Acquired Assets material to the operation of the Businesses (including the Lease) to Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances (except for any Permitted Encumbrances described in clause (i) of the definition thereof to the extent attributable to any Tax that is not an Assumed Liability), and (ii) to the extent any Assigned Contract (other than the Lease), Intellectual Property Agreement or Licensed Intellectual Property is not assignable at the Closing, make available to Purchaser under the TSA all such Assigned Contracts (other than the Lease), Intellectual Property Agreements and Licensed Intellectual Property and all other assets, properties and rights, in each case, as are reasonably necessary for Purchaser to operate (x) the Acquired Assets material to the operation of the Businesses (including the Lease) and (y) the Businesses from and after the Closing); and

(d) No Material Adverse Effect shall have occurred or been discovered since the date of this Agreement.

7.3 Conditions Precedent to the Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Sellers in their sole discretion), on or prior to the Closing, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct in all material respects (without giving effect to any materiality or similar qualification contained therein), as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date,

which shall be so true and correct only as of such other specified date), except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby;

(b) Purchaser shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing; and

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 2.5.

7.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing. Neither Purchaser nor any Seller may rely on the failure of any condition set forth in this Article VII, as applicable, to be satisfied if such failure was caused by such Party's failure to use, as required by this Agreement, its reasonable best efforts to consummate the transactions contemplated hereby.

ARTICLE VIII

TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated only in accordance with this Section 8.1. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and Purchaser;

(b) by written notice of either Purchaser or the Company, upon the issuance by any Governmental Body of an Order restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or declaring unlawful the transactions contemplated by this Agreement, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by the breach or action or inaction of such Party;

(c) by written notice of either Purchaser or the Company, if the Closing shall not have occurred on or before August 12, 2021 (the "Outside Date"); provided, that, notwithstanding the foregoing, prior to the Outside Date, the Company may elect, by written notice to Purchaser, to extend the Outside Date until August 26, 2021 if the Company reasonably and in good faith determines that Sellers require additional time to satisfy the conditions set forth in Section 7.2; provided further that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by the breach or action or inaction of such Party;

(d) by written notice from the Company to Purchaser, if each Seller is not then in material breach of any provision of this Agreement, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied, including a breach of Purchaser's obligation to consummate the Closing; provided that if such

breach is curable by Purchaser then the Company may not terminate this Agreement under this Section 8.1(d) unless such breach has not been cured by the date which is the earlier of (i) two (2) Business Days prior to the Outside Date and (ii) thirty (30) days after the Company notifies Purchaser of such breach;

(e) by written notice from Purchaser to the Company, if Purchaser is not then in material breach of any provision of this Agreement, upon a breach of any covenant or agreement on the part of any Seller, or if any representation or warranty of any Seller will have become untrue, in each case, such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied, including a breach of Sellers's obligation to consummate the Closing, or a failure of the condition set forth in Section 7.2(c); provided that (i) if such breach is curable by any Seller then Purchaser may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date and (B) thirty (30) days after Purchaser notifies the Company of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(f) will not be available to Purchaser at any time that Purchaser is in material breach of, any covenant, representation or warranty hereunder;

(f) by written notice from the Company to Purchaser, if all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Purchaser fails to complete the Closing at the time required by Section 2.3;

(g) by written notice from the Company to Purchaser, if Sellers or the board of directors of the Company determines that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary;

(h) by written notice of either Purchaser or the Company, following compliance by each Seller in all material respects with this Agreement and the Bidding Procedures Order, if any Seller enters into a definitive agreement with respect to an Alternative Transaction, the Bankruptcy Court approves an Alternative Transaction, or automatically if an Alternative Transaction is consummated, or if Purchaser is not declared the winning bidder or the backup bidder at the Auction (as defined in the Bidding Procedures Order);

(i) by written notice from Purchaser to the Company, in the event the Bankruptcy Court enters an Order dismissing, or converting under Chapter 7 of the Bankruptcy Code, the Bankruptcy Case, and such Order has become final, binding and non-appealable, or the Bankruptcy Case is so dismissed or converted; or

(j) by written notice of either Purchaser or the Company in the event the Bankruptcy Court enters an Order that otherwise precludes the consummation of the transactions set forth herein on the terms and conditions set forth in this Agreement.

8.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to Section 8.1 or Section 6.11, this Agreement shall forthwith become void and there shall be no liability on the part of any Party or any other Seller Party or any member of the Purchaser Group; provided that

Section 2.2, this Article VIII, and Article X and the definitions referenced in such Sections and Articles, even if not included in such Sections and Articles, shall survive any such termination; provided further that no termination will relieve the Parties from any liability for damages (including damages based on the loss of the economic benefits of the transactions contemplated by this Agreement, including the Purchase Price, to Sellers), losses, costs, or expenses (including reasonable legal fees and expenses) resulting from any willful breach of this Agreement by a Seller prior to any such termination or fraud by a Party. Each Seller, on behalf of itself and the Seller Parties, acknowledges and agrees that any disbursement of the Deposit to Sellers pursuant to Section 2.2 shall be deemed liquidated damages and shall be the sole and exclusive recourse of each Seller and the Seller Parties against Purchaser and the Purchaser Group for any loss or damage suffered as a result of any breach of this Agreement or any representation, warranty, covenant or agreement contained herein by Purchaser or the failure of the transactions contemplated by this Agreement to be consummated, except in the event Sellers are entitled to and elect specific performance of Purchaser's obligations to consummate the transactions contemplated herein pursuant to Section 10.12. In the event of valid termination of this Agreement pursuant to Section 8.1, in the event that Sellers have elected not to require specific performance of Purchaser's obligations to consummate the transactions contemplated herein pursuant to Section 10.12 and have opted instead to receive the Deposit, then upon release of the Deposit to Sellers in accordance with Section 2.2, (i) Purchaser and the Purchaser Group shall not have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby and (ii) neither any Seller nor any of the Seller Parties will have any right of recovery, whether arising under contract Law, tort Law or any other theory of Law, against, and no personal liability shall attach to any Purchaser and the Purchaser Group, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil, by the enforcement of any assessment or by any legal or equitable Action, by virtue of any statute, regulation or applicable Law, or otherwise. For the avoidance of doubt, the maximum aggregate liability of Purchaser and the Purchaser Group for losses in connection with this Agreement shall be limited to the Deposit, and under no circumstances will any Seller or any of the Seller Parties be entitled to, nor will any Seller or any of the Seller Parties seek, obtain or accept, monetary damages or losses of any kind (including damages for the loss of the benefit of the bargain, opportunity cost, loss of premium, time value of money or otherwise, or any consequential, special, expectancy, indirect or punitive damages) in connection with the termination of this Agreement in excess of the amount of the Deposit; provided, however, that the foregoing shall not been interpreted to limit in any way Sellers' right to require specific performance of Purchaser's obligations to consummate the transactions contemplated herein pursuant to Section 10.12 in the event this Agreement has not been terminated.

(b) Subject in all cases to Section 8.3 and Section 10.12, prior to the applicable Closing, in the event of any breach by any Seller of this Agreement, the sole and exclusive remedy of Purchaser shall be to terminate this Agreement in accordance with Section 8.1.

8.3 Break-Up Fee; Expense Reimbursement. In consideration of Purchaser having expended considerable time and expense in connection with this Agreement and negotiation thereof and Purchaser's willingness to act as the "stalking horse" bidder with respect to the Auction (as defined in the Bidding Procedures Order), Sellers believe that Purchaser is entitled to certain bid protections.

(a) If this Agreement is terminated pursuant to Section 8.1(e), Section 8.1(g), Section 8.1(h) or Section 8.1(i) (or by the Company pursuant to Section 8.1(c), in circumstances where Purchaser would be entitled to terminate this Agreement pursuant to Section 8.1(e), Section 8.1(h) or Section 8.1(i)), then Sellers, jointly and severally, shall pay the Break-Up Fee to Purchaser in immediately available funds, without need for further order of or from the Bankruptcy Court, and such Break-Up Fee shall be due and payable simultaneously with any such termination of this Agreement.

(b) If this Agreement is terminated pursuant to Section 8.1(b), Section 8.1(c), Section 8.1(e), Section 8.1(g), Section 8.1(h) or Section 8.1(i) (or by the Company pursuant to Section 8.1(c), in circumstances where Purchaser would be entitled to terminate this Agreement pursuant Section 8.1(b), Section 8.1(c), Section 8.1(e), Section 8.1(h) or Section 8.1(i)), then Sellers, jointly and severally, shall pay the Expense Reimbursement to Purchaser in immediately available funds, without need for further order of or from the Bankruptcy Court, and such Expense Reimbursement shall be due and payable simultaneously with any such termination of this Agreement. For the avoidance of doubt, if this Agreement is terminated pursuant to Section 8.1(e), Section 8.1(g), Section 8.1(h) or Section 8.1(i) (or by the Company pursuant to Section 8.1(c), in circumstances where Purchaser would be entitled to terminate this Agreement pursuant to Section 8.1(e), Section 8.1(h) or Section 8.1(i)), each of the Break-Up Fee and the Expense Reimbursement shall be immediately due and payable to Purchaser.

(c) To the extent that any Seller consummates an Alternative Transaction and either or both of the Break-Up Fee and Expense Reimbursement are due and owing to Purchaser pursuant to this Section 8.3, the Break-Up Fee and Expense Reimbursement shall be paid from the first dollars of sale proceeds from such Alternative Transaction. To the extent that such Seller does not consummate an Alternative Transaction and either or both of the Break-Up Fee and Expense Reimbursement are due and owing to Purchaser pursuant to this Section 8.3, the Break-Up Fee and Expense Reimbursement shall be deemed an allowed administrative expense claim in accordance with Sections 503(b) and 507(b) of the Bankruptcy Code.

(d) If any Seller fails to take any action reasonably necessary to cause the delivery of the Break-Up Fee or the Expense Reimbursement under circumstances where Purchaser is entitled to the Break-Up Fee or the Expense Reimbursement and, in order to obtain such Break-Up Fee or the Expense Reimbursement, Purchaser commences an Action which results in a judgment in favor of Purchaser, Sellers, jointly and severally, shall pay to Purchaser, in addition to the Break-Up Fee or the Expense Reimbursement, an amount of cash equal to the costs and expenses (including attorneys' fees) incurred by Purchaser in connection with such Action or if Purchaser loses, Purchaser shall pay such amount to Sellers.

(e) Each Seller hereby acknowledges and agrees that the obligation to pay the Break-Up Fee and the Expense Reimbursement (to the extent due hereunder) shall survive the termination of this Agreement and shall have administrative priority status against each Seller and its estate.

(f) Sellers may hold an Auction (as defined in the Bidding Procedures Order) for the Acquired Assets if it receives one or more Qualified Bids (as defined in the Bidding Procedures Order) for the Acquired Assets; provided that in addition to the requirements for

Qualified Bids, as set forth in the Bidding Procedures Order, a Qualified Bid must be in a cash amount equal to the Purchase Price plus the Break-Up Fee plus the Expense Reimbursement plus $550,000.00.

ARTICLE IX

TAXES

9.1 Transfer Taxes. Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use, or other Taxes and recording charges payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne and timely paid by Purchaser only to the extent not exempt under the Bankruptcy Code, as applicable to the transfer of the Acquired Assets pursuant to this Agreement, and Purchaser shall timely file all Tax Returns related to any Transfer Taxes. Sellers and Purchaser shall use commercially reasonable efforts and cooperate in good faith to exempt all such transactions from any Transfer Taxes, including pursuant to section 1146(a) of the Bankruptcy Code.

9.2 Allocation of Purchase Price. For U.S. federal and applicable state and local income Tax purposes, Purchaser, Sellers, and their respective Affiliates shall allocate the purchase price (and any Assumed Liabilities treated as part of the purchase price for applicable income Tax purposes) among the Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations. Within ninety (90) days following Closing, Purchaser shall provide the allocation to Sellers setting forth the allocation of the Purchase Price (and other amounts treated as purchase price for U.S. federal income Tax purposes) among the Acquired Assets (the "Draft Allocation") for Sellers' review and approval. If Sellers, acting in good faith, object to the Draft Allocation, Sellers shall, within ten (10) Business Days after receipt of the Draft Allocation, deliver written notice of such objection to Purchaser, and such notice shall specify in reasonable detail the items in the Draft Allocation to which Sellers object and the basis for such objection. Following delivery of such notice, Purchaser and Sellers shall cooperate in good faith to reach a mutually acceptable agreement regarding such disputed items. In the event that Purchaser and Sellers cannot mutually agree upon a resolution with respect to such disputed items within thirty (30) days of Purchaser's receipt of such notice, then no Party shall be required to file any Tax Returns (including IRS Form 8594 and any similar state, local or non-U.S. Tax form) in accordance with the Draft Allocation. In the event that Purchaser and Sellers mutually agree upon a resolution with respect to such disputed items within thirty (30) days of Purchaser's receipt of such notice, then the Draft Allocation shall become final (the "Final Allocation") and the Parties and their respective Affiliates shall file all Tax Returns (including IRS Form 8594 and any similar state, local or non-U.S. Tax form) in accordance with such Final Allocation and neither Purchaser nor any Seller shall take any Tax position inconsistent with such Final Allocation and neither Purchaser nor any Seller shall agree to any proposed adjustment to the Final Allocation by any Tax Authority, in each case, unless otherwise required by a "determination" within the meaning of Section 1313(a) of the Code.

9.3 Cooperation. After the Closing, Purchaser and Sellers agree to furnish or cause to be furnished to the other, upon reasonable request, as promptly as reasonably practicable, such Tax information and assistance relating to the Acquired Assets, including access to books and records, as is reasonably necessary for the filing of all Tax Returns by Purchaser or Sellers, the making of

any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax, in each case with respect to the Acquired Assets. Each of Purchaser and Sellers shall retain all books and records with respect to Taxes pertaining to the Acquired Assets for the period expiring at the earlier of seven (7) years following the Closing Date or the final wind-down and liquidation of Sellers, whichever occurs first. Purchaser and Sellers shall reasonably cooperate with each other in the conduct of any audit, Action or other proceeding relating to Taxes involving the Acquired Assets or the Allocation. Each party shall promptly notify the other party in writing upon receipt by such first party of notice of any pending or threatened Tax audits or assessments relating to the income, properties or operations of the first party that reasonably may be expected to relate to or give rise to any Encumbrance for Taxes on the Acquired Assets.

9.4 Allocation of Tax Liability. For all purposes under this Agreement, in the case of any Straddle Period, the portion of Taxes (or any Tax refund and amount credited against any Tax) that are allocable to the portion of the Straddle Period ending on the Closing Date will be (i) in the case of all real property Taxes, personal property Taxes and similar ad valorem Taxes and other Taxes imposed on a periodic basis without regard to income, gross receipts or sales, deemed to be the amount of such Taxes (or Tax refund or amount credited against Tax) for such entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of such Straddle Period ending on the end of the Closing Date and the denominator of which is the number of calendar days in such entire Straddle Period, and (ii) in the case of all other Taxes, determined as though the taxable year of the Company terminated at the end of the Closing Date.

9.5 Transferred Employees. Purchaser and Sellers hereby agree to follow the alternate procedure for United States employment tax withholding as provided in Section 5 of Rev. Proc. 2004-53, 2004-34 I.R.B. 320. Accordingly, Sellers shall have no United States employment tax reporting responsibilities, and Purchaser or its Affiliate, as the successor employer to Sellers, shall have full United States employment tax reporting responsibilities, for any transferred employees subject to United States employment taxes following the close of business on the Closing Date. In addition, Purchaser and Sellers hereby agree to adopt the "alternative procedure" of Revenue Procedure 2004-53 for purposes of filing IRS Forms W-4 (Employee's Withholding Allowance Certificate) and W-5 (Earned Income Credit Advance Payment Certificate). This Section 9.5 shall survive the Closing Date.

ARTICLE X

MISCELLANEOUS

10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and

agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for twenty (20) years following the Closing Date, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and the Seller Parties acknowledge and agree, on their own behalf and on behalf of the Purchaser Group or the Seller Parties, as the case may be, that the agreements contained in this Section 10.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for twenty (20) years; and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this Section 10.1, none of the Parties would enter into this Agreement.

10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein (including, for the avoidance of doubt, Section 8.2 and Section 8.3), all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby will be paid by the Party incurring such fees, costs and expenses; it being acknowledged and agreed that all Transfer Taxes will be allocated pursuant to Section 9.1.

10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail, if transmitted prior to 5:00 PM local time of the recipient on a Business Day, otherwise on the next succeeding Business Day, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

VBC Tracy LLC
6128 Ridge Avenue
Philadelphia PA 19128
Attention: Vaughan Buckley
William McGroarty
Email: vbuckley@vbc.co
wmcgroarty@vbc.co

with a copy to (which shall not constitute notice):

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
Attention: Michael T. Fishman
Nancy A. Peterman
Email: FishmanM@gtlaw.com
PetermanN@gtlaw.com

Greenberg Traurig, LLP
1000 Louisiana Street, Suite 1700
Houston, TX 77002
Attention: Shari L. Heyen
Email: HeyenS@gtlaw.com

Notices to Sellers:

Katerra Inc.
Katerra Construction LLC
9305 E. Via de Ventura, Suite 200
Scottsdale, AZ 85258
Attention: Marc Liebman
Email: marc.liebman@alvarezandmarsal.com

with a copy to (which shall not constitute notice):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Joshua A. Sussberg, P.C.
Christine A Okike
Email: joshua.sussberg@kirkland.com
christine.okike@kirkland.com

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attention: Joshua M. Altman
Dan Latona
Email: josh.altman@kirkland.com
dan.latona@kirkland.com

Kirkland & Ellis LLP
609 Main Street
Houston, TX 77002
Attention: John D. Furlow
Email: john.furlow@kirkland.com

10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, upon the entry of and subject to the terms of the Sale Order, Sellers, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated by any Party without the prior written consent of the other Parties; provided, that (a) Sellers may assign this Agreement and any of their rights and obligations hereunder, without the consent of Purchaser, to any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case, and (b) Purchaser may assign this Agreement and any of its rights and obligations hereunder, without the consent of any Party, (i) prior to or following the Closing, to an Affiliate, unless doing so would restrict, delay or otherwise adversely affect the consummation of the transactions contemplated hereby, (ii) following the Closing to any purchaser of all or any portion of the assets or business of Purchaser or any of its Affiliates, or (iii) on or following the Closing, as collateral security to any lender or prospective lender to Purchaser or any of its Affiliates or the Businesses. In the event of any assignment or designation pursuant to this Section 10.4, Purchaser shall not be relieved of any liability or obligation to Sellers hereunder. Any attempted assignment of this Agreement in violation of the express terms hereof shall be null and void *ab initio*.

10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and the Company or (b) waived only in a writing executed by the Person against which enforcement of such waiver is

sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

10.6 Third Party Beneficiaries. Except for the Seller Parties, which are intended third party beneficiaries of this Agreement and shall be entitled to enforce the terms of this Agreement as if a direct party hereto, and except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement; provided, however, that notwithstanding the foregoing, the Debt Financing Parties shall be intended third-party beneficiaries of, and may enforce this Section 10.6 and Section 10.20.

10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of any Party or any Subsidiary of Sellers will have any liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or liabilities of any of the parties to this Agreement or for any Action based upon, arising out of or related to this Agreement.

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

10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement that are qualified or modified by such disclosure; however, each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules (and any disclosure in such Schedule will be deemed a disclosure against any representation or warranty set forth in this Agreement) only if, and to the extent that, it is reasonably apparent on its face that such disclosure or information is applicable to such other representations and warranties. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are

required to be disclosed as material or threatened) or are within or outside of the Ordinary Course or consistent with past practice, and no Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules, Updated Schedules, or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Schedules or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreements and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fail to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Sellers nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Purchaser pursuant to this Section 10.12 will be in addition to any other

remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit Purchaser from seeking to collect or collecting damages. If, prior to the Outside Date, Purchaser brings any Action, in each case in accordance with Section 10.12, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (y) for the period during which such action is pending, plus ten (10) Business Days or (z) by such other time period established by the court presiding over such action, as the case may be. Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that Sellers shall be entitled to specific performance of Purchaser's obligations to consummate the transaction contemplated herein only in the event that (i) all of the conditions set forth in Section 7.1 and Section 7.2 (other than those conditions that by their terms are to be satisfied at the Closing, each of which shall be capable of being satisfied if the Closing were to occur) have been and remain satisfied as of the time when Closing is required to have occurred pursuant to Section 2.3, (ii) Purchaser has failed to consummate the Closing on the date that the Closing is required to occur pursuant to Section 2.3, and (iii) the Company has delivered to Purchaser an irrevocable notice on or after the date that the Closing is required to occur pursuant to Section 2.3 that all conditions set forth in Section 7.1 and Section 7.2 have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, each of which shall be capable of being satisfied if the Closing were to occur) and the Closing shall occur in accordance with Section 2.3 if specific performance is granted.

10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action that may be based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement and the transactions contemplated hereby brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) in the event the Bankruptcy Case is closed, or if the Bankruptcy Court is unwilling or unable to hear such Action, in the Delaware Court of Chancery sitting in Wilmington, Delaware (or, if the Delaware Court of Chancery, any state or federal court within the State of Delaware) ((a) and (b), the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any Action relating thereto except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any Chosen Court, and no Party will file a motion to dismiss any Action filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to this agreement to serve process in any other manner permitted by Law.

10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arising out of or related to this

Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Texas applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Texas or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Texas to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 No Right of Set-Off. Purchaser, on its own behalf and on behalf the Purchaser Group and its and their respective successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment, or similar rights that Purchaser, any member of the Purchaser Group or any of its or their respective successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith.

10.16 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one Party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a facsimile machine, .PDF or other electronic transmission, will be treated in all manner and respects as an original contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party or pursuant to any such contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party

hereto or to any such contract will raise the use of a facsimile machine, .PDF or other electronic transmission to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine, .PDF or other electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

10.17 Publicity. From the date hereof until the earlier termination of this Agreement and the Closing, neither the Company, nor the Seller Parties nor Purchaser shall issue any press release or public announcement (directly or indirectly) concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchaser or the Company, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or the Company lists securities, provided that the Party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof. Notwithstanding anything to the contrary in this Agreement, after the Closing, the Purchaser Group and Sellers shall have the right to issue any press releases and make any public announcements concerning the Acquired Assets and the Assumed Liabilities in its and their sole and absolute discretion; provided that any such Person shall allow the Purchaser Group or Sellers, as applicable, reasonable opportunity to review and provide input to such press release or public announcement prior to dissemination.

10.18 Bulk Sales Laws. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any liens or claims arising out of the bulk transfer laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement.

10.19 Fiduciary Obligations. Nothing in this Agreement, or any document related to the transactions contemplated hereby, will require Sellers or any of their respective directors, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations. For the avoidance of doubt, Sellers retain the right to pursue any transaction or restructuring strategy that, in Sellers' business judgment, will maximize the value of their estates.

10.20 Debt Financing Sources. Notwithstanding anything in this Agreement to the contrary, each Seller and the Seller Parties, on behalf of themselves, and each of their respective Subsidiaries and controlled Affiliates hereby: (a) agrees that any Action, whether in law or in equity, whether in contract or in tort or otherwise, involving the Debt Financing Parties, arising out of or relating to, this Agreement, the Debt Financing or any of the agreements (including the Debt Commitment Letter) entered into in connection with the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder shall be subject to the exclusive jurisdiction of any federal or state court in the Borough of Manhattan, New York, New York, so long as such forum is and remains available, and any appellate court thereof and each party hereto irrevocably submits itself and its property with respect to any such

Action to the exclusive jurisdiction of such court, (b) agrees that any such Action shall be governed by the laws of the State of New York (without giving effect to any conflicts of law principles that would result in the application of the laws of another State), except as may otherwise be provided in the Debt Commitment Letter or other applicable definitive document relating to the Debt Financing, (c) agrees not to bring or support or permit any of its Subsidiaries or controlled Affiliates to bring or support any Action of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Debt Financing Party in any way arising out of or relating to, this Agreement, the Debt Financing, the Debt Commitment Letter or any document relating to the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder in any forum other than any federal or state court in the Borough of Manhattan, New York, New York, (d) agrees that service of process upon any member of the Seller Parties, or their respective Subsidiaries or controlled Affiliates in any such Action or proceeding shall be effective if notice is given in accordance with Section 10.3, (e) irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Action in any such court, (f) knowingly, intentionally and voluntarily waives to the fullest extent permitted by applicable law trial by jury in any such Action, including any Action brought against the Debt Financing Parties in any way arising out of or relating to, this Agreement, the Debt Financing, the Debt Commitment Letter or any document relating to the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, (g) agrees that (i) none of the members of the Seller Parties or any of their respective Subsidiaries or controlled Affiliates (in each case, other than Purchaser or its Subsidiaries) shall have any rights or claims against any Debt Financing Party in any way arising out of or relating to, this Agreement, the Debt Financing, the Debt Commitment Letter or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, whether at law or in equity, in contract, in tort or otherwise and (ii) none of the Debt Financing Parties will have any liability (including by way of consequential, punitive or indirect damages of a tortious nature) to any member of the Seller Parties or any of their respective Subsidiaries or controlled Affiliates or representatives (in each case, other than Buyer or its Subsidiaries) relating to or arising out of this Agreement, the Debt Financing, the Debt Commitment Letter or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, whether in law or in equity, whether in contract or in tort or otherwise, (h) agrees that the Debt Financing Parties are express third party beneficiaries of, and may enforce, any of the provisions of this Section 10.20, and that such provisions and the definitions of "Debt Financing Entities" and "Debt Financing Parties" shall not be amended in any way adverse to the Debt Financing Parties without the prior written consent of the Debt Financing Parties) and (i) Purchaser may assign its rights under this Agreement to any Debt Financing Entity as collateral security pursuant to Section 10.4.

10.21 Further Assurances. The Parties agree (a) to furnish upon request to each other such further information, (b) to execute, acknowledge and deliver to each other such other documents and (c) to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement and as may be reasonably necessary to transfer and convey the Acquired Assets to Purchaser, on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the transactions contemplated hereby. In addition, from time to time following the Closing Date, each Party shall (and shall cause its respective Affiliates to) promptly execute, acknowledge and deliver such further documents and perform such further acts as are

reasonably requested by Purchaser and as may be reasonably necessary to transfer and convey to Purchaser, or make available to Purchaser the benefits of any assets, properties or rights held by Sellers or any of its Affiliates (or their respective assignees) that have been used in, and are reasonably necessary for the operation of, either Business. The Parties acknowledge and agree that (a) Sellers and their Affiliates shall be obligated to transfer and convey ownership of an asset, property or right under this Section 10.21 only if the asset is used exclusively in either Business, and (b) with respect to any asset that is also used by Sellers or any of their respective Affiliates, then, Sellers and their respective Affiliates (and their respective assignees) shall be obligated to enter into an arrangement on terms reasonably acceptable to Purchaser pursuant to which Purchaser receives the benefit of such asset, property or right, in each case without cost to Purchaser.

ARTICLE XI

ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

11.1 Certain Definitions.

(a) "Action" means any action, claim (including a counterclaim, cross-claim, or defense), complaint, grievance, summons, suit, litigation, arbitration, mediation, audit, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination, assessment, notice of violation, citation or investigation, of any kind whatsoever (civil, criminal, administrative, regulatory, investigative, appellate or otherwise), regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory.

(b) "Advisors" means, with respect to any Person, the accountants, attorneys, consultants, advisors, investment bankers, or other representatives of such Person.

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

(d) "Alternative Transaction" means any transaction (or series of transactions), whether direct or indirect, concerning a sale, merger, acquisition, issuance, financing, recapitalization, reorganization, liquidation or disposition, in each case, pursuant to which all or a substantial and material portion of the Acquired Assets are to be transferred to any Person other than Purchaser or any of its Affiliates or any plan of reorganization that does not contemplate or that does not permit the sale of the Acquired Assets to Purchaser pursuant to this Agreement.

(e) "Ancillary Documents" means the Bill of Sale, the IP Assignment Agreement, TSA and the other agreements, instruments and documents required to be delivered

pursuant to this Agreement or in connection with the transactions contemplated hereunder or at the Closing.

(f) "Bidding Procedures Order" means the Order of the Bankruptcy Court approving the *Debtors' Motion for Entry of an Order Approving Bidding Procedures for the Sale of the Debtors' Assets* Docket No. 30 and the Bidding Procedures attached to the Bidding Procedures Order as Exhibit 1.

(g) "Break-Up Fee" means an amount equal to $637,500.00, which is three percent (3.0%) of the Purchase Price.

(h) "Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(i) "Claim" has the meaning ascribed by Section 101(5) of the Bankruptcy Code and shall include all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

(j) "Code" means the United States Internal Revenue Code of 1986, as amended.

(k) "Confidentiality Agreements" means (i) that certain letter agreement, dated as of July 8, 2021, by and between the Company and Volumetric Building Companies LLC and (ii) that certain letter agreement, dated as of June 17, 2021, by and between the Company and BRAVO Strategies IV LLC.

(l) "Consent" means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(m) "Contract" means any contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license or other agreement that is binding upon a Person or its property.

(n) "Cure Costs" means cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of Assigned Contracts.

(o) "Debt Financing" means the debt financing incurred or intended to be incurred pursuant to the Debt Commitment Letter.

(p) "Debt Financing Entities" means the entities that have committed to provide or otherwise entered into agreements in connection with the Financing, or to purchase securities from or place securities or arrange or provide loans for the Purchaser in lieu of the Debt Financing under the Debt Commitment Letter, in connection with the transactions contemplated hereunder, including the parties to the Debt Commitment Letter and any joinder agreements or credit agreements relating thereto.

(q) "Debt Financing Parties" means the Debt Financing Entities and their respective Affiliates and their and their respective Affiliates' officers, directors, employees, agents and representatives and their respective successors and assigns; provided that neither Seller nor any Affiliate of the Purchaser shall be a Debt Financing Party.

(r) "Encumbrance" means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), including claims or liability based on successor liability theories or otherwise under any theory of Law or equity, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, community property interest, equitable interest, title defects, hypothecations, easements, rights of way, rights of first refusal, conditions, encroachments, judgments, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer, voting or use or receipt of income or exercise of any attribute of ownership, whether secured or unsecured, perfected or unperfected, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

(s) "Environment" or "Environmental" means or concerns any of the following media: (a) land, including surface land, sub-surface strata, sea bed and river bed under water (as defined in clause (b) hereof), and any natural or man-made structures; (b) water, including coastal and inland waters, surface waters, ground waters, drinking water supplies and waters in drains and sewers, surface and sub-surface strata; and (c) air, including indoor and outdoor air and air within buildings and other man-made or natural structures above or below ground, in each case, including any living organism or system supported by such media.

(t) "Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, investigations, proceedings or notices of noncompliance or violation (written or oral) by any Person alleging potential liability (including potential liability for enforcement, investigative costs, cleanup costs, governmental response costs, removal costs, remedial costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on or resulting from: (i) the presence, or Release of any Hazardous Materials at any location, whether or not owned by the Company or any of the Subsidiaries; (ii) circumstances forming the basis of any violation or alleged violation, of any Environmental, Health and Safety Laws; or (iii) any and all claims by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence or Release of any Hazardous Materials.

(u) "Environmental Laws" means the common law and any applicable federal, state, local and foreign Law relating in any manner to Hazardous Materials, the protection of human health and safety (solely with respect to exposure to Hazardous Materials), or the Environment including, without limitation: the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.; CERCLA; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act of 1970 (solely with respect to exposure to Hazardous Materials), as amended; and any applicable state and local Law,

in each case as in effect as of the Closing Date, regulating the same subject matter as the foregoing or otherwise concerning human health and safety (solely with respect to exposure to Hazardous Materials), pollution or protection of the Environment.

(v) "Escrow Agent" means PrimeClerk.

(w) "Excluded Assets" means all assets, liabilities, rights, obligations and other items of any Seller (or any Affiliate thereof) that are not included in the definition of Acquired Assets, including, without limitation, all Avoidance Actions that are not Acquired Avoidance Actions, Income Tax refunds, Income Tax assets, and other Income Tax attributes and all Contracts of any Seller other than the Assigned Contracts, but specifically including (i) those Contracts listed on Schedule 11.1(w) (such Contracts, the "Excluded Contracts"), (ii) the other assets listed on Schedule 11.1(w), (iii) any cash disbursements made by Barclays upon cancellation of the letter of credit issued by Barclays on behalf of the Company to satisfy the Company's security deposit obligations under the Lease (not to exceed $2,100,000), and (iv) non-Income Tax refunds, non-Income Tax assets and other non-Income Tax attributes, in each case, to the extent attributable to or arising out of the Acquired Assets or either Business for any period (or portion thereof) ending on or before the Closing.

(x) "Expense Reimbursement" means the actual and documented reasonable fees, costs and expenses of Purchaser, including the fees and costs of attorneys, accountants and financial and other advisors in an aggregate amount not to exceed $300,000.00.

(y) "GAAP" means United States generally accepted accounting principles as in effect from time to time.

(z) "Governmental Authorization" means any permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

(aa) "Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

(bb) "Hazardous Material" means any pollutant, contaminant, chemical, material, substance, waste or constituent (including, without limitation, crude oil or any other petroleum product, per- and polyfluoroalkyl substances, and asbestos) addressed by, subject to regulation under, or which can give rise to Liability or an obligation under, any Environmental Law due to its hazardous or deleterious properties or characteristics.

(cc) "Income Tax" means any federal, state, local, or foreign Tax based on or measured by reference to net income.

(dd) "Intellectual Property" means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents

and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Body-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) ("Patents"); (b) trademarks (registered, unregistered and at common law), service marks (registered and at common law), brands, certification marks, logos, slogans, all trade dress rights, corporate names, identifying symbols, emblems, trade names, service names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by any of the foregoing, and all registrations, applications for registration, and renewals of any of the foregoing ("Trademarks"); (c) copyrights, works of authorship, moral rights and other copyrightable subject matter, whether or not copyrightable, whether or not registered under national copyright laws, and all registrations, applications for registration, and renewals of any of the foregoing ("Copyrights"); (d) Internet domain names, and Social Media Accounts and user names (including "handles"), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages (including Facebook, Instagram, Twitter, Tiktok and YouTube), film libraries, and all content and data thereon or relating thereto, whether or not constituting Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information (including customer and supplier lists, pricing and cost information, business and marketing plans and proposals), databases, data compilations and collections, tools, methods, processes, techniques, and all rights therein; (h) computer programs, operating systems, applications, firmware, and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof; (i) all advertising and promotional materials; (j) all documentation and media constituting, describing or relating to the above, including manuals, memoranda and records; and (k) all other intellectual or industrial property and proprietary rights.

(ee) "Intellectual Property Agreements" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property Assets or Licensed Intellectual Property.

(ff) "Intellectual Property Assets" means all Intellectual Property that is owned by a Seller and used in connection with or otherwise useful or necessary for the operation of either Business, including those assets listed on Schedule 1.1(e), together with all (i) royalties, fees, income, payments, and other proceeds hereafter due or payable to a Seller with respect to such Intellectual Property; and (ii) Claims and causes of action with respect to such Intellectual Property, whether accruing before, on, or after the date hereof, including all rights to and Claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other violation thereof.

(gg) "knowledge" or "knowledge of the Company" or "knowledge of Sellers" means the actual knowledge of Mark Jones.

(hh) "Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common

law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

(ii) "Lease" means the Lease Agreement by and between Prologis L.P., a Delaware limited partnership, as landlord, and Katerra Inc., a Delaware corporation, as tenant, effective as of May 17, 2018, as amended as of August 7, 2019, March 2020 and August 27, 2020.

(jj) "Leasehold Improvements" means all buildings, structures, improvements and fixtures which are owned by any Seller and located on the Acquired Leased Real Property, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the lease for such Acquired Leased Real Property.

(kk) "Liability" means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, perfected or unperfected, determined or determinable, disputed or undisputed, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, at law or in equity or otherwise, including any claims or liability based on successor liability theories or otherwise under any theory of Law or equity, and including all costs and expenses related thereto.

(ll) "Licensed Intellectual Property" means all Intellectual Property in which a Seller holds any rights or interests granted by other Persons used in connection with or otherwise necessary for the operation of either Business, including third party Intellectual Property made available to a Seller under an open source license.

(mm) "Material Adverse Effect" means any event, change, condition, fact, circumstance, occurrence, or effect (each, an "Effect") that, individually or in the aggregate with all other Effects, has had, or would reasonably be expected to have, a material adverse effect on (w) the Acquired Leased Real Property or either Business, (x) the Acquired Assets (taken as a whole) and the Assumed Liabilities (taken as a whole), or (y) the validity of enforceability of this Agreement and the Ancillary Documents or the rights and remedies of any Seller under this Agreement and the Ancillary Documents; provided that, in the case of clauses (w) and (x) immediately above, none of the following shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: (i) Effects in, arising from or relating to general business or economic conditions affecting the industry in which the Company and its Subsidiaries operate, (ii) Effects in arising from or relating to national or international political or social conditions, including the engagement by the United States in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States, (iii) Effects in, arising from or

relating to financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, contract or index and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transactions contemplated by this Agreement), (iv) Effects in, arising from or relating to changes in GAAP, (v) Effects in, arising from or relating to changes in Laws, (vi) Effects in, arising from or relating to (A) the taking of any action contemplated by this Agreement or at the written request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, or (C) the negotiation, announcement or pendency of this Agreement or the transactions contemplated hereby or the identity, nature or ownership of Purchaser, (vii) Effects that arise from any seasonal fluctuations in the business, (viii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect), (ix) the effect of any action taken by the Purchaser or its Affiliates with respect to the transactions contemplated by this Agreement or the financing thereof or any breach by the Purchaser of this Agreement, or (x) (A) the commencement or pendency of the Bankruptcy Case, or (B) any objections in the Bankruptcy Court to the assumption or rejection of any Assigned Contract; except in the case of the clauses (i), (ii), (iii), (iv), (v) and (vii) to the extent such Effects have a materially disproportionate impact on the Acquired Assets, the Assumed Liabilities or the Businesses, taken as a whole, as compared to other participants engaged in the industries and geographies in which Sellers operate.

(nn) "Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body, including any Order entered by the Bankruptcy Court in the Bankruptcy Case.

(oo) "Ordinary Course" means the ordinary and usual course of operations of the Acquired Assets taken as a whole taking into account the commencement of the Bankruptcy Case.

(pp) "Permitted Encumbrances" means (i) Encumbrances for current Taxes not yet due and payable or being contested in good faith or the non-payment of which is permitted or required under the Bankruptcy Code, (ii) recorded easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments of record against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets (taken as a whole) and, in the case of the Acquired Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of Acquired Leased Real Property as it relates to the operation of the Acquired Assets (taken as a whole), (ii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law which are not violated by the current use or occupancy of such Acquired Leased Real Property, as applicable, (iii) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion, or (iv) any Encumbrances set forth on Schedule 11.1(pp). Notwithstanding clause (i) of this definition, in no event shall such Encumbrance for current Taxes constitute an Assumed Liability unless such Encumbrance is an Encumbrance attributable to a Tax specifically enumerated in Section 1.3(c).

(qq) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(rr) "Prorations" means the liabilities and obligations payable under or in connection with the Lease (including the "Base Rent", "Taxes", "Monthly Fixed Operating Expenses" and any costs relating to "Solar Power" (as such terms are defined in the Lease)) that are prorated as of the Closing Date, with the Company responsible for all such amounts accruing prior to and on the Closing Date, and Purchaser bearing responsibility for all such amounts to the extent accruing after the Closing Date.

(ss) "Purchaser Group" means Purchaser, any Affiliate of Purchaser and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(tt) "Real and Personal Property Tax Adjustment" means, with respect to the applicable Straddle Period, an amount equal *to the sum of* (x) any unpaid real or personal property Taxes of Sellers attributable to or arising out of the conduct of the Acquired Assets that are attributable to the pre-Closing portion of the applicable Straddle Period, as determined in accordance with Section 9.4, and which (to the extent such Taxes for the entire Straddle Period is not known at the Closing) are based on the amount of such Taxes for the immediately preceding Tax period (that is not a Straddle Period) for which a final Tax amount is known (which, for the avoidance of doubt, shall be reflected as a positive number), *plus* (y) any prepayment, overpayment, or credit of real or personal property Taxes made by Sellers for the Acquired Assets to the extent attributable to the post-Closing portion of the applicable Straddle Period, as determined in accordance with Section 9.4 (which, for the avoidance of doubt, shall be reflected as a negative number).

(uu) "Release" means any release, spill, emission, emptying, leaking, injection, deposit, disposal, discharge, dispersal, leaching, pumping, pouring, or migration into the Environment.

(vv) "Sale Order" means an order in form and substance reasonably satisfactory to Purchaser and Sellers.

(ww) "Seller Parties" means each Seller and each of their respective Subsidiaries and each of their respective former, current, or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns.

(xx) "Social Media Accounts" means any and all accounts, profiles, pages, feeds, registrations and other presences on or in connection with any (i) social media or social networking website or online service, (ii) blog or microblog, (iii) mobile application, (iv) photo, video or other content-sharing website, (v) virtual game world or virtual social world, (vi) rating and review website, (vii) wiki or similar collaborative content website or (viii) message board, bulletin board, or similar forum.

(yy) "Straddle Period" means any taxable period that includes (but does not end on) the Closing Date.

(zz) "Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(aaa) "Tax" or "Taxes" means any federal, state, local, foreign or other income, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, ad valorem/personal property, unclaimed property, escheat, stamp, excise, occupation, sales, use, transfer, value added, import, export, alternative minimum or estimated tax, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

(bbb) "Tax Authority" shall mean any Governmental Body, having or purporting to exercise jurisdiction with respect to any Tax.

(ccc) "Tax Return" means any return, claim for refund, report, statement or information return relating to Taxes filed or required to be filed with a Governmental Body, including any schedule or attachment thereto, and including any amendments thereof.

11.2 Index of Defined Terms.

11.3 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

(b) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, schedule and exhibit references contained in this Agreement are references to sections, clauses, schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(c) Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(d) The words "to the extent" shall mean "the degree by which" and not "if."

(e) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(f) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(g) The word "will" will be construed to have the same meaning and effect as the word "shall". The words "shall," "will," or "agree(s)" are mandatory, and "may" is permissive.

(h) All references to "$" and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(i) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(j) Any reference to any agreement or contract will be a reference to such agreement or contract, as amended, modified, supplemented or waived.

(k) Any reference to any particular Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Code section or Law, the reference to such Code section or Law means such Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

[*Signature page(s) follow*.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

SELLERS:

KATERRA INC.

By: _____
Name: Marc Liebman
Title: Chief Transformation Officer

KATERRA CONSTRUCTION LLC

By: _____
Name: Marc Liebman
Title: Chief Transformation Officer

PURCHASER:

VBC TRACY LLC

By: _____
Name: Vaughan Buckley
Title: President