

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

FORM 10-K

(Mark

One)

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

For the fiscal year ended May 31, 2023

OR

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

For the transition period from and

Commission file number 001-31968

APPLIED DIGITAL CORPORATION

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction of
incorporation or organization)

7370
(Primary Standard Industrial
Classification Code Number)

95-4863690
(I.R.S. Employer
Identification No.)

3811 Turtle Creek Blvd., Suite 2100, Dallas, TX 75219

214-427-1704

(Address, including zip code, and telephone number, including area code, of principal executive offices)

Securities	registered	pursuant	to	Section	12(b)	of	the	Act:
Title of each class			Trading Symbol(s)			Name of each exchange on which registered		
Common Stock, par value \$0.001 per share			APLD			Nasdaq Global Select Market		

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

Yes No

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

Yes No

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

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

Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

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

The aggregate market value of voting stock held by non-affiliates of the Registrant on November 30, 2022, based on the closing price of \$1.95 for shares of the Registrant's common stock as reported by The Nasdaq Stock Market, was approximately \$137.8 million. Shares of common stock beneficially owned by each executive officer, director, and holder of more than 5% of our common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

APPLICABLE ONLY TO REGISTRANTS INVOLVED IN BANKRUPTCY
PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

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

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

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

APPLICABLE ONLY TO CORPORATE ISSUERS:

The registrant had outstanding 103,950,005 shares of common stock as of July 25, 2023.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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Part I

FORWARD LOOKING STATEMENTS

This Annual Report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that involve substantial risks and uncertainties. In some cases you can identify these statements by forward-looking words such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “seek,” “should,” “will,” and “would,” or similar words. Statements that contain these words and other statements that are forward-looking in nature should be read carefully because they discuss future expectations, contain projections of future results of operations or of financial positions or state other “forward-looking” information.

These statements are based on our management’s beliefs and assumptions, which are based on currently available information. Our actual results, and the assumptions on which we relied, could prove materially different from our expectations. You are cautioned not to place undue reliance on forward-looking statements. Except as otherwise may be required by law, we undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or actual operating results. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including, but not limited to:

- Labor and other workforce shortages and challenges;
- our dependence on principal customers;
- the addition or loss of significant customers or material changes to our relationships with these customers;
- our sensitivity to general economic conditions including changes in disposable income levels and consumer spending trends;
- our ability to timely and successfully build new hosting facilities with the appropriate contractual margins and efficiencies;
- our ability to continue to grow sales in our hosting business;
- volatility of cryptoasset prices
- uncertainties of cryptoasset regulation policy; and
- equipment failures, power or other supply disruptions.

You should carefully review the risks described in Item 1A of this Annual Report on form 10-K, as the occurrence of any of these events could have an adverse effect, which may be material, on our business, results of operations, financial condition or cash flows.

Item 1. Business

Overview

Our Business

We are a designer, builder and operator of next-generation digital infrastructure. We have three primary business streams, artificial intelligence (“AI”) cloud services, high performance computing (“HPC”) datacenter hosting, and crypto datacenter hosting.

AI Cloud Service

Our AI Cloud service operates through our Sai Computing brand and provides cloud services applicable to artificial intelligence.

On October 13, 2022, we formed Sai Computing, LLC (“Sai Computing”). Sai Computing was formed to provide artificial intelligence and machine learning application customers with access to machines and a hosting environment.

On May 15, 2023, we announced the formal launch of our AI cloud services business through Sai Computing. On May 16, 2023, we announced that Sai Computing secured its first major AI customer with an agreement worth up to \$180 million over a 24-month period. The customer will make a significant prepayment as part of the agreement.

On May 25, 2023, we formed Sai Computing Holdings LLC ("Sai Holdings") and Sai-Foundry Computing LLC ("Sai-Foundry"). Sai Holdings serves as the parent entity over Sai Computing and Sai-Foundry, and Sai-Foundry will serve as the joint venture entity between the Company and Foundry Technologies ("Foundry"). We have a 98% ownership interest in Sai-Foundry and consolidate the entity.

On June 23, 2023, we announced that we had signed our second customer in our AI cloud hosting business. This agreement has a value worth up to \$460 million over 36 months.

To support our AI Cloud Services business, we have placed orders for over 26,000 Graphics Processing Units ("GPUs"). We have also entered into two contracts with colocation service providers for secure space and energy for our hosting services. Our current strategy is to use a mix of third-party colocation centers and our HPC datacenters to deliver AI Cloud services to customers.

HPC Datacenter Hosting

Our HPC datacenter business designs, builds, and operates Next-Gen datacenters which are designed to provide massive computing power and support high-compute applications within a cost-effective model.

On December 14, 2022, we announced the beginning of construction of a 5 megawatt ("MW") facility next to the Company's currently operating 100-MW hosting facility in Jamestown, North Dakota. We subsequently determined to increase the capacity of this facility to 9 MW. This separate and unique building, designed and purpose-built for GPUs, will sit separate from our crypto hosting buildings and will host more traditional high performance computing applications, such as natural language processing, machine learning, and additional HPC developments. This facility is expected to be brought online in the second half of calendar year 2023. During early calendar year 2023, we began testing HPC hosting at this facility. The systems in this facility passed initial testing in the second calendar quarter of 2023.

We have current plans to expand our HPC hosting capacity up to 200 MW through build outs at existing and future locations.

Crypto Datacenter Hosting

Our crypto datacenter hosting business provides infrastructure and colocation services to crypto mining customers. With expert advisors in the fields of power, crypto mining operations, procurement, and construction, we have designed and implemented a plan for a prefabricated facility and organization within the facility that can be delivered and installed quickly and maximize performance and efficiency of the facility and our customers' crypto mining equipment. We provide energized space for customers to host computing equipment.

We have a colocation business model where our customers place hardware they own into our facilities and we provide operational and maintenance services for a fixed fee. We typically enter into long-term fixed rate contracts with our customers.

As of May 31, 2023, we had approximately 185 MW of capacity online and available to service crypto mining customers. Subsequent to May 31, 2023, we brought another 100 MW of capacity online, bringing total energized capacity to approximately 285 MW as of the date of this report. Additionally, there is another 200 MW of capacity the Company has committed to energize, all of which is contracted for under multi-year arrangements.

During the fiscal year ended May 31, 2023, the Company entered into a joint venture agreement with GMR Limited ("GMR") to form Highland Digital Holdings, LLC ("Highland Digital"). Highland Digital is dormant and the Company currently has no plans to use the entity for any activities.

REIT structure

As our operations expand, we believe our business structure may become conducive to a REIT structure, comparable to Digital Realty Trust (NYSE: DLR) and Equinix, Inc. (NASDAQ: EQIX), each of which is a traditional datacenter operator, and Innovative Industrial Properties, Inc. (NYSE: IIPR), a specialty REIT that similarly services a new growth industry. We have begun to investigate the possibility, costs and benefits of converting to a REIT structure.

Our Competitive Strengths

Premier strategic collaboration with leading industry participants.

On May 24, 2023, we announced that we are working with Super Micro Computer, Inc. ("Super Micro"), a global leader in Application-Optimized Total IT Solutions, to deliver Applied Digital's AI Cloud service. Super Micro is a leading provider of application-optimized, high-performance server and storage solutions that address a broad range of computational-intensive workloads. Super Micro's next-generation GPU servers significantly lower the power requirements of data centers. With the amount of power required to enable today's rapidly evolving large scale AI models, optimizing the Total Cost of Ownership (TCO) and the Total Cost to Environment (TCE) is crucial to data center operators.

On June 30, 2023, we announced a collaboration with Hewlett Packard Enterprise Company ("HPE"), a global edge-to-cloud company. As part of the collaboration, HPE will deliver its powerful, energy-efficient supercomputers that are proven to support large-scale AI through Applied Digital's AI cloud service.

Access to low-cost power with long-term services agreement

One of the main benefits of our electrical services agreements for our Jamestown, North Dakota and Ellendale, North Dakota facilities is the low cost of power. Power capacity available for high computing power processes is scarce, especially at scalable sites with over 100 MW of potential capacity. This scarcity of power allows us to realize attractive hosting rates in the current market, in particular given our ability to provide long-term (3-5 year) hosting contracts.

Benefits of Next-Gen datacenters compared to traditional datacenters.

Next-Gen datacenters are optimized for large computing power and require more power than traditional datacenters that are optimized for data retention and retrieval. Next-Gen datacenters and traditional datacenters also have very different layouts, internet connection requirements and cooling designs to accommodate different power demands and customer requirements. Traditional datacenters cannot be easily converted to Next-Gen datacenter facilities like ours because of these differences. Geographically, traditional datacenters are at a disadvantage because they require fiber bases, low-latency connections and connection redundancies that are usually found in high-cost areas with high-density populations.

Hosting provides predictable, recurring revenue and cash flow

Within each of our business streams, we have entered into long-term fixed rate contracts with our customers. In addition, we have obtained access to low cost energy through our energy services agreements, which provides us with consistent margins and cash flow. We intend for the steady cash flows generated by our operations to be reinvested into our AI Cloud services and HPC datacenter businesses.

Strong management team

We have continued to expand our leadership team by attracting top talent in the digital infrastructure space. Recent hires from both publicly traded and private companies have allowed us to build a team capable of designing and

constructing hosting facilities, for example, our Chief Technology Officer, Michael Maniscalco. Mr. Maniscalco was an Entrepreneur in Residence at Stanley Black & Decker Venture Studio (StanleyX AI) in 2021. He was a founder and Chief Executive Officer of Better Living Technologies from 2018 to 2022. Prior to that, Mr. Maniscalco founded, and was Vice President of Product, of Ihiji from 2009 to 2018.

Our Growth Strategies

Continued expansion of businesses.

We have started expansion into hosting for HPC applications. We have current plans to expand our HPC hosting capacity up to 200 MW through build outs at existing and future locations. Further, we launched our AI cloud hosting services business through Sai Computing and have announced our first major customer.

Leverage leading equipment vendors to grow operations while minimizing risk.

We believe that the signing of our initial customers for our AI cloud service business will help us elevate our profile within the market. Further, we are working with Super Micro and HPE, which are both leading vendors in the AI hosting space, and we believe that we will be able to leverage their networks to identify leads for the expansion of our AI cloud services and HPC datacenter hosting businesses.

Secure scalable power sites.

We have developed a pipeline of potential power sources across our sites in Jamestown, North Dakota; Garden City, Texas; and Ellendale, North Dakota. Through our build-out of our first North Dakota facility and the prior experience our leadership team brings to our initiatives, we believe that we have developed a repeatable power strategy to significantly scale our operations. In addition, we are currently focused on and will continue to target states that have favorable laws and regulations for HPC application industries, which we believe further minimizes the associated with risks the scaling of our operations.

Vertically integrate power assets.

With recent additions to our management team, we are increasingly looking at various types of power assets to support the growth of our hosting operations. This also includes power generation assets, which longer-term could be used to reduce our cost of power. Our management team has experience not only in evaluating and acquiring power assets, but also in the conversion of power assets to crypto mining/hosting operations and the construction of datacenters with the specific purpose of mining cryptocurrency assets.

Site Selection Criteria

To the extent we are building new facilities, our site selection criteria considers geographic diversity, attractive return on investment, and environmental impact.

Geographic Diversity

Geographic diversity minimizes the risk to us of any event in a particular region that may impact our facilities. We expect to choose locations in environments that are policy and regulation friendly, and find sites with less expensive stable energy.

Environmental Impact

We are doing our part to be as environmentally conscious as possible when choosing sites for development by targeting renewable energy assets to minimize our carbon footprint. Further, because Next-Gen datacenters like ours represent a unique power load, we believe our demand for renewable energy and entry into agreements with renewable energy providers will increase and accelerate the buildout of renewable energy infrastructures.

There is no assurance that selection criteria will be met or that viable sites will be selected.

Customers

We have material customer concentration in our crypto datacenter hosting business. We have entered into service contracts with Spring Mud, LLC (a subsidiary of GMR Limited) Bitmain Technologies Limited, Arrakis, Inc., Hashing LLC, Marathon Digital Holdings, Inc., and Global Operating Infrastructure, LLC ("GOI"), who have collectively contracted to use the entire capacity of our three crypto hosting datacenters.

GMR Limited ("GMR") holds more than 5% of our outstanding Common Stock. Guo Chen, a 50% owner and sole director of GMR, is also deemed to beneficially own shares of our Common Stock held by GMR.

Mr. Chen owns 60% of Altermity Fund Ltd., which owns 100% of GOI. On December 8th, 2021, we entered into a Service Order with GOI pursuant to which we provide energized space for mining activities of GOI. Our hosting arrangements with Spring Mud and GOI are therefore considered related party transactions. We have disclosed related party revenue in the accompanying footnotes to the financial statements,

Our crypto hosting site-level strategy consists of having one key anchor tenant that has signed a 3–5 year long-term contract at the site and filling the rest of the facility with customers with 18–36 month terms.

We have also material customer concentrations in our AI cloud services business, as we only have two customers. On May 16, 2023, we announced that we had signed our first customer in our AI cloud hosting business. This agreement has a value worth up to \$180 million over 24 months, and contains a significant prepayment. On June 23, 2023, we announced that we had signed our second customer in our AI cloud hosting business with a total value worth up to \$460 million over 36 months. If we acquire rights to additional properties and build additional facilities, we intend to use a mix of third-party colocation centers and our HPC datacenters to deliver AI Cloud services to customers.

Environmental Regulations

North Dakota is one of the states leading the United States in wind power generation. The power comes off a grid and we cannot control whether that energy is generated by wind or other methods. Currently, we do not have access to such information. In addition, we expect our Texas facility will be largely supplied with power that is generated from wind, including power generated by the adjacent wind farm. Beyond the wind farm, the data center will be connected to the Wind Energy Transmission of Texas transmission lines, which for the most part transmit wind generated power. We are, however, not purchasing the renewable energy credits from the wind generation facility. We have, and will continue to, consider opportunities for limiting the impact of our business on the environment.

Employees and Human Capital

As of May 31, 2023, we had 121 employees, all of whom were full time. We also had 6 independent contractors who focus full time on our business and 67 independent contractors who worked on a part time basis on our business. We have relied and plan on continuing to rely on independent organizations, advisors and consultants to perform certain services for us. Such services may not always be available to us on a timely basis, on commercially reasonable terms or at all. Our future performance will depend in part on our ability to successfully integrate newly hired employees and to engage and retain consultants, as well as our ability to develop an effective working relationship with our employees and consultants.

Item 1A. Risk Factors

We are at an early stage of development of our hosting business, currently have limited sources of revenue, and may not become profitable in the future.

Although we began generating revenue from crypto mining in June 2021 and began generating revenue from hosting operations when our first co-hosting facility came online on February 2, 2022, we are subject to the risks and

uncertainties of a new business, including the risk that we may never further develop, complete development of or market any of our proposed services. During the building of our co-hosting operations, we determined that it would be beneficial to our stockholders to focus more of our resources on building our co-hosting operations than on expanding our mining operations. Accordingly, in December 2021, we began selling our crypto mining equipment. On March 9, 2022, we ceased all crypto mining operations and completed the sale of all crypto mining equipment in service. We have no plans to return to crypto mining operations in the future.

Accordingly, we have only a limited history upon which an evaluation of our prospects and future performance can be made. Hosting revenues includes only fees from access to space and electricity and not maintenance or other services provided by us. Direct costs of sales from hosting includes operations, maintenance, and power related costs. However, any increased hosting revenue or decreased costs, for instance, as a result of pricing power, economies of scale and additional services provided, or any decrease in demand for our hosting services, for example as a result of increased regulation on cryptoasset mining of our hosting customers or a significant decrease in cryptoasset prices, will significantly change the terms on which we are able to enter into additional agreements necessary to expand our business and thus impact the results of our hosting revenues and direct hosting costs.

We intend to reduce the impact of such variability on our hosting revenue and hosting costs by entering into long term contracts with the goal of having one blue chip anchor tenant that has signed a 3-5 year long-term contract at each site and filling the rest of the facility with customers with 18-36 month terms. The actual results may vary significantly from the plans set forth above and we make no representations with respect thereto.

If we are unable to successfully implement our development plan or to increase our generation of revenue, we will not become profitable, and we may be unable to continue our operations. Furthermore, our proposed operations are subject to all business risks associated with new enterprises. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications, and delays frequently encountered in connection with the expansion of a business, operation in a competitive industry, and the continued development of advertising, promotions and a corresponding customer base. There can be no assurances that we will operate profitably.

Our success depends on external factors in the cryptomining industry.

We have a material concentration of customers in the crypto mining industry. The cryptomining industry is subject to various risks which could adversely affect our current customers' ability to continue to operate their businesses, including, but not limited to:

- ongoing and future government or regulatory actions that could effectively prevent our customers' mining operations, with little to no access to policymakers and lobbying organizations in many jurisdictions;
- a high degree of uncertainty about cryptoassets' status as a "security," a "commodity" or a financial instrument in any relevant jurisdiction which may subject our customers to regulatory scrutiny, investigations, fines, and other penalties;
- banks or financial institutions may close the accounts of businesses engaging in cryptoasset-related activities as a result of compliance risk, cost, government regulation or public pressure;
- use of cryptoassets in the retail and commercial marketplace is limited;
- extreme volatility in the market price of cryptoassets that may harm our customers financial resources, ability to meet their contractual obligations to us or cause them to reduce or cease mining operations;
- use of a ledger-based platform may not necessarily benefit from viable trading markets or the rigors of listing requirements for securities creating higher potential risk for fraud or the manipulation of the ledger due to a control event;

- concentrated ownership, large sales of cryptoassets, or distributions or redemptions by vehicles invested in cryptoassets could have an adverse effect on the demand for, and market price of, such cryptoasset;
- our customers could face difficulty adapting to emergent digital ledgers, blockchains, or alternatives thereto, rapidly changing technology or methods of, rules of, or access to, platforms;
- the number of cryptoassets awarded for solving a block in a blockchain could decrease, which may adversely affect our customers' incentive to expend processing power to solve blocks and/or continue mining and our customers may not have access to resources to invest in increasing processing power when necessary in order to maintain the continuing revenue production of their mining operations;
- our customers may face third parties' intellectual property claims or claims relating to the holding and transfer of cryptoassets and their source code, which, regardless of the merit of any such action, could reduce confidence in some or all cryptoasset networks' long-term viability or the ability of end-users to hold and transfer cryptoassets;
- contributors to the open-source structure of the cryptoasset network protocols are generally not directly compensated for their contributions in maintaining and developing the protocol and may lack incentive to properly monitor and upgrade the protocols;
- a disruption of the Internet on which our customers' business of mining cryptoassets is dependent;
- decentralized nature of the governance of cryptoasset systems, generally by voluntary consensus and open competition with no clear leadership structure or authority, may lead to ineffective decision making that slows development or prevents a network from overcoming emergent obstacles; and
- security breaches, hacking, or other malicious activities or loss of private keys relating to, or hack or other compromise of, digital wallets used to store our customers' cryptoassets could adversely affect their ability to access or sell their cryptoassets or effectively utilize impacted platforms.

Even if we are able to diversify our customer base, negative impacts to the cryptomining industry may negatively affect our business, financial condition, operating results, liquidity and prospects.

If we fail to effectively manage our growth, our business, financial condition and results of operations could be harmed.

We are a development stage company with a small management team and are subject to the strains of ongoing development and growth, which will place significant demands on our management and our operational and financial infrastructure. Although we may not grow as we expect, if we fail to manage our growth effectively or to develop and expand our managerial, operational and financial resources and systems, our business and financial results could be materially harmed. We may not be able to manage growth effectively, which could damage our reputation, limit our growth and negatively affect our operating results. Further, we cannot provide any assurance that we will successfully identify emerging trends and growth opportunities in this business sector and we may lose out on opportunities. Such circumstances could have a material adverse effect on our business, prospects or operations.

We may be unable to raise additional capital needed to grow our business.

We expect to need to raise substantial additional capital to expand our operations, pursue our growth strategies and to respond to competitive pressures or unanticipated working capital requirements. We may not be able to obtain additional debt or equity financing on favorable terms, if at all, which could impair our growth and adversely affect our existing operations.

If we raise additional equity financing, our stockholders may experience significant dilution of their ownership interests, and the per share value of our common stock could decline. Furthermore, if we engage in additional debt financing, the holders of debt likely would have priority over the holders of common stock on order of payment preference. We may be required to accept terms that restrict our ability to incur additional indebtedness, pay dividends to our shareholders, or take other actions. We may also be required to maintain specified liquidity or other ratios that could otherwise not be in the interests of our stockholders.

If we incorrectly estimate our hosting capacity requirements and related capital expenditures, our results of operations could be adversely affected.

We are continuously evaluating our capacity requirements in order to effectively manage our capital expenditures and operating results. However, we may be unable to accurately project our future capacity needs or sufficiently allocate resources to address such needs. If we under estimate these requirements, we may not be able to provide sufficient service to existing customers or may be required to limit new customer acquisition, both of which may materially and adversely impair our results of operations.

Similarly, we have entered into multi-year contract commitments with colocation service providers. If we overestimate our capacity requirements and therefore secure excess capacity and have excess capital expenditures, our operating material could be materially reduced.

Any disruption of service experienced by certain of our third-party service providers, or our ineffective management of relationships with third-party service providers could harm our business, financial condition, operating results, cash flows, and prospects.

We rely on several third-party service providers for services that are essential to our business model, the most important of which are our suppliers of power, electrical equipment, building materials, and construction services. Additionally, as we build our AI Cloud services, we also expect to rely on third parties to lease or sell us equipment which we then lease to certain of our AI Cloud customers. If these third parties experience difficulty providing the services or products we require, or if they experience disruptions or financial distress or cease operations temporarily or permanently, or if the products they supply are defective or cease to operate for any reason, it could make it difficult for us to execute our operations. If we are unsuccessful in identifying or finding highly qualified third-party service providers, or if we fail to negotiate cost-effective relationships with them or if we are ineffective in managing and maintaining these relationships, it could materially and adversely affect our business and our financial condition, operating results, cash flows, and prospects.

Certain natural disasters or other external events could harm our business, financial condition, results of operations, cash flows, and prospects.

We may experience disruptions due to mechanical failure, power outage, human error, physical or electronic security breaches, war, terrorism, fire, earthquake, pandemics, hurricane, flood and other natural disasters, sabotage and vandalism. Our systems may be susceptible to damage, interference, or interruption from modifications or upgrades, power loss, telecommunications failures, computer viruses, ransomware attacks, computer denial of service attacks, phishing schemes, or other attempts to harm or access our systems. Such disruptions could materially and adversely affect our business and our financial condition, operating results, cash flows, and prospects.

Various actual and potential conflicts of interest may be detrimental to stockholders.

Certain conflicts of interest may exist, or be perceived to exist, between certain of our directors or officers and us. Mr. Cummins and certain of our directors have other business interests to which they also must devote time, resources and attention. These other interests may conflict with such officer's or director's interest in us, including conflicting with interests in allocating resources, time and attention to our business and impacting decisions made on our behalf with respect to such entities, their affiliates or competitors.

We do not have specific procedures in place with respect to potential conflicts of interest, however, in determining to engage with potential competitors and entities with whom our officers or directors may have relationships, we considered the risks and risk mitigation factors, including requiring that transactions valued at over \$120,000 in which our officers, directors and holders of more than 5% of our common stock have an interest be approved or ratified by our Audit Committee. Mr. Cummins holds over 22% of our common stock, and has a financial interest in the success of our operations.

We also have more than a majority of independent directors on our Board in order to ensure that there are limitations on the risks of conflicts of interest impacting Board level decisions. We cannot, however, guarantee that the conflicts of interest described above, or other future conflicts of interest, will not manifest in advice or decisions that negatively impact our financial results and our operations.

The loss of any of our management team, our inability to execute an effective succession plan, or our inability to attract and retain qualified personnel, could adversely affect our business.

Our success and future growth will depend to a significant degree on the skills and services of our management team. We will need to continue to grow our management team in order to alleviate pressure on our existing team and in order to continue to develop our business. If our management team, including any new hires that we may make, fails to work together effectively and to execute our plans and strategies on a timely basis, our business could be harmed. Furthermore, if we fail to execute an effective contingency or succession plan with the loss of any member of our management team, the loss of such management personnel may significantly disrupt our business.

The loss of key members of our management team could inhibit our growth prospects. Our future success also depends in large part on our ability to attract, retain and motivate key management and operating personnel. As we continue to develop and expand our operations, we may require personnel with different skills and experiences, and who have a sound understanding of our business and high computing power technologies. The market for highly qualified personnel in this industry is very competitive and we may be unable to attract such personnel. If we are unable to attract such personnel, our business could be harmed.

Employee disputes or litigation and related unfavorable publicity may negatively affect our future business, financial condition and operating results.

We may become involved in lawsuits or other disputes relating to employment matters, such as hostile work place, discrimination, wage and hour disputes, sexual harassment, or other employment issues. These types of claims, depending on their nature, can have a significant negative impact on businesses. Certain companies that have faced employment- or harassment-related lawsuits have had to terminate management or other key personnel, and have borne economic and other costs and suffered reputational harm that has negatively impacted their business. If we were to face any employment-related claims, our business could be negatively affected.

As previously disclosed, on June 23, 2023, the Company announced an internal investigation with respect to a potential sexual harassment claim between two of our executive officers. Based on information obtained through the investigation, the Audit Committee of our Board of Directors determined that the relationship between the parties was consensual and the allegations of workplace harassment are unfounded. However, we cannot guarantee that this matter is resolved or that these or subsequent allegations will not result in litigation or other disputes. In such an event, we would likely incur significant legal fees and expenses, and any dispute could distract our management from the operation of our business or lead to employee separations from the Company. Moreover, while we do not believe any such claim would have merit, any dispute or resolution could result in the payment of damages, severance, vesting of equity awards or payment of other amounts by the Company, which could be significant. All of these factors could negatively affect our business, financial condition, operating results, liquidity and prospects.

We may depend upon outside advisors who may not be available on reasonable terms as needed.

To supplement the business experience of our officers and directors, we may be required to employ technical experts, appraisers, attorneys, or other consultants or advisors. Our management, with our Board approval in certain cases, without any input from stockholders will make the selection of any such advisors. Furthermore, it is

anticipated that such persons may be engaged on an “as needed” basis without a continuing fiduciary or other obligation to us. In the event we consider it necessary to hire outside advisors, we may elect to hire persons who are affiliates, if they are able to provide the required services.

COVID-19 or any pandemic, epidemic or outbreak of an infectious disease in the United States or elsewhere may adversely affect our business.

COVID-19 or any pandemic, epidemic or outbreak of an infectious disease in the United States or elsewhere may adversely affect our business. The COVID-19 virus has had unpredictable and unprecedented impacts in the United States and around the world. The implications of the COVID-19 pandemic on our results of operations and overall financial performance remain uncertain. The economic effects of the pandemic and any recovery and resulting societal changes, including the impact of current labor shortages in the United States, are currently not predictable, and the future financial impacts could vary from current projections.

If our co-hosting customers determine not to use our co-hosting facility, our co-hosting operations may suffer from significant losses.

We currently have material customer concentration of cryptomining customers.

As a result of the risks our crypto mining customers face, it is not possible for us to predict the future level of demand for our services that will be generated by these customers or the future demand for the products and services of these customers. Should some or all of our co-hosting customers suffer from harm or loss due to a set of circumstances, their businesses could be negatively impacted or prevented. Further, our contracts with these customers permit them to terminate our services at any time (subject to notice and certain other provisions).

If any of our customers' experience declining mining operations for any reason or determine to stop utilizing our co-hosting facilities, we could be pressured to reduce the prices we charge for our services or we could lose a major customer. Any such development could have an adverse effect on our margins and financial position, and would negatively affect our revenues and results of operations.

Under the Inflation Reduction Act of 2022, we may have liability for the 1% stock buyback tax to the extent holders of Series E Preferred Stock require that we redeem such stock.

On August 16, 2022, the Inflation Reduction Act of 2022 (the “IR Act”) was signed into federal law. The IR Act provides for, among other things, a new U.S. federal 1% excise tax (the “Excise Tax”) on certain repurchases of stock by publicly traded U.S. domestic corporations and certain U.S. domestic subsidiaries of publicly traded foreign corporations occurring on or after January 1, 2023. The Excise Tax is imposed on the repurchasing corporation itself, not its stockholders from which shares are repurchased. The amount of the Excise Tax is generally 1% of the fair market value of the shares repurchased at the time of the repurchase. However, for purposes of calculating the Excise Tax, repurchasing corporations are permitted to net the fair market value of certain new stock issuances against the fair market value of stock repurchases during the same taxable year. In addition, certain exceptions apply to the Excise Tax. The U.S. Department of the Treasury (the “Treasury”) has been given authority to provide regulations and other guidance to carry out and prevent the abuse or avoidance of the Excise Tax. Any share redemption or other share repurchase that occurs after December 31, 2022 may be subject to the Excise Tax. Whether and to what extent we would be subject to the Excise Tax will depend on a number of factors, including (i) the fair market value of any redemptions and repurchases, (ii) the nature and amount of any equity issuances, and (iii) the content of regulations and other guidance from the Treasury. Depending on the number of shares of our Series E Preferred Stock we sell and the number of holders of Series E Preferred Stock who redeem their stock, the Excise Tax could be applicable to the Company and adversely affect the cash we have available for our operations. As of the date of this prospectus supplement we have not sold or issued any shares of Series E Preferred Stock.

We maintain cash deposits in excess of federally insured limits. Adverse developments affecting financial institutions, including bank failures, could adversely affect our liquidity and financial performance.

We regularly maintain domestic cash deposits in Federal Deposit Insurance Corporation (“FDIC”) insured banks that exceed the FDIC insurance limits. Bank failures, events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, or concerns or rumors about such events, may lead to liquidity constraints. For example, on March 10, 2023, Silicon Valley Bank failed and was taken into receivership by the FDIC. The failure of a bank, or other adverse conditions in the financial or credit markets impacting financial institutions at which we maintain balances, could adversely impact our liquidity and financial performance. There can be no assurance that our deposits in excess of the FDIC or other comparable insurance limits will be backstopped by the U.S., or that any bank or financial institution with which we do business will be able to obtain needed liquidity from other banks, government institutions or by acquisition in the event of a failure or liquidity crisis.

Accounting for our power purchase agreements could cause variability in the results we report.

With respect to certain of our power purchase agreements, it is both possible and probable that we will net settle them, meaning that we have the ability and intent to sell power back into the grid in lieu of taking full physical delivery of all of the contracted power. Accordingly, these agreements will meet the definition of an accounting derivative. This means that these agreements will be accounted for at fair value at each quarterly measurement period, and these values may fluctuate significantly. As a result, our consolidated financial statements and results of operations may fluctuate quarterly based on factors outside of our control. We could have substantial variability in our financial results and disclosures, which, if material, could affect our operating results and in turn could impact our stock price. Investors should consider such derivative accounting matters when evaluating our financial results.

Risks Related to our Common Stock

Continued volatility of our stock price may affect the price at which you could sell our common stock.

The trading price of our common stock has been volatile and may continue to be volatile in response to various factors, some of which are beyond our control. Any of the factors listed below could have a material adverse effect on an investment in our securities:

- actual or anticipated fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to us;
- changes in the market’s expectations about our operating results;
- relative success of our competitors;
- our operating results failing to meet the expectations of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning us and the market for our co-hosting facilities and services;
- operating and stock price performance of other companies that investors deem comparable to us;
- our ability to continue to expand our operations;
- changes in laws and regulations affecting our business or our industry;
- commencement of, or involvement in, litigation involving us;
- changes in our capital structure, such as future issuances of securities or the borrowing of additional debt;

- the volume of shares of common stock available for public sale pursuant to an effective registration statement or exemption from registration requirements
- any major change in our board of directors or management;
- sales of substantial amounts of our common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions, interest rates, international currency and crypto currency fluctuations and acts of war or terrorism.

Broad market and industry factors may materially harm the market price of our common stock irrespective of our operating performance. The stock market in general, and Nasdaq in particular, have experienced price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the particular companies affected.

The trading prices and valuations of these stocks, and of our common stock, may not be predictable. A loss of investor confidence in the market for retail stocks or the stocks of other companies that investors perceive to be similar to us could depress our stock price regardless of our business, prospects, financial conditions or results of operations. A decline in the market price of our common stock also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future.

We do not expect to declare or pay dividends on our common stock in the foreseeable future, which may limit the return our shareholders realize on their investment.

We do not expect to declare or pay dividends on our common stock in the foreseeable future, as we anticipate that we will invest future earnings in the development and growth of our business. Therefore, holders of our common stock may not receive any return on their investment in our common stock unless and until the value of such common stock increases and they are able to sell such shares of common stock, and there is no assurance that any of the foregoing will occur.

Failure to establish and maintain effective internal control over financial reporting could have a material adverse effect on our business, operating results and stock value.

We are a newly public company and are now required to comply with the SEC's rules implementing Section 302 of the Sarbanes-Oxley Act ("SOX"), which requires our management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of our internal control over financial reporting. To comply with the requirements of being a public company, we will need to upgrade our systems, including information technology, implement additional financial and management controls, reporting systems and procedures and hire additional accounting, finance and legal staff.

We have identified the following material weakness in the design of our internal controls:

- We have not designed and implemented controls to ensure we can record, process, summarize, and report financial data.
- We have not yet designed and implemented user access controls to ensure appropriate segregation of duties that would adequately restrict user and privileged access to the financially relevant systems and data to appropriate personnel.
- We did not design and maintain effective controls associated with related party transactions and disclosures. Controls in place were not designed or implemented at a sufficient level of precision or rigor to effectively identify related party relationships and disclose their related transactions in our financial statements.

- We also do not have a properly designed internal control system that identifies critical processes and key controls.

We are in the process of remediating such material weaknesses and there can be no assurance as to when or if we will fully remediate such material weaknesses.

Our efforts to develop and maintain our internal controls may not be successful, and we may be unable to maintain effective controls over our financial processes and reporting in the future and comply with the certification and reporting obligations under Sections 302 and 404 of SOX. Any failure to maintain effective controls or any difficulties encountered in our implementation or improvement of our internal controls over financial reporting could result in material misstatements that are not prevented or detected on a timely basis, which could potentially subject us to sanctions or investigations by the SEC or other regulatory authorities. Ineffective internal controls could also cause investors to lose confidence in our reported financial information.

You may experience dilution of your ownership interest because of the future issuance of additional equity in our company.

In the future, we may issue additional shares of capital stock in our company, resulting in the dilution of current stockholders' relative ownership. Our board and stockholders have approved an employee incentive plan and a non-employee director incentive plan. We have reserved 18,000,897 shares of our common stock for future issuance under our plans. Such conversions and issuances would also result in dilution of current stockholders' relative ownership.

On January 6, 2022, we and Antpool entered into a Limited Liability Company Agreement of 1.21 Gigawatts, LLC pursuant to which we and Antpool will own 80% and 20%, respectively, of 1.21 Gigawatts. Antpool's interest in each such entity will be convertible by it at any time into a number of shares of our common stock equal to Antpool's capital contribution in connection with the acquisition of such interests divided by \$7.50. Antpool's potential ownership of our common stock is dependent on its capital contributions to 1.21 Gigawatts which in turn will depend on which projects are approved by us and Antpool and the costs associated therewith. Accordingly, we cannot predict the amount of Antpool's potential ownership of our common stock.

On January 14, 2022, we granted an aggregate of 1,791,666 restricted stock units ("RSUs") to three consultants, consisting of 125,000 RSUs to Roland Davidson, who acts as our Executive Vice President of Engineering, 416,666 RSUs to Nick Phillips, our Executive Vice President of Hosting and Public Affairs, and 1,250,000 RSUs to Etienne Snyman, who acts as our Executive Vice President of Power. Subsequently, Mr. Phillips' 416,666 RSUs were terminated and Mr. Phillips was hired as an employee receiving awards under our employee incentive plan.

On June 27, 2023, the Company began issuing and selling common stock under an "at the market" sale agreement, with Craig-Hallum Capital Group LLC ("Craig-Hallum Capital"), pursuant to which the Company may sell up to \$125 million in shares of our common stock, par value \$.001 per share (the "Common Stock"). The Company has sold approximately 7.9 million shares.

We may also issue other securities that are convertible into or exercisable for equity in our company in connection with hiring or retaining employees or consultants, future acquisitions or future sales of our securities.

Provisions in our Articles, our Bylaws, and Nevada law may discourage a takeover attempt even if a takeover might be beneficial to our stockholders.

Provisions contained in our Articles and Bylaws could make it more difficult for a third party to acquire us if we have become a publicly traded company. Provisions of our Articles and Bylaws impose various procedural and other requirements, which could make it more difficult for stockholders to effect certain corporate actions. For example, our Articles authorize our Board to determine the rights, preferences, privileges and restrictions of unissued series of preferred stock without any vote or action by our stockholders. Thus, our Board can authorize and issue shares of

preferred stock with voting or conversion rights that could adversely affect the voting or other rights of holders of our other series of capital stock. These rights may have the effect of delaying or deterring a change of control of our company. Additionally, our Bylaws establish limitations on the removal of directors and on the ability of our stockholders to call special meetings.

For a more complete understanding of these provisions, please refer to the Nevada Revised Statutes and our Articles and Bylaws filed with the SEC. Though we are not currently, in the future we may become subject to Nevada's control share law. A corporation is subject to Nevada's control share law if it has more than 200 stockholders, at least 100 of whom are stockholders of record and residents of Nevada, and it does business in Nevada or through an affiliated corporation. The law focuses on the acquisition of a "controlling interest" which means the ownership of outstanding voting shares sufficient, but for the control share law, to enable the acquiring person to exercise the following proportions of the voting power of the corporation in the election of directors: (i) one-fifth or more but less than one-third; (ii) one-third or more but less than a majority; or (iii) a majority or more. The ability to exercise such voting power may be direct or indirect, as well as individual or in association with others.

The effect of the control share law is that the acquiring person, and those acting in association with it, obtains only such voting rights in the control shares as are conferred by a resolution of the stockholders of the corporation, approved at a special or annual meeting of stockholders. The control share law contemplates that voting rights will be considered only once by the other stockholders. Thus, there is no authority to strip voting rights from the control shares of an acquiring person once those rights have been approved. If the stockholders do not grant voting rights to the control shares acquired by an acquiring person, those shares do not become permanent non-voting shares. The acquiring person is free to sell its shares to others. If the buyers of those shares themselves do not acquire a controlling interest, their shares do not become governed by the control share law. If control shares are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of the voting power, any stockholder of record, other than an acquiring person, who has not voted in favor of approval of voting rights is entitled to demand fair value for the redemption of such stockholder's shares. Nevada's control share law may have the effect of discouraging takeovers of the corporation.

In addition to the control share law, Nevada has a business combination law which prohibits certain business combinations between Nevada corporations and "interested stockholders" for two years after the "interested stockholder" first becomes an "interested stockholder," unless our Board approves the combination in advance or thereafter by both the Board and 60% of the disinterested stockholders. For purposes of Nevada law, an "interested stockholder" is any person who is (i) the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding voting shares of the corporation, or (ii) an affiliate or associate of the corporation and at any time within the two previous years was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares of the corporation. The definition of the term "business combination" is sufficiently broad to cover virtually any kind of transaction that would allow a potential acquirer to use the corporation's assets to finance the acquisition or otherwise to benefit its own interests rather than the interests of the corporation and its other stockholders. The effect of Nevada's business combination law is to potentially discourage parties interested in taking control of us from doing so if it cannot obtain the approval of our Board.

If securities or industry analysts do not publish research or reports about our business, or if they downgrade their recommendations regarding our common stock, its trading price and volume could decline.

We expect the trading market for our common stock to be influenced by the research and reports that industry or securities analysts publish about us, our business or our industry. As a new public company, we have only minimal research coverage by securities and industry analysts. If we do not expand securities or industry analyst coverage, or if one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline and our common stock to be less liquid. Moreover, if one or more of the analysts who cover us downgrades our stock or publishes inaccurate or unfavorable research about our business, or if our results of operations do not meet their expectations, our stock price could decline.

We may not be able to maintain the listing of our common stock on Nasdaq, which may adversely affect the ability of holders of common stock to resell their securities in the secondary market.

Our common stock is presently listed on Nasdaq, which requires us to meet certain conditions to maintain our listing status. If the Company is unable to meet the continued listing criteria of Nasdaq and the common stock became delisted, trading of the common stock could thereafter be conducted in the over-the-counter markets in the OTC Pink Market, also known as “pink sheets” or, if available, on another OTC trading platform. We cannot assure you that we will meet the criteria for continued listing, in which case the common stock could become delisted. Any such delisting could harm our ability to raise capital through alternative financing sources on terms acceptable to us, or at all, and may result in the loss of confidence in our financial stability by suppliers, customers and employees. Investors would likely find it more difficult to dispose of, or to obtain accurate market quotations for, the common stock, as the liquidity that Nasdaq provides would no longer be available to investors. In addition, the failure of our common stock to continue to be listed on the Nasdaq could adversely impact the market price for the common stock and our other securities, and we could face a lengthy process to re-list the common stock, if we are able to re-list such stock.

We are a public reporting company. There are ongoing costs in maintaining compliance with being a public reporting company and our management will spend a significant amount of time ensuring such compliance. If we are unable to maintain compliance with our public reporting company obligations, our securities may be delisted and we may be unable to re-list our common stock on another national stock exchange or quotation system.

Risks Related to Possible REIT Status

We have not yet determined if or when we may elect to be taxed as a REIT.

Our board of directors has not yet determined whether we will elect to be taxed as a REIT and/or when any such election would be effective. In addition, even if we do make an election to be taxed as a REIT, our board of directors may revoke or otherwise terminate the REIT election of the Company, without the approval of holders of the common stock, if the board determines that it is no longer in the best interest of the stockholders to continue to qualify as a REIT. We can make no assurance that we will ever elect to be taxed as a REIT or, if we do make such an election, that such REIT election will be in place during a stockholder’s entire holding period of our stock. Our board of directors’ broad discretion in setting policies and our stockholders’ inability to exert control over those policies increases the uncertainty and risks our stockholders face.

Our qualification as a REIT will depend upon our ability to meet requirements regarding our organization and ownership, distributions of our income, the nature and diversification of our income and assets, and other tests imposed by the Code. If we fail to qualify as a REIT after electing to be taxed as a REIT, we would generally be disqualified from qualifying as a REIT for the four taxable years following the year of losing our REIT status. Losing our REIT status would reduce our net earnings available for investment or distribution to stockholders because of the additional tax liability. To qualify for REIT status, we must meet a number of organizational and operational requirements, including a requirement that we annually distribute at least 90% of our REIT taxable income, determined without regard for any deduction for distributions paid and excluding any net capital gain to our stockholders. If we do not qualify as a REIT (either because we choose not to elect to be taxed as a REIT or because we failed to so qualify after having made a REIT election), this would reduce our net earnings available for distribution and would adversely affect the timing, amount, and character of distributions to our common stockholders. If we do not elect to be taxed as a REIT or fail to maintain REIT status, we will continue to be subject to federal income tax at regular corporate rates.

If we elect REIT status, the REIT ownership and distribution requirements may inhibit opportunities or have an impact on the Company.

If we elect to be taxed as a REIT, then in order to qualify as a REIT, we must satisfy certain tests on an ongoing basis concerning, among other things, ownership requirements, the sources of our income, nature of our assets, and

the amounts we distribute to our stockholders. For example, in order for us to qualify as a REIT, not more than 50% in value of our outstanding shares of stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) at any time during the last half of each taxable year after the first year for which we elect to qualify as a REIT. Additionally, at least 100 persons must beneficially own our stock during at least 335 days of a taxable year (other than the first taxable year for which we elect to be taxed as a REIT). Additionally, as typical for REITs, our board of directors would likely pursue an amendment of our Articles to restrict any person from owning more than 9.8% by value of our outstanding capital stock. These ownership limits could delay or prevent a transaction or a change in control of our company that might involve a premium price for our shares of common stock or otherwise be in the best interest of our stockholders.

If we elect to be taxed as a REIT and we do not have other funds available to make distributions sufficient to enable us to pay out enough of our taxable income to satisfy the REIT distribution requirement, we could be subject to corporate income tax and the 4% excise tax in a particular year. To qualify as a REIT, we must not have any non-REIT accumulated earnings and profits, as measured for U.S. federal income tax purposes, at the end of any REIT taxable year. Such non-REIT earnings and profits generally will include any accumulated earnings and profits of any corporations acquired by us (or whose assets we acquire), which, for this purpose, would include any earnings and profits we have in a taxable year in which we were taxed as a C corporation prior to the taxable year in which our REIT election is effective.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

We lease approximately 10,700 square feet of office space at 3811 Turtle Creek Blvd., Suite 2100, Dallas, Texas 75219. We use this location as our principal offices. In addition, we lease approximately 11,000 square feet of office and warehouse space in Irving, Texas that serve as our hosting operations control center.

Our wholly-owned subsidiary, APLD Hosting LLC, owns in fee simple a 40-acre parcel of land located in Jamestown, Stutsman County, North Dakota. Our subsidiary APLD – Rattlesnake Den I LLC, which is part of the 1.21 Gigawatts, LLC joint venture, in which the Company owns an 80% equity interest, is party to a 99-year land lease for a 50-acre parcel of land located in Garden City, Texas. APLD ELN-01, LLC, a wholly owned subsidiary of the Company, owns 40 acres of land in Ellendale, North Dakota. The Company has built datacenters on each of the properties in Jamestown, North Dakota; Garden City, Texas; and Ellendale, North Dakota.

Item 3. Legal Proceedings

As of the date of this filing, we are not involved in any material pending legal proceedings.

Item 4. Mine Safety Disclosures

Not applicable.

Part II

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

Primary Market

The Company's Common Stock is traded on the Nasdaq Global Select Market under the symbol "APLD".

Holdings

As of July 25, 2023, we had 102 shareholders of record.

Dividends

We have not paid cash dividends to our common stock holders in the past. We anticipate that all of our earnings in the foreseeable future will be retained to finance the continued growth and development of our business and to repay our outstanding debts and any debts we may incur in the future. We have no intention of paying cash dividends to our common stock holders in the foreseeable future. Any future determination to pay cash dividends will be made at the discretion of our board of directors and will depend on our financial condition, operating results, capital requirements, general business conditions, and other factors that our Board may deem relevant.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

We and our affiliates have not undertaken any share repurchases during the year ended May 31, 2023.

Item 6. [Reserved]

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

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes appearing elsewhere in this Annual Report on form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should read the sections titled "Risk Factors" and "Forward-Looking Statements" for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Business Overview

We are a designer, builder and operator of next-generation digital infrastructure. We have three primary business streams, artificial intelligence ("AI") cloud services, high performance computing ("HPC") datacenter hosting, and crypto datacenter hosting.

Business Update

AI Cloud Services

Our AI cloud services business operates through our Sai Computing brand and provides cloud services applicable to artificial intelligence.

On May 15, 2023, we announced the formal launch of our AI Cloud services business through Sai Computing. On May 16, 2023, we announced that Sai Computing secured its first major AI customer with an agreement worth up to \$180 million over a 24-month period. The customer will make a significant prepayment as part of the agreement.

On June 23, 2023, we announced that Sai Computing had secured its second AI customer with an agreement worth up to \$460 million over 36 months. We have also entered into two contracts with colocation service providers for secure space and energy for our hosting services. Our current strategy is to use a mix of third-party colocation centers and our HPC datacenters to deliver AI Cloud services to customers.

HPC Datacenter Hosting

Our HPC datacenter business designs, builds, and operates Next-Gen datacenters which are designed to provide massive computing power and support high-compute applications within a cost-effective model.

We are in the process of constructing a 9 megawatt ("MW") facility next to the Company's currently operating 100-MW hosting facility in Jamestown, North Dakota. This separate and unique building, designed and purpose-built for Graphics Processing Units ("GPUs"), will sit separate from our crypto hosting buildings and will host more traditional high performance computing applications, such as natural language processing, machine learning, and additional HPC developments. This facility is expected to be brought online in the second half of calendar year 2023. During early calendar year 2023, we began testing HPC hosting at this facility. The systems in this facility passed initial testing in the second calendar quarter of 2023.

In June, the Company expanded its commitment for up to 26,000 GPUs for the Company's AI Cloud services business. The Company has received and deployed an initial production cluster of 1,024 GPUs.

We have current plans to expand our HPC hosting capacity up to 200 MW through build outs at existing and future locations.

Crypto Datacenter Hosting

Our crypto datacenter hosting business provides infrastructure and colocation services to crypto mining customers.

Jamestown, North Dakota Datacenter

We purchased property in Jamestown, North Dakota on which we constructed our first co-hosting facility. Construction of our first co-hosting facility began in September 2021. On February 2, 2022, we brought our first facility online and it has been fully operational since that date. As of May 31, 2023, the facility had approximately 105 MW of capacity, which is fully contracted with our customers.

Garden City, Texas Datacenter

On November 24, 2021, we entered into a letter of intent to develop a second datacenter facility in Garden City, Texas. On April 13, 2022, the Company entered into a 99-year ground lease in Garden City, Texas, with the intent to build our second datacenter facility on this site. On April 25, 2022, we began construction on this site. This facility is collocated with a wind farm and upon completion is expected to provide 200 MW of power to hosting customers. The facility is expected to begin operating in the second half of calendar 2023 and the 200 MW capacity is fully contracted with our customers.

Ellendale, North Dakota Datacenter

On August 8, 2022, we completed the purchase of 40 acres of land in Ellendale, North Dakota, for a total cost of \$1 million. We took possession of the land on August 15, 2022, built a hosting facility, and began energizing the site on March 4, 2023. The facility is fully energized and the facility will have approximately 180 MW of capacity, which is fully contracted with our customers.

Public Offering and Changes to Equity

On June 27, 2023, the Company began issuing and selling common stock under an "at the market" sale agreement, with Craig-Hallum Capital Group LLC ("Craig-Hallum Capital"), pursuant to which the Company may sell up to \$125 million in shares of our common stock, par value \$.001 per share (the "Common Stock"). The Company has sold approximately 7.9 million shares. Net proceeds, less commission fees of approximately \$2.0 million, are approximately \$64.7 million.

Debt Financing

Starion Term Loan

On July 25, 2022, APLD Hosting, LLC, a wholly-owned subsidiary of Applied Digital Corporation, entered into a Loan Agreement with Starion Bank and the Company as Guarantor (the "Starion Loan Agreement"). The Starion Loan Agreement provides for a term loan (the "Starion Term Loan") in the principal amount of \$15 million with a maturity date of July 25, 2027. The Starion Term Loan is secured by the Jamestown hosting facility, a security interest in the substantially all of the assets of the APLD Hosting LLC, and interests in all master hosting agreements related to the Jamestown hosting facility.

The Starion Loan Agreement provides for an interest rate of 6.50% per annum. The Starion Loan Agreement contains customary covenants, representations and warranties and events of default. The Company is not subject to financial covenants until May 31, 2024. At that time, the Company will be subject to a debt service coverage ratio. Deferred financing costs related to the Starion Term Loan total \$0.1 million.

The City of Jamestown, North Dakota and Stutsman County's Economic Development Fund provides a multimillion-dollar economic development program, available to assist with expanding or relocating businesses. As part of financial packages, the Jamestown Stutsman Development Corporation (JSDC) makes direct loans, equity investments, and interest buy-downs to businesses. The Company has entered into an agreement with JSDC and Starion Bank which buys down the Company's interest rate to 1.5% for a period of 13 months through a loan and community bond (the "Starion Term Loan Buy-Down"). The loan totals \$0.2 million and bears an interest rate of 2%, and the bond totals \$0.5 million.

In connection with the Starion Loan Agreement, the Company repaid all of the outstanding balance on the March 11, 2022 agreement between the Company and Vantage Bank Texas. This agreement included a promissory note agreement for \$7.5 million for a five year term with an interest rate of 5% per annum.

Vantage Garden City Loan

On November 7, 2022, APLD – Rattlesnake Den I, LLC, a wholly-owned subsidiary of the Company, entered into a Loan Agreement (the “Vantage Garden City Loan Agreement”) with Vantage Bank Texas and the Company, as guarantor, which agreement provides for a term loan (“The Vantage Garden City Loan”) in the principal amount of \$15 million. The Vantage Garden City Loan Agreement will be advanced in 16 installments for working capital needs for Rattlesnake Den I, LLC's datacenter in Garden City, Texas, with each installment not exceeding approximately \$0.9 million for the costs and expenses of a building at the Company's hosting facility in Garden City, Texas (the “Garden City Facility”). The unpaid principal amount of the Vantage Garden City Loan Agreement will bear interest at a fixed rate of 6.15% per annum, and the Borrower may prepay the Vantage Garden City Loan Agreement, in whole or in part, without the payment of any fee or penalty. The Loan is secured by the leasehold interest on the Garden City Facility, a security interest in substantially all of the assets of the Rattlesnake Den I, LLC, and a security interest in the form of a collateral assignment of the Company's rights and interests in the master hosting agreements related to the Garden City Facility and records and data relating thereto. The Vantage Garden City Loan Agreement matures April 26, 2028. The Vantage Garden City Loan Agreement contains customary representations, warranties, covenants and events of default. As of May 31, 2023, an aggregate amount of \$10.3 million has been advanced under the Vantage Garden City Loan Agreement, with the outstanding principal balance totaling \$10.1 million. Total deferred costs related to the issuance of this loan total are \$0.2 million.

Starion Ellendale Loan

On February 16, 2023, APLD ELN-01 LLC, a wholly-owned subsidiary of the Company, entered into a Loan Agreement with Starion Bank and the Company as Guarantor (the “Ellendale Loan Agreement”). The Ellendale Loan Agreement provides for a term loan (The "Ellendale Loan") in the principal amount of \$20 million with a maturity date of February 3, 2028. The Ellendale Loan Agreement contains customary covenants, representations and warranties and events of default. The Ellendale Loan is secured by the Ellendale hosting facility, a security interest in the substantially all of the assets of the APLD ELN-01 LLC, and interests in all master hosting agreements related to the Ellendale hosting facility. The Ellendale Loan Agreement provides for an interest rate of 7.48% per annum. The proceeds of the Loan will be used to fund expansion on the Ellendale hosting datacenter. Total deferred costs related to the issuance of this loan total are \$0.2 million. As of May 31, 2023, the total balance outstanding under the Ellendale Loan Agreement was \$19.7 million.

B. Riley Loan

On May 23, 2023, SAI Computing LLC, a wholly-owned subsidiary of the Company (“Sai”), entered into a Loan and Security Agreement (the "B. Riley Loan") with B. Riley Commercial Capital, LLC and B. Riley Securities, Inc (collectively "B. Riley"). with the Company as Guarantor. The B. Riley Loan provides for a term loan of up to \$50 million in the principal amount of 9.00% per annum. The proceeds of the B. Riley Loan will be used to provide additional liquidity to fund the buildout of the Company's recently announced AI cloud services platform and datacenters by Sai, and for general corporate purposes and working capital. The B. Riley Loan contains events of default and covenants customary for such an agreement. The B. Riley Loan is secured by a security interest in substantially all of the assets of SAI as set forth in the B. Riley Loan and a security interest in any proceeds of Sai's operations. Pursuant to the B. Riley Loan agreement, the Company unconditionally guaranteed Sai's obligations to B. Riley. The B. Riley Loan contains initial fees of approximately \$1.5 million that were reduced from the initial funds remitted to Sai. The B. Riley Loan also contains a term fee of \$1 million that is due upon the Company's initial principal payment. Finally, the B. Riley Loan and Security agreement contains a commitment fee of 3% on any balance outstanding as of each quarter end beginning with the calendar quarter ending September 30, 2023. As of May 31, 2023, the total outstanding balance under the B. Riley Loan was \$36.5 million. The Company repaid the total balance of the B. Riley Loan on July 17, 2023.

Results of Operations for the fiscal year ended May 31, 2023 compared to fiscal year ended May 31, 2022

The following table sets forth key components of the results of operations of Applied Digital Corporation during the three months and fiscal year ended May 31, 2023 and 2022 (in thousands).

	Three Months Ended		Year Ended	
	May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022
Revenues:				
Hosting revenue	\$ 22,038	\$ 7,523	\$ 55,392	\$ 8,549
Cost of revenues	\$ 15,950	\$ 7,433	\$ 44,388	\$ 9,506
Gross profit	6,088	90	11,004	(957)
Costs and expenses:				
Selling, general and administrative	\$ 12,332	\$ 4,356	\$ 55,059	\$ 19,941
Total costs and expenses	\$ 12,332	\$ 4,356	\$ 55,059	\$ 19,941
Operating loss	\$ (6,244)	\$ (4,266)	\$ (44,055)	\$ (20,898)
Other income (expense):				
Interest Expense	\$ (855)	\$ (112)	\$ (1,980)	\$ (112)
Gain on extinguishment of accounts payable	—	—	—	406
Loss on extinguishment of debt	—	—	(94)	(1,342)
Total other expense, net	(855)	(112)	(2,074)	(1,048)
Net loss from continuing operations before income tax expenses	(7,099)	(4,378)	(46,129)	(21,946)
Income tax benefit (expense)	243	(266)	523	(540)
Net loss from continuing operations	(6,856)	(4,643)	(45,606)	(22,486)
Net loss from discontinued operations, net of income taxes	—	1,826	—	(1,044)
Net loss including noncontrolling interests	(6,856)	(2,817)	(45,606)	(23,530)
Net loss attributable to noncontrolling interest	(383)	(10)	(960)	(10)
Net loss attributable to Applied Digital Corporation	\$ (6,473)	\$ (2,807)	\$ (44,646)	\$ (23,520)
Basic and diluted net (loss) gain per share:				
Continuing Operations	\$ (0.07)	\$ (0.06)	\$ (0.49)	\$ (0.39)
Discontinued Operations	—	0.02	—	(0.02)
Basic and diluted net loss per share	\$ (0.07)	\$ (0.04)	\$ (0.49)	\$ (0.41)
Basic and diluted weighted average number of shares outstanding	95,146,122	76,631,835	93,976,233	57,121,096
Adjusted Amounts (a)				
Adjusted Operating Loss from Continuing Operations	293	(3,933)	(7,320)	(6,222)
Adjusted Operating Margin from Continuing Operations	1 %	(52)%	(13)%	(73)%
Adjusted Net Loss from Continuing Operations	(319)	(4,311)	(8,871)	(7,810)
Other Financial Data (a)				
EBITDA	(3,607)	(3,391)	(36,881)	(20,714)
as a percentage of revenues	(16)%	(45)%	(67)%	(242)%
Adjusted EBITDA	2,930	(3,058)	(146)	(6,038)
as a percentage of revenues	13 %	(41)%	— %	(71)%
Adjusted Gross Profit	7,827	1,100	15,438	113
as a percentage of revenues	36 %	15 %	28 %	1 %

(a) Adjusted Amounts and Other Financial Data are non-GAAP performance measures. A reconciliation of reported amounts to adjusted amounts can be found in the "Non-GAAP Measures and Reconciliation" section of the MD&A.

Commentary on Results of Operations Comparative Results for the three months Ended May 31, 2023 compared to the three months ended May 31, 2022

Revenues

Hosting revenues increased by \$14.5 million, or 193%, from \$7.5 million for the three months ended May 31, 2022 to \$22.0 million for the three months ended May 31, 2023. The increase in hosting revenues was driven by the increase in energized capacity with the Company's Ellendale, North Dakota facility energizing during the three months ended May 31, 2023.

Cost of Revenues

Cost of revenues increased by \$8.6 million, or 116%, from \$7.4 million for the three months ended May 31, 2022 to \$16.0 million for the three months ended May 31, 2023. The increase in cost of revenues was primarily driven by the energization of the Company's Ellendale, North Dakota facility during the three months ended May 31, 2023. The primary drivers of the change to cost of revenues for the three months ended May 31, 2023 were:

- approximately \$6.7 million increase in energy costs used to generate hosting revenues;
- approximately \$0.9 million increase in personnel expenses directly attributable to generating hosting revenues;
- approximately \$0.7 million increase in depreciation and amortization expense directly attributable to the property and equipment supporting hosting revenues; and
- approximately \$0.3 million increase in other expenses directly attributable to generating hosting revenues.

Operating Expenses

Selling, general and administrative expenses increased by \$7.9 million, or 181%, from \$4.4 million for the three months ended May 31, 2022 to \$12.3 million for the three months ended May 31, 2023. The primary drivers of the change to selling, general and administrative expense for the three months ended May 31, 2023 were:

- approximately \$5.2 million increase in stock-based compensation expense;
- approximately \$0.9 million increase in depreciation and amortization expense not directly attributable to property and equipment supporting hosting revenues;
- approximately \$0.9 million increase in employee salaries and benefits expense not directly attributable to revenues;
- approximately \$0.6 million increase in insurance expense; and
- approximately \$1.1 million increase in other selling, general, and administrative expenses such as computer and software expenses.

These factors are partially offset by an approximately \$0.8 million decrease in professional service expense, which is attributable to the increase in full time employees that have replaced previously outsourced professional services.

Other Expense

Interest expense increased \$0.8 million, or approximately 681% , from interest expense of \$0.1 million for the three months ended May 31, 2022 to \$0.9 million for the three months ended May 31, 2023. The increase was driven by the increase in finance leases and in the Company's debt obligations between periods.

Income tax benefit (expense)

The income tax benefit increased by \$0.5 million or 191% from a \$0.3 million expense for the three months ended May 31, 2022 to a \$0.2 million benefit for the three months ended May 31, 2023. This change was driven by a change in valuation allowance for the three months ended May 31, 2023 compared to the three months ended May 31, 2022.

Loss from Discontinued Operations

Gain from discontinued operations decreased by \$1.8 million, or 100%, from \$1.8 million for the three months ended May 31, 2022 to zero for the three months ended May 31, 2023. The change was due to the fact that the Company ceased generating revenues from mining operations in March 2022.

Commentary on Results of Operations Comparative Results for the fiscal year ended May 31, 2023 compared to the fiscal year ended May 31, 2022

Revenues

Hosting revenues increased by \$46.9 million, or 548%, from \$8.5 million for the year ended May 31, 2022 to \$55.4 million for the year ended May 31, 2023. The increase in hosting revenues was driven by a full year of operations at our hosting facility in Jamestown, North Dakota and energization of our hosting facility in Ellendale, North Dakota for the year ended May 31, 2023 compared to a partial year of operations at the Jamestown, North Dakota facility for the year ended May 31, 2022.

Cost of Revenues

Cost of revenues increased by \$34.9 million, or 367%, from \$9.5 million for the fiscal year ended May 31, 2022 to \$44.4 million for the fiscal year ended May 31, 2023. The increase in cost of revenues was driven by a full year of operations at our hosting facility in Jamestown, North Dakota and energization of our hosting facility in Ellendale, North Dakota for the year ended May 31, 2023 compared to a partial year of operations at the Jamestown, North Dakota facility for the year ended May 31, 2022. The primary drivers of the change to cost of revenues for the fiscal year ended May 31, 2023 were:

- approximately \$28.5 million increase in energy costs used to generate hosting revenues;
- approximately \$2.7 million increase in personnel expenses directly attributable to generating hosting revenues;
- approximately \$3.2 million increase in depreciation and amortization expense directly attributable to the property and equipment supporting hosting revenues; and
- approximately \$0.5 million increase in other expenses directly attributable to generating hosting revenues.

Operating Expenses

Selling, general and administrative expenses increased by \$35.2 million, or 176%, from \$19.9 million for the fiscal year ended May 31, 2022 to \$55.1 million for the fiscal year ended May 31, 2023. The primary drivers of the change to selling, general and administrative expense for the fiscal year ended May 31, 2023 were:

- approximately \$19.7 million increase in stock-based compensation expense;
- approximately \$2.9 million increase in depreciation and amortization expense not directly attributable to property and equipment supporting hosting revenues;
- approximately \$4.0 million increase in employee salaries and benefits expense not directly attributable to revenues;

- approximately \$2.9 million increase in insurance expense;
- approximately \$1.5 million increase in professional service expenses incurred as the Company experienced a full year of greater administrative needs; and
- approximately \$4.2 million increase in other selling, general, and administrative expenses such as computer and software expenses.

Other Expense

Interest expense increased \$1.9 million, or 1,666% , from \$0.1 million for the fiscal year ended May 31, 2022 to \$2.0 million for the fiscal year ended May 31, 2023. The change is driven by the increase in finance leases and change in the Company's debt obligations between periods.

Loss on extinguishment of debt decreased \$1.2 million, or 93%, from \$1.3 million for the fiscal year ended May 31, 2022 to \$0.1 million for the fiscal year ended May 31, 2023. This decrease was driven by the lack of extinguishment of our related party notes payable by conversion to common stock, which occurred during the fiscal year ended May 31, 2022, compared to a smaller extinguishment of term debt that was recognized in the fiscal year ended May 31, 2023.

Income tax benefit (expense)

Income tax benefit increased \$1.0 million or approximately 193% from a \$0.5 million expense for the year ended May 31, 2022 to approximately \$0.5 million benefit for the fiscal year ended May 31, 2023. This change was driven by a change in valuation allowance for the fiscal year ended May 31, 2023 compared to the fiscal year ended May 31, 2022.

Loss from Discontinued Operations

Loss from discontinued operations decreased \$1.0 million, or 100%, from \$1.0 million for the fiscal year ended May 31, 2022 to zero for the year ended May 31, 2023. The change was due to the fact that the Company ceased generating revenues from mining operations in March 2022.

Non-GAAP Measures

Adjusted Operating Loss and Adjusted Net Loss

“Adjusted Operating Loss” and “Adjusted Net Loss” are non-GAAP measures that represent operating loss and net loss, respectively, from continuing operations excluding stock-based compensation and nonrecurring expenses. We believe these are useful metrics as they provide additional information regarding factors and trends affecting our business and provide perspective on results absent one-time or significant non-cash items. However, Applied Digital's presentation of these measures should not be construed as an inference that its future results will be unaffected by unusual or non-recurring items. Applied Digital's computation of Adjusted Operating Loss and Adjusted Net Loss may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate Adjusted Operating Loss and Adjusted Net Loss in the same fashion.

Because of these limitations, Adjusted Operating Loss and Adjusted Net Loss should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. Applied Digital compensates for these limitations by relying primarily on its GAAP results and using Adjusted Operating Loss and Adjusted Net Loss on a supplemental basis. You should review the reconciliation of operating loss to Adjusted Operating Loss and net loss to Adjusted Net Loss above and not rely on any single financial measure to evaluate Applied Digital's business.

EBITDA and Adjusted EBITDA

“EBITDA” is defined as earnings before interest, taxes, and depreciation and amortization. “Adjusted EBITDA” is defined as EBITDA adjusted for stock-based compensation, gain on extinguishment of accounts payable, loss on extinguishment of debt, one-time professional service costs, one-time costs related to electricity set up, and other non-recurring expenses. These costs have been adjusted as they are not indicative of business operations. Adjusted EBITDA is intended as a supplemental measure of Applied Digital’s performance that is neither required by, nor presented in accordance with, GAAP. Applied Digital believes that the use of EBITDA and Adjusted EBITDA provides an additional tool for investors to use in evaluating ongoing operating results and trends and in comparing its financial measures with those of comparable companies, which may present similar non-GAAP financial measures to investors. We also believe EBITDA and Adjusted EBITDA are useful metrics to investors because they provide additional information regarding factors and trends affecting our business, which are used in the business planning process to understand expected operating performance, to evaluate results against those expectations, and because of their importance as measures of underlying operating performance, as the primary compensation performance measure under certain programs and plans. However, you should be aware that when evaluating EBITDA and Adjusted EBITDA, Applied Digital may incur future expenses similar to those excluded when calculating these measures. In addition, Applied Digital’s presentation of these measures should not be construed as an inference that its future results will be unaffected by unusual or non-recurring items. Applied Digital’s computation of Adjusted EBITDA may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate Adjusted EBITDA in the same fashion.

Because of these limitations, EBITDA and Adjusted EBITDA should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. Applied Digital compensates for these limitations by relying primarily on its GAAP results and using EBITDA and Adjusted EBITDA on a supplemental basis. You should review the reconciliation of net loss to EBITDA and Adjusted EBITDA above and not rely on any single financial measure to evaluate Applied Digital’s business.

Adjusted Gross Profit

“Adjusted Gross Profit” is a non-GAAP measure that represents gross profit adjusted for depreciation expense and one-time charges related to electricity set up within cost of revenues. We believe this is a useful metric as it provides additional information regarding gross profit aside from significant non-cash expense in depreciation. However, Applied Digital’s presentation of this measure should not be construed as an inference that its future results will be unaffected by other factors within cost of revenues. Applied Digital’s computation of Adjusted Gross Profit may not be comparable to other similarly titled measures computed by other companies, because all companies may not calculate Adjusted Gross Profit in the same fashion.

Because of these limitations, Adjusted Gross Profit should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. Applied Digital compensates for these limitations by relying primarily on its GAAP results and using Adjusted Gross Profit on a supplemental basis. You should review the reconciliation of gross profit to Adjusted Gross Profit above and not rely on any single financial measure to evaluate Applied Digital’s business.

Non-GAAP Measures

Reconciliation of GAAP to Non-GAAP Measures

\$ in thousands	Three Months Ended		Fiscal Year Ended	
	May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022
Adjusted operating loss				
Operating Loss from Continuing Operations (GAAP)	\$ (6,244)	\$ (4,266)	\$ (44,055)	\$ (20,898)
Add: Stock-based compensation	5,195	—	32,074	12,337
Add: Gain on Extinguishment of Accounts Payable	—	—	—	(406)
Add: Loss on Extinguishment of Debt	—	—	94	1,342
Add: Non-recurring professional service costs	727	240	2,164	1,310
Add: One-time electricity charges	—	—	114	—
Add: Other non-recurring expenses	615	93	2,290	93
Adjusted Operating Loss from Continuing Operations (Non-GAAP)	\$ 293	\$ (3,933)	\$ (7,320)	\$ (6,222)
Adjusted operating margin from Continuing Operations	1 %	(52)%	(13)%	(73)%
Adjusted net income (loss)				
Net Loss from Continuing Operations (GAAP)	\$ (6,856)	\$ (4,643)	\$ (45,606)	\$ (22,486)
Add: Stock-based compensation	5,195	—	32,074	12,337
Add: Gain on Extinguishment of Accounts Payable	—	—	—	(406)
Add: Loss on Extinguishment of Debt	—	—	94	1,342
Add: Non-recurring professional service costs	727	240	2,164	1,310
Add: One-time electricity charges	—	—	114	—
Add: Other non-recurring expenses	615	93	2,290	93
Adjusted net loss from Continuing Operations (Non-GAAP)	\$ (319)	\$ (4,310)	\$ (8,871)	\$ (7,810)
EBITDA and Adjusted EBITDA				
Net Loss from Continuing Operations (GAAP)	\$ (6,856)	\$ (4,643)	\$ (45,606)	\$ (22,486)
Add: Interest Expense	855	112	1,980	112
Add: Income Tax Benefit (Expense)	(242)	266	(523)	540
Add: Depreciation and Amortization	2,636	875	7,267	1,120
EBITDA (Non-GAAP)	\$ (3,607)	\$ (3,390)	\$ (36,881)	\$ (20,714)
Add: Stock-based compensation	5,195	—	32,074	12,337
Add: Gain on Extinguishment of Accounts Payable	—	—	—	(406)
Add: Loss on Extinguishment of Debt	—	—	94	1,342
Add: Non-recurring professional service costs	727	240	2,164	1,310
Add: One-time electricity charges	—	—	114	—
Add: Other non-recurring expenses	615	93	2,290	93
Adjusted EBITDA (Non-GAAP)	\$ 2,930	\$ (3,057)	\$ (146)	\$ (6,038)
Adjusted Gross Profit				
Gross profit (GAAP)	\$ 6,088	\$ 90	\$ 11,004	\$ (957)
Add: Depreciation and amortization in cost of revenues	1,739	1,010	4,320	1,070
Add: One-time electricity charges	—	—	114	—
Adjusted Gross Profit (Non-GAAP)	\$ 7,827	\$ 1,100	\$ 15,438	\$ 113

Sources of Liquidity

We have primarily generated cash in the last 12 months from the proceeds of our term loans, issuance of common stock, and the receipt of contractual deposits and revenue prepayments from hosting customers. The Company's primary term loans are noted below.

On July 25, 2022, the Company entered into the Starion Loan Agreement. The Starion Loan Agreement provides for the Starion Term Loan which has a total principal balance of \$15.0 million, with an interest rate per annum of 6.50%. Approximately \$7.1 million of the proceeds were used to pay down the remaining Vantage term loan balance that was entered into on March 11, 2022. The remaining proceeds of the term loan will be used for working capital needs for the operation of Phase I of the hosting facility in Jamestown, North Dakota.

On November 7, 2022, the Company entered into the Vantage Garden City Loan Agreement, with a maximum total principal value of \$15 million, and an interest rate per annum of 6.15%. As of February 28, 2023, an aggregate amount of \$10.3 million has been advanced under the Vantage Garden City Loan Agreement. The proceeds of the Vantage Garden City Loan will be used for the costs and expenses of a building at the Garden City Facility.

On February 16, 2023, the Company entered into the Starion Ellendale Loan Agreement with Starion Bank. This agreement provides for a term loan in the principal amount of \$20 million with a maturity date of February 3, 2028. The loan provides for an interest rate of 7.48% per annum. The proceeds of the loan will be used to fund expansion on the Ellendale Facility. On March 30, 2023, the Company received funding for the Starion Ellendale Loan. The funding, net of issuance fees, totaled \$19.8 million.

On May 23, 2023, the Company entered into the B. Riley Loan and Security Agreement with B. Riley Commercial Capital, LLC and B. Riley Securities. The B. Riley Loan and Security Agreement provides for a term loan in the principal amount of up to \$50 million, with an interest rate of 9.00% per annum. The proceeds of the Loan will be used to provide additional liquidity to fund the buildout of the Company's recently announced AI cloud platform and datacenters by the Company, and for general corporate purposes and working capital. The Company was initially advanced \$34.9 million in funding, net of issuance fees of \$1.6 million. The Company repaid the total balance of the B. Riley Loan on July 17, 2023.

See Note 7 - Debt to the consolidated financial statements included in this Annual Report on Form 10-K for more information on our term loans.

On June 27, 2023, the Company began issuing and selling common stock under an "at the market" sales agreement, with Craig-Hallum Capital, pursuant to which the Company may sell up to \$125 million in shares of Common Stock. The Company has sold approximately 7.9 million shares. Net proceeds, less commission fees of approximately \$2.0 million, are approximately \$64.7 million.

During the fiscal year ended May 31, 2023, we received \$100.1 million in payments for future hosting services. During the fiscal year ended May 31, 2022, we generated revenue from crypto mining and co-hosting, but we have incurred net losses from operations. During the fiscal year ended May 31, 2023, we have generated revenue from co-hosting, but incurred net losses from operations. As of May 31, 2023 and May 31, 2022, we had cash and cash equivalents of \$29.0 million and \$38.8 million, respectively, and an accumulated deficit of \$100.7 million and \$56.1 million, respectively.

Funding Requirements

We have experienced net losses through the periods ended May 31, 2023. Our transition to profitability is dependent on the successful operation of our hosting facilities. We believe that amounts we received from proceeds from our term loans, proceeds from stock offerings, and payments we have received from our hosting operations will be sufficient to meet our working capital needs for at least the next 12 months and all of the Company's known requirements and plans for cash. We have based our estimates as to how long we expect we will be able to fund our operations on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect, in which case, we would be required to obtain additional financing sooner than currently

projected, which may not be available to us on acceptable terms, or at all. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategy.

We expect that our general and administrative expenses and our operating expenditures will continue to increase as we continue to expand our operations and as we bear the costs of being a public company. We believe that the significant investments in property and equipment continue during calendar 2023 as we continue to grow our AI cloud services business. We also expect that our revenues will increase as we continue to bring online additional capacity at existing datacenter facilities and as we begin to provide services to AI cloud services and HPC customers.

Summary of Cash Flows

The following table provides information about Applied Digital's net cash flow for the fiscal years ended May 31, 2023 and May 31, 2022.

\$ in thousands	Fiscal Year Ended	
	May 31, 2023	May 31, 2022
Net cash provided by (used in) operating activities	\$ 58,735	\$ (872)
Net cash used in investing activities	(132,088)	(45,871)
Net cash provided by financing activities	70,628	81,292
Net change in cash, cash equivalents, and restricted cash	(2,725)	\$ 34,549
Cash, cash equivalents, and restricted cash at beginning of period	46,299	\$ 11,750
Cash, cash equivalents, and restricted cash at end of period	<u>\$ 43,574</u>	<u>\$ 46,299</u>

Commentary on cash flows for the fiscal year ended May 31, 2023

Operating Activities

The net cash provided by operating activities of \$58.7 million for the fiscal year ended May 31, 2023 consisted primarily of the following:

- \$32.1 million non-cash adjustment for stock-based compensation expense;
- \$26.8 million increase in customer deposits due to the Company executing new contracts during the period; and
- \$44.8 million increase in deferred revenue due to prepayments from new contracts as well as more cash being received than revenue recognized during the period.

The above factors were partially offset by the \$45.6 million loss from continuing operations

Investing Activities

The net cash used in investing activities of \$132.1 million for the fiscal year ended May 31, 2023 was driven by the increase of purchases of property and equipment and other assets related to the construction of the Company's Garden City, Texas and Ellendale, North Dakota hosting facilities, as well as deposit payments on equipment.

Financing Activities

The net cash provided by financing activities of \$70.6 million for the fiscal year ended May 31, 2023 was primarily driven by the following factors:

- \$45.7 million in proceeds from term loans
- \$36.5 million in proceeds from the related party loan; and
- \$4.1 million in equity contributions to 1.21 Gigawatts, a subsidiary of the Company, by noncontrolling interest.

These above factors were partially offset by the extinguishment of the Vantage term loan totaling \$7.1 million.

Commentary on cash flows for the fiscal year ended May 31, 2022

Operating Activities

The net cash used in operating activities of \$0.9 million for the fiscal year ended May 31, 2022 consisted primarily of the following:

- \$22.5 million in loss from continuing operations; and
- \$1.0 million in loss from discontinued operations

These above factors were partially offset by the following

- \$12.3 million non-cash expense adjustment for stock-based compensation expense;
- \$6.4 million increase in accounts payable and accrued liabilities due to the timing of payments;
- \$9.5 million increase in customer deposits due to the Company executing new contracts during the period; and
- \$3.9 million increase in deferred revenue due to prepayments from new contracts as well as more cash being received than revenue recognized during the period.

Investing Activities

The net cash used in investing activities of \$45.9 million for the fiscal year ended May 31, 2022 consisted of:

- \$55.0 million in purchases of property and equipment related to the construction of the Company's Jamestown, ND facility; and
- \$9.1 million in the sale of equipment related to the Company's discontinued operations.

Financing Activities

The net cash provided by financing activities of \$81.3 million for the fiscal year ended May 31, 2022 consisted primarily of:

- \$34.5 million in proceeds from the issuance of preferred stock , partially offset by issuance costs of \$2.9 million.

- \$40.0 million in proceeds from the issuance of Common Stock from the April 2022 initial public offering, partially offset by issuance costs of \$4.3 million
- \$7.3 million in proceeds from the issuance of term loans; and
- \$7.0 million in contributions in equity contributions to 1.21 Gigawatts, a subsidiary of the Company, by noncontrolling interest.

Off Balance Sheet Arrangements

None.

Significant Accounting Pronouncements

None.

Recent Accounting Pronouncements

For a discussion of recently issued financial accounting standards, refer to Note 3 - Basis of Presentation and Significant Accounting Policies, in Part II, Item 8 of this Annual Report on Form 10-K.

Critical Accounting Estimates

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). In connection with the preparation of our financial statements, we are required to make assumptions and estimates about future events and apply judgments that affect the reported amounts of assets, liabilities, revenue, expenses and the related disclosures. We base our assumptions, estimates and judgments on historical experience, current trends and other factors that management believes to be relevant at the time our consolidated financial statements are prepared. On a regular basis, management reviews the accounting policies, assumptions, estimates and judgments to ensure that our financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

Stock-based Compensation

We account for stock-based compensation with performance conditions by recognizing expense ratably over the requisite service period once the Company concludes that it is probable that the performance conditions will be achieved. The Company's conclusion as to the probability of achievement is complex and requires judgment. In addition, the Company makes estimates around the service period for certain performance awards that are probable of being achieved. The Company may revise its estimate when it determines that it is probable that the performance condition will be achieved within a different time period.

The Company reassesses the probability related to vesting and the requisite service period at each reporting period, and recognizes a cumulative catch up adjustment for such changes in its probability assessment in subsequent reporting periods. The Company's determination of probability is based on historical metrics, future projections, and the Company's historical performance against such projections.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our financial instruments are denominated in United States Dollars and are not subject to interest rate or foreign currency exchange risks. Our term note facility and the note payable issued thereunder bears interest at a fixed interest rate. We have determined our energy services agreement for our Ellendale, North Dakota facility represents a derivative instrument with a notional amount of 180 MW, however, we have determined that

this instrument does not have any value as the agreement provides purchases and sales at market value. We do not hold any other financial instruments.

Our market risk exposure is primarily a result of exposure due to potential changes in inflation.

Inflation Risk

Inflationary factors such as increases in costs may adversely affect our operating results. Although we do not believe that inflation has had a material impact on our financial position or results of operations to date, a high rate of inflation in the future may have an adverse effect on our operating expenses.

We manage a portion of our inflation risk through our participation in a long-term Electricity Supply Agreement, through which we have negotiated a fixed rate for the electricity to be used by our Jamestown, ND hosting facility.

Item 8. Financial Statements and Supplementary Data

Consolidated Financial Statements

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of Applied Digital Corporation

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Applied Digital Corporation (the "Company") as of May 31, 2023 and 2022, the related consolidated statements of operations, stockholders' equity and cash flows for each of the two years in the period ended May 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of May 31, 2023 and 2022, and the results of its operations and its cash flows for each of the two years in the period ended May 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

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

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

Critical Audit Matters

Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ Marcum LLP

Marcum LLP

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

New York, NY
August 2, 2023

See Accompanying Notes to the Consolidated Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Consolidated Balance Sheets
(In thousands, except number of shares and par value data)

	May 31, 2023	May 31, 2022
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 28,999	\$ 38,798
Accounts receivable	82	227
Prepaid expenses and other current assets	16,678	1,337
Total current assets	45,759	40,362
Property and equipment, net	195,593	64,260
Operating lease right of use asset, net	1,290	1,110
Finance lease right of use asset, net	14,303	5,298
Other Assets	7,012	8,950
TOTAL ASSETS	\$ 263,957	\$ 119,980
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable and accrued liabilities	\$ 14,776	\$ 13,260
Current portion of operating lease liability	320	191
Current portion of finance lease liability	5,722	813
Current portion of term loan	7,950	1,333
Customer deposits	36,370	9,524
Current deferred revenue	48,692	3,877
Sales and use tax payable	1,630	—
Total current liabilities	115,460	28,998
Deferred tax liability	—	540
Long-term portion of operating lease liability	1,005	936
Long-term portion of finance lease liability	8,334	4,374
Long-term portion of term loan	33,222	5,897
Long-term related party loan	35,257	—
Other long-term related party liabilities	1,000	—
Total liabilities	194,278	40,745
Commitments and contingencies (Note 11)		
Stockholders' deficit:		
Common stock, \$0.001 par value, 166,666,667 shares authorized, 100,927,358 shares issued and 95,925,630 shares outstanding at May 31, 2023, and 97,837,703 shares issued and 97,801,407 shares outstanding at May 31, 2022	101	98
Treasury stock, 5,001,728 shares at May 31, 2023 and 36,296 shares at May 31, 2022, at cost	(62)	(62)
Additional paid in capital	160,194	128,293
Accumulated deficit	(100,716)	(56,070)
Total stockholders' equity attributable to Applied Digital Corporation	59,517	72,259
Noncontrolling interest	10,162	6,976
Total Stockholders' equity including noncontrolling interest	69,679	79,235
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 263,957	\$ 119,980

See Accompanying Notes to the Consolidated Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Consolidated Statements of Operations
(In thousands, except share and per share data)

	Fiscal Year Ended	
	May 31, 2023	May 31, 2022
Revenues:		
Hosting revenue	\$ 55,392	\$ 8,549
Cost of revenues		
Cost of revenues	\$ 44,388	\$ 9,506
Gross profit	11,004	(957)
Costs and expenses:		
Selling, general and administrative	\$ 55,059	\$ 19,941
Total costs and expenses	\$ 55,059	\$ 19,941
Operating loss	\$ (44,055)	\$ (20,898)
Other income (expense):		
Interest Expense	\$ (1,980)	\$ (112)
Gain on extinguishment of accounts payable	—	406
Loss on extinguishment of debt	(94)	(1,342)
Total other expense, net	(2,074)	(1,048)
Net loss from continuing operations before income tax expenses	(46,129)	(21,946)
Income tax benefit (expense)	523	(540)
Net loss from continuing operations	(45,606)	(22,486)
Net loss from discontinued operations, net of income taxes	—	(1,044)
Net loss including noncontrolling interests	(45,606)	(23,530)
Net loss attributable to noncontrolling interest	(960)	(10)
Net loss attributable to Applied Digital Corporation	\$ (44,646)	\$ (23,520)
Basic and diluted net loss per share:		
Continuing Operations	\$ (0.49)	\$ (0.39)
Discontinued Operations	\$ —	\$ (0.02)
Basic and diluted net loss per share	\$ (0.49)	\$ (0.41)
Basic and diluted weighted average number of shares outstanding	93,976,233	57,121,096

See Accompanying Notes to the Consolidated Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Consolidated Statements of Stockholders' Equity
For the Years Ended May 31, 2023 and 2022
(In thousands, except per share data)

	Series C Convertible Preferred Stock		Series D Convertible Preferred Stock		Total Mezzanine Equity	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Common Stock		Treasury Stock		Additional Paid in Capital	Accumulated Deficit	Stockholders' Equity	Noncontrolling interest	Total Equity
	Shares	Amount	Shares	Amount	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount					
Balance, May 31, 2021	660,000	\$ 15,135	—	—	\$ 15,135	27,195	\$ 3,370	17,087	\$ 1,849	1,511,061	\$ 2	(36,296)	\$ (62)	\$ 13,881	\$ (21,623)	\$ (2,583)	—	\$ 12,552
Extinguishment of debt	—	—	—	—	—	—	—	—	—	5,083,828	5	—	—	3,473	—	3,478	—	\$ 3,478
Issuance of dividends to preferred stock	—	—	—	—	—	60,822	6,082	29,772	2,979	—	—	—	—	—	(8,946)	115	—	\$ 115
Conversion of series A and B preferred stock	—	—	—	—	—	(88,017)	(9,452)	(46,859)	(4,828)	28,765,308	29	—	—	14,251	—	—	—	\$ —
Service agreement stock compensation	—	—	—	—	—	—	—	—	—	18,036,723	18	—	—	12,319	—	12,337	—	\$ 12,337
Issuance of Series D preferred stock	—	—	1,380,000	34,500	34,500	—	—	—	—	—	—	—	—	—	—	—	—	\$ 34,500
Issuance Costs of Series D preferred Stock	—	—	—	(2,927)	(2,927)	—	—	—	—	—	—	—	—	—	—	—	—	\$ (2,927)
Preferred Stock Dividends Accrued	25,633	641	53,587	1,340	1,981	—	—	—	—	—	—	—	—	—	(1,981)	(1,981)	—	\$ —
Conversion of Series C and D preferred stock	(685,633)	(15,776)	(1,433,587)	(32,913)	(48,689)	—	—	—	—	36,440,783	36	—	—	48,653	—	48,689	—	\$ —
Initial public offering of common stock	—	—	—	—	—	—	—	—	—	8,000,000	8	—	—	39,992	—	40,000	—	\$ 40,000
Offering costs of initial public offering	—	—	—	—	—	—	—	—	—	—	—	—	—	(4,276)	—	(4,276)	—	\$ (4,276)
Contributions by noncontrolling interest	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6,986	\$ 6,986
Net Loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(23,520)	(23,520)	(10)	\$ (23,530)
Balance, May 31, 2022	—	—	—	—	—	—	—	—	—	97,837,703	98	(36,296)	(62)	128,293	(56,070)	72,259	6,976	\$ 79,235
Issuance of common stock - vesting of awards	—	—	—	—	—	—	—	—	—	2,615,550	3	—	—	(171)	—	(168)	—	\$ (168)
Issuance of common stock - restricted stock awards	—	—	—	—	—	—	—	—	—	474,105	—	—	—	—	—	—	—	\$ —
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	—	32,072	—	32,072	—	\$ 32,072
Common stock forfeited	—	—	—	—	—	—	—	—	—	—	—	(4,965,432)	—	—	—	—	—	\$ —
Capital contribution to noncontrolling interest	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	4,146	\$ 4,146
Net Loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(44,646)	(44,646)	(960)	\$ (45,606)
Balance, May 31, 2023	—	—	—	—	—	—	—	—	—	100,927,358	101	(5,001,728)	(62)	160,194	(100,716)	59,517	10,162	\$ 69,679

See Accompanying Notes to the Consolidated Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Consolidated Statements of Cash Flows (In thousands)

	Fiscal Year Ended	
	May 31, 2023	May 31, 2022
CASH FLOW FROM OPERATING ACTIVITIES		
Net loss attributable to Applied Digital Corporation	\$ (44,646)	\$ (23,520)
Net loss from discontinued operations, net of income taxes	—	(1,044)
Net loss attributable to noncontrolling interest	(960)	(10)
Net loss from continuing operations	(45,606)	(22,486)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and Amortization	7,267	1,120
Gain on extinguishment of accounts payable	—	(406)
Loss on extinguishment of debt	94	1,342
Stock-Based Compensation	32,072	12,337
Lease Expense	347	328
Non-cash interest expense	410	—
Changes in assets and liabilities:		
Accounts receivable	145	(227)
Prepaid expenses and other current assets	(766)	(1,331)
Customer deposits	26,846	9,524
Deferred revenue	44,815	3,877
Deferred Tax	(540)	540
Accounts payable and accrued liabilities	(6,265)	6,417
Other Assets	364	(1,450)
Lease Assets and Liabilities	(118)	—
Payments of operating leases	(330)	(310)
Net cash provided by operating activities of continuing operations	58,735	9,275
Net cash used in operating activities of discontinued operations	—	(10,147)
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES	58,735	(872)
CASH FLOW FROM INVESTING ACTIVITIES		
Purchases of property and equipment and other assets	(128,721)	(54,974)
Deposits on equipment	(2,557)	—
Investments in private companies	(810)	—
Net cash used in investing activities of continuing operations	(132,088)	(54,974)
Net cash provided by investing activities of discontinued operations	—	9,103
NET CASH USED IN INVESTING ACTIVITIES	(132,088)	(45,871)
CASH FLOW FROM FINANCING ACTIVITIES		
Initial public offering of common stock	—	40,000
Issuance of preferred stock	—	34,500
Repayment of finance leases	(3,353)	(221)
Preferred stock issuance costs	—	(2,927)
Common stock issuance costs	—	(4,276)
Term loan payoff	(7,056)	—
Proceeds from issuance of term loan	45,650	7,324
Term Loan Issuance Costs	(567)	(94)
Proceeds from issuance of related party term loan	36,500	—
Related party term Loan Issuance Costs	(1,548)	—
Loan Payments	(2,977)	—
Payments of employee restricted stock tax withholdings	(168)	—
Noncontrolling interest contributions	4,147	6,986
Net cash provided by financing activities of continuing operations	70,628	81,292
Net cash provided by financing activities of discontinued operations	—	—
CASH FLOW PROVIDED BY FINANCING ACTIVITIES	70,628	81,292
NET (DECREASE) INCREASE IN CASH, CASH EQUIVALENTS, AND RESTRICTED CASH	(2,725)	34,549
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH, BEGINNING OF PERIOD (See Note 3)	46,299	11,750
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH, END OF PERIOD (See Note 3)	\$ 43,574	\$ 46,299
Less: cash, cash equivalents, and restricted cash of discontinued operations	—	—
Cash, cash equivalents, and restricted cash of continuing operations	\$ 43,574	\$ 46,299

See Accompanying Notes to the Consolidated Financial Statements

Consolidated Statements of Cash Flows (In thousands)

	Fiscal Year Ended	
	May 31, 2023	May 31, 2022
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest Paid	\$ 1,570	\$ 112
Income Taxes Paid	\$ 18	\$ —
SUPPLEMENTAL DISCLOSURE OF NON-CASH ACTIVITIES		
Non-cash dividends paid in-kind	\$ —	\$ 11,042
Operating right-of-use assets obtained by lease obligation	\$ 397	\$ 1,288
Finance right-of-use assets obtained by lease obligation	\$ 12,331	\$ 5,418
Fixed assets in accounts payable	\$ 7,399	\$ 6,998

See Accompanying Notes to the Consolidated Financial Statements

Notes to the Consolidated Financial Statements

1. BUSINESS AND ORGANIZATION

Applied Digital Corporation, f/k/a Applied Blockchain, Inc. (the “Company”) is a designer, builder and operator of next-generation digital infrastructure. The Company has three primary business streams, artificial intelligence (“AI”) cloud services, high performance computing (“HPC”) datacenter hosting, and crypto datacenter hosting. For the fiscal year ended May 31, 2023, the Company has only had operational activity in the crypto datacenter hosting business.

The Company was originally incorporated in Nevada in May 2001. On November 14, 2022, the Company changed its corporate name from Applied Blockchain, Inc. to Applied Digital Corporation.

2. LIQUIDITY AND FINANCIAL CONDITION

As of May 31, 2023, the Company had approximate cash and cash equivalents of \$29.0 million and negative working capital of \$69.7 million. Historically the Company has incurred losses and has relied on equity and debt financings to fund its operations. Based on an analysis of cash flows, current net working capital, and expected operations revenue, the Company believes its current cash on hand is sufficient to meet its operating and capital requirement for at least next twelve months from the date these financial statements were issued.

3. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation:

The consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States (“GAAP”). The accompanying consolidated financial statements of the Company include the accounts of the Company and its wholly owned and controlled subsidiaries. Consolidated subsidiaries results are included from the date the subsidiary was formed or acquired. Noncontrolling interests in consolidated subsidiaries in the consolidated financial statements represent non-controlling stockholders' proportionate share of the operations in such subsidiaries. Intercompany investments, balances and transactions have been eliminated in the consolidated financial statements. The Company's consolidated operating subsidiaries include the Company's wholly-owned subsidiaries, the Company's interest in Highland Digital Holdings LLC, and the Company's majority interests in Sai Foundry Computing LLC, as well as 1.21 Gigawatts LLC.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the balance sheet and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ significantly from those estimates. The most significant accounting estimates inherent in the preparation of the Company's financial statements are:

- The valuation allowance associated with the Company's deferred tax assets.
- The probability assessment associated with performance conditions in share based payment awards

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less at the date of acquisition to be cash equivalents. Our cash equivalents in excess of federally insured limits potentially subject us to concentrations of credit risk, although we believe they are subject to minimal risk.

Restricted Cash

The Company has restricted cash related to its letters of credit totaling \$14.6 million. The Company is required to keep these balances in separate accounts for the duration of the letter of credit agreements, which last through the first quarter of calendar 2024. The following tables reconciles cash and cash equivalents and restricted cash to presentation on the balance sheet as of May 31, 2023, and May 31, 2022.

(in thousands)	May 31, 2023	May 31, 2022
Cash and cash equivalents	\$ 28,999	\$ 38,798
Restricted cash included in prepaid expenses and other current assets	14,575	—
Restricted cash included in other assets	—	7,501
Total Cash, Cash Equivalents, and Restricted Cash	\$ 43,574	\$ 46,299

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. The cost of maintenance and repairs is charged to operations as incurred, whereas significant improvements that extend the life of an asset are capitalized.

Lease Accounting

The Company determines whether an arrangement contains a lease at the inception of the arrangement. If a lease is determined to exist, the term of such lease is assessed based on the date on which the underlying asset is made available for the Company's use by the lessor. The Company's assessment of the lease term reflects the non-cancelable term of the lease, inclusive of any rent-free periods and/or periods covered by early-termination options which the Company is reasonably certain of not exercising, as well as periods covered by renewal options which the Company is reasonably certain of exercising. The Company also determines lease classification as either operating or finance at lease commencement, which governs the pattern of expense recognition and the presentation reflected in the consolidated statements of operations over the lease term.

For leases with a term exceeding 12 months, a lease liability is recorded on the Company's consolidated balance sheet at lease commencement reflecting the present value of its fixed minimum payment obligations over the lease term. A corresponding right-of-use ("ROU") asset equal to the initial lease liability is also recorded, adjusted for any prepaid rent and/or initial direct costs incurred in connection with execution of the lease and reduced by any lease incentives received. For purposes of measuring the present value of its fixed payment obligations for a given lease, the Company uses its incremental borrowing rate, determined based on information available at lease commencement, as rates implicit in its leasing arrangements are typically not readily determinable. The Company's incremental borrowing rate reflects the rate it would pay to borrow and incorporates the term and economic environment of the associated lease.

For the Company's operating leases, fixed lease payments are recognized as lease expense on a straight-line basis over the lease term. For leases with an initial term of 12 months or less, any fixed lease payments are recognized on a straight-line basis over the lease term and are not recognized on the Company's consolidated balance sheet as an accounting policy election. Leases qualifying for the short-term lease exception were insignificant. Variable lease costs are recognized as incurred. Assets and liabilities related to operating leases are presented in separate captions from those relating to finance leases.

For the Company's finance leases, expense is split between amortization and interest expense. Variable lease costs are recognized as incurred. Assets and liabilities related to finance leases are presented in separate captions from those relating to operating leases.

Revenue Recognition

The Company recognizes revenue in accordance with ASC 606, Revenue from Contracts with Customers ("ASC 606"). The Company provides energized space to customers who locate their hardware within the Company's co-

hosting facility. All hosting performance obligations are achieved simultaneously by providing the hosting environment for the customers' operations. Hosting revenue is recorded monthly in fixed amounts, net of credits for non-performance, based on the terms of the hosting agreements. Any ancillary revenue for maintenance or installation services is at a point in time when the Customer has received the full service. As these services support the hosting operation as a whole, all revenue is within the hosting revenue caption. Customer contracts include advance payment terms. Advanced payments are recorded as deferred revenue until the related service is provided.

Stock-based compensation

Restricted Stock Awards

The Company has granted restricted stock awards to officers and directors. Each of the awards vests upon the completion of service conditions for specified times and a performance condition for the occurrence of an effective registration statement covering the resale of the shares of Common Stock comprising the stock award with the Securities and Exchange Commission (the "SEC"). The Company has recognized the cost of the restricted stock-based on the grant date fair value of the awards ratably over the related vesting terms as it is probable that the performance condition for the reserved underlying shares will be met.

Restricted Stock Units

The Company has granted restricted stock units ("RSUs") to certain consultants and employees, in all cases as compensatory grants for services rendered to the Company, which contain performance conditions that affect vesting. The Company has recognized the cost of these RSUs based on the grant date fair value ratably for each tranche, as applicable, based on the probability that the performance conditions will be achieved over the related vesting terms. In addition, the Company has granted RSUs to employees as compensation for employment services. The average term of the RSUs granted under the employee incentive plan is three years from grant date, and the only conditions for vesting are service conditions. The Company has recognized the expense of the RSUs based on grant date fair value of the awards ratably over the service period.

Income Taxes

ASC Topic 740, Income Taxes, ("ASC 740"), clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The benefit of a tax position is recognized in the financial statements in the period during which based on all available evidence, management believes it is most likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions.

ASC 740 also provides guidance on derecognition, classification, interest and penalties, accounting in interim period, disclosure, and transition.

Based on the Company's evaluation, it has been concluded that there are no significant uncertain tax positions requiring recognition in the Company's consolidated financial statements.

Segment Information

The Company's chief operating decision maker, the chief executive officer, reviews discrete financial information presented on a consolidated basis for purposes of regularly making operating decisions, allocation of resources, and assessing financial performance. Accordingly, the Company has one operating and reporting segment.

Recent Accounting Pronouncements

The Company continually assesses any new accounting pronouncements to determine their applicability. When it is determined that a new accounting pronouncement affects the Company's financial reporting, the Company

undertakes a study to determine the consequences of the change to its consolidated financial statements and assures that there are proper controls in place to ascertain that the Company's consolidated financial statements properly reflect the change. The Company has determined that there are no recently issued pronouncements that are currently applicable to the Company.

Reclassifications

Within the Consolidated Financial Statements certain immaterial amounts have been reclassified to conform with current period presentation. The Company has reclassified restricted cash from cash and cash equivalents to other assets. In addition, the Company has reclassified utility deposits to other assets. These reclassifications had no impact on reported operating income or net income; cash flows from operations, investing, or financing activities; or total assets and liabilities.

4. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following as of May 31, 2023 and 2022:

(in thousands)	Estimated Useful Life	May 31, 2023	May 31, 2022
Hosting Equipment			
Electric Generation and Transformers	15 years	\$ 4,655	\$ 4,338
Other Equipment and Fixtures			
Other Equipment and Fixtures	6 years	1,685	588
Construction in Progress			
Construction in Progress		106,226	18,305
Information Systems and Software			
Information Systems and Software	5 years	21,173	9,608
Land & Building			
Land			
Land		2,152	1,074
Land Improvements			
Land Improvements	15 years	1,293	1,180
Building			
Building	39 years	63,350	30,176
Total cost of property and equipment		<u>200,534</u>	<u>65,269</u>
Accumulated Depreciation		<u>(4,940)</u>	<u>(1,009)</u>
Property and Equipment, Net		<u>\$ 195,593</u>	<u>\$ 64,260</u>

Depreciation expense totaled \$3.9 million and \$1 million for the years ended May 31, 2023 and 2022, respectively. Depreciation is computed on the straight-line basis for the period assets are in service. Construction in progress represents assets received but not placed into service as of May 31, 2023.

5. REVENUE FROM CONTRACTS WITH CUSTOMERS

Below is a summary of the Company's revenue concentration by major customer for the years ended May 31, 2023 and 2022

Customer	Fiscal Year Ended	
	May 31, 2023	May 31, 2022
Customer A	24 %	— %
Customer B	20 %	13 %
Customer C	19 %	41 %
Customer D	14 %	16 %
Customer E	12 %	15 %
Customer F	11 %	15 %
Total	100 %	100 %

Remaining Performance Obligations

As of May 31, 2023, the Company had \$48.7 million in deferred revenue, which represents the Company's remaining performance obligations. The Company expects to recognize all of this revenue within the next 12 months.

Deferred Revenue

Changes in the Company's deferred revenue balances for the years ended May 31, 2023 and 2022, respectively, are shown in the following table:

(in thousands)		
Balance at May 31, 2021	\$	—
Advance billings		12,426
Revenue recognized		(8,549)
Other adjustments		—
Balance at May 31, 2022	\$	3,877
Advance billings		100,072
Revenue recognized		(55,392)
Other adjustments		135
Balance at May 31, 2023	\$	48,692

Customer Deposits

Changes in the Company's customer deposits balances for the years ended May 31, 2023 and 2022, respectively, are shown in the following table:

(in thousands)		
Balance at May 31, 2021	\$	—
Customer deposits received	\$	9,524
Customer deposits refunded		—
Other adjustments		—
Balance at May 31, 2022	\$	9,524
Customer deposits received	\$	26,981
Customer deposits refunded		—
Other adjustments	\$	(135)
Balance at May 31, 2022	\$	36,370

6. RELATED PARTY TRANSACTIONS

Related Party Notes Payable

See discussion below in Note 7 - Debt, regarding the Company's term loan agreement with B. Riley Commercial Capital, LLC and B. Riley Securities, Inc, both wholly-owned subsidiaries of B. Riley Financial, Inc. Bryant Riley, chairman of the board and co-chief executive officer, of B. Riley Financial, Inc. (Nasdaq: RILY), directly or indirectly through subsidiaries of RILY, held in excess of 5% of our then outstanding Common Stock beginning in April 2023. The following table illustrates the related party balances on this loan for the fiscal year ended May 31, 2023.

(in thousands)

Description	May 31, 2023	
Principal Outstanding	\$	36,500
Other long-term liabilities		1,000
Accrued Interest Payable		81

Related Party Revenue

The Company has revenue transactions with two related party customers:

- Customer A is a subsidiary of an entity which is deemed to beneficially own over 5% of the Company's outstanding common stock.
- Customer B is 60% owned by an individual who is deemed to beneficially own over 5% of the Company's outstanding stock.

The following tables illustrate related party revenue for fiscal years ended ended May 31, 2023 and May 31, 2022.

(in thousands)

Customer	Related Party Revenue for the Fiscal Year Ended			
	May 31, 2023		May 31, 2022	
Customer A	\$	8,007	\$	1,417
Customer B	\$	6,401	\$	1,268

The following tables illustrate related party deferred revenue and deposits balances as of May 31, 2023 and May 31, 2022.

(in thousands)

Caption	Customer A Balances as of			
	May 31, 2023		May 31, 2022	
Deferred revenue	\$	1,474	\$	692
Customer Deposits	\$	2,450	\$	2,059

(in thousands)	Customer B Balances as of			
Caption	May 31, 2023		May 31, 2022	
Deferred revenue	\$	50	\$	262
Customer Deposits	\$	1,361	\$	1,171

Related Party Sublease Income

For the fiscal years ending May 31, 2023 and May 31, 2022, the Company received sublease income from B. Riley Asset Management, which is also a wholly-owned subsidiary of B. Riley Financial, Inc. Mr. Cummins, the CEO of the Company, is also the President of B. Riley Asset Management.

(in thousands)				
Description	May 31, 2023		May 31, 2022	
Sublease Income	\$	84	\$	80

7. DEBT

Below is a summary of the Company's term loan balances, including current debt and deferred financing fees as of May 31, 2023 and 2022.

(in thousands)	May 31, 2023		May 31, 2022	
Total Outstanding Loan Balances		79,441		7,324
Less: Deferred Issuance Costs		(3,012)		(94)
Less: Current portion of Term Loan		(7,950)		(1,333)
Less: Long-term related party loan		(35,257)		—
Long-term portion of Term Loan		<u>\$33,222</u>		<u>\$5,897</u>

Below is the weighted-average interest rate for the Company's term loans as of May 31, 2023 and 2022.

	May 31, 2023	May 31, 2022
Weighted-average interest rate	13.4 %	5.0 %

Remaining Principal Payments

Below is a summary of the remaining principal payments due over the life of the term loans as of May 31, 2023.

(in thousands)		
Year	Principal Payments	
FY24	\$	9,394
FY25		46,586
FY26		10,780
FY27		8,550
FY28		4,131
Thereafter		—
Total Term Loan Remaining Payments	\$	<u>79,441</u>

Starion Term Loan

On July 25, 2022, APLD Hosting, LLC, a wholly-owned subsidiary of the Company, entered into a loan agreement with Starion Bank and the Company as Guarantor (the "Starion Loan Agreement"). The Starion loan agreement provides for a term loan (the "Starion Term Loan") in the principal amount of \$15 million with a maturity date of July 25, 2027. The Starion Loan Agreement provides for an interest rate of 6.50% per annum. The Starion Loan Agreement contains customary covenants, representations and warranties and events of default. The Company is not subject to financial covenants under the Starion Loan Agreement until May 31, 2024. At that time, the Company will be subject to a debt service coverage ratio. Deferred financing costs related to the Starion Term Loan total \$0.1 million.

The City of Jamestown, North Dakota and Stutsman County's Economic Development Fund provides a multimillion-dollar economic development program, available to assist with expanding or relocating businesses. As part of financial packages, the Jamestown Stutsman Development Corporation (JSDC) makes direct loans, equity investments, and interest buy-downs to businesses. The Company has entered into an agreement with JSDC and Starion Bank which buys down the Company's interest rate to 1.5% for a period of 13 months through a loan and community bond (the "Starion Term Loan Buy-Down"). The loan totals \$0.2 million and bears an interest rate of 2%, and the bond totals \$0.5 million.

In connection with the Starion Loan Agreement, the Company repaid all of the outstanding balance on the March 11, 2022 loan agreement between the Company and Vantage Bank Texas. This loan agreement included a promissory note agreement for \$7.5 million for a five year term with an interest rate of 5% per annum.

Vantage Garden City Loan

On November 7, 2022, APLD – Rattlesnake Den I, LLC, a wholly-owned indirect subsidiary of the Company, entered into a loan agreement with Vantage Bank Texas and the Company, as guarantor, which agreement provides for a term loan in the principal amount of \$15 million (the "Vantage Garden City Loan Agreement"). The loan pursuant to the Vantage Garden City Loan Agreement will be advanced in 16 installments, with each installment not exceeding approximately \$0.9 million for the costs and expenses of a building at the Company's hosting facility in Garden City, Texas (the "Garden City Facility"). The unpaid principal amount of the Garden City Facility will bear interest at a fixed rate of 6.15% per annum, and the Company may prepay the Garden City Facility, in whole or in part, without the payment of any fee or penalty. The Garden City Facility matures April 26, 2028. The Vantage Garden City Loan Agreement contains customary representations, warranties, covenants and events of default. As of May 31, 2023, an aggregate amount of \$10.3 million has been advanced under the Vantage Garden City Loan Agreement, with the outstanding balance totaling \$10.1 million. Total deferred costs related to the issuance of this loan total are \$0.2 million.

Starion Ellendale Loan

On February 16, 2023, APLD ELN-01 LLC, a wholly-owned subsidiary of the Company, entered into a Loan Agreement with Starion Bank and the Company as Guarantor (the "Ellendale Loan Agreement"). The Ellendale Loan Agreement provides for a term loan in the principal amount of \$20 million with a maturity date of February 3, 2028. The Ellendale Loan Agreement contains customary covenants, representations and warranties and events of default. The Ellendale Loan Agreement provides for an interest rate of 7.48% per annum. The proceeds of the loan under the Ellendale Loan Agreement will be used to fund expansion on the Ellendale, North Dakota hosting datacenter. Total deferred costs related to the issuance of this loan total are \$0.2 million. As of May 31, 2023, the total balance outstanding under the Ellendale Loan Agreement was \$19.7 million.

B. Riley Loan

On May 23, 2023, Sai Computing LLC, a wholly-owned subsidiary of the Company, entered into a Loan and Security Agreement (the "B. Riley Loan and Security Agreement") with B. Riley Commercial Capital, LLC and B. Riley Securities, with the Company as Guarantor. The B. Riley Loan and Security Agreement provides for a term

loan of up to \$50 million in the principal with an interest rate of 9.00% per annum (the "B. Riley Loan"). The proceeds of the B. Riley Loan will be used to provide additional liquidity to help fund the buildout of the Company's recently announced AI cloud services platform and datacenters by the Company, and for general corporate purposes and working capital. The B. Riley Loan and Security Agreement contains initial fees of approximately \$1.5 million that were reduced from the initial funds remitted to the Company. The B. Riley Loan and Security agreement also contains a term fee of \$1 million that is due upon the Company's initial principal payment. Finally, the B. Riley Loan and Security agreement contains a commitment fee of 3% on any balance outstanding as of each quarter end beginning with the calendar quarter ending September 30, 2023. As of the date of May 31, 2023, the total outstanding balance of the B. Riley Loan was \$36.5 million.

8. INCOME TAXES

The Company recorded income tax benefit of \$0.5 million for the year ended May 31, 2023, compared to income tax expense of \$0.5 million for the year ended May 31, 2022. The Company's effective tax rate was 1.2% and (2.4)%, for the years ended May 31, 2023 and 2022 respectively.

(in thousands)	For the Fiscal Year Ended	
	May 31, 2023	May 31, 2022
Current expense / (benefit)		
Federal	\$ —	\$ —
Foreign	—	—
State	18	—
Total current expense	\$ 18	\$ —
Deferred expense / (benefit)		
Federal	\$ (540)	\$ 540
Foreign	—	—
State	—	—
Total deferred (benefit) expense	\$ (540)	\$ 540
Total income tax (benefit) expense	\$ (523)	\$ 540

The following table reconciles the statutory rate to our effective tax rate:

	May 31, 2023	May 31, 2022
Expected income tax expense (benefit) at U.S. Statutory Rate	21.0 %	21.0 %
Stock-based compensation	(6.0)%	— %
State income taxes, net of federal tax benefit	— %	4.5 %
Change in valuation allowance	(13.0)%	(27.0)%
Other, net	(0.8)%	(0.9)%
Income tax expense / (benefit)	1.2 %	(2.4)%

Deferred income taxes reflect the temporary differences between the amounts at which assets and liabilities are recorded for financial reporting purposes and the amounts utilized for tax purposes. The primary components of the temporary differences that gave rise to the Company's deferred tax assets and liabilities are as follows for the year ended May 31, 2023, and 2022:

(in thousands)	May 31, 2023	May 31, 2022
Deferred Tax Assets:		
Net Operating Loss	\$ 15,137	\$ 11,971
Stock-Based Compensation	3,068	—
Capitalized Research and Development	897	—
Lease Liability	1,875	2,080
Other	360	248
Gross Deferred Tax Assets	21,337	14,298
Less: Valuation Allowances	(15,697)	(9,346)
Total Net Deferred Tax Asset	\$ 5,640	\$ 4,953
Deferred Tax Liabilities:		
Property, Plant, and Equipment	\$ (3,712)	\$ (3,407)
Right of Use Assets	(1,929)	(2,086)
Other	—	—
Total Net Deferred Tax Liability	(5,640)	(5,493)
Net deferred tax assets (liabilities)	\$ —	\$ (540)

The Company had \$114.8 million and \$83.6 million of federal and state tax net operating losses at May 31, 2023 and 2022, respectively. At May 31, 2023, \$99.3 million is available indefinitely to offset future income. The remaining carryforward amounts expire at varying dates beginning in 2028.

A valuation allowance is provided when it is more likely than not that some portion or the entire net deferred tax asset will not be realized. The Company has recorded an increase in the valuation allowance of \$6.3 million and \$6.2 million as of May 31, 2023 and 2022, respectively. The Company has provided a valuation allowance for the portion of the deferred tax assets that it has determined are not more likely than not to be recognized.

The valuation allowance is primarily attributable to deferred tax assets for net operating losses that management believes are more likely than not to expire prior to being realized. The ultimate realization of the deferred tax assets is dependent upon the generation of future taxable income of the appropriate character (i.e., capital or ordinary) during the period in which the temporary differences become deductible. Management considers, among other things, the scheduled reversals of deferred tax liabilities and the history of positive taxable income in evaluating the realizability of the deferred tax assets. Management believes that it is not likely that the results of future operations will generate sufficient taxable income to realize its deferred tax assets. Under the provisions of the Internal Revenue Code, certain substantial changes in the Company's ownership, including a sale of the Company or significant changes in ownership due to sales of equity, may have limited, or may limit in the future, the amount of net operating loss carryforwards that could be used annually to offset future taxable income.

The Company is subject to U.S. federal income tax. Tax years ending May 31, 2021 through May 31, 2023 are open to examination by the major taxing jurisdictions to which the Company is subject, as carryforward attributes generated in these years may still be adjusted upon examination by the Internal Revenue Service (IRS) or other authorities if they have or will be used in a future period. The Company is not currently under examination by the IRS or any other taxing jurisdictions for any tax years.

9. STOCKHOLDERS' EQUITY (DEFICIT)

Equity Plans

On October 9, 2021, the Company's board of directors approved two equity incentive plans, which the Company's stockholders approved on January 20, 2022. The two plans consist of the 2022 Incentive Plan, previously referred to

in the Company's SEC filings as the 2021 Incentive Plan (the "Incentive Plan"), which provides for grants of various equity awards to the Company's employees and consultants, and the 2022 Non-Employee Director Stock Plan previously referred to in the Company's SEC filings as the 2021 Non-Employee Director Stock Plan (the "Director Plan" and, together with the Incentive Plan, the "Plans"), which provides for grants of restricted stock to non-employee directors and for deferral of cash and stock compensation if such deferral provisions are activated at a future date. As of May 31, 2023, the Company had issued approximately 0.6 million shares of restricted stock awards and approximately 12.4 million of restricted stock units under the plans.

Restricted Stock Awards

The following is a summary of the activity and balances for unvested restricted stock awards granted for the fiscal year ended May 31, 2023:

	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Outstanding as of May 31, 2022	1,366,666	\$ 8.04
Granted	551,605	\$ 2.19
Vested	(1,537,316)	\$ 7.38
Forfeited	—	\$ —
Outstanding as of May 31, 2023	380,955	\$ 2.22

As of May 31, 2023, total remaining expense to be recognized related to these awards was \$0.8 million and the weighted average remaining recognition period for the unvested awards was 5 months.

Restricted Stock Units

The following is a summary of the activity and balances for unvested restricted stock units granted for the fiscal year ended May 31, 2023:

	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Outstanding as of May 31, 2022	1,791,666	\$ 8.04
Granted	12,391,207	\$ 2.28
Vested	(1,180,525)	\$ 6.41
Forfeited	(536,413)	\$ 6.71
Outstanding as of May 31, 2023	12,465,935	\$ 2.53

As of May 31, 2023, total remaining expense to be recognized related to these awards was \$31.5 million and the weighted average remaining recognition period for the unvested awards was 24 months.

Share Forfeiture

On June 6, 2022, through an agreement between the Company and Xsquared Holding Limited ("Sparkpool"), Sparkpool agreed to forfeit shares of Common Stock that had been issued to it pursuant to the service agreement executed on March 19, 2021. Sparkpool had ceased providing the contracted services for the Company, and agreed to forfeit shares to compensate for future services that will not be rendered. As a result of this agreement, 4,965,432 shares of Common Stock were forfeited and returned to the Company and placed in treasury.

10. LEASES

The Company has entered into leases for hosting equipment, office space, and land. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants. The Company presents operating and finance right of use assets and liabilities separately on the balance sheet as their own captions. The liabilities are split between current and long-term, respectively.

The Company presents lease costs as follows:

(in thousands) Lease Type	Consolidated Statements of Operations Presentation	Fiscal Year Ended	
		May 31, 2023	May 31, 2022
Operating lease cost:			
Operating lease expense	Selling, General and Administrative	\$ 347	\$ 328
Short-term lease expense	Selling, General and Administrative	187	126
Sublease Income	Selling, General and Administrative	(103)	(159)
Total operating lease cost		\$ 431	\$ 295
Finance lease expense:			
Amortization of ROU assets related to revenue production	Cost of Sales	554	85
Amortization of ROU assets not related to revenue production	Depreciation and Amortization Expense	2,782	26
Interest on finance leases	Interest Expense	773	50
Variable finance lease expense	Selling, General and Administrative	3	—
Total finance lease cost		\$ 4,112	\$ 161
Total Lease Cost		\$ 4,543	\$ 456

The following table represents the Company's future minimum lease payments as of May 31, 2023:

(in thousands)	Year	Operating Leases	Finance Leases	Total
FY24		\$ 445	\$ 6,687	\$ 7,132
FY25		482	5,429	5,911
FY26		495	348	844
FY27		158	188	346
FY28		—	180	180
Beyond		—	87,145	87,145
Total		\$ 1,580	\$ 99,977	\$ 101,557
Present value of lease liabilities		\$ (255)	\$ (85,921)	\$ (86,176)
Less: Current portion of lease liability		\$ 320	\$ 5,722	\$ 6,042
Long-term portion of lease liability		\$ 1,005	\$ 8,334	\$ 9,339

Supplemental cash flow and other information related to leases is as follows:

	Fiscal Year Ended	
	May 31, 2023	May 31, 2022
Weighted-average years remaining (in years)		
Finance leases	22	57
Operating leases	3	4
Weighted-average discount rate		
Finance leases	8 %	8 %
Operating leases	11 %	13 %

The Company has entered into operating leases signed but not yet commenced with total minimum payments of approximately \$83.1 million to support the Company's AI Cloud service business. The payments are expected to be made over a total of 84 months.

The Company has entered into finance leases signed but not yet commenced with total minimum payments of approximately \$8.5 million. The payments are expected to be made over a total of 30 months.

11. COMMITMENTS AND CONTINGENCIES

Commitments

As of May 31, 2023, the Company has commitments related to its term loan and lease agreements, which have been disclosed in *Note 7 - Debt* and *Note 10 - Leases*, respectively. The Company also has the following commitments:

Jamestown Energy Services Agreement

The Company has a commitment of approximately \$28 million related to the energy services agreement for its Jamestown, North Dakota hosting facility. The minimum term of this agreement is five years, and will remain in effect on a year-to-year basis unless terminated by either party by notice given at least 365 calendar days in advance of termination. The commitment is fully due within the next fiscal year, as the company commits to specific power consumption on an annual basis as part of the energy services agreement.

Other

The Company has other purchase commitments of approximately \$10.2 million related to the buildout of its AI Cloud hosting services business and insurance premiums. These commitments are expected to be fulfilled within twelve months of May 31, 2023.

The Company also has a commitment for 1,024 H100 GPUs to support its AI Cloud services business, which has been subsequently financed through an arrangement totaling approximately \$41 million over 24 months as discussed in *Note 14 - Subsequent Events*.

Contingencies

Letter of Credit

As of May 31, 2023 and May 31, 2022, the Company had letters of credit outstanding totaling \$14.5 million and \$7.5 million, respectively. As discussed in *Note 3 - Basis of Presentation and Significant Accounting Policies*, the Company is required to maintain these amounts in separate accounts, and therefore the cash is restricted. Further, the Company had no unused lines of credit as of May 31, 2023 or May 31, 2022, respectively.

Mediation

The Company has agreed to enter into mediation, tentatively scheduled for August 18, 2023, around the allegations previously announced by the Company on June 23, 2023. The Company estimates the potential range of loss based on such allegations to be \$0 to \$1 million.

Claims and Litigation

From time to time, the Company may be involved in litigation relating to claims arising out of operations in the normal course of business. As of May 31, 2023 and 2022, there were no pending or threatened lawsuits that could reasonably be expected to have a material effect on the results of the Company's consolidated operations. There are also no legal proceedings in which any of the Company's management or affiliates is an adverse party or has a material interest adverse to the Company's interest.

12. EARNINGS PER SHARE

Basic net income (loss) per share ("EPS") of Common Stock is computed by dividing the Company's net earnings (loss) by the weighted average number of shares of Common Stock outstanding during the period. Diluted EPS reflects the potential dilution that could occur if the securities or other contracts to issue Common Stock were exercised or converted into Common Stock or resulted in the issuance of Common Stock that then shared in the earnings of the entity.

Potentially dilutive securities are excluded from the computation of diluted net loss per share as their inclusion would be anti-dilutive. As of May 31, 2023, the Company had approximately 12.8 million shares of granted but unvested restricted stock and restricted stock units that would have a potentially dilutive effect on earnings per share.

Earnings per share for the year ended May 31, 2023 and 2022 are shown in the following table:

(in thousands, except for share and per share data)

	Fiscal Year Ended	
	May 31, 2023	May 31, 2022
Net loss from continuing operations	\$ (45,606)	\$ (22,486)
Net loss from discontinued operations, net of income taxes	—	(1,044)
Net Loss including noncontrolling interests	(45,606)	(23,530)
Net Loss attributable to noncontrolling interest	(960)	(10)
Net loss attributable to Applied Digital Corporation	\$ (44,646)	\$ (23,520)
Continuing operations	\$ (0.49)	\$ (0.39)
Discontinued operations	\$ —	\$ (0.02)
Basic and diluted net loss per share	\$ (0.49)	\$ (0.41)
Basic and diluted weighted average number of shares outstanding	93,976,233	57,121,096

13. DISCONTINUED OPERATIONS

During the fiscal year ended May 31, 2022, the Company recognized a net loss from discontinued operations related to the Company's cryptocurrency mining operation. The Company had no results from discontinued operations during the year ended May 31, 2023. Operating results of discontinued operations are summarized below:

(in thousands)

	Fiscal Year Ended May 31, 2022
Cryptoasset Mining Revenue	\$ 2,987
Cost of Sales	1,611
Gross Profit	1,376
Impairment of Cryptocurrency Assets	(393)
Gain on Sale of Fixed Assets	1,229
Loss on Asset Reclass to Discontinued Operations	(3,256)
Net Loss from Discontinued Operations	\$ (1,044)

14. SUBSEQUENT EVENTS

Financing Arrangements

The Company entered into a finance arrangement for approximately \$41 million over 24 months for 1,024 H100 GPUs in connection with its AI Cloud Services business.

Additional Debt Financing

The Company received an additional \$3 million in funding from the B. Riley Loan and Security Agreement, bringing the total outstanding loan principal balance to \$39.5 million. Subsequently, the Company repaid the entire outstanding loan principal balance, along with all outstanding interest and fees.

Common Stock Issuance

The Company began issuing common stock under an "at the market" sale agreement pursuant to which the Company may sell up to \$125 million in shares of Common Stock. The Company has sold approximately 7.9 million shares. Net proceeds, less commission fees of approximately \$2.0 million, are approximately \$64.7 million.

Customer Prepayment

The Company has confirmed receipt of a customer prepayment for its AI cloud services business of approximately \$22.5 million.

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

None

Item 9A. Controls and Procedures**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated, as of the end of the period covered by this Annual Report on Form 10-K, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, and as a result of the material weaknesses described below, our Chief Executive Officer and Chief Financial Officer concluded that, as of May 31, 2023, our disclosure controls and procedures were not effective at the reasonable assurance level.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of a company's annual and interim financial statements will not be detected or prevented on a timely basis.

We have identified the following material weakness in the design of our internal controls:

- We have not designed and implemented controls to ensure we can record, process, summarize, and report financial data.
- We have not yet designed and implemented user access controls to ensure appropriate segregation of duties that would adequately restrict user and privileged access to the financially relevant systems and data to appropriate personnel.
- We did not design and maintain effective controls associated with related party transactions and disclosures. Controls in place were not designed or implemented at a sufficient level of precision or rigor to effectively identify related party relationships and disclose their related transactions in our financial statements.
- We also do not have a properly designed internal control system that identifies critical processes and key controls.

In order to remediate these material weaknesses, we have begun to take the following steps, among others:

1. Hiring additional qualified accounting and financial reporting personnel to support division of responsibilities;
2. Improving and updating our systems;
3. Developing IT general controls to manage access and program changes across our key systems and the execution of improvements to application controls within our systems; and
4. Implementing processes and controls to better identify and manage segregation of duties.

We will not be able to fully remediate the material weaknesses until these steps have been completed and have been operating effectively for a sufficient period of time.

Internal Control over Financial Reporting

This annual report does not include an attestation report of the Company's registered public accounting firm due to the fact that the Company is a Smaller Reporting Company and exempt from the requirement.

Changes in Internal Control over Financial Reporting

Except as set forth above, there were no changes in the Company's internal control over financial reporting during the fourth quarter of 2023, which were identified in connection with management's evaluation required by paragraph

(d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. Other Information

Not applicable.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

Part III

Item 10. Directors, Executive Officers and Corporate Governance

Executive Officers and Directors

The following table provides information regarding our Named Executive Officers (as defined below) and directors as of June 30, 2023.

Name	Age	Position(s)	Period of Service
<i>Executive Officers</i>			
Wes Cummins	45	Chief Executive Officer and Chairman of the Board of Directors	Director from February 2007 to December 2020 and March 2021 to Present, sole officer from March 2012 to December 2020 and CEO, Secretary and Treasurer from March 2021 to Present
David Rench	45	Chief Financial Officer	March 2021 to Present
Michael Maniscalco	43	Chief Technology Officer	Executive Vice President of Technology from September 2021 to June 2023; Chief Technology Officer beginning in July 2023
<i>Non-Employee Directors</i>			
Chuck Hastings	45	Director	April 2021 to Present
Kelli McDonald	45	Director	April 2021 to Present
Douglas Miller	66	Director	April 2021 to Present
Virginia Moore	49	Director	April 2021 to Present
Richard Nottenburg	69	Director	June 2021 to Present

Executive officers

Wes Cummins

Mr. Cummins has served as a member of our Board from 2007 until 2020 and from March 11, 2021 through present. During that time Mr. Cummins also served in various executive officer positions and he is currently serving as our chairman of the Board, chief executive officer, president, secretary and treasurer. Mr. Cummins was also the founder and CEO of 272 Capital LP, a registered investment advisor, which he sold to B. Riley Financial, Inc. (Nasdaq: RILY) in August 2021. Following the sale Mr. Cummins joined B. Riley as President of B. Riley Asset Management. Mr. Cummins intends to spend at least 40 hours per week on our business. Mr. Cummins has been a technology investor for over 20 years and held various positions in capital markets including positions at investment banks and hedge funds. Prior to founding 272 Capital and starting our operating business, Mr. Cummins was an analyst with Nokomis Capital, L.L.C., an investment advisory firm, a position he held from October 2012 until February 2020. Mr. Cummins also served as president of B. Riley & Co., from 2002 to 2011. Mr. Cummins also serves as a member of the boards of Sequans Communications S.A. (NYSE: SQNS), a fabless designer, developer and supplier of cellular semiconductor solutions for massive, broadband and critical Internet of Things markets and Vishay Precision Group, Inc. (VPG), designer, manufacturer and marketer of sensors, and sensor-based measurement systems, as well as specialty resistors and strain gages based upon their proprietary technology. Mr. Cummins served on the board of Telenav, Inc. (NASDAQ: TNAV) from August 2016 until February 2021. He holds a BSBA from Washington University in St. Louis where he majored in finance and accounting.

David Rench

Mr. Rench became our chief financial officer in March 2021 and continues to serve in that capacity. Prior to joining us, Mr. Rench co-founded in 2010, and from 2010 to 2017 served as the VP of Finance and Operations of, a software startup company, Ihiji, until the company was acquired by Control4 in 2017. After the acquisition of Ihiji, Mr. Rench joined and served as Chief Financial Officer of Hirzel Capital, an investment management company, from 2017 to 2020. Mr. Rench holds a BBA from the Neeley School of Business at Texas Christian University in Fort Worth, Texas, and an MBA from the Cox School of Business at Southern Methodist University in Dallas, Texas.

Michael Maniscalco

Mr. Maniscalco became our Executive Vice President of Technology in September 2022, and was named Chief Technology Officer in July 2023. In 2009, Mr. Maniscalco co-founded Ihiji, a remote network management services company, where he served as the Vice President of Product through February 2018, after Ihiji was acquired in 2017. From 2018 until his employment with the Company, Mr. Maniscalco founded and served as Chief Executive Officer of Better Living Technologies from 2018 to 2022.. In addition, Mr. Maniscalco has founded several other companies and organizations over the last five years.

Appointment of Officers

Our executive officers are appointed by, and serve at the discretion of, our Board. There are no family relationships among any of our executive officers or directors.

Non-employee directors

Chuck Hastings

Mr. Hastings currently serves as Chief Executive Officer of B. Riley Wealth Management. Mr. Hastings joined B. Riley Financial in 2013 as a portfolio manager and became Director of Strategic Initiatives at B. Riley Wealth Management in 2018 and President in 2019. Prior to joining B. Riley, Mr. Hastings served as Portfolio Manager at Tri Cap LLC and was Head Trader at GPS Partners, a Los Angeles-based hedge fund, where he managed all aspects of trading and process including price and liquidity discovery and trade execution from 2005 to 2009. While at GPS Partners, Mr. Hastings was instrumental in growing the fund with the founding partners from a small start-up to one of the largest funds on the West Coast. Earlier in his career, Mr. Hastings served as a convertible bond trader at

Morgan Stanley in New York. Mr. Hastings also serves as a Board member for IQvestment Holdings. Mr. Hastings holds a B.A. in political science from Princeton University. He is a recognized leader in the financial industry with more than two decades of global financial and business expertise.

Kelli McDonald

Ms. McDonald has a passion for high impact charity work in her local community. Ms. McDonald works in merchandising and book sales for an independent bookstore. She worked in early childhood education from 2006 to 2020. She served as the Fundraising Chairperson and Social Media Manager for KSD NOW in the early inception of the district-wide supplemental nutrition program, helping social workers launch a now-vital service. In addition to work in non-profit development, early childhood education and the Literacy Project, Ms. McDonald founded NG Gives Back. She earned a Bachelor of Arts degree from The University of Wisconsin Oshkosh.

Douglas Miller

Mr. Miller has served as a member of the board of directors of three public companies over the past nine years: Telenav, Inc. (NASDAQ: TNAV) from July 2015 to February 2021, CareDx, Inc. (NASDAQ: CDNA) from July 2016 to May 2017, and Procera Networks, Inc. (NASDAQ: PKT) from May 2013 to June 2015. He has chaired the Audit Committee for each of these companies, and has also served as a Lead Independent Director and as chair or committee member on Compensation, Nominating and Governance and Special committees. Prior to his roles as board member, Mr. Miller served as senior vice president, chief financial officer and treasurer of Telenav, a wireless application developer specializing in personalized navigation services, from 2006 to 2012. From 2005 to 2006, Mr. Miller served as vice president and chief financial officer of Longboard, Inc., a privately held provider of telecommunications software. Prior to that, from 1998 to 2005, Mr. Miller held various management positions, including senior vice president of finance and chief financial officer, at Synplicity, Inc., a publicly traded electronic design automation company.

Mr. Miller also served as chief financial officer of 3DLabs, Inc., a publicly held graphics semiconductor company, and as an audit partner at Ernst & Young LLP, a professional services organization. Mr. Miller is a certified public accountant (inactive). He holds a B.S.C. in Accounting from Santa Clara University.

Virginia Moore

Ms. Moore is the Co-founder, and CEO since 2017, of Catavento, a home textiles company based in Los Angeles. For 7 years prior to that, Ms. Moore was a partner and Vice President of Corbis Global, a 100- person architectural and engineering outsourcing firm. Earlier in her career she held positions in Marketing and Category Management with Coca-Cola, AC Nielsen and Universal Studios Home Entertainment. Ms. Moore earned a Business Administration degree from Universidad Católica de Córdoba in her native Argentina and an MBA from ESADE Business School in Barcelona, Spain.

Richard Nottenburg

Dr. Nottenburg is Executive Chairman of NxBeam Inc., which designs and builds leading proprietary mmWave ICs and radio products to power the next generation of satellite and terrestrial communication networks. Dr. Nottenburg is on the board of directors of Cognyte Software Ltd., (NASDAQ: CGNT), a global leader in security analytics software and Verint Systems Inc. (NASDAQ: VRNT), a customer engagement company. He serves as chairman of the compensation committee of both companies. He is also a member of the board of Sequans Communications S.A. (NYSE: SQNS), a leading developer and provider of 5G and 4G chips and modules for massive, broadband and critical IoT applications where he serves on both the audit and compensation committees. Previously, Dr. Nottenburg served as President and Chief Executive Officer and a member of the board of directors of Sonus Networks, Inc. from 2008 through 2010. From 2004 until 2008, Dr. Nottenburg was an officer with Motorola, Inc., ultimately serving as its Executive Vice President, Chief Strategy Officer and Chief Technology Officer.

Delinquent Section 16(a) Reports

Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) requires the Company’s directors, executive officers and persons who beneficially own more than 10% of its Common Stock to file reports of ownership and changes in ownership with the Commission and to furnish the Company with copies of all such reports they file. Based on the Company’s review of the copies of such forms received by it, or written representations from certain reporting persons, the Company believes that none of its directors, executive officers or persons who beneficially own more than 10% of the Common Stock failed to comply with Section 16(a) reporting requirements during the fiscal year ended May 31, 2023 (the “Last Fiscal Year”), except for one Form 4 filed by Virginia Moore reporting eight late transactions.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees, officers, and directors. The full text of our code of business conduct and ethics is posted on the Investors section of our website: www.applieddigital.com. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of these provisions, on our website or in public filings.

Board of Directors Composition

Our Board currently consists of six members. Each of our current directors serves until the next annual meeting of our stockholders or earlier death, resignation or removal. Despite the expiration of a director’s term, however, the director shall continue to serve until such director’s successor is elected and qualifies or until there is a decrease in the number of directors.

Director Independence

Lead Independent Director

Our Board has appointed Douglas Miller as our lead independent director. Our lead independent director is expected to provide leadership to our Board if circumstances arise in which the role of chief executive officer and chairperson of our Board may be, or may be perceived to be, in conflict, and perform such additional duties as our Board may otherwise determine and delegate.

Committees of the Board of Directors

Our Board has established an Audit Committee, a Compensation Committee, and a Nominating and Governance Committee, each of which have the composition and responsibilities described below. Members serve on these committees until their resignation or until otherwise determined by our Board. Each committee operates under a written charter approved by our Board that satisfies the applicable rules of the SEC and the listing standards of the Nasdaq Global Select Market. Copies of each committee’s charter are posted on the Investors section of our website. Membership in each committee is shown in the following table.

	Audit Committee	Compensation Committee	Nominating and Governance Committee
Wes Cummins			
Chuck Hastings	•		•
Kelli McDonald		•	•
Douglas Miller	▲	•	

Virginia Moore		•	▲
Richard Nottenburg	•	▲	

▲ Chair • Member

Audit Committee

Our Audit Committee is comprised of Messrs. Miller, Hastings and Nottenburg. Mr. Miller is the chairperson of our Audit Committee. Each Audit Committee member meets the requirements for independence under the current Nasdaq Global Select Market listing standards and SEC rules and regulations. Mr. Miller qualifies as an “audit committee financial expert” as defined in Item 407(d) of Regulation S-K promulgated under the Securities Act of 1933 (the “Securities Act”). This designation does not impose any duties, obligations, or liabilities that are greater than are generally imposed on members of our Audit Committee and our Board. Each member of our Audit Committee is financially literate. Our Audit Committee is directly responsible for, among other things:

- selecting a firm to serve as the independent registered public accounting firm to audit our consolidated financial statements;
- ensuring the independence of the independent registered public accounting firm;
- discussing the scope and results of the audit with the independent registered public accounting firm and reviewing, with management and that firm, our interim and year-end operating results;
- establishing procedures for employees to anonymously submit concerns about questionable accounting or audit matters;
- considering the adequacy of our internal controls and internal audit function;
- inquiring about significant risks, reviewing our policies for risk assessment and risk management, including cybersecurity risks, and assessing the steps management has taken to control these risks;
- reviewing and overseeing our policies related to compliance risks;
- reviewing related party transactions that are material or otherwise implicate disclosure requirements; and
- approving or, as permitted, pre-approving all audit and non-audit services to be performed by the independent registered public accounting firm.

Compensation Committee

Our Compensation Committee is comprised of Mr. Nottenburg, Ms. McDonald, Ms. Moore and Mr. Miller. Mr. Nottenburg is the chairperson of our Compensation Committee. The composition of our Compensation Committee meets the requirements for independence under the current Nasdaq Global Select Market listing standards and SEC rules and regulations. Each member of this committee is a non-employee director, as defined in Rule 16b-3 promulgated under the Exchange Act. Our Compensation Committee is responsible for, among other things:

- reviewing and approving, or recommending that our Board approve, the compensation and the terms of any compensatory agreements of our executive officers;
- reviewing and recommending to our Board the compensation of our directors;
- administering our stock and equity incentive plans;
- reviewing and approving, or making recommendations to our Board with respect to, incentive compensation and equity plans; and
- establishing our overall compensation philosophy.

Nominating and Governance Committee

Our Nominating and Governance Committee is comprised of Ms. Moore, Ms. McDonald and Mr. Hastings. Ms. Moore is the chairperson of our Nominating and Governance Committee. The composition of our Nominating and Governance Committee meets the requirements for independence under the current Nasdaq listing standards and SEC rules and regulations. Our Nominating and Governance Committee is responsible for, among other things:

- identifying and recommending candidates for membership on our Board;
- recommending directors to serve on board committees;
- reviewing and recommending our corporate governance guidelines and policies;
- reviewing succession plans for senior management positions, including the chief executive officer;
- reviewing proposed waivers of the code of business conduct and ethics for directors, executive officers, and employees (with waivers for directors or executive officers to be approved by the Board);
- evaluating, and overseeing the process of evaluating, the performance of our Board and individual directors; and
- advising our Board on corporate governance matters.

Board's Role in Risk Oversight

Our Board of directors is primarily responsible for overseeing our risk management processes. Our Board, as a whole, determines our appropriate level of risk, assesses the specific risks that we face, and reviews management's strategies for adequately mitigating and managing the identified risks. Although our Board administers this risk management oversight function, the committees of our Board support our Board in discharging its oversight duties and address risks inherent in their respective areas. The Audit Committee reviews our major financial risk exposures and the steps management has taken to monitor and control such exposures, including our procedures and related policies with respect to risk assessment and risk management. Our Audit Committee also reviews matters relating to compliance, cybersecurity, and security and reports to our Board regarding such matters. The Compensation Committee reviews risks and exposures associated with compensation plans and programs. We believe this division of responsibilities is an effective approach for addressing the risks we face and that our Board leadership structure supports this approach.

Board Diversity

Each year, our Nominating and Governance Committee will review, with the Board, the appropriate characteristics, skills, and experience required for the Board as a whole and its individual members. In evaluating the suitability of individual candidates, our nominating and governance committee will consider factors including, without limitation, an individual's character, integrity, judgment, potential conflicts of interest, other commitments, and diversity. While we have no formal policy regarding board diversity for our Board as a whole nor for each individual member, the Nominating and Governance Committee does consider such factors as gender, race, ethnicity and experience, area of expertise, as well as other individual attributes that contribute to the total diversity of viewpoints and experience represented on the Board.

In August 2021, the SEC approved a Nasdaq Stock Market proposal to adopt new listing rules relating to board diversity and disclosure. As approved by the SEC, the new Nasdaq listing rules require all Nasdaq listed companies to disclose consistent, transparent diversity statistics regarding their boards of directors. The rules also require most Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self identifies as either an under-represented minority or LGBTQ+. The Board Diversity Matrix below presents the Board's diversity statistics in the format prescribed by the Nasdaq rules.

Board Diversity Matrix (as of July 25, 2023)				
Total Number of Directors	6			
	Female	Male	Non-Binary	Did Not Disclose Gender
Part I: Gender Identity				
Directors	2	4	0	0
Part II: Demographic Background				
African American or Black	0	0	0	0
Alaskan Native or Native American	0	0	0	0
Asian	0	0	0	0

Hispanic or Latinx	1	0	0	0
Native Hawaiian or Pacific Islander	0	0	0	0
White	1	4	0	0
Two or More Races or Ethnicities	0	0	0	0
Other (Race or Ethnicity)	0	0	0	0
LGBTQ+	0	0	0	0
Did Not Disclose Demographic Background	0	0	0	0

To see our Board Diversity Matrix as of August 30, 2022, please see our proxy statement filed with the SEC on September 27, 2022.

Legal Proceedings

To our knowledge, (i) no director or executive officer has been a director or executive officer of any business which has filed a bankruptcy petition or had a bankruptcy petition filed against it during the past ten years; (ii) no director or executive officer has been convicted of a criminal offense or is the subject of a pending criminal proceeding during the past ten years; (iii) no director or executive officer has been the subject of any order, judgment or decree of any court permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities or banking activities during the past ten years; and (iv) no director or officer has been found by a court to have violated a federal or state securities or commodities law during the past ten years.

Item 11. Executive Compensation

Compensation Overview

Overview

Our compensation programs are designed to:

- Attract, motivate, incentivize, and retain employees at the executive level who contribute to our long-term success;
- Provide compensation packages to our executives that are competitive, reward the achievement of our business objectives, and effectively align their interests with those of our stockholders; and
- Focus on long-term equity incentives that correlate with the growth of sustainable long-term value for our stockholders.

Our Compensation Committee is responsible for the executive compensation programs for our Named Executive Officers and reports to our Board of Directors on its discussions, decisions, and other actions. Our Chief Executive Officer makes recommendations for the respective executive officers that report to him to our Compensation Committee and typically attends Compensation Committee meetings. Our Chief Executive Officer makes such recommendations (other than with respect to himself) regarding base salary, and short-term and long-term compensation, including equity incentives, for our executive officers based on our results, an executive officer's individual contribution toward these results, the executive officer's role and performance of his or her duties, and his or her achievement of individual goals. Our Compensation Committee then reviews the recommendations and other data, including various compensation survey data and publicly available data of our peers, and makes decisions as to the target total direct compensation for each executive officer, including our Chief Executive Officer, as well as each individual compensation element. While our Chief Executive Officer typically attends meetings of the Compensation Committee, the Compensation Committee meets outside the presence of our Chief Executive Officer when discussing his compensation and when discussing certain other matters, as well.

Our Compensation Committee is authorized to retain the services of one or more executive compensation advisors, as it sees fit, in connection with the establishment of our executive compensation programs and related policies. In fiscal year ending May 31, 2023, the Compensation Committee retained Compensia Inc., a national compensation consulting firm with compensation expertise relating to technology and life science companies, to provide it with market information, analysis, and other advice relating to executive compensation on an ongoing basis. The Compensation Committee engaged Compensia, Inc. to, among other things, assist in developing an appropriate group of peer companies to help us determine the appropriate level of overall compensation for our executive officers, as well as to assess each separate element of compensation, with a goal of ensuring that the compensation we offer to our executive officers, individually as well as in the aggregate, is competitive and fair. We do not believe the retention of, and the work performed by, Compensia, Inc. creates any conflict of interest.

Compensation and Governance Practices and Policies

We endeavor to maintain strong governance standards in our policies and practices related to executive compensation. Below is a summary of our key executive compensation and corporate governance practices.

	What We Do		What We Don't Do
✓	Annually assess the risk-reward balance of our compensation programs in order to mitigate undue risks in our programs	X	No pension plans or Supplemental Executive Retirement Plans
✓	Provide compensation mix that more heavily weights variable pay	X	No hedging or pledging of our securities
✓	An independent compensation consultant advises the Compensation Committee	X	No excise tax gross-ups upon a change of control

Peer Group

The Compensation Committee reviews market data of companies that we believe are comparable to us. With Compensia's assistance, the Compensation Committee developed a peer group for use when making its compensation decisions for the fiscal year ending May 31, 2023, which consisted of publicly traded technology companies headquartered in the U.S. that generally had a market capitalization between 0.25x and 4.0x the Company's market capitalization. The Compensation Committee referred to compensation data from this peer group and broader survey data (for similarly-sized companies) when making base salary, cash bonus and equity award decisions for our executive officers for the fiscal year ending May 31, 2023. The following is a list of the public companies that composed our peer group for the fiscal year ending May 31, 2023:

Alkami Technology	CleanSpark	Paya
Backblaze	Couchbase	Riot Platforms
Bakkt Holdings	Fastly	Stronghold Digital Mining
Bit Digital	Greenidge Generation Holdings	Sumo Logic
Cantaloupe	IronNet	TeraWulf
Cipher Mining	Marathon Digital Holdings	Veritone

Base Salaries

The compensation of Named Executive Officers is generally determined and approved by the Compensation Committee of the Board of Directors. The base salaries of each of the Named Executive Officers for the fiscal years ending May 31, 2022 and 2023 were as follows.

Named Executive Officer	Position	Base Salary FY22	Base Salary FY22
Wes Cummins	CEO	\$300,000	\$600,000
David Rench	CFO	\$240,000	\$350,000
Michael Maniscalco	CTO	\$200,000	\$275,000

Annual Bonuses

We maintain an annual bonus program that rewards each of our Named Executive Officers for our performance against business objectives. Our Board of Directors establishes performance goals for this program each year and then evaluates performance against these established goals to determine the amount of each award. This program is based on performance over a fiscal year and pays out early in the following year, subject to the executive's continued service through the payment date. All awards under this program are subject to the discretion of the Compensation Committee and the Board of Directors. For the fiscal year ending May 31, 2023, the target annual bonuses for our Named Executive Officers were as follows.

Named Executive Officer	Position	Target Bonus (% of Salary)
Wes Cummins	CEO	100%
David Rench	CFO	100%
Michael Maniscalco	CTO	75%

Equity Compensation

During the fiscal year ended May 31, 2023, we granted restricted stock units ("RSUs") and performance stock units ("PSUs") to each of our Named Executive Officers. We feel this equity mix effectively aligns Named Executive Officer compensation with shareholder returns while also achieving retention objectives. During the fiscal year, grants to our Named Executive Officers were as follows:

Named Executive Officer	Position	# of Restricted Stock Units	# of Performance-Based Restricted Stock Units (at target)
Wes Cummins	CEO	1,100,000	1,400,000
David Rench	CFO	460,000	490,000
Michael Maniscalco	CTO	216,000	175,000

The RSUs are time-based and provide for vesting in tranches over three years. The PSUs are performance-based and provide for earning between 50% -250% of the employee's target units if certain financial targets are met during the measurement period, which consists of two fiscal years, and for vesting of any earned units on the third anniversary of grant.

Employment Agreements with Named Executive Officers

The Company currently has employment agreements with Mr. Cummins, and Mr. Rench. The employment agreements include non-compete and non-solicitation provisions. See "Employment Agreements and Arrangements Between the Company and Named Executives" of this Item 11 for a description of the material terms of Mr. Cummins's and Mr Rench's employment agreements. The Company does not currently have an employment agreement with Mr. Maniscalco.

Welfare and other Benefits

See “Welfare and other benefits” of this Item 11 for a description of certain benefits provided to our Named Executive Officers. The Company maintains a broad-based 401(k) plan for its employees including its Named Executive Officers. Our Named Executive Officers did not participate in, or otherwise receive any benefits under, any pension or retirement plan sponsored by us during the fiscal year ending May 31, 2023. Our Named Executive Officers did not participate in, or earn any benefits under, a nonqualified deferred compensation plan sponsored by us during the fiscal year ending May 31, 2023.

Potential Payments upon Termination or Change in Control

Except as provided below, the Named Executive Officers’ employment agreements do not provide for any special payments in the event of a termination of employment or a Change in Control of the Company while the agreement is in effect.

Under the terms of each Named Executive Officer’s restricted stock award (each, an “Award”), if the Named Executive Officer’s employment terminates before the Award is vested and the termination is on account of the Named Executive Officer’s death, disability or termination by the Company without Cause (as defined in the Award), the Named Executive Officer will vest in a portion of the unvested Award based on the number of full months of employment that the Named Executive Officer has completed as of the termination date, and since the grant date of the Award. Under the terms of each Named Executive Officer’s PSU Award, the portion of the Target Award that will be earned and vested is determined based on both the months of employment completed as of the termination date and on achievement of certain performance factors defined in the Award during the period prior to the termination of employment

In addition, if there is a change in control of the Company as defined in the Award (“Change in Control”) of the Company while the Award remains unvested, the Award will be treated in accordance with one of the following as determined by the Compensation Committee: (1) the Award may be replaced with a new award that constitutes a “Replacement Award” under the terms of the Award and relevant tax rules; (2) if the Company’s stock continues to be publicly traded on the Nasdaq Global Select Market (or another established securities market) after the Change in Control, then the Award will continue in place and be treated as a Replacement Award; or (3) if, following the Change in Control, the Company’s stock is no longer publicly traded on The Nasdaq Global Select Market (or another established securities market), the unvested portion of the Award shall become vested immediately prior to the consummation of the Change in Control. Notwithstanding any of the foregoing, the Committee may determine that any unvested portion of the Award will be cancelled and terminated for consideration instead. Notwithstanding the foregoing, for PSU Awards, if the Change in Control occurs prior to the date that the Committee determines the number of units earned under the Award, the Named Executive Officer will vest in a portion of the Award based on the months of employment completed as of the Change in Control, applied to the higher of 100% of the target Award and the amount earned based on actual performance as of the end of the last full calendar quarter preceding the Change in Control date.

If payment of an Award in connection with a Change in Control would result in liability for an excise tax under Section 4999 of the Code for “excess parachute payments” as defined in Section 280G of the Code, the amount of the Award may be reduced to avoid imposition of the excise tax, if such reduction results in a greater post-tax benefit to the Named Executive Officer as compared to payment of the full amount of the Award and imposition of the excise tax.

Executive Compensation

We are a “smaller reporting company” under applicable SEC rules and are providing disclosure regarding our executive compensation arrangements pursuant to the rules applicable to emerging growth companies, which means that we are not required to provide a compensation discussion and analysis and certain other disclosures regarding our executive compensation. The following discussion relates to the compensation of each of the Company’s Chief Executive Officer and its two other most highly compensated individuals who were serving as executive officers at the end of the fiscal year ended May 31, 2023, for services rendered in all capacities during such year (the “Named

Executive Officers”), consisting of Wes Cummins, our Chief Executive Officer, Secretary, Treasurer, Chairman of the Board, David Rench, our Chief Financial Officer, and Michael Maniscalco, our Chief Technology Officer.

Summary Compensation Table

Name and Principal Position(s)	Year	Salary (\$) (1)	Bonus (\$)	Non-Equity Incentive Plan Compensation (\$) (2)	All Other Compensation (\$) (3)	Total (\$)
Wes Cummins	2023	\$312,500	\$150,000	—	\$5,492,078	\$5,954,578
Chief Executive Officer, President, Secretary and Treasurer	2022	\$279,167	\$300,000	\$4,020,000	—	\$4,599,167
	2021	52,083	—	—	—	52,083
David Rench	2023	\$272,292	\$339,375	—	\$2,098,578	\$2,710,245
Chief Financial Officer	2022	\$254,707	\$180,000	\$1,339,987	—	\$1,774,694
	2021	41,667	20,000	—	—	61,667
Michael Maniscalco	2023	\$200,000	\$92,500	—	\$854,941	\$1,147,441
Chief Technology Officer (4)	2022	\$61,667	—	—	—	\$61,667

1. 2021 amounts represent compensation for partial year service from March 2021 through May 31, 2021.
2. Consists of value of restricted stock awards made outside of the 2022 Incentive Plan.
3. Consists of restricted stock units granted through the 2022 Incentive Plan and health care premiums paid by the Company.
4. Mr. Maniscalco joined the Company in September 2021 as EVP, Technology, and became Chief Technology Officer on July 5, 2023.

Employment Agreements

Cummins Agreement

Wes Cummins is our Chief Executive Officer. On January 4, 2022, we and Mr. Cummins entered into an Employment Agreement, effective as of November 1, 2021 (the “Cummins Employment Agreement”).

Pursuant to the Cummins Employment Agreement, Mr. Cummins receives a base salary of \$300,000 per annum, subject to annual review, and shall also be eligible for an annual bonus of up to 100% of his base salary, to be determined at our sole discretion. The term of the Cummins Employment Agreement ends on October 31, 2024, with automatic one (1) year extensions unless notice not to renew is given by either party at least 60 days prior to the relevant end date.

The Cummins Employment Agreement grants Mr. Cummins an incentive award of 500,000 restricted shares of our common stock (“Restricted Stock”).

The Restricted Stock will vest in accordance with the following schedule (pending an effective registration statement covering the resale of shares of common stock comprising the stock award, which has yet to occur at the time of this filing):

Number of Shares	Vesting Date*
250,000	4/1/2022
62,500	7/1/2022
62,500	10/1/2022

62,500	1/1/2023
62,500	4/1/2023

* Shares will vest on such date or the date, if later, on which the SEC declares effective a registration statement covering the resale of the shares of restricted stock (such date, the "Later Date").

The Cummins Employment Agreement requires Mr. Cummins to devote his full-time efforts to his employment duties and obligations, and provides that Mr. Cummins will be entitled to participate in all benefit plans provided to our employees in accordance with our applicable plan, policy or practices, as well as in any long-term incentive program established by us. It also provides for unlimited annual paid vacation, and reimbursement of reasonable business expenses, and provides that either party may terminate the employment arrangement pursuant to the notice requirements set forth in the Cummins Employment Agreement.

The Cummins Employment Agreement contains restrictive covenants prohibiting Mr. Cummins from disclosing our confidential information at any time, from competing with us in any geographic area where we do business during his employment, and from soliciting our employees, contractors or customers, during his employment and for one year thereafter.

Rench Agreement

David Rench is our Chief Financial Officer. On January 4, 2022, we and Mr. Rench entered into an Employment Agreement, effective as of November 1, 2021 (the "Rench Employment Agreement"). Pursuant to the Rench Employment Agreement, Mr. Rench receives a base salary of \$240,000 per annum, subject to annual review, and shall also be eligible for an annual bonus of up to 75% of his base salary, to be determined at our sole discretion. The term of the Rench Employment Agreement ends on October 31, 2024, with automatic one (1) year extensions unless notice not to renew is given by either party at least 60 days prior to the relevant end date.

The Rench Employment Agreement grants Mr. Rench an incentive award of 166,666 shares of Restricted Stock. The Restricted Stock will vest in accordance with the following schedule (pending an effective registration statement covering the resale of shares of common stock comprising the stock award, which has yet to occur at the time of this filing):

Number of Shares	Vesting Date*
83,333	4/1/2022
20,833	7/1/2022
20,833	10/1/2022
20,833	1/1/2023
20,834	4/1/2023

* Shares will vest on such date or the Later Date, if later.

The Rench Employment Agreement requires Mr. Rench to devote forty (40) hours per week to his employment duties and obligations, and provides that Mr. Rench will be entitled to participate in all benefit plans provided to our employees in accordance with our applicable plan, policy or practices, as well as in any long-term incentive program established by us. It also provides for unlimited annual paid vacation, and reimbursement of reasonable business expenses, and provides that either party may terminate the employment arrangement pursuant to the notice requirements set forth in the Rench Employment Agreement.

The Rench Employment Agreement contains restrictive covenants prohibiting Mr. Rench from disclosing our confidential information at any time, from competing with us in any geographic area where we do business during his employment, and from soliciting our employees, contractors or customers, during his employment and for one year thereafter.

On July 18, 2022, the Compensation Committee increased Mr. Rench's annual base salary to \$275,000, effective August 1, 2022.

Maniscalco

The Company does not currently have an employment agreement with Mr. Maniscalco. Mr. Maniscalco receives a base salary of \$275,000 per annum, subject to annual review, and is eligible for an annual bonus of up to 75% of his base salary, to be determined at our sole discretion. Mr. Maniscalco is entitled to participate in all benefit plans provided to our employees in accordance with our applicable plan, policy or practices, as well as in any long-term incentive program established by us.

Severance Agreements

None of our employees have severance agreements.

OUTSTANDING EQUITY AWARDS AT MAY 31, 2023

Name	STOCK AWARDS	
	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)
Wes Cummins	416,667 ⁽¹⁾	\$ 3,487,503
	600,000 ⁽²⁾	\$ 5,022,000
	700,000 ⁽³⁾	\$ 5,859,000
David Rench	208,334 ⁽⁴⁾	\$ 1,743,756
	210,000 ⁽⁵⁾	\$ 1,757,700
	245,000 ⁽⁶⁾	\$ 2,050,650
Michael Maniscalco	125,000 ⁽⁷⁾	\$ 1,046,250
	75,000 ⁽⁸⁾	\$ 627,750
	87,500 ⁽⁸⁾	\$ 732,375

(1) Consists of restricted stock units that vest as follows: 83,333 on each of August 5, 2023, August 5, 2024 and February 5, 2025 and 83,334 on each of February 5, 2024 and August 5, 2025.

(2) Consists of restricted stock units that vest as follows: 200,000 on April 4, 2024 and 100,000 on each of October 4, 2024, April 4, 2025, October 4, 2025 and April 4, 2026.

(3) Consists of performance stock units, at threshold, that may be earned during the two fiscal years beginning in 2023 and 2024 if certain financial performance criteria are met and will vest on April 4, 2026.

(4) Consists of restricted stock units that vest as follows: 41,667 on each of August 5, 2023, February 5, 2024, February 5, 2025 and August 5, 2025 and 41,666 on August 5, 2024.

(5) Consists of restricted stock units that vest as follows: 70,000 on April 4, 2024 and 35,000 on each of October 4, 2024, April 4, 2025, October 4, 2025 and April 4, 2026.

(6) Consists of performance stock units, at threshold, that may be earned during the two fiscal years beginning in 2023 and 2024 if certain financial performance criteria are met and will vest on April 4, 2026.

(7) Consists of restricted stock units that vest as follows: 30,556 on August 5, 2023, and 23,611 on each of February 5, 2024, August 5, 2024, February 5, 2025 and August 5, 2025.

(8) Consists of restricted stock units that vest as follows: 25,000 on April 4, 2024 and 12,500 on each of October 4, 2024, April 4, 2025, October 4, 2025 and April 4, 2026.

(9) Consists of performance stock units, at threshold, that may be earned during the two fiscal years beginning in 2023 and 2024 if certain financial performance criteria are met and will vest on April 4, 2026.

Equity Compensation Plans

The following table sets forth certain information, as of May 31, 2023, regarding the shares of the Company's common stock authorized for issuance under the Company's equity compensation plans.

Plan	Number of shares of Common Stock issuable upon exercise of outstanding options, warrants or rights (1)	Weighted average of exercise price of outstanding	Number of shares of Common Stock remaining available for future issuance
2022 Incentive Plan	—	\$0.00	5,085,720
2022 Non-Employee Director Stock Plan	—	\$0.00	1,359,229
Compensation plans not approved by shareholders (1)	895,839	\$0.00	—

(1) Reflects restricted stock units which were not granted under the 2022 Incentive Plan or 2022 Non-Employee Director Stock Plan.

Employee Benefit Plans

On October 9, 2021, our Board approved two equity incentive plans, which our stockholders approved on January 20, 2022. The two plans consist of the 2021 Incentive Plan (the "Incentive Plan"), which provides for grants of various equity awards to our employees and consultants, and the 2021 Non-Employee Director Stock Plan (the "Director Plan" and, together with the Incentive Plan, the "Plans"), which provides for grants of restricted stock to non-employee directors and for deferral of cash and stock compensation if such deferral provisions are activated at a future date.

The Incentive Plan

The following is a summary of the material features of the Incentive Plan, qualified in its entirety by reference to the Incentive Plan.

Administration

The Compensation Committee administers the Incentive Plan. The Compensation Committee has full and exclusive discretionary power to interpret the terms and the intent of the Incentive Plan and any award agreement or other agreement or document ancillary to or in connection with the Incentive Plan, to select eligible employees and third-party service providers to receive awards ("Participants"), to determine eligibility for awards and to adopt such rules, regulations, forms, instruments, and guidelines for administering the Incentive Plan as it may deem necessary or proper. Such authority shall include, but not be limited to, selecting award recipients, establishing all award terms and conditions, including the terms and conditions set forth in award agreements, granting awards as an alternative to or as the form of payment for grants or rights earned or due under compensation plans, service contracts or other of our arrangements, construing any ambiguous provision of the Incentive Plan or any award agreement, and,

subject to stockholder or Participant approvals as may be required, adopting modifications and amendments to the Incentive Plan or any award agreement. All actions taken and all interpretations and determinations made by the Compensation Committee shall be final and binding upon Participants, us, and all other interested individuals.

The Compensation Committee may delegate its administrative duties or powers to one or more of its members or to one or more of our officers, our affiliates or subsidiaries, or to one or more agents or advisors. However, the authority to grant awards to individuals who are subject to Section 16 of the Exchange Act, cannot be delegated to anyone who is not a member of the Compensation Committee. As used in this summary, the term "Incentive Plan Administrator" means the Compensation Committee and any delegate, as appropriate.

Eligibility

Any employee of, and any third-party service provider to, us, an affiliate or a subsidiary is eligible to participate in the Incentive Plan if selected by the Incentive Plan Administrator. We are not able to estimate the number of individuals that the Incentive Plan Administrator will select to participate in the Incentive Plan or the type or size of awards that the Incentive Plan Administrator will approve. Therefore, the benefits to be allocated to any individual or to various groups of individuals are not presently determinable.

Awards

Under the Incentive Plan, if approved by stockholders, we will be able to grant nonqualified stock options, incentive stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, performance units, cash-based awards and other stock-based awards.

Options. Options granted under the Incentive Plan may be incentive stock options ("ISOs") or nonqualified stock options. Options entitle the Participant to purchase a specified number of shares of common stock from us at a specified option price, subject to applicable vesting conditions and such other provisions as the Incentive Plan Administrator may determine consistent with the Incentive Plan, including, without limitation, restrictions on transferability of the underlying shares. The per-share option price will be fixed by the Incentive Plan Administrator at the time the option is granted, but cannot be less than the per-share fair market value of the underlying common stock on the date of grant (or, with respect to ISOs, in the case of a holder of more than 10 percent of outstanding voting securities, 110 percent of such per share fair market value). The option price may be paid, in the Incentive Plan Administrator's discretion, in cash or its equivalent, with shares of common stock, by a cashless, broker-assisted exercise, or a combination thereof, or any other method accepted by the Compensation Committee.

The minimum vesting period for an option is generally one year. The maximum period in which a vested option may be exercised will be fixed by the Incentive Plan Administrator at the time the option is granted but cannot exceed 10 years (five years for ISOs granted to a holder of more than 10 percent of our outstanding voting securities). The Award Agreement will set forth the extent to which a Participant may exercise the option following termination of employment. No employee may be granted ISOs that are first exercisable in a calendar year for common stock having an aggregate fair market value (determined as of the date the option is granted) exceeding \$100,000.

SARs. A stock appreciation right ("SAR") entitles the Participant to receive an amount upon exercise equal to the excess of the fair market value of one share of common stock on the exercise date over the grant price of the SAR. SARs shall be subject to applicable vesting conditions and such other provisions as the Incentive Plan Administrator may determine consistent with the Incentive Plan, including, without limitation, mandatory holding periods for any shares received upon exercise. The grant price per SAR shall be determined by the Incentive Plan Administrator, but cannot be less than the fair market value of one share of common stock on the grant date.

The minimum vesting period for a SAR is generally one year. The maximum period in which a vested SAR may be exercised will be fixed by the Incentive Plan Administrator at the time the SAR is granted, but generally cannot exceed 10 years. The Award Agreement shall set forth the extent to which a Participant may exercise the SAR following termination of employment. The amount payable upon the exercise of an SAR may, in the Incentive Plan

Administrator's discretion, be settled in cash, common stock, or a combination thereof, or any other manner approved by the Incentive Plan Administrator.

Restricted Stock and Restricted Stock Units. Restricted stock is common stock issued to a Participant subject to applicable vesting and other restrictions. Restricted stock units are similar to restricted stock except that no shares of common stock are actually issued to the Participant unless and until the restrictions on the award lapse. An award of restricted stock or restricted stock units will be forfeitable, or otherwise restricted, until conditions established at the time of the grant are satisfied. These conditions may include, for example, a requirement that the Participant complete a specified period of service or the attainment of certain performance objectives. Any restrictions imposed on an award of restricted stock or restricted stock units will be prescribed by the Incentive Plan Administrator.

The minimum vesting period for restricted stock and restricted stock units is generally one year. The Award Agreement shall set forth the extent to which a Participant may retain restricted stock or restricted stock units following termination of employment. Participants may be granted full voting rights with respect to restricted stock during the applicable restriction period, but will have no voting rights with respect to restricted stock units until common stock is issued in settlement thereof. Restricted stock will become freely transferable by the Participant after all conditions and restrictions have been satisfied. Vested restricted stock units may, in the Incentive Plan Administrator's discretion, be settled in cash, common stock, or a combination of cash and common stock or any other manner approved by the Incentive Plan Administrator.

Performance Shares and Performance Units. A performance share award entitles a Participant to receive a payment equal to the fair market value of a specific number of shares of common stock, subject to applicable performance and vesting conditions. A performance unit award is similar to a performance share award except that a performance unit award is not necessarily tied to the value of common stock. The Incentive Plan Administrator will prescribe, as set forth in an award agreement, the performance conditions that must be satisfied during the applicable performance period for an award of performance shares or performance units to be earned. The Incentive Plan Administrator may also impose time-based vesting conditions on the payment of earned performance shares or performance units.

The minimum performance period or vesting period for performance shares and performance units is generally one year. The award agreement shall set forth the extent to which a Participant may retain performance units and performance shares following termination of employment. To the extent that performance units or performance shares are earned and vested, the obligation may be settled in cash, common stock or a combination of cash and common stock. If the award is settled in shares of common stock, the shares may be subject to additional restrictions deemed appropriate by the Incentive Plan Administrator.

Cash-Based Awards and Other Stock-Based Awards. The Incentive Plan also allows the Incentive Plan Administrator to make cash-based awards and other stock-based awards to Participants on such terms and conditions as the Incentive Plan Administrator prescribes, including without limitation, time-based and performance-based vesting conditions. The minimum vesting period for other stock-based awards is generally one year. The award agreement shall set forth the extent to which a Participant may retain cash-based and other stock and equity-based awards following termination of employment. To the extent that any cash-based and other stock and equity-based awards are granted, they may, in the Incentive Plan Administrator's discretion, be settled in cash or common stock.

Dividend Equivalents

Participants may be granted dividend equivalents based on the dividends declared on shares that are subject to any award during the period between the grant date and the date the Award is exercised, vests or expires. The payment of dividends and dividend equivalents prior to an award becoming vested is prohibited, and the Incentive Plan Administrator shall determine the extent to which dividends and dividend equivalents may accrue during the vesting period.

Minimum Vesting of Stock-Based Awards

Awards granted under the Incentive Plan are generally subject to a minimum vesting period of at least one year. Awards may be subject to cliff-vesting or graded-vesting conditions, with graded vesting starting no earlier than one year after the grant date. The Incentive Plan Administrator may provide for shorter vesting periods in an award agreement for no more than five percent of the maximum number of shares authorized for issuance under the Incentive Plan.

Transferability

In general, awards available under the Incentive Plan will be nontransferable except by will or the laws of descent and distribution.

Performance Objectives

The Compensation Committee shall have full discretionary authority to select performance measures and related performance goals upon which payment or vesting of an award depends. Performance measures may relate to financial metrics, non-financial metrics, GAAP and non-GAAP metrics, business and individual objectives or any other performance metrics that the Compensation Committee deems appropriate.

The Compensation Committee may provide in any award that any evaluation of performance may include or exclude any of the following events that occurs during a performance period: (a) asset write-downs, (b) litigation or claim judgments or settlements, (c) the effect of changes in tax laws, accounting principles, or other laws or provisions affecting reported results, (d) any reorganization and restructuring programs, (e) extraordinary nonrecurring items as described in management's discussion and analysis of financial condition and results of operations appearing in the our annual report to stockholders for the applicable year, (f) acquisitions or divestitures, and (g) foreign exchange gains and losses.

The Compensation Committee shall retain the discretion to adjust performance-based awards upward or downward, either on a formula or discretionary basis or any combination, as the Committee determines.

Change in Control

Unless otherwise provided in an award agreement or otherwise determined by the Compensation Committee, upon a Change in Control the following shall occur:

- a. For awards other than performance awards, a Replacement Award (that is, an award with a value and terms that are at least as favorable as the outstanding award) may be issued;
- b. For awards other than performance awards, if a Replacement Award is not issued and our common stock ceases to be publicly traded after the Change in Control, such awards shall be immediately vested and exercisable upon such Change in Control;
- c. For unearned performance awards, the award shall be (i) earned on a pro-rata basis at the higher of actual or target performance and (ii) measured as of the end of the calendar quarter before the effective date of the Change in Control, or, if the award is stock-price based, as of the effective date of the Change in Control;
- d. For earned but unvested performance awards, the award shall be immediately vested and payable as of the effective date of the Change in Control;
- e. For awards other than performance awards, if our common stock continues to be publicly traded after a Change in Control, such awards shall continue under their applicable terms, unless otherwise determined by the Compensation Committee.

Notwithstanding the forgoing, in the case of awards other than performance awards, the Compensation Committee may cancel such awards, and the award holders shall receive shares or cash equal to the difference between the amount stockholders receive for their shares pursuant to the Change in Control event and the purchase price per share, if any, under the award.

Except as may be provided in a severance compensation agreement between us and the Participant, if, in connection with a Change in Control, a Participant's payment of any awards will cause the Participant to be liable for federal excise tax levied on certain "excess parachute payments," then either (i) all payments otherwise due or (ii) the reduced payment amount to avoid an excess parachute payment, whichever will provide the Participant with the greater after-tax economic benefit taking into account any applicable excise tax, shall be paid to the Participant. In no event will any Participant be entitled to receive any kind of gross-up payment or reimbursement for any excise taxes payable in connection with Change in Control payments.

Share Authorization

The maximum aggregate number of shares of common stock that may be issued under the Incentive Plan was initially 13,333,333 shares. On January 1st of each year, for a period of not more than nine years, beginning on January 1, 2023 and ending on (and including) January 1, 2031, the number of shares authorized under the Incentive Plan automatically increases in an amount equal to 3% of the total number of shares of common stock outstanding on December 31st of the preceding calendar year. On January 1, 2023, 2,834,229 shares were added to the Incentive Plan, resulting in a new number of shares authorized under the Incentive Plan of 16,167,562, all of which can be issued pursuant to the exercise of incentive stock options.

In connection with any corporate event or transaction (including, but not limited to, a change in our shares or our capitalization) such as a merger, consolidation, reorganization, recapitalization, separation, partial or complete liquidation, stock dividend, stock split, reverse stock split, split up, spin off, or other distribution of our stock or property, combination of shares, exchange of shares, dividend in kind, or other like change in capital structure, number of outstanding shares or distribution (other than normal cash dividends) to our stockholders, or any similar corporate event or transaction, the Compensation Committee, in its sole discretion, in order to prevent dilution or enlargement of Participants' rights under the Incentive Plan, shall substitute or adjust, as applicable, the number and kind of shares that may be issued under the Incentive Plan or under particular forms of awards, the number and kind of shares subject to outstanding awards, the option price or grant price applicable to outstanding awards, and other value determinations applicable to outstanding awards. The Compensation Committee may also make appropriate adjustments in the terms of any awards under the Incentive Plan to reflect or relate to such changes or distributions and to modify any other terms of outstanding awards, including modifications of performance goals and changes in the length of performance periods.

If an award entitles the holder to receive or purchase shares of common stock, the shares covered by such award or to which the award relates shall be counted against the aggregate number of shares available for awards under the Incentive Plan as follows:

- a. With respect to any awards, the number of shares available for awards shall be reduced by one share for each share covered by such award or to which the award relates; and
- b. Awards that do not entitle the holder to receive or purchase shares and awards that are settled in cash shall not be counted against the aggregate number of shares available for awards under the Incentive Plan.

In addition, any shares related to awards which terminate by expiration, forfeiture, cancellation, or otherwise without issuance of shares shall be available again for grant under the Incentive Plan.

In no event, however, will the following shares again become available for awards or increase the number of shares available for grant under the Incentive Plan:

- (i) shares tendered by the Participant in payment of the exercise price of an option;
- (ii) shares withheld from exercised awards for tax withholding purposes;
- (iii) shares subject to a SAR that are not issued in connection with the settlement of that SAR; and
- (iv) shares repurchased by us with proceeds received from the exercise of an option.

Amendment and Termination

No award may be granted under the Incentive Plan after 10 years from the date the Incentive Plan was approved by stockholders. The Compensation Committee may, at any time and from time to time, alter, amend, modify, suspend, or terminate the Incentive Plan and any award agreement in whole or in part; provided, however, that,

(i) without the prior approval of our stockholders, options or SARs issued under the Incentive Plan will not be repriced, repurchased (including a cash buyout), replaced, or re-granted through cancellation, or by lowering the option price of a previously granted option or the grant price of a previously granted SAR (except in connection with a permitted adjustment in authorized shares described above), and

(ii) any amendment of the Incentive Plan must comply with the rules of the primary stock exchange or trading market, if any, that our common stock is publicly traded on (the "Trading Market"), and (iii) no material amendment of the Incentive Plan shall be made without stockholder approval if stockholder approval is required by law, regulation, or Trading Market rule.

The Compensation Committee may make adjustments in the terms and conditions of, and the criteria included in, awards in recognition of unusual or nonrecurring events affecting us or our financial statements or of changes in applicable laws, regulations, or accounting principles, whenever the Compensation Committee determines that such adjustments are appropriate in order to prevent unintended dilution or enlargement of the benefits or potential benefits intended to be made available under the Incentive Plan.

Notwithstanding the foregoing, no termination, amendment, suspension, or modification of the Incentive Plan or an award agreement shall adversely affect in any material way any award previously granted under the Incentive Plan, without the written consent of the Participant holding such award.

Federal Income Tax Consequences

We have been advised by counsel regarding the federal income tax consequences of the Incentive Plan. No income is recognized by a Participant at the time an option or SAR is granted. If the option is an ISO, no income will be recognized upon the Participant's exercise of the option (except that the alternative minimum tax may apply). Income is recognized by a Participant when they dispose of shares acquired under an ISO. The exercise of a nonqualified stock option or SAR generally is a taxable event that requires the Participant to recognize, as ordinary income, the difference between the shares' fair market value and the option price. If a Participant disposes of shares acquired under an ISO before two years after the ISO was granted, or before one year after the ISO was exercised, this is a "disqualifying disposition" and any gain recognized by the Participant upon the disposition of such shares will be taxed as ordinary income to the extent such gain does not exceed the fair market value of such shares on the date the ISO was exercised over the option price.

Income is recognized on account of the award of restricted stock and performance shares when the shares first become transferable or are no longer subject to a substantial risk of forfeiture unless the Participant makes an election to recognize income on the grant date under Section 83(b) of the Code. At the applicable time, the Participant recognizes income equal to the fair market value of the common stock.

With respect to awards of performance units, restricted stock units, and cash-based awards, a Participant will recognize ordinary income equal to any cash that is paid and the fair market value of common stock that is received in settlement of an award.

Except in the case of a disqualifying distribution of shares acquired upon the exercise of an ISO, as described above, upon the sale or other disposition of shares acquired by a Participant under the Incentive Plan, the Participant will recognize short-term or long-term capital gain or loss, depending on whether such shares have been held for more than one year at such time. Such capital gain or loss will equal the difference between the amount realized on the sale of the shares and the Participant's tax basis in such shares (generally, the amount previously included in income by the Participant in connection with the grant or vesting of the shares or the exercise of the related option).

We generally will be entitled to claim a federal income tax deduction on account of the exercise of a nonqualified stock option or SAR or upon the taxability to the recipient of restricted stock and performance shares, the settlement

of a performance unit or restricted stock unit, and the payment of a cash-based or other stock-based award (subject to tax limitations on our deductions in any year that certain remuneration paid to certain executives exceeds \$1 million). The amount of the deduction is equal to the ordinary income recognized by the Participant. We will not be entitled to a federal income tax deduction on account of the grant or the exercise of an ISO unless the Participant has made a “disqualifying disposition” of the shares acquired on exercise of the ISO, in which case we will be entitled to a deduction at the same time and in the same amount as the Participant’s recognition of ordinary income. Except in the case of a disqualifying disposition of shares acquired on exercise of an ISO, a Participant’s sale or other disposition of shares acquired under the Incentive Plan should have no tax consequences for us.

The Director Plan

The following is a summary of the material features of the Director Plan, qualified in its entirety by reference to the Director Plan.

Awards and Deferrals

The Director Plan permits (1) the grant of shares of common stock to each of our non-employee directors and (2) if and when authorized by the Board, the deferral by the directors of some or all of their directors’ cash retainer fee and stock compensation. The Director Plan will have a term of ten years from the date on which it is approved by stockholders.

Administration

Our Chief Financial Officer (“Director Plan Administrator”) will administer the Director Plan. The Director Plan Administrator will interpret all provisions of the Director Plan, establish administrative regulations to further the purposes of the Director Plan and take any other action necessary for the proper operation of the Director Plan. All decisions and acts of the Director Plan Administrator shall be final and binding upon all participants in the Director Plan.

Eligibility

Each of our non-employee director is eligible to be a participant in the Director Plan (a “Director”) until they no longer serve as a non-employee director. The Board currently includes six (6) non-employee directors.

Share Authorization

The maximum aggregate number of shares of common stock that may be issued under the Director Plan is 1,833,333 shares. The aggregate fair market value (determined as of the grant date) of shares that may be issued as stock compensation to a Director in any year shall not exceed \$750,000, provided, however, that with respect to new directors joining the Board, the maximum amount shall be \$1,000,000 for the first year, or portion thereof, of service.

In connection with the occurrence of any corporate event or transaction (including, but not limited to, a change in our shares or our capitalization) such as a merger, consolidation, reorganization, recapitalization, separation, partial or complete liquidation, stock dividend, stock split, reverse stock split, split up, spin-off, or other distribution of our stock or property, combination of shares, exchange of shares, dividend in kind, or other like change in capital structure, number of outstanding shares or distribution (other than normal cash dividends) to our stockholders, or any similar corporate event or transaction, the Director Plan Administrator, in its sole discretion, in order to prevent dilution or enlargement of the Directors’ rights under the Director Plan, shall substitute or adjust, as applicable, the number and kind of shares that may be issued under the Director Plan, the number and kind of shares subject to outstanding grants, the annual grant limits, and other value determinations applicable to outstanding grants. The Director Plan Administrator may also make appropriate adjustments in the terms of any grants under the

Director Plan to reflect or relate to such changes or distributions and to modify any other terms of outstanding grants.

Grant of Shares

As of the first day of each compensation year (as defined in the Director Plan), we will, unless a different formula is selected in accordance with the last sentence of this paragraph, grant each Director a number of shares of our common stock for such year determined by (i) dividing the amount of each Director's cash retainer for the compensation year by the fair market value of the shares on the first day of the compensation year, and (ii) rounding such number of shares up to the nearest whole share. We may revise the foregoing formula for any year without stockholder approval, subject to the Plan's overall share limits. First Amendment to the Director Plan, adopted as of April 4, 2023 and effective as of November 10, 2022, adjusted the definition of the compensation year and changed the annual amount of shares of common stock to be awarded to the number of shares having a fair market value as of the date of grant of \$160,000, rounded up to the nearest whole share.

Vesting of Shares

Shares granted under the Director Plan will vest on the first anniversary of the grant date unless otherwise determined by the Director Plan Administrator. Unvested shares will be forfeited when a Director's service as a director terminates, except that (i) a Director's unvested shares shall become fully vested upon the Director's death or disability and (ii) a Director who elects not to stand for reelection as a Director for the following compensation year shall vest in a pro-rata portion of their outstanding grants at the annual meeting at which their service as a Director terminates.

Deferral Elections

While the deferral provision is not initially effective, at any point after the Director Plan is approved, the Board may determine that non-employee directors may defer all or part of their cash compensation (in 10% increments) into a deferred cash account, and they may defer all or part of their stock compensation (in 10% increments) into a deferred stock account. Prior to the Board's taking action to permit deferrals under the Director Plan, no cash or stock deferrals shall be permitted. Deferred cash and stock accounts, once permitted and created, would be unfunded and maintained for record keeping purposes only, and directors wishing to defer amounts under the 2021 Directors' Plan would be required to make their deferral elections by December 31st (or such earlier date as the Director Plan Administrator may designate) of the calendar year preceding the calendar year in which such compensation is earned or granted or, if later, within 30 days after first becoming eligible to make deferrals under the Director Plan.

Distributions of Deferrals

Distributions of deferrals under the Director Plan, once permitted, would generally be paid in a lump sum unless the Director specifies installment payments over a period up to 10 years. Deferred cash account amounts would be paid in cash, and deferred stock would be paid in whole shares of common stock. Unless otherwise elected by the Director, distributions would begin on February 15th of the year following the year in which the Director ceases to be a non-employee director. A Director could also elect to have their distributions commence on (a) the February 15th of the year following the later of the year in which they cease to be a non-employee director and the year in which they attain a specified age, or (b) the February 15th of the year following the year in which they attain a specified age, without regard to whether they are still a non-employee director. Cash deferral accounts would be credited with earnings and losses on such basis as determined by the Board or its designee, and stock deferral accounts would be credited with additional shares equal to the value of any dividends paid during the deferral period on deferred stock. Under limited hardship circumstances, Directors could withdraw some or all of the amounts of deferred cash and stock in their deferral accounts.

Change in Control

Unless otherwise determined by the Director Plan Administrator in connection with a grant, a Change in Control shall have the following effects on outstanding awards.

- a. On a Change in Control in which a Director receives a replacement award with a value and terms that are at least as favorable as the Director's outstanding awards (a "Replacement Award"), the Director's outstanding awards shall remain outstanding subject to the terms of the Replacement Award.
- b. On a Change in Control in which our shares cease to be publicly traded, the Director's outstanding awards shall become immediately vested unless the Director receives Replacement Awards.
- c. On a Change in Control in which our shares continue to be publicly traded, a Director's outstanding awards shall remain outstanding and be treated as Replacement Awards.

Notwithstanding the forgoing, the Director Plan Administrator may determine that any or all outstanding awards granted under the Director Plan will be canceled and terminated upon a Change in Control, and that in connection with such cancellation and termination, the Director shall receive for each share of common stock subject to such award a cash payment (or the delivery of shares of stock, other securities or a combination of cash, stock and securities equivalent to such cash payment) equal to the consideration received by our stockholders for a share of common stock in such Change in Control.

Amendment and Termination

The Director Plan Administrator may, at any time, alter, amend, modify, suspend, or terminate the Director Plan in whole or in part; provided, however, that, without the prior approval of our stockholders, no such amendment shall increase the number of shares that may be granted to any Director, except as otherwise provided in the Director Plan, or increase the total number of shares that may be granted under the Director Plan. In addition, any amendment of the Director Plan must comply with the rules of the Trading Market, and no material amendment of the Director Plan shall be made without stockholder approval if stockholder approval is required by law, regulation, or stock exchange rule.

Federal Income Tax Consequences

With respect to shares granted under the Director Plan, unless deferred if and when the Board authorizes the deferral feature, the Director will be taxed on the fair market value of such shares at ordinary income rates at the time such shares vest or, if the Director made an election under Section 83(b), on the grant date. We will receive a corresponding deduction for the same amount at the same time.

With respect to cash or shares deferred under the Director Plan, Directors will be taxed on amounts distributed to them from their deferred cash and deferred stock accounts at ordinary income rates at the time of such distributions. We will receive a deduction for the same amounts at the same time.

Upon the sale or other disposition of shares acquired by a Director under the Director Plan, the Director will recognize short-term or long-term capital gain or loss, depending on whether such shares have been held for more than one year at such time. Such capital gain or loss will equal the difference between the amount realized on the sale of such shares and the Director's tax basis in such shares (generally, the amount previously included in income by the Director in connection with the grant or vesting of such shares). Such sale or other disposition by a Director should have no tax consequences for us.

Other Information

The number of shares to be issued in each year is not determinable, as it varies based on the amount of stock awards determined to be paid to Directors as part of their retainer fees.

Welfare and other benefits

We provide health, dental, and vision insurance benefits to our Named Executive Officers, on the same terms and conditions as provided to all other eligible U.S. employees except for a recently hired employee in North Dakota for whom separate benefit arrangements are being put together due to North Dakota laws.

We maintain a broad-based 401(k) plan including our Named Executive Officers. Our Named Executive Officers did not participate in, or otherwise receive any benefits under, any pension or retirement plan sponsored by the Company during the fiscal year ended May 31, 2023. Our Named Executive Officers did not participate in, or earn any benefits under, a non-qualified deferred compensation plan sponsored by the Company during the fiscal year ended May 31, 2023.

Director Compensation

The following table presents the compensation for each person who served as a director on our Board during fiscal year ended May 31, 2023.

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$) ⁽¹⁾	Total (\$)
Chuck Hastings	\$33,000	\$210,503	\$243,503
Kelli McDonald	\$38,000	\$210,503	\$248,503
Douglas Miller	\$45,000	\$210,503	\$255,503
Virginia Moore	\$35,000	\$210,503	\$245,503
Richard Nottenburg	\$36,000	\$210,503	\$246,503

(1) Amounts shown represent the aggregate grant date fair value, computed in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 718, of awards of restricted stock granted during fiscal year ended May 31, 2023. Each director held 76,191 unvested shares of restricted stock as of May 31, 2023.

The following table shows the annual cash retainer fees for non-employee directors.

Base retainer	\$	40,000
Audit Committee Chair	\$	20,000
Audit Committee Member	\$	10,000
Compensation Committee Chair	\$	15,000
Compensation Committee Member	\$	7,500
Nominating and Governance Committee Chair	\$	12,000
Nominating and Governance Committee Member	\$	6,000
Lead Independent Director	\$	25,000

Directors serving in multiple leadership roles receive incremental compensation for each role. Directors are not expected to receive additional compensation for attending regularly scheduled Board or committee meetings. For less than full years of service, the compensation paid to the non-employee directors will be prorated based on the number of days of service. Directors also receive customary reimbursement for reasonable out-of-pocket expenses related to Board service.

In addition to the annual cash retainer fees, directors also receive an annual grant of restricted stock valued at \$160,000, calculated using the closing price of the Common Stock on the Nasdaq Global Select Market on the date of grant, which is the date of each annual meeting of stockholders, and vesting on the first anniversary of the date of grant.

On April 21, 2023, directors received (i) a grant of 76,191 shares of restricted stock that will vest on November 10, 2023 in order to compensate directors who were elected on November 10, 2022 for the subsequent 12 months, and (ii) a grant of 18,630 vested shares in light of the fact that the non-employee directors did not receive a grant of equity on April 21, 2022 as originally contemplated under the Director Plan.

Directors who are employees of the Company do not receive any additional compensation for Board service.

Compensation Committee Interlocks and Insider Participation

None of the members of our Compensation Committee is, or has been, our officer or employee. None of our executive officers currently serves, or during the year ended May 31, 2021 served, as a member of the Board, or as a member of the compensation or similar committee, of any entity that has one or more executive officers serving on our Board or Compensation Committee.

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

The following table sets forth certain information with respect to the beneficial ownership of our common stock, as of July 25, 2023, by:

- (a) each of our Named Executive Officers
- (b) each of our Directors
- (c) all of our directors and officers as a group
- (d) each stockholder known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock.

We have determined beneficial ownership in accordance with the rules of the SEC. Unless otherwise indicated below, to our knowledge, based on information furnished to us, the persons and entities named in the table have sole voting and investment power with respect to all shares that they beneficially own, subject to applicable community property laws. Any securities that are exercisable for, or convertible into, shares of Common Stock within 60 days of July 25, 2023 are deemed to be outstanding and to be beneficially owned by the person holding the securities for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

We have based our calculation of the percentage ownership of our common stock on 103,950,005 shares of our common stock.

Name and Address(a)	Shares Beneficially Owned (b)	
	Number	Percentage
Directors and Officers:		
Wes Cummins	23,394,201 (b)	22.5 %
David Rench	207,664 (c)	*
Chuck Hastings	559,321 (d)	*
Kelli McDonald	194,821 (e)	*
Douglas Miller	194,821 (f)	*
Virginia Moore	462,438 (g)	*
Richard Nottenburg	194,821 (h)	*
Michael Maniscalco	47,222(i)	*
Officers and Directors as a group (8 people)	25,255,309 (b)-(i)	24.3 %

5% Holders:

Guo Chen	7,440,148 ⁽ⁱ⁾	7.16 %
Bo Dong		
c/o GMR Limited Trinity Chamber PO BOX 4301 Tortola, British Virgin Islands		

* Less than 1%.

(a) Unless otherwise indicated, the business address of each person or entity named in the table is c/o Applied Blockchain, Inc., 3811 Turtle Creek Blvd., Suite 2100, Dallas, TX 75219.

(b) Includes (i) 17,590,238 shares of common stock held by Cummins Family Ltd, of which Mr. Cummins is the CEO, (ii) 742,166 shares of common stock held by Wesley Cummins IRA Account, (iii) 2,030,686 shares of Common Stock held by B. Riley Asset Management, LLC, of which Mr. Cummins is the President and (iv) 83,333 shares of common stock issuable upon vesting of RSUs held by Mr. Cummins within 60 days of July 25, 2023.

(c) Includes 41,667 shares of common stock issuable upon vesting of RSUs held by Mr. Rench within 60 days of July 25, 2023.

(d) Includes 76,191 shares of restricted Common Stock held directly by Mr. Hastings which will vest on November 11, 2023.

(e) Includes 76,191 shares of restricted Common Stock held directly by Ms. McDonald which will vest on November 11, 2023.

(f) Includes 76,191 shares of restricted Common Stock held directly by Mr. Miller which will vest on November 11, 2023.

(g) Includes (i) 267,617 shares of common stock, held directly by Mr. Moore and (ii) 76,191 shares of restricted Common Stock held directly by Ms. Moore which will vest on November 11, 2023.

(h) Includes 76,191 shares of restricted Common Stock held directly by Dr. Nottenburg which will vest on November 11, 2023.

(i) Includes 30,556 shares of Common Stock issuable upon vesting of RSUs held by Mr. Maniscalco within 60 days of July 25, 2023.

(j) Guo Chen, as 50% owner and sole director of GMR Limited, and Bo Dong, as 50% owner of GMR, each have voting and dispositive power over the 7,440,148 shares of our common stock held by GMR Limited. Mr. Chen and Mr. Dong disclaims beneficial ownership of such shares.

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

Related Transactions

In addition to the compensation arrangements discussed in the sections titled “Management” and “Executive Officer and Director Compensation,” the following is a description of each transaction since June 1, 2022 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeded or will exceed \$120,000; and
- any of our directors, executive officers, or holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with, any of these individuals, had or will have a direct or indirect material interest.

GMR Limited (“GMR”) holds more than 5% of our outstanding Common Stock. Guo Chen, a 50% owner and sole director of GMR, is also deemed to beneficially own shares of our Common Stock held by GMR. GMR and subsidiaries made payments to the Company of approximately \$9.2 million during the fiscal year ended May 31, 2023

Mr. Chen owns 60% of Altermity Fund Ltd., which owns 100% of GOI. On December 8th, 2021, we entered into a Service Order with GOI pursuant to which we provide energized space for mining activities of GOI. During fiscal

year 2023, Global Operating Infrastructure LLC paid approximately \$6.4 million to Company pursuant to the Service Order.

Bryant Riley, chairman of the board and co-chief executive officer, of B. Riley Financial, Inc. (Nasdaq: RILY), directly or indirectly through subsidiaries of RILY, held in excess of 5% of our then outstanding Common Stock beginning in April 2023. Such shares no longer represent more than 5% of our outstanding Common Stock. On May 23, 2023, the Company entered into a Loan and Security Agreement with B. Riley Commercial Capital, LLC and B. Riley Securities, Inc., each of which is a wholly-owned subsidiary of RILY, with a total possible principal amount up to \$50 million. As of May 31, 2023 the total loan balance was \$36.5 million, all of which has been subsequently repaid as of July 17, 2023.

Review, Approval, or Ratification of Transactions with Related Parties

In July 2021, we adopted a charter of the Audit Committee, pursuant to which all related party transactions including those between us, our directors, executive officers, majority stockholders and each of our respective affiliates or family members will be reviewed and approved by our Audit Committee, or if no Audit Committee exists, by a majority of the independent members of our Board. Our existing policies are designed to comply with applicable rules and regulations of the SEC and the listing requirements and rules of Nasdaq.

Director Independence

Please see the discussion of director independence under Item 10. Directors, Executive Officers and Corporate Governance starting on page 60 above.

Item 14. Principal Accounting Fees and Services

REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

The Audit Committee oversees the Company's financial reporting process on behalf of the Board. In fulfilling its oversight responsibilities, the Audit Committee reviewed and discussed with management the audited financial statements in the Company's Form 10-K, including a discussion of the acceptability of the accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the financial statements.

The Audit Committee reviewed and discussed with the independent registered public accounting firm, which is responsible for expressing an opinion on the conformity of those audited financial statements with the standards of the Public Company Accounting Oversight Board, the matters required to be discussed by Statements on Auditing Standards (SAS 61), as may be modified or supplemented, and their judgments as to the acceptability of the Company's accounting principles and such other matters as are required to be discussed with the Audit Committee under the standards of the Public Company Accounting Oversight Board.

In addition, the Audit Committee has discussed with the independent registered public accounting firm their independence from management and the Company, including receiving the written disclosures and letter from the independent registered public accounting firm as required by the Independence Standards Board Standard No. 1, as may be modified, or supplemented, and has considered the compatibility of any non-audit services with the auditors' independence.

The Audit Committee discussed with the Company's independent registered public accounting firm the overall scope and plans for their audit. The Audit Committee met with the independent registered public accounting firm, with and without management present, to discuss the results of their examinations and the overall quality of the Company's financial reporting.

In reliance on the reviews and discussions referred to above, the Audit Committee recommended to the Board, and the Board approved, that the audited financial statements be included in the Company's Form 10-K for the year ended May 31, 2023 for filing with the SEC.

Respectfully submitted,

The Audit Committee of the Board of Directors
Douglas Miller, Chair
Chuck Hastings
Richard Nottenburg

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The following table presents fees billed to the Company for professional services rendered by our independent registered public accounting firm, Marcum LLP, for the fiscal years ended May 31, 2023 and 2022:

(in thousands)	Fiscal Years Ended May 31,	
	2023	2022
Type of Fees:		
Audit fees	\$556	\$423
Total fees	\$556	\$423

For the fiscal years ended May 31, 2023 and 2022, the Audit Committee approved all of the services provided by, and fees paid to, Marcum LLP.

The Audit Committee has established a policy requiring approval by it of all fees for audit and non-audit services to be provided by the Company's independent registered public accountants, prior to commencement of such services. Consideration and approval of fees generally occurs at the Committee's regularly scheduled meetings or, to the extent that such fees may relate to other matters to be considered at special meetings, at those special meetings.

Part IV

Item 15. Exhibits, Financial Statement Schedules

Documents filed as part of this report

All financial statements:

Index to consolidated financial statements	Page
Report of Registered Independent Public Accounting Firm	
Consolidated Balance Sheets as of May 31, 2022 and 2022	
Consolidated Statements of Operations for the Annual Period Ended May 31, 2023, and 2022	
Consolidated Statements of Changes in Stockholders' Equity for the Annual Period ended May 31, 2023 and 2022	
Consolidated Statements of Cash Flows for the Annual Period ended May 31, 2023 and 2022	
Notes to Consolidated Financial Statements	

Financial statement schedules:

All financial statement schedules have been omitted, since the required information is not applicable or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements and accompanying notes included in this Form 10-K.

Exhibits required by Item 601 of Regulation S-K:

Exhibit No.	Description
3.1*	Second Amended and Restated Articles of Incorporation, as amended from time to time.

3.2	<u>Amended and Restated Bylaws, as amended from time to time (Incorporated by reference to Exhibit 3.2 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)</u>
4.1	<u>Registration Rights Agreement, dated April 15, 2021, by and between the Company and B. Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 4.1 to the Company's Form S-1 (Registration No. 333-258818), with the SEC on August 13, 2021)</u>
4.1.1	<u>Amendment, dated December 13, 2021, to Registration Rights Agreement, dated April 15, 2021, by and between the Company and B. Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 3.2 to Amendment No. 1 to the Company's form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022)</u>
4.1.2	<u>Amendment No. 2, dated February 22, 2022, to Registration Rights Agreement, dated April 15, 2021, by and between the Company and Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 4.3 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on February 28, 2022)</u>
4.2	<u>Registration Rights Agreement, dated July 30, 2021, by and between the Company and B. Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 4.2 to the Company's Form S-1 (Registration No. 333-258818), with the SEC on August 13, 2021)</u>
4.2.1	<u>Amendment, dated December 13, 2021, to Registration Rights Agreement, dated July 30, 2021, by and between the Company and B. Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 3.2 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022)</u>
4.2.2	<u>Amendment No. 2, dated February 22, 2022, to Registration Rights Agreement, dated July 30, 2021, by and between the Company and Riley Securities, Inc., for the benefit of B. Riley Securities, Inc. and the Investors (Incorporated by reference to Exhibit 4.6 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on February 28, 2022)</u>
4.3	<u>Right of First Refusal and Co-Sale Agreement, dated as of April 15, 2021, by and between the Company, the Key Holders and Investors (Incorporated by reference to Exhibit 4.3 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)</u>
4.4	<u>Right of First Refusal and Co-Sale Agreement, dated as of July 30, 2021, by and between the Company, the Key Holders and Investors (Incorporated by reference to Exhibit 4.4 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)</u>
4.5*	<u>Description of Securities</u>
10.1	<u>Services Agreement, dated March 19, 2021, by and among the Company, GMR Limited, Xsquared Holding Limited, and Valuefinder (Incorporated by reference to Exhibit 10.1 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)</u>
10.2	<u>Master Professional Services Agreement between Ulteig Engineers, Inc. and APLD Hosting, LLC (Incorporated by reference to Exhibit 10.2 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)</u>
10.3	<u>Non-Fixed Price Sales and Purchase Agreement, dated April 13, 2021, between Bitmain Technologies Limited and the Company (Incorporated by reference to Exhibit 10.3 to the company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)</u>
10.4	<u>Coinmint Colocation Mining Services Agreement dated as of June 15, 2021 by and between Coinmint, LLC and the Company (Incorporated by reference to Exhibit 10.4 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021)</u>

10.5#	Service Framework Agreement, dated July 5, 2021, by and between APLD Hosting, LLC and JointHash Holding Limited (Incorporated by reference to Exhibit 10.5 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.6#	Amended and Restated Electric Services Agreement, dated September 13, 2021, by and between APLD Hosting, LLC and [Redacted] (Incorporated by reference to Exhibit 10.6 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 258818), filed with the SEC on November 2, 2021).
10.7	Sublease Agreement, dated as of May 19, 2021, by and between the Company and Encap Investments L.P. (Incorporated by reference to Exhibit 10.7 to the Company's Form S-1 (Registration No. 333-258818), filed with the SEC on August 13, 2021).
10.8#	Service Framework Agreement, dated July 5, 2021, by and between APLD Hosting, LLC and Bitmain Technologies Limited (Incorporated by reference to Exhibit 10.8 to the Company's Annual Report on Form 10-K, filed with the SEC on August 29, 2022).
10.9#	Master Hosting Agreement, dated as of September 20, 2021, by and between APLD Hosting, LLC and F2Pool Mining, Inc. (Incorporated by reference to Exhibit 10.9 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.10#	Master Hosting Agreement, dated as of October 12, 2021, by and between APLD Hosting, LLC and Hashing LLC. (Incorporated by reference to Exhibit 10.10 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.11	Services Agreement, effective as of October 12, 2021, by and among Applied Blockchain, LTD and Xsquared Holding Limited. (Incorporated by reference to Exhibit 10.11 to Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on November 2, 2021).
10.12†	2022 Incentive Plan (Incorporated by reference to Exhibit 10.1 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.12.1†	Form of Employee Restricted Stock Award Agreement (Incorporated by reference to Exhibit 10.2 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.12.2†	Form of Restricted Stock Unit Award Agreement (Employees) (Incorporated by reference to Exhibit 10.3 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.12.3†	Form of Restricted Stock Unit Award Agreement (Consultants) (Incorporated by reference to Exhibit 10.4 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.13†	2022 Non-Employee Director Stock Plan (Incorporated by reference to Exhibit 10.5 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.13.1*†	First Amendment to the 2022 Non-Employee Director Stock Plan, dated April 4, 2023.
10.13.2	Form of Director Restricted Stock Award Agreement (Incorporated by reference to Exhibit 10.6 to the Company's registration statement on Form S-8 (Registration No. 333-265698), filed with the SEC on June 17, 2022).
10.14#	Limited Liability Company Agreement, dated as of January 6, 2022, by and between the Company and Antpool Capital Asset Investment (Incorporated by reference to Exhibit 10.14 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).
10.15†	Employment Agreement, effective as of November 1, 2021, by and between the Company and Wes Cummins (Incorporated by reference to Exhibit 10.15 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).
10.16†	Employment Agreement, effective as of November 1, 2021, by and between the Company and David Rench (Incorporated by reference to Exhibit 10.16 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).

10.17*	Ground Lease, effective as of April 13, 2022, by and between EDB, Ltd and APLD - Rattlesnake Den I LLC
10.18†	Employment Agreement, effective as of November 1, 2021, by and between the Company and Regina Ingel (Incorporated by reference to Exhibit 10.17 to Amendment No. 5 to the Company's registration statement on Form S-1 (Registration No. 333-258818), filed with the SEC on January 24, 2022).
10.18.1	Amendment dated August 1, 2022 to Employment Agreement between Applied Blockchain, Inc. and Regina Ingel (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on August 5, 2022)
10.19	Loan Agreement dated as of March 11, 2022 by and between APLD Hosting, LLC, Vantage Bank Texas and Applied Blockchain, Inc. (Incorporated by reference to Exhibit 10.20 to Amendment No. 6 the Company's form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022).
10.20	Continuing Guaranty Agreement dated as of March 11, 2022 by Applied Blockchain, Inc. for the benefit of Vantage Bank Texas. (Incorporated by reference to Exhibit 10.21 to Amendment No. 6 the Company's form S-1 (Registration No. 333-258818), filed with the SEC on April 12, 2022).
10.21	Letter between Applied Blockchain, Inc. and Xsquared Holding Limited dated June 6, 2022 (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on June 8, 2022).
10.22	Hosting Agreement, dated as of July 12, 2022, by and between Marathon Digital Holdings, Inc. and Applied Blockchain, Inc. (Incorporated by reference to Exhibit 10.6 to the Company's quarterly report on Form 10-Q (Commission File No. 001-31968), filed with the SEC on October 12, 2022).
10.23	Loan Agreement, dated as of July 25, 2022, by and among APLD Hosting, LLC, Starion Bank, and Applied Blockchain, Inc. as Guarantor (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on August 12, 2022).
10.24	Security Agreement, dated of July 25, 2022, by and between APLD Hosting, LLC and Starion Bank (Incorporated by reference to Exhibit 10.2 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on August 12, 2022).
10.25	Security Agreement, dated of July 25, 2022, by and among APLD Hosting, LLC, Applied Blockchain, Inc., as Grantor, and Starion Bank (Incorporated by reference to Exhibit 10.3 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on August 12, 2022).
10.26	Unlimited Commercial Corporate Guaranty of Applied Blockchain, Inc. dated as of July 25, 2022 (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on August 12, 2022).
10.27	Loan Agreement by and among APLD – Rattlesnake Den I, LLC, as borrower, Vantage Bank Texas, as lender, and the Company, as guarantor entered into as of November 7, 2022. (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on November 14, 2022).
10.28#	Loan Agreement, dated as of February 16, 2023 by and among APLD ELN-01 LLC, Starion Bank, and Applied Digital Corporation as Guarantor (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on February 21, 2023).
10.29#	Security Agreement, dated as of February 16, 2023 by and between APLD ELN-01 LLC and Starion Bank (Incorporated by referenced to Exhibit 10.2 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on February 21, 2023).
10.30	Security Agreement, dated as of February 16, 2023 by and among APLD ELN-01 LLC, Applied Digital Corporation and Starion Bank (Incorporated by referenced to Exhibit 10.3 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on February 21, 2023).

10.31	Unlimited Commercial Corporate Guaranty of Applied Digital Corporation dated as of February 16, 2023 (Incorporated by referenced to Exhibit 10.4 to the Company's current report on Form 8-K (Commission File No. 001-31968), filed with the SEC on February 21, 2023)
10.32#	Loan and Security Agreement, dated as of May 23, 2023, by and among SAI Computing, LLC as Borrower, B. Riley Commercial Capital LLC and B. Riley Securities, Inc., as Lenders, B. Riley Commercial Capital, LLC as Collateral Agent, and Applied Digital Corporation Guarantor (Incorporated by reference to Exhibit 10.1 to the Company's current report on Form 8-K (Commission File No. 001-31968), with the SEC on May 24, 2023).
21.1*	List of Subsidiaries.
23.1*	Consent of Marcum, LLP.
24.1	Power of Attorney (contained on signature page).
31.1*	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley of 2002.
31.2*	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley 2002.
32.1*	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley of 2002.
32.2*	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley 2002.
101.INS*	Inline XBRL Instance Document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

† Management compensatory agreement.

Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, Texas on August 2, 2023.

APPLIED DIGITAL CORPORATION

By: /s/ Wes Cummins

Name: Wes Cummins
Title: Chief Executive Officer, Secretary and Treasurer (Principal Executive Officer)

By: /s/ David Rench

Name: David Rench
Title: Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below hereby constitutes and appoints Wes Cummins and David Rench, and each of them individually, his or her true and lawful agent, proxy and attorney-in-fact, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to (i) act on, sign and file with the Securities and Exchange Commission any and all amendments to this Report together with all schedules and exhibits thereto, (ii) act on, sign and file with the Securities and Exchange Commission any and all exhibits to this Report and any and all exhibits and schedules thereto, (iii) act on, sign and file any and all such certificates, notices, communications, reports, instruments, agreements and other documents as may be necessary or appropriate in connection therewith and (iv) take any and all such actions which may be necessary or appropriate in connection therewith, granting unto such agents, proxies and attorneys-in-fact, and each of them individually, full power and authority to do and perform each and every act and thing necessary or appropriate to be done, as fully for all intents and purposes as he or she might or could do in person, and hereby approving, ratifying and confirming all that such agents, proxies and attorneys-in-fact, any of them or any of his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Person	Capacity	Date
/s/ Wes Cummins Wes Cummins	Chairperson of the Board and Director (Principal Executive Officer)	August 2, 2023

<u>/s/ David Rench</u> David Rench	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	August 2, 2023
<u>/s/ Chuck Hastings</u> Chuck Hastings	Director	August 2, 2023
<u>/s/ Kelli McDonald</u> Kelli McDonald	Director	August 2, 2023
<u>/s/ Douglas Miller</u> Douglas Miller	Director	August 2, 2023
<u>/s/ Virginia Moore</u> Virginia Moore	Director	August 2, 2023
<u>/s/ Richard Nottenburg</u> Richard Nottenburg	Director	August 2, 2023



FRANCISCO V. AGUILAR
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
 Website: www.nvsos.gov

Certificate, Amendment or Withdrawal of Designation

NRS 78.1955, 78.1955(6)

Certificate of Designation
 Certificate of Amendment to Designation - Before Issuance of Class or Series
 Certificate of Amendment to Designation - After Issuance of Class or Series
 Certificate of Withdrawal of Certificate of Designation

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:	Name of entity: <input style="width: 90%;" type="text" value="Applied Digital Corporation"/> Entity or Nevada Business Identification Number (NVID): <input style="width: 20%;" type="text" value="C13283-2001"/>
2. Effective date and time:	For Certificate of Designation or Amendment to Designation Only Date: <input style="width: 15%;" type="text"/> Time: <input style="width: 15%;" type="text"/> (Optional): (must not be later than 90 days after the certificate is filed)
3. Class or series of stock: (Certificate of Designation only)	The class or series of stock being designated within this filing: <input style="width: 90%;" type="text" value="Series E Preferred Stock"/>
4. Information for amendment of class or series of stock:	The original class or series of stock being amended within this filing: <input style="width: 90%;" type="text"/>
5. Amendment of class or series of stock:	<input checked="" type="checkbox"/> Certificate of Amendment to Designation- Before Issuance of Class or Series As of the date of this certificate no shares of the class or series of stock have been issued.
	<input type="checkbox"/> Certificate of Amendment to Designation- After Issuance of Class or Series The amendment has been approved by the vote of stockholders holding shares in the corporation entitling them to exercise a majority of the voting power, or such greater proportion of the voting power as may be required by the articles of incorporation or the certificate of designation.
6. Resolution: Certificate of Designation and Amendment to Designation only)	By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes OR amends the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.* <input style="width: 90%;" type="text" value="See Exhibit A attached hereto for Certificate of Amendment to Certificate of Designations for Series E Preferred Stock"/>
7. Withdrawal:	Designation being <input style="width: 20%;" type="text"/> Date of <input style="width: 20%;" type="text"/> Withdrawn: <input style="width: 20%;" type="text"/> Designation: <input style="width: 20%;" type="text"/> No shares of the class or series of stock being withdrawn are outstanding. The resolution of the board of directors authorizing the withdrawal of the certificate of designation establishing the class or series of stock: * <input style="width: 90%; height: 40px;" type="text"/>
8. Signature: (Required)	DocuSigned by: <input style="width: 80%; height: 20px;" type="text" value="David Rendh"/> Date: <input style="width: 15%;" type="text" value="6/7/2023"/> Signature of Officer

* Attach additional page(s) if necessary
 This form must be accompanied by appropriate fees.

EXHIBIT A
TO CERTIFICATE, AMENDMENT OR WITHDRAWAL OF DESIGNATION OF
SERIES E REDEEMABLE PREFERRED STOCK OF
APPLIED DIGITAL CORPORATION

IT IS HEREBY CERTIFIED THAT:

1. The Certificate of Designations of Series E Redeemable Preferred Stock of Applied Digital Corporation (the "Corporation") is hereby amended by striking out Section 1.1(d)(i)(A) thereof and by substituting in its place the following new Section:

“(A) The holders of shares of Series E Preferred Stock shall be entitled to receive, and the Corporation shall pay, out of legally available funds, dividends on each share of Series E Preferred Stock at an annual rate of 8.0% of the Stated Value. Dividends will be declared and accrued monthly. Such dividends shall be payable upon Board approval, which may not be monthly, out of legally available funds in cash. Dividends payable on the Series E Preferred Stock for any Dividend Period (as defined below) (including any Dividend Period during which any shares of Series E Preferred Stock shall be redeemed) shall be computed on the basis of twelve 30-day months and a 360-day year. The holders of shares of Series E Preferred Stock are not entitled to any dividend in excess of full cumulative dividends on shares of Series E Preferred Stock. Such dividends shall be payable upon Board approval, which may not be monthly, out of legally available funds in cash.”

2. That said amendment was duly adopted in accordance with the provisions of Section 78.380 of the Nevada Revised Statutes by the unanimous consent of the members of the Board of Directors of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed and attested to this 7th day of June, 2023.

DocuSigned by:

02052968860111
David Rench
Chief Financial Officer

FRANCISCO V. AGUILAR
Secretary of State

GABRIEL DI CHIARA
Chief Deputy

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701
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Fax (775) 684-7138
North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
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Business Entity - Filing Acknowledgement

02/14/2023

Work Order Item Number: W2023021401529-2703770
Filing Number: 20232955038
Filing Type: Certificate of Designation
Filing Date/Time: 2/14/2023 12:12:00 PM
Filing Page(s): 9

Indexed Entity Information:

Entity ID: C13283-2001 Entity Name: Applied Digital Corporation
Entity Status: Active Expiration Date: None

Commercial Registered Agent

CAPITOL CORPORATE SERVICES, INC.
202 SOUTH MINNESOTA STREET, Carson City, NV 89703, USA

The attached document(s) were filed with the Nevada Secretary of State, Commercial Recording Division. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Respectfully,

A handwritten signature in black ink that reads "FV Aguilar".

FRANCISCO V. AGUILAR
Secretary of State

DocuSign Envelope ID: 2B8E9D92-D127-4A86-ADC2-EAD1B21CC6E5



FRANCISCO V. AGUILAR
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
 Website: www.nvsos.gov

Filed in the Office of	Business Number
<i>FV Aguilar</i>	C13283-2001
Secretary of State	Filing Number
State Of Nevada	20232955038
	Filed On
	2/14/2023 12:12:00 PM
	Number of Pages
	9

Certificate, Amendment or Withdrawal of Designation

NRS 78.1955, 78.1955(6)

- Certificate of Designation**
- Certificate of Amendment to Designation - Before Issuance of Class or Series**
- Certificate of Amendment to Designation - After Issuance of Class or Series**
- Certificate of Withdrawal of Certificate of Designation**

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity Information:	Name of entity: Applied Digital Corp.
	Entity or Nevada Business Identification Number (NVID): C13283-2001
2. Effective date and time:	For Certificate of Designation or Amendment to Designation Only (Optional): Date: _____ Time: _____ (must not be later than 90 days after the certificate is filed)
3. Class or series of stock: (Certificate of Designation only)	The class or series of stock being designated within this filing: Series E Preferred Stock
4. Information for amendment of class or series of stock:	The original class or series of stock being amended within this filing: _____
5. Amendment of class or series of stock:	<input type="checkbox"/> Certificate of Amendment to Designation- Before Issuance of Class or Series As of the date of this certificate no shares of the class or series of stock have been issued. <input type="checkbox"/> Certificate of Amendment to Designation- After Issuance of Class or Series The amendment has been approved by the vote of stockholders holding shares in the corporation entitling them to exercise a majority of the voting power, or such greater proportion of the voting power as may be required by the articles of incorporation or the certificate of designation.
6. Resolution: Certificate of Designation and Amendment to Designation only)	By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes OR amends the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.* See Exhibit A attached hereto for Certificate of Designations for Series E Preferred Stock.
7. Withdrawal:	Designation being Withdrawn: _____ Date of Designation: _____ No shares of the class or series of stock being withdrawn are outstanding. The resolution of the board of directors authorizing the withdrawal of the certificate of designation establishing the class or series of stock: * _____
8. Signature: (Required)	DocuSigned by: <input checked="" type="checkbox"/> <i>David Kende</i> A76581D9E41846E Signature of Officer Date: 2/14/2023

* Attach additional page(s) if necessary
 This form must be accompanied by appropriate fees.

**CERTIFICATE OF DESIGNATIONS
OF THE POWERS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER RESTRICTIONS
OF SERIES E PREFERRED STOCK
OF APPLIED DIGITAL CORP.**

Applied Digital Corp. (the "*Corporation*"), pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions, does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation (the "*Board*") by the provisions of Article FOURTH of the Second Amended and Restated Articles of Incorporation of the Corporation (the "*Articles*"), the Board of Directors of the Corporation duly adopted resolutions authorizing the issuance of 2,000,000 shares of preferred stock, par value \$0.001 per share, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock to be designated "Series E Redeemable Preferred Stock," as further described below (the "*Series E Designation*"). The Series E Designation shall be in full force and effect as of the date hereof.

Section 1.1 Designation. As of the effective date of this Certificate, there is hereby created out of the authorized preferred stock of the Corporation a series of preferred stock designated as "Series E Redeemable Preferred Stock", par value \$0.001 per share (the "*Series E Preferred Stock*"). The following rights, powers and privileges, and restrictions, qualifications and limitations, shall apply to the Series E Preferred Stock.

(a) Rank. The Series E Preferred Stock, if entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up of the Corporation's affairs, ranks, with respect to the payment of any such dividends and rights upon the Corporation's liquidation, dissolution or winding up of its affairs: (i) prior or senior to all classes or series of common stock of the Corporation, par value \$0.001 per share ("*Common Stock*"); (ii) on a parity with other classes or series of our equity securities issued in the future if, pursuant to the specific terms of such class or series of equity securities, the holders of such class or series of equity securities are entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up of the affairs of the Corporation in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority one over the other; (iii) junior to any class or series of our equity securities if, pursuant to the specific terms of such class or series, the holders of such class or series are entitled to the receipt of dividends or amounts distributable upon liquidation, dissolution or winding up

of the affairs of the Corporation in preference or priority to the holders of the Series E Preferred Stock; and (iv) junior to all of the Corporation's existing and future debt.

(b) Liquidation, Dissolution or Winding Up of Affairs; Certain Mergers, Consolidations and Asset Sales.

(i) Payments to Holders of Series E Preferred Stock. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, before any distribution or payment shall be made to the holders of Common Stock or any other class or series of capital stock ranking junior to the Series E Preferred Stock, by reason of their ownership thereof, and after payment or provision for the Corporation's debts and other liabilities, the holders of shares of Series E Preferred Stock then outstanding shall be entitled to be paid out of the funds and assets available for distribution to the stockholders of the Corporation, an amount per share equal to the Stated Value (as defined below) for such share of Series E Preferred Stock, plus an amount per share equal to accrued, but unpaid dividends to, but not including, the date of payment, and excluding interest on any such payment. If upon any such liquidation, dissolution or winding up of the affairs of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation shall be insufficient to pay the holders of shares of Series E Preferred Stock the full amount to which they are entitled under this Section 1.1(b)(i), the holders of shares of Series E Preferred Stock shall share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of the shares of Series E Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. The "*Stated Value*" shall mean Twenty-Five United States Dollars and No Cents (\$25.00) per share, subject to an equitable adjustment for stock splits, stock combinations, recapitalizations and similar transactions.

(ii) Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series E Preferred Stock as provided in Section 1.1(b)(i), the remaining funds and assets available for distribution to the stockholders of the Corporation shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder. Upon the liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, until payment in full is made to the holders of shares of Series E Preferred Stock of the liquidation distribution to which they are entitled, (A) no dividend or other distribution shall be made to the holders of Common Stock or any other class or series of shares of capital stock of the Corporation ranking junior to the shares of Series E Preferred Stock and (B) no purchase, redemption or other acquisition for any consideration by the Corporation shall be made in respect of the Common Stock or any other class or series of shares

of capital stock of the Corporation ranking junior to the shares of Series E Preferred Stock.

(iii) Exceptions. The consolidation or merger of the Corporation with or into any other corporation, trust or other entity, the consolidation or merger of any other corporation, trust or entity with or into the Corporation, the sale or transfer of any or all of the Corporation's assets or business or a statutory share exchange will not be deemed to constitute a liquidation, dissolution, or winding up of the affairs of the Corporation for purposes of this Section 1.1(b).

(c) Voting. Holders of shares of Series E Preferred Stock shall not have voting rights.

(d) Dividends.

(i) Dividends Generally.

(A) The holders of shares of Series E Preferred Stock shall be entitled to receive, and the Corporation shall pay, out of legally available funds, dividends on each share of Series E Preferred Stock at an annual rate of 8.0% of the Stated Value. Dividends will be declared and accrued monthly. Such dividends shall be payable upon Board approval, which may not be monthly, out of legally available funds in cash or Common Stock. Dividends payable on the Series E Preferred Stock for any Dividend Period (as defined below) (including any Dividend Period during which any shares of Series E Preferred Stock shall be redeemed) shall be computed on the basis of twelve 30-day months and a 360-day year. The holders of shares of Series E Preferred Stock are not entitled to any dividend in excess of full cumulative dividends on shares of Series E Preferred Stock. Such dividends shall be payable upon Board approval, which may not be monthly, out of legally available funds in cash or Common Stock. The aggregate number of shares of Common Stock issuable on the Series E Preferred Stock (for dividends and redemption) will not exceed 18,800,189 shares of Common Stock without consent of the Corporation's shareholders.

(B) Dividends payable on each share of Series E Preferred Stock shall begin accruing on, and will be cumulative from, the first day of the Dividend Period during which such share of Series E Preferred Stock was originally issued. Each subsequent dividend will begin accruing on, and will be cumulative from, the end of the most recent Dividend Period for which a dividend has been paid on each such share of Series E Preferred Stock. The term "*Dividend Period*" means the respective periods commencing on, and including, the first day of each month of each year and ending on, and including, the day preceding the first day of the next succeeding Dividend Period (other than the Dividend Period during which any shares of Series E Preferred Stock shall be redeemed, which shall end on, and include, the day

preceding the redemption date with respect to the shares of Series E Preferred Stock being redeemed).

(ii) Restrictions. Unless full cumulative dividends on the shares of Series E Preferred Stock for all past Dividend Periods have been or contemporaneously are paid or a sum sufficient for the payment thereof is set apart for payment, the Corporation shall not:

(A) declare and pay or declare and set apart for payment dividends and the Corporation shall not declare and make any other distribution of cash or other property (other than dividends or distributions paid in shares of stock ranking junior to the Series E Preferred Stock as to the dividend rights or rights upon the Corporation's liquidation, dissolution or winding up of its affairs, and options, warrants or rights to purchase such shares), directly or indirectly, on or with respect to any shares of Common Stock or any class or series of the Corporation's stock ranking junior to or on parity with the Series E Preferred Stock as to dividend rights or rights upon the Corporation's liquidation, dissolution or winding up of its affairs for any period; or

(B) except by conversion into or exchange for shares of stock ranking junior to the Series E Preferred Stock as to dividend rights or rights upon the Corporation's liquidation, dissolution or winding up of its affairs, or options, warrants or rights to purchase such shares, redeem, purchase or otherwise acquire (other than a redemption, purchase or other acquisition of Common Stock made for purposes of an employee incentive or benefit plan) for any consideration, or pay or make available any monies for a sinking fund for the redemption of, any Common Stock or any class or series of the Corporation's stock ranking junior to or on parity with the Series E Preferred Stock as to dividend rights or rights upon the Corporation's liquidation, dissolution or winding up of its affairs.

(e) Redemption.

(i) Optional Redemption Generally.

(A) Subject to the restrictions described herein and unless prohibited by Nevada law governing distributions to stockholders of a corporation, each holder of shares of Series E Preferred Stock is entitled to redeem any portion of the outstanding Series E Preferred Stock held by such holder (a "**Holder Optional Redemption**"). At the option of the Board, in its sole discretion and taking into account the Corporation's reserves and other considerations as the Board may determine, a Holder Optional Redemption may be redeemed in either cash or Common Stock; provided that the aggregate number of shares of Common Stock issuable to holders of Series E Preferred Stock for dividends and redemption shall not exceed

18,800,189 shares of Common Stock without consent of the Corporation's shareholders.

(B) If the Corporation settles a Holder Optional Redemption in cash, it shall do so by paying the holder the Settlement Amount (as defined below). If the Corporation settles a Holder Optional Redemption with Common Stock, it shall do so by delivering to the holder a number of shares of Common Stock at a rate equal to (1) the Settlement Amount divided by (2) the closing price of shares of Common Stock on the Nasdaq Global Select Market, or other national securities exchange on which the Common Stock is listed, on the last trading day on or before the Holder Redemption Exercise Date (as defined below). If the Corporation opts to deliver shares of Common Stock in settlement of a redemption, and on the Holder Redemption Exercise Date (defined below) Nevada law governing distributions to stockholders of a corporation or the terms hereof prevents the Corporation from redeeming all outstanding shares of Series E Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares of Series E Preferred Stock that it may redeem with Common Stock consistent with such law and the provisions hereof, and shall redeem the remaining shares in cash or in Common Stock as soon as it may lawfully do so under such law or the terms hereof. The "**Settlement Amount**" means (I) the Stated Value, plus (II) unpaid Dividends accrued to, but not including, the Holder Redemption Exercise Date (as defined below), minus (III) the Series E Holder Optional Redemption Fee applicable on the respective Holder Redemption Deadline (defined below).

(C) Holders of shares of Series E Preferred Stock may elect to redeem their shares of Series E Preferred Stock at any time by delivering to the Corporation's servicing agent a notice of redemption (the "**Holder Redemption Notice**"). A Holder Redemption Notice shall be effective as of the last business day of the month after a Holder Redemption Notice is duly received by the Corporation (such date, a "**Holder Redemption Deadline**"). Any Holder Redemption Notice received after 5:00 p.m. Eastern time on a Holder Redemption Deadline shall be effective as of the next Holder Redemption Deadline. For all shares of Series E Preferred Stock duly submitted for Redemption on or before a Holder Redemption Deadline, the Corporation shall determine the Settlement Amount on any business day after such Holder Redemption Deadline but before the next Holder Redemption Deadline (such date, the "**Holder Redemption Exercise Date**"). Within such period, the Corporation may select the Holder Redemption Exercise Date in the Corporation's sole discretion. The Corporation may, in the Corporation's sole discretion, permit a holder to revoke their Holder Redemption Notice at any time prior to 5:00 pm, Eastern time, on the business day immediately preceding the Holder Redemption Exercise Date.

(ii) Optional Redemption Fee. A share of Series E Preferred Stock is subject to an early redemption fee ("*Series E Holder Optional Redemption Fee*") if it is redeemed by its holder within three years after the date of its issuance (the "*Issuance Date*"). The amount of the fee equals a percentage of the Stated Value based on the year in which the redemption occurs after the Issuance Date as follows:

(A) Prior to the first anniversary of the Issuance Date: 9.00% of the Stated Value, which equals \$2.25 per share of Series E Preferred Stock;

(B) On or after the first anniversary of the Issuance Date but prior to the second anniversary of the Issuance Date: 7.00% of the Stated Value, which equals \$1.75 per share of Series E Preferred Stock;

(C) On or after the second anniversary of the Issuance Date but prior to the third anniversary of the Issuance Date: 5.00% of the Stated Value, which equals \$1.25 per share of Series E Preferred Stock; and

(D) On or after the third anniversary of the Issuance Date: 0.00% of the Stated Value, which equals \$0.00 per share of Series E Preferred Stock.

The Corporation is permitted to waive the Holder Optional Redemption Fee. Any such waiver would apply to any holder Series E Preferred Stock qualifying for the waiver and exercising a Holder Optional Redemption during the pendency of the term of such waiver. Although the Corporation has retained the right to waive the Holder Optional Redemption Fee in the manner described above, the Corporation is not required to establish any such waivers and the Corporation may never establish any such waivers.

(iii) Optional Redemption Following Death of a Holder. Subject to the restrictions described herein and unless prohibited by Nevada law governing distributions to stockholders of a corporation, beginning on the Issuance Date and ending at the end of the third year, the Corporation shall redeem Series E Preferred Stock of a beneficial owner who is a natural person (including a natural person who holds shares of Series E Preferred Stock through an Individual Retirement Account or in a personal or estate planning trust) upon his or her death at the written request of the beneficial owner's estate at a redemption price equal to the Settlement Amount without application of the Series E Holder Optional Redemption Fee.

(iv) Corporation Optional Redemption. Subject to the restrictions described herein and unless prohibited by Nevada law governing distributions to stockholders of a corporation or the terms hereof, a share of Series E Preferred Stock may be redeemed at the Corporation's option (the "*Corporation Optional Redemption*") at any time or from time to time upon not less than 10 calendar days nor more than 90 calendar days written notice to the holders prior to the date fixed for redemption thereof, at a redemption price of 100% of the Stated Value of the

shares of Series E Preferred Stock to be redeemed plus accrued but unpaid dividends thereon. In the Board's sole and absolute discretion, the Corporation may determine to fulfill a Corporation Optional Redemption in either cash or with fully paid and non-assessable shares of Common Stock; provided that the aggregate number of shares of Common Stock issuable to holders of Series E Preferred Stock for dividends and redemption shall not exceed 18,800,189 shares of Common Stock without consent of the Corporation's shareholders. The Corporation shall not exercise the Corporation Optional Redemption prior to the earlier of the second-year anniversary of the date on which a share of Series E Preferred Stock has been issued (the "***Redemption Eligibility Date***"). If the Corporation exercises the Corporation Optional Redemption for less than all of the outstanding shares of Series E Preferred Stock, then shares of Series E Preferred Stock shall be selected for redemption on a pro rata basis or by lot across holders of the series of Series E Preferred Stock selected for redemption. If, on the date of the contemplated Corporation Optional Redemption, Nevada law governing distributions to stockholders of a corporation or the terms hereof prevents the Corporation from redeeming all outstanding shares of Series E Preferred Stock to be redeemed, the Corporation may ratably redeem the maximum number of shares of Series E Preferred Stock that it may redeem consistent with such law or provision hereof, and may redeem the remaining shares, in the Board's sole discretion, in cash or, as soon as it may lawfully do so under such law, with shares of Common Stock. There is no Holder Optional Redemption Fee charged upon a Corporation Optional Redemption.

(v) Reserves of Common Stock. To the extent the Corporation determines to fulfill a Holder Optional Redemption or a Corporation Optional Redemption with fully paid and non-assessable shares of Common Stock, instead of with cash, the Corporation shall ensure it has available shares of Common Stock out of its authorized and unissued shares of Common Stock. All rights with respect to the Series E Preferred Stock shall terminate upon the redemption.

(vi) Retirement of Series E Preferred Stock. Any Series E Preferred Stock redeemed in accordance with this (e) shall be retired and cancelled and shall not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its preferred stock accordingly.

Section 1.2 Withholding. The Corporation agrees that, provided that a holder of the Corporation's capital stock delivers to the Corporation a properly executed IRS Form W-9 certifying as to such holder's complete exemption from backup withholding (or, if such holder is a disregarded entity for U.S. federal income tax purposes, its regarded owner's complete exemption from backup withholding), under current law the Corporation (including any paying agent of the Corporation) shall not be required to, and shall not, withhold on any payments or

deemed payments to any such holder. In the event that any holder of the Corporation's capital stock fails to deliver to the Corporation such properly executed IRS Form W-9, the Corporation reasonably believes that a previously delivered IRS W-9 is no longer accurate and/or valid, or there is a change in law that affects the withholding obligations of the Corporation, the Corporation and its paying agent shall be entitled to withhold taxes on all payments made to the relevant holder in the form of cash or to request that the relevant holder promptly pay the Corporation in cash any amounts required to satisfy any withholding tax obligations. In the event that the Corporation does not have sufficient cash with respect to any such holder from withholding on cash payments otherwise payable to such holder and cash paid by such holder to the Corporation pursuant to the immediately preceding sentence, the Corporation and its paying agent shall be entitled to withhold taxes on deemed payments, including constructive distributions, on the Series E Preferred Stock to the extent required by law, and the Corporation and its paying agent shall be entitled to satisfy any required withholding tax on non-cash payments (including deemed payments) from cash dividends or sales proceeds subsequently paid or credited on the Series E Preferred Stock.

BARBARA K. CEGAVSKE
Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for
Commercial Recordings

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701
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North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888

Business Entity - Filing Acknowledgement

04/12/2022

Work Order Item Number: W2022041200473-2050767
Filing Number: 20222245441
Filing Type: Certificate Pursuant to NRS 78.209
Filing Date/Time: 4/12/2022 9:06:00 AM
Filing Page(s): 1

Indexed Entity Information:

Entity ID: C13283-2001 Entity Name: Applied Blockchain, Inc.
Entity Status: Active Expiration Date: None

Commercial Registered Agent
CAPITOL CORPORATE SERVICES, INC.
202 SOUTH MINNESOTA STREET, Carson City, NV 89703, USA

The attached document(s) were filed with the Nevada Secretary of State, Commercial Recording Division. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

BARBARA K. CEGAVSKE
Secretary of State



BARBARA K. CEGAVSKE
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
 Website: www.nvsos.gov

Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 2022245441
	Filed On 4/12/2022 9:06:00 AM
	Number of Pages 1

Certificate of Change Pursuant to NRS 78.209

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Indicate the current number of authorized shares and par value, if any, and each class or series before the change.
3. Indicate the number of authorized shares and par value, if any of each class or series after the change.
4. Indicate the change of the affected class or series of issued, if any, shares after the change in exchange for each issued share of the same class or series.
5. Indicate provisions, if any, regarding fractional shares that are affected by the change.
6. NRS required statement.
7. This section is optional. If an effective date and time is indicated the date must not be more than 90 days after the date on which the certificate is filed.
8. Must be signed by an Officer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: <div style="border: 1px solid black; padding: 2px;">Applied Blockchain, Inc.</div>		
	Entity or Nevada Business Identification Number (NVID): <div style="border: 1px solid black; padding: 2px;">C13283-2001</div>		
2. Current Authorized Shares:	The current number of authorized shares and the par value, if any, of each class or series, if any, of shares before the change: Number of Common Stock: 1,000,000,000, par value \$0.001 Number of Series A Preferred Stock: 70,000, par value \$0.001 Number of Series B Preferred Stock: 50,000, par value \$0.001 Number of Series C Preferred Stock: 660,000, par value \$0.001 Number of Series D Preferred Stock: 1,380,000, par value \$0.001		
3. Authorized Shares After Change:	The number of authorized shares and the par value, if any, of each class or series, if any, of shares after the change: Number of Common Stock: 166,666,666, par value \$0.001 Number of Series A Preferred Stock: 70,000, par value \$0.001 Number of Series B Preferred Stock: 50,000, par value \$0.001 Number of Series C Preferred Stock: 660,000, par value \$0.001 Number of Series D Preferred Stock: 1,380,000, par value \$0.001		
4. Issuance:	The number of shares of each affected class or series, if any, to be issued after the change in exchange for each issued share of the same class or series: (1) Reverse Stock Split of all authorized common stock: 1 share for each 6 authorized; 1,000,000,000 shares of common stock were authorized, leaving 166,666,666 shares authorized after the reverse stock split. (2) A corresponding Reverse Stock Split of all issued and outstanding common stock: 1 share for each 6 issued and outstanding; 547,230,709 shares of common stock were issued and outstanding, leaving 91,205,023 shares outstanding after the reverse stock split.		
5. Provisions:	The provisions, if any, for the issuance of fractional shares, or for the payment of money or the issuance of scrip to stockholders otherwise entitled to a fraction of a share and the percentage of outstanding shares affected thereby: No fractional shares will be issued. All fractional shares as a result of the reverse split will be paid out in cash.		
6. Provisions:	The required approval of the stockholders has been obtained.		
7. Effective date and time: (Optional)	Date: April 12, 2022	Time: 1:15 PM Pacific Time	(must not be later than 90 days after the certificate is filed)
8. Signature: (Required)	<input checked="" type="checkbox"/> <i>[Signature]</i>	Chief Executive Officer	3-11-2022
	Signature of Officer	Title	Date

This form must be accompanied by appropriate fees.
 If necessary, additional pages may be attached to this form.

BARBARA K. CEGAVSKE
Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for
Commercial Recordings

STATE OF NEVADA



**OFFICE OF THE
SECRETARY OF STATE**

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701
Telephone (775) 684-5708
Fax (775) 684-7138
North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888

Certified Copy

01/05/2022 12:23:57 PM

Work Order Number: W2022010501262 - 1823582
Reference Number: 20222004999
Through Date: 01/05/2022 12:23:57 PM
Corporate Name: Applied Blockchain, Inc.

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number	Description	Number of Pages
20211673333	Certificate of Correction - 07/28/2021	2
20211638120	Amendment After Issuance of Stock - 07/28/2021	1
20211638141	Certificate of Designation - 07/28/2021	19
20211631740	Certificate of Correction - 07/23/2021	1
20211631749	Amendment After Issuance of Stock - 07/23/2021	1
20211631763	Certificate of Designation - 07/23/2021	19
20211566343	Certificate of Acceptance by Registered Agent - 06/29/2021	1
20211502899	Annual List - 06/02/2021	2
20211456018	Certificate of Correction - 05/13/2021	2
20211387751	Amended and Restated Articles - 04/15/2021	71
20211386244	Certificate of Correction - 04/15/2021	2

BARBARA K. CEGAVSKE
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KIMBERLEY PERONDI
Deputy Secretary for
Commercial Recordings

STATE OF NEVADA



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North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888



Certified By: Electronically Certified
Certificate Number: B202201052285184
You may verify this certificate
online at <http://www.nvsos.gov>

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

BARBARA K. CEGAVSKE
Nevada Secretary of State

DocuSign Envelope ID: 7A838493-EDCD-4BF7-B493-FB194D25DCCF



BARBARA K. CEGAVSKE
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
 Website: www.nvsos.gov

Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20211673333
	Filed On 7/28/2021 10:57:00 AM
	Number of Pages 2

Certificate of Correction
 NRS 78, 78A, 80, 81, 82, 84, 86, 87, 87A, 88, 88A, 89 and 92A
 (Only one document may be corrected per certificate.)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Name of document with inaccuracy or defect.
3. Filing date of document with inaccuracy or defect.
4. Brief description of inaccuracy or defect.
5. Correction of inaccuracy or defect.
6. Must be signed by Authorized Signer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: Applied Blockchain, Inc. Entity or Nevada Business Identification Number (NVID): C13283-2001
2. Document:	Name of document with inaccuracy or defect: Second Amended and Restated Articles of Incorporation
3. Filing Date:	Filing date of document which correction is being made: April 15, 2021
4. Description:	Description of inaccuracy or defect: Section 1.1(c)(ii)(B) of Exhibit C to the Second Amended and Restated Articles of Incorporation contains an incorrect reference in the first sentence of the paragraph.
5. Correction:	Correction of inaccuracy or defect: Section 1.1(c)(ii)(B) of Exhibit C to the Second Amended and Restated Articles of Incorporation is corrected to remove the reference (12) twelve months and change it to (8) eight months.
6. Signature: (Required)	<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <p>DocuSigned by:</p> <p>X <i>David Kende</i></p> <p>Signature</p> </div> <div style="text-align: right;"> <p>07/28/2021</p> <p>Date</p> </div> </div>

This form must be accompanied by appropriate fees.

DocuSign Envelope ID: 5AB838FE-68F5-4751-95E3-3DFB88B932FC



BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20211638120
	Filed On 7/28/2021 9:49:00 AM
	Number of Pages 1

Certificate of Amendment
(PURSUANT TO NRS 78.385 AND 78.390)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Amendment to Articles of Incorporation
For Nevada Profit Corporations
(Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)**

1. Name of corporation:

APPLIED BLOCKCHAIN, INC.

2. The articles have been amended as follows: (provide article numbers, if available)

THIRD. The total number of shares of capital stock which this corporation shall have authority to issue is one billion, five million (1,005,000,000) with a par value of \$0.001 per share amounting to \$1,005,000.00. One billion (1,000,000,000) of those shares are Common Stock and five million (5,000,000) of those shares are Preferred Stock. Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of this corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except (i) as determined by the Board of Directors of this corporation in accordance with the provisions of Section (3) of Article FOURTH of these Articles of Incorporation, or (ii) as otherwise provided by the Nevada General Corporation Law, as amended from time to time.

3. The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is:

4. Effective date and time of filing: (optional) Date: Time: (must not be later than 90 days after the certificate is filed)

5. Signature: (required)

X Digitally signed by:
Wes Cummings

Signature of Officer

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.
This form must be accompanied by appropriate fees.

Nevada Secretary of State Amend Profit-After
Revised: 1-6-15

DocuSign Envelope ID: F89C73E1-5BF5-4B9E-9B2D-B48A702532AA



BARBARA K. CEGAVSKE
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
 Website: www.nvsos.gov

Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20211638141
	Filed On 7/28/2021 9:49:00 AM
	Number of Pages 19

Certificate, Amendment or Withdrawal of Designation

NRS 78.1955, 78.1955(6)

- Certificate of Designation**
- Certificate of Amendment to Designation - Before Issuance of Class or Series**
- Certificate of Amendment to Designation - After Issuance of Class or Series**
- Certificate of Withdrawal of Certificate of Designation**

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity Information:	Name of entity: <input type="text" value="Applied Blockchain, Inc."/> Entity or Nevada Business Identification Number (NVID): <input type="text" value="C13283-2001"/>
2. Effective date and time:	For Certificate of Designation or Amendment to Designation Only (Optional): Date: <input type="text"/> Time: <input type="text"/> <small>(must not be later than 90 days after the certificate is filed)</small>
3. Class or series of stock: (Certificate of Designation only)	The class or series of stock being designated within this filing: <input type="text" value="Series D Preferred Stock"/>
4. Information for amendment of class or series of stock:	The original class or series of stock being amended within this filing: <input type="text"/>
5. Amendment of class or series of stock:	<input type="checkbox"/> Certificate of Amendment to Designation- Before Issuance of Class or Series As of the date of this certificate no shares of the class or series of stock have been issued.
	<input type="checkbox"/> Certificate of Amendment to Designation- After Issuance of Class or Series The amendment has been approved by the vote of stockholders holding shares in the corporation entitling them to exercise a majority of the voting power, or such greater proportion of the voting power as may be required by the articles of incorporation or the certificate of designation.
6. Resolution: Certificate of Designation and Amendment to Designation only)	By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes OR amends the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.* <input type="text" value="See Exhibit A attached hereto for Certificate of Designations for Series D Preferred Stock."/>
7. Withdrawal:	Designation being Withdrawn: <input type="text"/> Date of Designation: <input type="text"/> No shares of the class or series of stock being withdrawn are outstanding. The resolution of the board of directors authorizing the withdrawal of the certificate of designation establishing the class or series of stock: * <input type="text"/>
8. Signature: (Required)	<input checked="" type="checkbox"/> <i>Wes Cummins</i> Signature of Officer Date: <input type="text" value="7/28/2021"/>

* Attach additional page(s) if necessary
 This form must be accompanied by appropriate fees.

**CERTIFICATE OF DESIGNATIONS
OF THE POWERS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER RESTRICTIONS
OF SERIES D PREFERRED STOCK
OF APPLIED BLOCKCHAIN, INC.**

Applied Blockchain, Inc. (the "Corporation"), pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions, does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the provisions of Article FOURTH of the Second Amended and Restated Articles of Incorporation of the Corporation (the "*Articles*"), the Board of Directors of the Corporation duly adopted resolutions authorizing the issuance of 1,380,000 shares of preferred stock, par value \$0.001 per share, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock to be designated "Series D Convertible Redeemable Preferred Stock," as further described below (the "*Series D Designation*"). The Series D Designation shall be in full force and effect as of the date hereof.

Section 1.1 Designation. As of the effective date of this Certificate, there is hereby created out of the authorized preferred stock of the Corporation a series of preferred stock designated as "Series D Convertible Redeemable Preferred Stock" (the "*Series D Preferred Stock*"), par value \$0.001 per share. The Series D Preferred Stock shall, with respect to dividend rights or rights upon a liquidation, winding-up or dissolution of the Corporation, rank *pari passu* with the Series C Convertible Redeemable Preferred Stock (the "*Series C Preferred Stock*"), and together with the Series D Preferred Stock, the "*Preferred Stock*"). The following rights, powers and privileges, and restrictions, qualifications and limitations, shall apply to the Series D Preferred Stock.

(a) Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(i) Payments to Holders of Series D Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or any Deemed Liquidation Event (as defined below), before any payment shall be made to the holders of the Common Stock by reason of their ownership thereof, the holders of shares of Series D Preferred Stock then outstanding shall be entitled to be paid out of the funds and assets available for distribution to the stockholders of the Corporation, an amount per share equal to the Stated Value (as defined below) for such share of Series D Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series D Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (as defined below). If upon any such liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation shall be insufficient to pay the holders of shares of Series D Preferred Stock the full amount to which they are entitled under this Section 1.1(a)(i) and the holders of Series C Preferred Stock the full amount to which they are entitled under the Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other

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Restrictions of Series C Preferred Stock, the holders of shares of Series D Preferred Stock and Series C Preferred Stock shall share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of the shares of Series D Preferred Stock and Series C Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. The "*Stated Value*" shall mean Twenty-Five United States Dollars and No Cents (\$25.00) per share, subject to an equitable adjustment for stock splits, stock combinations, recapitalizations and similar transactions.

(ii) Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series D Preferred Stock and Series C Preferred Stock as provided in Section 1.1(a)(i), the remaining funds and assets available for distribution to the stockholders of the Corporation shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

(iii) Deemed Liquidation Events.

(A) Definition. Each of the following events shall be considered a "*Deemed Liquidation Event*" unless the holders of at least a majority of the outstanding shares of Series D Preferred Stock (voting as a single class on an as-if converted to Common Stock basis) (the "*Requisite Holders*") elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

(1) a merger or consolidation in which (I) the Corporation is a constituent party or (II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the equity securities of (x) the surviving or resulting party or (y) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such merger or consolidation, the parent of such surviving or resulting party; *provided* that, for the purpose of this Section 1.1(a)(iii)(A), all shares of Common Stock issuable upon exercise of options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, deemed to be converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged; or

(2) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or, if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, the sale or disposition (whether by merger or otherwise)

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of one or more subsidiaries of the Corporation, except where such sale, lease, transfer or other disposition is to the Corporation or one or more wholly owned subsidiaries of the Corporation.

Notwithstanding the foregoing, a Significant Transaction Event (as defined below) shall not be considered a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event. A "*Significant Transaction Event*" means (i) a merger or other business combination designed to increase the number of stockholders of the Corporation in order to facilitate a listing on a Trading Market (as such term is defined in that certain Registration Rights Agreement, dated as of July 28, 2021, by and between the Corporation and B. Riley Securities, Inc., as the placement agent ("*B. Riley*"), for the benefit of B. Riley and the holders of Series D Preferred Stock (the "*Registration Rights Agreement*"), (ii) a business combination with a special purpose acquisition company that results in the Corporation's securities being listed for trading on a Trading Market, or (iii) a business combination with a company that is listed on a Trading Market that results in the Corporation's securities being listed for trading on a Trading Market.

(B) Public Offering or Listing Facilitation Transaction. Under no circumstances shall a public offering of the Corporation's securities, including a public offering that results in a change of control of the Corporation, designed to increase the number of stockholders of the Corporation in order to facilitate a listing on a Trading Market (as such term is defined in the Registration Rights Agreement) be considered a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

(C) Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Section 1.1(a)(iii)(A)(1)(I), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow, the definitive agreement for such transaction shall provide that the portion of such consideration that is placed in escrow shall be allocated among the holders of capital stock of the Corporation pro rata based on the amount of such consideration otherwise payable to each stockholder (such that each stockholder has placed in escrow the same percentage of the total consideration payable to such stockholder as every other stockholder).

(D) Amount Deemed Paid or Distributed. The funds and assets deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer or other disposition described in this Section 1.1(a)(iii) shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

(b) Voting. Holders of shares of Series D Preferred Stock shall vote together with holder of Series C Preferred Stock and holders of Common Stock on an as-if converted to Common Stock basis on any matters coming before the stockholders of the Corporation for a vote. Notwithstanding the foregoing, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate) the written consent or affirmative vote of the Requisite Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

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(i) materially change the principal business of the Corporation unless in connection with a Significant Transaction Event; or

(ii) except in connection with a Significant Transaction Event, sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of the Corporation or permit any direct or indirect subsidiary to do so; provided, however, that no consent or vote of the Requisite Holders shall be required in connection with sales of mining equipment in the ordinary course of the Corporation's business and in a manner consistent with the principal business of the Corporation.

(c) Dividends.

(i) Dividends Generally. The holders of shares of Series D Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series D Preferred Stock equal (on an as-if converted to Common Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. Except as set forth in this Section 1.1(c)(i) and for PIK Dividends (as defined below), no other dividends shall be paid on shares of Series D Preferred Stock.

(ii) PIK Dividends. The Corporation shall be required to pay a dividend in fully paid and non-assessable shares of Series D Preferred Stock (each a "*PIK Dividend*" and, collectively, the "*PIK Dividends*") equal to the percentage of Stated Value set forth below upon the occurrence of each of the following events:

(A) Failure to File. If the Corporation has not filed or confidentially submitted a registration statement (the "*Registration Statement*") to register the shares of Common Stock issuable upon conversion of the Series D Preferred Stock (the "*Registrable Securities*") on or before August 15, 2021, the Corporation shall accrue daily a PIK Dividend equal to ten percent (10%) per annum of Stated Value;

(B) Failure to be Declared Effective and to List. If the Registration Statement has not been declared effective by the U.S. Securities and Exchange Commission (the "*SEC*") on or before December 15, 2021 and/or the Registrable Securities are not listed on a Trading Market on or before December 15, 2021, the Corporation shall accrue daily a PIK Dividend of twelve percent (12%) per annum of Stated Value, or fifteen percent (15%) per annum of Stated Value for each day such failure continues after October 15, 2022. Such PIK Dividend shall be instead of, and not in addition to, any PIK Dividend also accruing under Section 1.1(c)(ii)(A); and

(C) Mandatory Redemption Failure. If the Corporation fails to complete a Mandatory Redemption (as defined below) when required to do so, it shall continue to pay a PIK Dividend in accordance with Section 1.1(c)(ii)(B).

The PIK Dividends shall be paid by delivering to each record holder of Series D Preferred Stock a number of shares of Series D Preferred Stock determined by dividing (x) the total aggregate dollar amount of dividends accrued and unpaid with respect to Series D Preferred Stock owned by such record holder (rounded to the nearest whole cent) by (y) the Stated Value.

Notwithstanding the foregoing, PIK Dividends shall cease cumulating and accruing upon the earliest to occur of (1) the date of the satisfaction of the conditions set forth in Section 1.1(c)(ii)(A), Section 1.1(c)(ii)(B) and Section 1.1(c)(ii)(C) that gave rise to such PIK Dividend (any such date, a "PIK Dividend Satisfaction Date"), and (2) any Conversion Date (as defined below) or Optional Conversion Date (as defined below). Upon a simultaneous or consecutive occurrence of two or more events that trigger the accrual of PIK Dividends on one or more days, PIK Dividends shall accrue on each issued and outstanding share of Series D Preferred Stock as if only one triggering event had occurred, such that the accrual of PIK Dividends in accordance with this Section 1.1(c)(ii) shall not be doubled, tripled or otherwise multiplied due to the existence of multiple events causing the accrual of PIK Dividends.

Notwithstanding the foregoing, (I) if on or prior to October 15, 2021, the Corporation enters into a binding definitive agreement or binding instrument relating to a Significant Transaction Event (a "Definitive Instrument"), then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date, and (II) if the Corporation has entered into a Definitive Instrument on or prior to October 15, 2021 and has consummated the Significant Transaction Event on or prior to February 15, 2022, then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date.

(d) Automatic Conversion.

(i) Trigger Event. On the Conversion Date (as defined below), each share of Series D Preferred Stock shall be automatically converted (without the payment of additional consideration by the holder thereof), into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Conversion Date. The "Conversion Price" shall be a price per share equal to the least of: (w) \$0.44 per share, (x) 75% of the price per share to be sold in the Corporation's Qualified Offering, (y) 75% of the opening public price per share in a direct listing of the Corporation's Common Stock on a Trading Market (a "Direct Listing") or (z) 75% of the per share amount to be paid for each share of the Corporation's Common Stock in a sale of all or substantially all of the stock or assets of the Company (a "Merger"), in each case subject to adjustment as provided herein. For purposes hereof, "Conversion Date" means (A) the date that the Registration Statement is declared effective by the SEC, (B) the date on which the Corporation consummates a Direct Listing or Qualified Offering or (C) the date on which a Merger is consummated. For purposes hereof, "Qualified Offering" means the first underwritten public offering of Common Stock by the Corporation to occur after the initial issuance of Series D Preferred Stock (the "Original Issue Date").

(ii) Mechanics of Conversion. All holders of record of Series D Preferred Stock shall be sent written notice of the Conversion Date and the place designated for conversion of all such shares of Series D Preferred Stock pursuant to this Section 1.1(d). Such notice need not be sent in advance of the occurrence of the Conversion Date. Upon receipt of such notice, each holder of Series D Preferred Stock shall, if such holder's shares are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series D Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent

on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer agent, duly executed by the registered holder of shares of Series D Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series D Preferred Stock converted pursuant to this Section 1.1(d) will terminate at the Conversion Date (notwithstanding the failure of the holder or holders of Series D Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series D Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(d)(ii). As soon as practicable after the Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series D Preferred Stock, the Corporation shall issue and deliver to such holder of Series D Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series D Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(iii) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series D Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of persons other than the holders of Series D Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 1.1(d)) upon the conversion of the then outstanding shares of Series D Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

(iv) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series D Preferred Stock. As to any fraction of a share which the holder of shares of Series D Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(v) Transfer Taxes and Expenses. The issuance of shares of Common Stock on conversion of the Series D Preferred Stock shall be made without charge to any holder of Series D Preferred Stock for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such shares of Common Stock, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such shares of Common Stock upon conversion in a name other than that of the holders of the Series D Preferred Stock of such shares of Series D Preferred Stock and the Corporation shall not be required to issue or deliver such shares of Common Stock unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all transfer agent fees required for same-day processing and all fees to the

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Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the shares of Common Stock.

(vi) Adjustments to Conversion Price for Diluting Issues.

(A) Special Definitions. For purposes of this Section 1.1(d), the following definitions shall apply:

(1) *“Additional Shares of Common Stock”* shall mean all shares of Common Stock issued (or, pursuant to Section 1.1(d)(vi)(C) below, deemed to be issued) by the Corporation after the Original Issue Date, other than (x) the following shares of Common Stock and (y) shares of Common Stock deemed issued pursuant to the following Options (as defined below) and Convertible Securities (as defined below) (clauses (x) and (y), collectively, *“Exempted Securities”*):

a. as to any series of Preferred Stock, shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock; or

b. shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 1.1(d)(vii); or

c. shares of Common Stock, Options or other equity-linked securities or awards issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation; or

d. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security; or

e. shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction; or

f. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; or

g. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked issued in connection with a Significant Transaction Event; or

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(2) "*Convertible Securities*" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(3) "*Option*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(C) Deemed Issue of Additional Shares of Common Stock.

(1) If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(2) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (II) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (2) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (x) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (y) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of

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Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(3) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) (either because the consideration per share (determined pursuant to Section 1.1(d)(vi)(E)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (II) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 1.1(d)(vi)(C)(1)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(4) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(5) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 1.1(d)(vi)(C) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (2) and (3) of this Section 1.1(d)(vi)(C)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 1.1(d)(vi)(C) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the

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Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 1.1(d)(vi)(C)), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(1) "CP₂" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock;

(2) "CP₁" shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(3) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock, other than Exempted Securities, issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(4) "B" shall mean the number of shares of Common Stock, excluding Exempted Securities, that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP₁ (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP₁); and

(5) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(E) Determination of Consideration. For purposes of this Section 1.1(d)(vi), the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

b. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

c. in the event Additional Shares of Common Stock are issued together with other shares or securities, excluding Exempted Securities, or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses a. and b. above, as determined in good faith by the Board of Directors of the Corporation.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 1.1(d)(vi)(C), relating to Options and Convertible Securities, shall be determined by dividing:

a. The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

b. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number), excluding Exempted Securities, issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(F) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(vii) Certain Other Adjustments.

(A) Stock Dividends and Stock Splits. If the Corporation, at any time while the Series D Preferred Stock is outstanding: (1) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other common stock equivalents (which, for avoidance of doubt, shall not include any PIK Dividends or shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Series D Preferred Stock or the Series C Preferred Stock), (2) subdivides outstanding shares of Common Stock into a larger number of shares, (3) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (4) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a

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fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 1.1(d)(vii)(A) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(B) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 1.1(d)(vii)(A) above, if at any time the Corporation grants, issues or sells any common stock equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the holder of shares of Series D Preferred Stock thereof will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the holder of shares of Series D Preferred Stock could have acquired if the holder of shares of Series D Preferred Stock had held the number of shares of Common Stock acquirable upon complete conversion of such holder's Series D Preferred Stock immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such purchase.

(C) Fundamental Transaction. If, at any time while the Series D Preferred Stock is outstanding, (1) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another person, other than a Significant Transaction Event, (2) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, other than a Significant Transaction Event, (3) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding capital stock of the Corporation, other than a Significant Transaction Event, (4) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, other than a Significant Transaction Event, or (5) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another person whereby such other person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other person or other persons making or party to, or associated or affiliated with the other persons making or party to, such stock or share purchase agreement or other business combination), other than a Significant Transaction Event (each a "Fundamental Transaction"), then, upon any subsequent conversion of the Series D Preferred Stock, the holders of shares of Series D Preferred Stock shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any

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additional consideration (the "*Alternate Consideration*") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Series D Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the holder of shares of Series D Preferred Stock shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series D Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file an amended and restated Articles of Incorporation or Certificate of Designation with the same terms and conditions and issue to the holders of shares of Series D Preferred Stock new preferred stock consistent with the foregoing provisions and evidencing the holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "*Successor Entity*") to assume in writing all of the obligations of the Corporation under this Certificate in accordance with the provisions of this Section 1.1(d)(vii)(C) pursuant to written agreements entered into prior to such Fundamental Transaction and shall deliver to the holder of shares of Series D Preferred Stock in exchange for the Series D Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series D Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of the Series D Preferred Stock prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series D Preferred Stock immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate with the same effect as if such Successor Entity had been named as the Corporation herein.

(viii) Calculations. All calculations under this Section 1.1(d) shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 1.1(d), the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(ix) Notice to the Holders. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 1.1(d), the Corporation shall promptly deliver to each holder

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of shares of Series D Preferred Stock a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series D Preferred Stock, and shall cause to be delivered to each holder of shares of Series D Preferred Stock at its last address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (1) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (2) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

(e) Optional Conversion.

(i) Optional Conversion Rights. At any time or times on or after the Original Issue Date, each holder of Series D Preferred Stock shall be entitled to convert any portion of the outstanding Series D Preferred Stock held by such holder and any PIK Dividends (without the payment of additional consideration by the holder thereof) into such number of fully paid and non-assessable shares of Common Stock as determined for any such holder by dividing (A) the sum of (I) the aggregate Stated Value of all outstanding shares of Series D Preferred Stock being converted by such holder, (II) the aggregate Stated Value of all shares of Series D Preferred Stock due and owing to such holder as PIK Dividends which such holder is converting, and (III) the aggregate amount of cash dividends due and owing to such holder that such holder is converting by (B) the Conversion Price in effect on the Optional Conversion Date (as defined below), as adjusted in accordance with Section 1.1(d).

(ii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series D Preferred Stock pursuant to this Section 1.1(e). As to any fraction of a share which the holder of shares of Series D Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(iii) Mechanics of Conversion.

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(A) To convert a share of Series D Preferred Stock and/or PIK Dividends into shares of Common Stock pursuant to this Section 1.1(e) on any date (an "**Optional Conversion Date**"), the holder of such shares of Series D Preferred Stock and/or PIK Dividends shall deliver to the Corporation (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of such conversion in the form attached hereto as Exhibit A (the "**Optional Conversion Notice**"). Within three (3) Trading Days (as defined below) of the Optional Conversion Date such holder that delivered the Optional Conversion Notice shall, if such holder's shares of Series D Preferred Stock are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series D Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer agent, duly executed by the registered holder of shares of Series D Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series D Preferred Stock converted pursuant to this Section 1.1(e) will terminate at the Optional Conversion Date (notwithstanding the failure of the holder or holders of Series D Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series D Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(e)(iii). As soon as practicable after the Optional Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series D Preferred Stock, the Corporation shall issue and deliver to such holder of Series D Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series D Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(B) On or before the third (3rd) Trading Day following the date of receipt of a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Optional Conversion Notice) (the "**Share Delivery Deadline**"), the Corporation shall (1) provided that its then current transfer agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which such converting holder shall be entitled to such holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such holder or its designee, for the number of shares of Common Stock to which such holder shall be entitled. If the number of shares of Series D Preferred Stock represented by the Series D Preferred Stock Certificate(s) submitted for conversion pursuant to

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Section 1.1(e)(3)(A) is greater than the number of shares of Series D Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than three (3) Trading Days after receipt of the Series D Preferred Stock Certificate(s) and at its own expense, issue and deliver to such holder (or its designee) a new Series D Preferred Stock Certificate representing the number of shares of Series D Preferred Stock not so converted. The person or entity entitled to receive the shares of Common Stock issuable upon an optional conversion of Series D Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(iv) "Trading Day" means any day on which the Common Stock is traded on the principal securities exchange securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the holder converting the relevant shares of Series D Preferred Stock pursuant to this Section 1.1(e).

(v) Corporation's Failure to Timely Convert. If the Corporation shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to issue to a holder a certificate for the number of shares of Common Stock to which such holder is entitled and register such shares of Common Stock on the Corporation's share register or to credit such holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such holder is entitled upon such holder's conversion pursuant to this Section 1.1(e) (a "Conversion Failure"), and if on or after such Share Delivery Deadline such holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that such holder so anticipated receiving from the Corporation, then, in addition to all other remedies available to such holder, the Corporation shall, within three (3) Trading Days after receipt of such holder's request and in such holder's discretion, either: (I) pay cash to such holder in an amount equal to such holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other individual or entity in respect, or on behalf, of such holder) (the "Buy-In Price"), at which point the Corporation's obligation to so issue and deliver such certificate or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder would have been entitled upon such holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such holder a certificate or certificates representing such shares of Common Stock or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder is entitled upon such holder's conversion hereunder (as the case may be) and pay cash to such holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II).

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(f) Redemption.

(i) Mandatory Redemption. Unless prohibited by Nevada law governing distributions to stockholders of a corporation, the Series D Preferred Stock shall be redeemed (a "Mandatory Redemption") by the Corporation at a price equal to the Stated Value for such share of Series D Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series D Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (the "Redemption Price"), if the Requisite Holders provide written notice of redemption to the Corporation on or after October 15, 2022, which notice may only be so provided if on or after such date the Common Stock of the Corporation is not listed on a Trading Market (the date selected by the Corporation that is within thirty (30) days following the date that the Corporation receives such notice is referred to as the "Redemption Date"). If on the Redemption Date Nevada law governing distributions to stockholders of a corporation prevents the Corporation from redeeming all outstanding shares of Series D Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares of Series D Preferred Stock that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. If the Corporation fails to pay the Redemption Price in full and redeem all outstanding shares of Series D Preferred Stock on the Redemption Date, then PIK Dividends shall accrue as specified in Section 1.1(c)(ii) hereof.

(ii) Redemption Notice. The Corporation shall send written notice of the Mandatory Redemption (the "Redemption Notice") to each holder of record of Series D Preferred Stock not less than ten (10) days prior to the Redemption Date. The Redemption Notice shall state:

(A) the number of shares of Series D Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(B) the Redemption Date and the Redemption Price; and

(C) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series D Preferred Stock to be redeemed.

(iii) Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Series D Preferred Stock to be redeemed on the Redemption Date, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof.

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(iv) Redeemed or Otherwise Acquired Shares. Any shares of Series D Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred.

(g) Waiver; Amendment. Any of the rights, powers, privileges and other terms of the Series D Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series D Preferred Stock by the affirmative written consent or vote of the Requisite Holders.

(h) Notices. Except as otherwise provided herein, any notice required or permitted by the provisions of this Section 1.1 to be given to a holder of shares of Series D Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with Section 78 of the Nevada Revised Statutes, and shall be deemed sent upon such mailing or electronic transmission.

Section 1.2 Withholding. The Corporation agrees that, provided that a holder of the Corporation's capital stock delivers to the Corporation a properly executed IRS Form W-9 certifying as to such holder's complete exemption from backup withholding (or, if such holder is a disregarded entity for U.S. federal income tax purposes, its regarded owner's complete exemption from backup withholding), under current law the Corporation (including any paying agent of the Corporation) shall not be required to, and shall not, withhold on any payments or deemed payments to any such holder. In the event that any holder of the Corporation's capital stock fails to deliver to the Corporation such properly executed IRS Form W-9, the Corporation reasonably believes that a previously delivered IRS W-9 is no longer accurate and/or valid, or there is a change in law that affects the withholding obligations of the Corporation, the Corporation and its paying agent shall be entitled to withhold taxes on all payments made to the relevant holder in the form of cash or to request that the relevant holder promptly pay the Corporation in cash any amounts required to satisfy any withholding tax obligations. In the event that the Corporation does not have sufficient cash with respect to any such holder from withholding on cash payments otherwise payable to such holder and cash paid to the Corporation by such holder to the Corporation pursuant to the immediately preceding sentence, the Corporation and its paying agent shall be entitled to withhold taxes on deemed payments, including PIK Dividends and constructive distributions, on the Series D Preferred Stock to the extent required by law, and the Corporation and its paying agent shall be entitled to satisfy any required withholding tax on non-cash payments (including deemed payments) through a sale of a portion of the Series D Preferred Stock received as a PIK Dividend or from cash dividends or sales proceeds subsequently paid or credited on the Series D Preferred Stock.

4822-7687-2944v.12



BARBARA K. CEGAVSKE
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
 Website: www.nvsos.gov
 www.nvsilverflume.gov

Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20211566343
	Filed On 06/29/2021 07:54:31 AM
	Number of Pages 1

Registered Agent Acceptance/Statement of Change

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:	Name of represented entity: Applied Blockchain, Inc. Entity or Nevada Business Identification Number (NVID): <input type="text" value="NV20011309405"/> <small>(for entities currently on file)</small>												
2. Registered Agent Acceptance:	<input checked="" type="checkbox"/> Registered Agent Acceptance												
3. Information Being Changed:	Statement of Change takes the following effect: (select only one) <input checked="" type="checkbox"/> Appoints New Agent (complete section 4) <input type="checkbox"/> Update Represented Entity Acting as Registered Agent (complete sections 5) <input checked="" type="checkbox"/> Update Registered Agent Name (complete sections 4 & 5) <input checked="" type="checkbox"/> Update Registered Agent Address (complete sections 4 & 5)												
4. Registered Agent Information Before the Change: (Non-commercial registered agents ONLY)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"><input type="text"/></td> <td style="width: 40%;"><input type="text"/></td> </tr> <tr> <td>Name</td> <td>Telephone</td> </tr> <tr> <td><input type="text"/></td> <td>Nevada <input type="text" value="0"/></td> </tr> <tr> <td>Street Address</td> <td>City <input type="text"/> Zip Code <input type="text"/></td> </tr> <tr> <td><input type="text"/></td> <td>Nevada <input type="text"/></td> </tr> <tr> <td>Mailing Address (only if different from above)</td> <td>City <input type="text"/> Zip Code <input type="text"/></td> </tr> </table>	<input type="text"/>	<input type="text"/>	Name	Telephone	<input type="text"/>	Nevada <input type="text" value="0"/>	Street Address	City <input type="text"/> Zip Code <input type="text"/>	<input type="text"/>	Nevada <input type="text"/>	Mailing Address (only if different from above)	City <input type="text"/> Zip Code <input type="text"/>
<input type="text"/>	<input type="text"/>												
Name	Telephone												
<input type="text"/>	Nevada <input type="text" value="0"/>												
Street Address	City <input type="text"/> Zip Code <input type="text"/>												
<input type="text"/>	Nevada <input type="text"/>												
Mailing Address (only if different from above)	City <input type="text"/> Zip Code <input type="text"/>												
5. Newly Appointed Registered Agent or Registered Agent Information After the Change:	<input checked="" type="checkbox"/> Commercial Registered Agent (name only below) <input type="checkbox"/> Noncommercial Registered Agent (name and address below) <input type="checkbox"/> Office or position with Entity (title and address below) CAPITOL CORPORATE SERVICES, INC. Name of Registered Agent OR Title of Office or Position with Entity 202 SOUTH MINNESOTA STREET Carson City Nevada 89703 Street Address City Zip Code <input type="text"/> Nevada <input type="text"/> Mailing Address (only if different from above) City Zip Code												
6. Electronic Notification: (Optional)	Email address for electronic notifications for "Non-Commercial" or "Office or Positions with Entity" registered agents only: <input type="text"/>												
7. Certificate of Acceptance of Appointment of Registered Agent: (Required)	I hereby accept appointment as Registered Agent for the above named Entity. X <u>DELANIE CASE</u> <input type="text" value="06/29/2021"/> Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity Date												
8. Signature of Represented Entity: (Required)	X <u>DAVID RENCH</u> <input type="text" value="06/29/2021"/> Authorized Signature On Behalf of the Entity Date												

This form must be accompanied by appropriate fees.



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Annual or Amended List and State Business License Application

ANNUAL **AMENDED** (check one)

List of Officers, Managers, Members, General Partners, Managing Partners, Trustees or Subscribers:

Applied Blockchain, Inc.	NV20011309405
NAME OF ENTITY	Entity or Nevada Business Identification Number (NVID)

TYPE OR PRINT ONLY - USE DARK INK ONLY - DO NOT HIGHLIGHT

IMPORTANT: Read instructions before completing and returning this form.

Please indicate the entity type (check only one):

- Corporation
 - This corporation is publicly traded, the Central Index Key number is:

0001144879
- Nonprofit Corporation (see nonprofit sections below)
- Limited-Liability Company
- Limited Partnership
- Limited-Liability Partnership
- Limited-Liability Limited Partnership
- Business Trust
- Corporation Sole

Filed in the Office of <i>Barbara K. Cegauske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20211502899
	Filed On 06/02/2021 14:24:01 PM
	Number of Pages 2

Additional Officers, Managers, Members, General Partners, Managing Partners, Trustees or Subscribers, may be listed on a supplemental page.

CHECK ONLY IF APPLICABLE

Pursuant to NRS Chapter 76, this entity is exempt from the business license fee.

001 - Governmental Entity

006 - NRS 680B.020 Insurance Co, provide license or certificate of authority number

For nonprofit entities formed under NRS chapter 80: entities without 501(c) nonprofit designation are required to maintain a state business license, the fee is \$200.00. Those claiming an exemption under 501(c) designation must indicate by checking box below.

Pursuant to NRS Chapter 76, this entity is a 501(c) nonprofit entity and is exempt from the business license fee. Exemption Code 002

For nonprofit entities formed under NRS Chapter 81: entities which are Unit-owners' association or Religious, Charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C § 501(c) are excluded from the requirement to obtain a state business license. Please indicate below if this entity falls under one of these categories by marking the appropriate box. If the entity does not fall under either of these categories please submit \$200.00 for the state business license.

Unit-owners' Association Religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. §501(c)

For nonprofit entities formed under NRS Chapter 82 and 80: Charitable Solicitation Information - check applicable box

Does the Organization intend to solicit charitable or tax deductible contributions?

No - no additional form is required

Yes - the "Charitable Solicitation Registration Statement" is required.

The Organization claims exemption pursuant to NRS 82A 210 - the "Exemption From Charitable Solicitation Registration Statement" is required

****Failure to include the required statement form will result in rejection of the filing and could result in late fees.****



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**Annual or Amended List
 and State Business License
 Application - Continued**

Officers, Managers, Members, General Partners, Managing Partners, Trustees or Subscribers:

CORPORATION, INDICATE THE SECRETARY:

Name Country

Address City State Zip/Postal Code

CORPORATION, INDICATE THE TREASURER:

Name Country

Address City State Zip/Postal Code

CORPORATION, INDICATE THE DIRECTOR:

Name Country

Address City State Zip/Postal Code

CORPORATION, INDICATE THE PRESIDENT:

Name Country

Address City State Zip/Postal Code

None of the officers and directors identified in the list of officers has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct.

I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

X Wesley Cummins
 Signature of Officer, Manager, Managing Member,
 General Partner, Managing Partner, Trustee,
 Subscriber, Member, Owner of Business,
 Partner or Authorized Signer FORM WILL BE RETURNED IF

Title

Date

UNSIGNED



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 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
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Filed in the Office of <i>Barbara K. Cegauske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20211456018
	Filed On 5/13/2021 3:41:00 PM
	Number of Pages 2

Certificate of Correction
 NRS 78, 78A, 80, 81, 82, 84, 86, 87, 87A, 88, 88A, 89 and 92A
 (Only one document may be corrected per certificate.)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Name of document with inaccuracy or defect.
3. Filing date of document with inaccuracy or defect.
4. Brief description of inaccuracy or defect.
5. Correction of inaccuracy or defect.
6. Must be signed by Authorized Signer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: Applied Blockchain, Inc. Entity or Nevada Business Identification Number (NVID): C13283-2001
2. Document:	Name of document with inaccuracy or defect: Second Amended and Restated Articles of Incorporation
3. Filing Date:	Filing date of document which correction is being made: April 15, 2021
4. Description:	Description of inaccuracy or defect: Number of shares and par value for Series C Convertible Redeemable Preferred Stock should have been specified.
5. Correction:	Correction of inaccuracy or defect: The Fourteenth Article is hereby replaced and corrected to specify that Series C preferred stock shall consist of 660,000 shares, par value \$0.001 per share, as further detailed in Exhibit A hereto.
6. Signature: (Required)	<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <input checked="" type="checkbox"/> <i>David Rusk</i> Signature </div> <div style="text-align: center;"> 05/13/2021 Date </div> </div>

This form must be accompanied by appropriate fees.

EXHIBIT A

The Fourteenth Article is hereby replaced and corrected to read as follows:

FOURTEENTH. Applied Blockchain, Inc., pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make that certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions of Series C Preferred Stock of Applied Blockchain, Inc., a copy of which has been attached hereto as Exhibit C (the "Series C Designation"). Applied Blockchain, Inc., does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the corporation by the provisions of Article FOURTH hereof, the Board of Directors duly adopted resolutions authorizing the issuance of 660,000 shares, par value \$0.001 per share, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock to be designated "Series C Convertible Redeemable Preferred Stock", as further described in and pursuant to the terms of Exhibit C hereto. The Series C Designation is incorporated herein and shall be in full force and effect as of the effective date hereof.



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 Carson City, Nevada 89701-4201
 (775) 684-5708
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Filed in the Office of <i>Barbara K. Cegavske</i> Secretary of State State Of Nevada	Business Number C13283-2001
	Filing Number 20211386244
	Filed On 4/15/2021 8:47:00 AM
	Number of Pages 2

Certificate of Correction

NRS 78, 78A, 80, 81, 82, 84, 86, 87, 87A, 88, 88A, 89 and 92A

(Only one document may be corrected per certificate.)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

INSTRUCTIONS:

1. Enter the current name as on file with the Nevada Secretary of State and enter the Entity or Nevada Business Identification Number (NVID).
2. Name of document with inaccuracy or defect.
3. Filing date of document with inaccuracy or defect.
4. Brief description of inaccuracy or defect.
5. Correction of inaccuracy or defect.
6. Must be signed by Authorized Signer. Form will be returned if unsigned.

1. Entity Information:	Name of entity as on file with the Nevada Secretary of State: <input type="text" value="Applied Blockchain, Inc."/>	
	Entity or Nevada Business Identification Number (NVID): <input type="text" value="C13283-2001"/>	
2. Document:	Name of document with inaccuracy or defect: <input type="text" value="Certificate of Amendment"/>	
3. Filing Date:	Filing date of document which correction is being made: <input type="text" value="03/25/2021"/>	
4. Description:	Description of inaccuracy or defect: Par value should have remained unchanged. Authorized common stock was increased without a corresponding increase to authorized capital stock.	
5. Correction:	Correction of inaccuracy or defect: The Third ARTICLE is hereby replaced and corrected to increase the authorized capital stock to 505,000,000, par value \$0.001, 500,000,000 are common stock and 5,000,000 are preferred stock [see attachment hereto]	
6. Signature: (Required)	<input checked="" type="checkbox"/> _____ Signature	<input type="text" value="04/15/2021"/> Date

This form must be accompanied by appropriate fees.

SUPPLEMENT TO ITEM 5
Correction of Inaccuracy or defect:

The Third Article is hereby replaced and corrected to read as follows:

THIRD. The total number of shares of capital stock which this corporation shall have authority to issue is five hundred five million (505,000,000) with a par value of \$0.001 per share amounting to \$505,000.00. Five hundred million (500,000,000) of those shares are Common Stock and five million (5,000,000) of those shares are Preferred Stock. Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of this corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except (i) as determined by the Board of Directors of this corporation in accordance with the provisions of Section (3) of Article FOURTH of these Articles of Incorporation, or (ii) as otherwise provided by the Nevada General Corporation Law, as amended from time to time.



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Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20211387751
	Filed On 4/15/2021 2:18:00 PM
	Number of Pages 71

Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:	Name of entity as on file with the Nevada Secretary of State: <input type="text" value="Applied Blockchain, Inc."/> Entity or Nevada Business Identification Number (NVID): <input type="text" value="C13283-2001"/>
2. Restated or Amended and Restated Articles: (Select one) (If <u>amending and restating only</u> , complete section 1, 2 3, 5 and 6)	<input checked="" type="checkbox"/> Certificate to Accompany Restated Articles or Amended and Restated Articles <input type="checkbox"/> Restated Articles - No amendments; articles are restated only and are signed by an officer of the corporation who has been authorized to execute the certificate by resolution of the board of directors adopted on: <input type="text"/> The certificate correctly sets forth the text of the articles or certificate as amended to the date of the certificate. <input checked="" type="checkbox"/> Amended and Restated Articles * Restated or Amended and Restated Articles must be included with this filing type.
3. Type of Amendment Filing Being Completed: (Select only one box) (If amending, complete section 1, 3, 5 and 6.)	<input type="checkbox"/> Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.380 - Before Issuance of Stock) The undersigned declare that they constitute at least two-thirds of the following: (Check only one box) <input type="checkbox"/> incorporators <input type="checkbox"/> board of directors The undersigned affirmatively declare that to the date of this certificate, no stock of the corporation has been issued <input checked="" type="checkbox"/> Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock) The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: <input type="text" value="78.6%"/> <input type="checkbox"/> Officer's Statement (foreign qualified entities only) - Name in home state, if using a modified name in Nevada: <input type="text"/> Jurisdiction of formation: <input type="text"/> Changes to takes the following effect: <input type="checkbox"/> The entity name has been amended. <input type="checkbox"/> Dissolution <input type="checkbox"/> The purpose of the entity has been amended. <input type="checkbox"/> Merger <input type="checkbox"/> The authorized shares have been amended. <input type="checkbox"/> Conversion <input type="checkbox"/> Other: (specify changes) <input type="text"/>

* Officer's Statement must be submitted with either a certified copy of or a certificate evidencing the filing of any document, amendatory or otherwise, relating to the original articles in the place of the corporations creation.

This form must be accompanied by appropriate fees.



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 Secretary of State
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 Carson City, Nevada 89701-4201
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Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and
Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

4. Effective Date and Time: (Optional) Date: _____ Time: _____
 (must not be later than 90 days after the certificate is filed)

5. Information Being Changed: (Domestic corporations only) Changes to takes the following effect:

- The entity name has been amended.
- The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
- The purpose of the entity has been amended.
- The authorized shares have been amended.
- The directors, managers or general partners have been amended.
- IRS tax language has been added.
- Articles have been added.
- Articles have been deleted.
- Other.

The articles have been amended as follows: (provide article numbers, if available)
 Articles 13 and 14 have been added; Article 14 adds new series of Preferred
 (attach additional page(s) if necessary)

6. Signature: (Required) X *[Signature]* CFO _____
 Signature of Officer or Authorized Signer Title

X _____ _____
 Signature of Officer or Authorized Signer Title

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:
 (attach additional page(s) if necessary)

SUPPLEMENT TO ITEM 5

The articles have been amended as follows:

1. The Thirteenth Article is hereby added to incorporate, restate and affirm:
 - (i) That certain Amended and Restated Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009 (the "Series A Designation"); and
 - (ii) That certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009 (the "Series B Designation").

The Series A Designation and the Series B Designation shall remain in full force and effect notwithstanding the filing of the Second Amended and Restated Articles of Incorporation of Applied Blockchain, Inc.

2. The Fourteenth Article is hereby added to adopt and incorporate that certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions of Series C Preferred Stock of Applied Blockchain, Inc. (the "Series C Designation"). The adoption of the Series C Designation constitutes an amendment to the Articles of Incorporation of Applied Blockchain, Inc.

SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
APPLIED BLOCKCHAIN, INC.

Pursuant to the provisions of Title 7, Chapter 78 of the Nevada Revised Statutes, the Articles of Incorporation of this Corporation are hereby amended and restated to read in their entirety as follows:

FIRST. The name of this corporation is Applied Blockchain, Inc.

SECOND. The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized pursuant to the General Corporation Law of the State of Nevada.

THIRD. The total number of shares of capital stock which this corporation shall have authority to issue is five hundred five million (505,000,000) with a par value of \$0.001 per share amounting to \$505,000.00. Five hundred million (500,000,000) of those shares are Common Stock and five million (5,000,000) of those shares are Preferred Stock. Each share of Common Stock shall entitle the holder thereof to one vote, in person or by proxy, on any matter on which action of the stockholders of this corporation is sought. The holders of shares of Preferred Stock shall have no right to vote such shares, except (i) as determined by the Board of Directors of this corporation in accordance with the provisions of Section (3) of Article FOURTH of these Articles of Incorporation, or (ii) as otherwise provided by the Nevada General Corporation Law, as amended from time to time.

FOURTH. The Board of Directors of this corporation shall be, and hereby is, authorized and empowered, subject to such limitations prescribed by law and the provisions of Article THIRD of these Articles of Incorporation, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Nevada, to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions of each such series. The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- (1) The number of shares constituting such series and the distinctive designation of such series;
- (2) The dividend rate on the shares of such series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of such series;

449505

- (3) Whether such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
- (4) Whether such series shall have conversion privileges, and, if so, the terms and conditions of such conversion privileges, including provision for the adjustment of the conversion rate, in such events as the Board of Directors shall determine;
- (5) Whether or not the shares of such series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which those shares shall be redeemable, and the amount per share payable in the event of redemption, which amount may vary in different circumstances and at different redemption dates;
- (6) Whether that series shall have a sinking fund for the redemption or purchase of shares of such series, and, if so, the terms and amount of such sinking fund;
- (7) The rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of this corporation, and the relative rights of priority, if any, of payment of shares of such series; and
- (8) Any other relative rights, preferences and limitation of such series.

Dividends on issued and outstanding shares of Preferred Stock shall be paid or declared and set apart for payment prior to any dividends being paid or declared and set apart for payment on the shares of Common Stock with respect to the same dividend period.

If, upon any voluntary or involuntary liquidation, dissolution or winding up of this corporation, the assets of this corporation available for distribution to holders of shares of Preferred Stock of all series shall be insufficient to pay such holders the full and complete preferential amount to which such holders are entitled, then such assets shall be distributed ratably among the shares of all series of Preferred Stock in accordance with the respective preferential amounts, including unpaid cumulative dividends, if any, payable with respect thereto.

FIFTH. No director or officer of this corporation shall have any personal liability to this corporation or its stockholders for damages for breach of fiduciary duty as a director or officer, except that this Article FIFTH shall not eliminate or limit the liability of a director or officer for (i) acts or omissions which involve intentional misconduct, fraud or a knowing violation of law, or (ii) the payment of dividends in violation of the Nevada General Corporation Law. Any repeal or modification of this article by the stockholders of this corporation shall not adversely affect any right or protection of any director of this corporation existing at the time of such repeal or modification.

SIXTH. This corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision specified in the Articles of Incorporation, and other provisions authorized by the laws of the State of Nevada at any such time then in force may be added or

inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to these Articles of Incorporation in their present form or as hereafter amended are granted subject to the rights reserved in this article.

SEVENTH. Capital stock issued by this corporation after the amount of the subscription price or par value therefor has been paid in full shall not be subject to pay debts of this corporation, and no capital stock issued by this corporation and for which payment has been made shall ever be assessable or assessed.

EIGHTH. (a) The affairs of this corporation shall be governed by a Board of Directors of not more than fifteen (15) persons nor less than one (1) person, as determined from time to time by vote of a majority of the Board of Directors of this corporation; provided, however, that the number of directors shall not be reduced so as to reduce the term of any director at the time in office.

(b) The directors shall be elected by the holders of shares entitled to vote thereon at the annual meeting of shareholders and until their respective successor has been elected and qualified.

(c) Notwithstanding any other provisions of these Articles of Incorporation or the bylaws of this corporation (and notwithstanding the fact that some lesser percentage may be specified by law, these Articles of Incorporation or the bylaws of this corporation), any director or the entire Board of Directors of this corporation may be removed at any time, but only for cause and only by the affirmative vote of the holders of seventy-five percent (75%) or more of the outstanding shares of capital stock of this corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders of this corporation called for that purpose. Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately as a class, to elect one or more directors of this corporation, the provisions of section (c) of this article shall not apply with respect to the director or directors elected by such holders of Preferred Stock.

NINTH. The period of existence of this corporation shall be perpetual.

TENTH. No contract or other transaction between this corporation and any other corporation, whether or not a majority of the shares of the capital stock of such other corporation is owned by this corporation, and no act of this corporation shall in any way be affected or invalidated by the fact that any of the directors of this corporation are pecuniarily or otherwise interested in, or are directors or officers of such other corporation. Any director of this corporation, individually, or any firm of which such director may be a member, may be a party to, or may be pecuniarily or otherwise interested in any contract or transaction of this corporation; provided, however, that the fact that he or such firm is so interested shall be disclosed or shall have been known to the Board of Directors of this corporation, or a majority thereof; and any director of this corporation who is also a director or officer of such other corporation, or who is so interested, may be counted in determining the existence of a quorum at any meeting of the Board of Directors of

this corporation that shall authorize such contract or transaction, and may vote thereat to authorize such contract or transaction, with the same force and effect as if he or she were not such director or officer of such other corporation or not so interested.

ELEVENTH. Subject to the provisions of any series of Preferred Stock of this corporation which may at the time be issued and outstanding and convertible into shares of Common Stock of this corporation, the affirmative vote of at least two-thirds (2/3) of the outstanding shares of Common Stock held by stockholders of this corporation other than the "related person" (as defined later in these Articles of Incorporation), shall be required for the approval or authorization of any "business combination" (as defined later in these Articles of Incorporation) of this corporation with any related person; provided, however, that such voting requirement shall not be applicable if:

- (1) The business combination was approved by the Board of Directors of this corporation either (A) prior to the acquisition by such related person of the beneficial ownership of twenty percent (20%) or requisition the outstanding shares of the Common Stock of this corporation, or (B) after such acquisition, but only during such time as such related person has sought and obtained the unanimous approval by the Board of Directors of this corporation of such acquisition of more than 20% of the Common Stock prior to such acquisition being consummated; or
- (2) The business combination is solely between this corporation and another corporation, fifty percent (50%) or more of the voting stock of which is owned by a related person; provided, however, that each stockholder of this corporation receives the same type of consideration in such transaction in proportion to his or her stockholdings; or
- (3) All of the following conditions are satisfied: (A) The cash or fair market value of the property, securities or other consideration to be received per share by holders of Common Stock of this corporation in the business combination is not less than the higher of (i) the highest per share price (including brokerage commissions, soliciting dealers fees, dealer-management compensation, and other expenses, including, but not limited to, costs of newspaper advertisements, printing expenses and attorneys' fees) paid by such related person in acquiring any of its holdings of this corporation's Common Stock or (ii) an amount which has the same or a greater percentage relationship to the market price of this corporation's Common Stock immediately prior to the commencement of acquisition of this corporation's Common Stock by such related person, but in no event in excess of two (2) times the highest per share price determined in clause (i), above; and

(B) After becoming a related person and prior to the consummation of such business combination, (i) such related person shall not have acquired any newly issued shares of capital stock, directly or indirectly, from this corporation (except upon conversion of convertible securities acquired by it prior to becoming a related person or upon

compliance with the provision of this article or as a result of a pro rata stock dividend or stock split) and (ii) such related person shall not have received the benefit, directly or indirectly, (except proportionately as a stockholder) of any loans, advances, guarantees, pledges or other financial assistance or tax credits provided by this corporation, or made any major changes in this corporation's business or equity capital structure; and

(C) A proxy statement complying with the requirements of the Securities Exchange Act of 1934, whether or not this corporation is then subject to such requirements, shall be mailed to the public stockholders of this corporation for the purpose of soliciting stockholder approval of such business combination and shall contain at the front thereof, in a prominent place (i) any recommendations as to the advisability (or inadvisability) of the business combination which the continuing directors, or any outside directors, may determine to specify, and (ii) the opinion of a reputable national investment banking firm as to the fairness (or not) of the terms of such business combination, from the point of view of the remaining public stockholders of this corporation (such investment banking firm to be engaged solely on behalf of the remaining public stockholders, to be paid a reasonable fee for its services by this corporation upon receipt of such opinion, to be a reputable national investment banking firm which has not previously been associated with such related person and, if there are at the time any such directors, to be selected by a majority of the continuing directors and outside directors).

For purposes of this article:

- (1) The term "business combination" shall be defined as and mean (a) any merger or consolidation of this corporation with or into a related person; (b) any sale, lease, exchange, transfer or other disposition, including, without limitation, a mortgage or any other security device, of all or any substantial part of the assets of this corporation, including, without limitation, any voting securities of a subsidiary, or of a subsidiary, to a related person; (c) any merger or consolidation of a related person with or into this corporation or a subsidiary of this corporation; (d) any sale, lease, exchange, transfer or other disposition of all or any substantial part of the assets of a related person to this corporation or a subsidiary of this corporation; (e) the issuance of any securities of this corporation or a subsidiary of this corporation to a related person; (f) the acquisition by this corporation or a subsidiary of this corporation of any securities of a related person; (g) any reclassification of Common Stock of this corporation, or any recapitalization involving Common Stock of this corporation, consummated within five (5) years after a related person becomes a related person, and (h) any agreement, contract or other arrangement providing for any of the transactions described in this definition of business combination.
- (2) The term "related person" shall be defined as and mean and include any individual, corporation, trust, association, partnership or other person or entity which, together

with their "affiliates" and "associates" (defined later in these Articles of Incorporation), "beneficially" owns (as this term is defined in Rule 13d-3 of the General Rules and Regulations pursuant to the Securities Exchange Act of 1934), in the aggregate 20% or more of the outstanding shares of the Common Stock of this corporation, and any "affiliate" or "associate" (as those terms are defined in Rule 12b-2 pursuant to the Securities Exchange Act of 1934) of any such individual, corporation, trust, association, partnership or other person or entity;

- (3) The term "substantial part" shall be defined as and mean more than ten percent (10%) of the total assets of the corporation in question, as of the end of its most recent fiscal year ending prior to the time the determination is being made;
- (4) Without limitation, any shares of Common Stock of this corporation which any related person has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, shall be deemed beneficially owned by such related person;
- (5) For the purposes of this article, the term "other consideration to be received" shall include, without limitation, Common Stock of this corporation retained by its existing public stockholders in the event of a business combination with such related person pursuant to which this corporation is the surviving corporation; and
- (6) With respect to any proposed business combination, the term "continuing director" shall be defined as and mean a director who was a member of the Board of Directors of this corporation immediately prior to the time that any related person involved in the proposed business combination acquired twenty percent (20%) or more of the outstanding shares of Common Stock of this corporation, and the term "outside director" shall be defined as and mean a director who is not (a) an officer or employee of this corporation or any relative of an officer or employee, (b) a related person or an officer, director employee, associate or affiliate of a related person, or a relative of any of the foregoing, or (c) a person having a direct or indirect material business relationship with this corporation.

TWELFTH. All of the powers of this corporation, insofar as the same may be lawfully vested by these Articles of Incorporation in the Board of Directors, are hereby conferred upon the Board of Directors of this corporation. In furtherance and not in limitation of that power, the Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time bylaws of this corporation, subject to the right of the shareholders entitled to vote with respect thereto to adopt, alter, amend and repeal bylaws made by the Board of Directors; provided, however, that bylaws shall not be adopted, altered, amended or repealed by the stockholders of this corporation, except by the vote of the holders of not less than two thirds (2/3) of the outstanding shares of stock entitled to vote upon the election of directors.

THIRTEENTH. Notwithstanding the execution and filing of these Second Amended and Restated Articles of Incorporation of Applied Blockchain, Inc., the following Series A Designation and Series B Designation filed with the Nevada Secretary of State are incorporated herein and shall remain in full force and effect as of the effective date hereof:

- (1) That certain Amended and Restated Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009, a copy of which has been attached hereto as Exhibit A (the "Series A Designation"); and
- (2) That certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock for Flight Safety Technologies, Inc. n/k/a Applied Blockchain, Inc., which was filed with the Nevada Secretary of State on September 9, 2009, a copy of which has been attached hereto as Exhibit B (the "Series B Designation").

FOURTEENTH. Applied Blockchain, Inc., pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make that certain Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions of Series C Preferred Stock of Applied Blockchain, Inc., a copy of which has been attached hereto as Exhibit C (the "Series C Designation"). Applied Blockchain, Inc., does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the corporation by the provisions of Article FOURTH hereof, the Board of Directors duly adopted resolutions authorizing the issuance of, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock to be designated "Series C Convertible Redeemable Preferred Stock", as further described in and pursuant to the terms of Exhibit C hereto. The Series C Designation is incorporated herein and shall be in full force and effect as of the effective date hereof.

IN WITNESS WHEREOF, the undersigned officer, for and on behalf of the Corporation has signed these Second Amended and Restated Articles of Incorporation this 15th day of April, 2021.



Wesley Cummins, CEO

[Signature Page to Second Amended and Restated Articles of Incorporation]

EXHIBIT A
SERIES A DESIGNATION
[See attached.]

[Exhibit A]

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4620
(775) 684 6708
Website: www.nvsos.gov

Filed in the Office of 	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20090672030-99
	Filed On 09/09/2009
	Number of Pages 19

**Amendment to
Certificate of Designation
After Issuance of Class or Series**
(PURSUANT TO NRS 78.1955)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Certificate of Designation
For Nevada Profit Corporations
(Pursuant to NRS 78.1955 - After Issuance of Class or Series)

1. Name of corporation:

FLIGHT SAFETY TECHNOLOGIES, INC.

2. Stockholder approval pursuant to statute has been obtained.

3. The class or series of stock being amended:

Series A Convertible Preferred Stock Par Value \$0.001

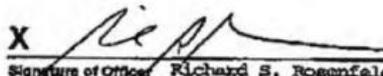
4. By a resolution adopted by the board of directors, the certificate of designation is being amended as follows or the new class or series is:

See attached Amended and Restated Certificate of Designation of Series A Convertible Preferred Stock

5. Effective date of filing: (optional)

(must not be later than 90 days after the certificate is filed)

6. Signature: (required)

X 
Signature of Officer: Richard S. Rosenfeld
Chief Financial Officer

Filing Fee: \$175.00

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State NRS Amend Designation - All
Revised: 8-8-08

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AMENDED AND RESTATED

**CERTIFICATE OF DESIGNATIONS OF THE POWERS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS OF
PREFERRED STOCK AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS
THEREOF**

Of

SERIES A

CONVERTIBLE PREFERRED STOCK

for

FLIGHT SAFETY TECHNOLOGIES, INC.

FLIGHT SAFETY TECHNOLOGIES, INC., a Nevada corporation (the "Corporation"), pursuant to the provisions of Section 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Amended and Restated Certificate of Designations and does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation, the Board of Directors duly amends and restates the Original Certificate of Designations of Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock for Flight Safety Technologies, Inc., as filed with the Secretary of State of the State of Nevada on December 17, 2008 as Document Number 2008-0816678-56, to read in its entirety as set forth herein, and adopts the following resolutions, which resolutions remain in full force and effect as of the date hereof:

RESOLVED, that, pursuant to Article Fourth of the Certificate of Incorporation of the Corporation, the Board of Directors hereby authorizes the issuance of, and fixes the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock consisting of 70,000 shares, par value \$.001 per share, to be designated "Series A Convertible Preferred Stock" (the "Series A Preferred Shares"); and

RESOLVED, that each of the Series A Preferred Shares shall rank equally in all respects with the Series B Convertible Preferred Stock of the Company, par value \$.001 per share (the "Series B Preferred Shares," and together with the Series A Preferred Shares, the "Preferred Shares"), and that the Series A Preferred Shares shall be subject to the following terms and provisions:

1. **Designation.** There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Series A Convertible Preferred Stock", par value \$.001 per share. The number of shares constituting such

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series shall be 70,000 shares.

2. Dividends.

(a) Dividend Rate. For so long as any Series A Preferred Shares are outstanding, the Corporation shall pay, at its discretion either: (i) a dividend payable in cash at a per annum rate of 8% of the Original Purchase Price (as defined below) per share; or (ii) a dividend payable in additional shares of Series A Preferred Shares at a per annum rate of 10% of the Original Purchase Price per share; *provided, however*, that if the VWAP (as such term is defined below) for the common stock, par value \$.001 of the Corporation ("Common Stock") exceeds Fourteen Cents (\$0.14) per share with respect to any fiscal quarter, no dividends shall be due with respect to such fiscal quarter. Dividends shall be calculated on the basis of a 30-day month and a 360-day year. For purposes of calculating the number of Series A Preferred Shares to be issued as a dividend under Section 2(a)(ii) hereof, the Series A Preferred Shares to be issued shall be valued at a price per share equal to the Original Purchase Price. For purposes of this Certificate, the following terms shall have the meanings indicated:

"VWAP" means the quarterly volume-weighted average sale price per share of Common Stock on the principal market for any particular fiscal quarter as reported, as such figure may be adjusted for stock splits and combinations of the Common Stock.

(b) Dividend Payment Dates. The dividend payment dates for the Series A Preferred Shares are the first days of March, June, September, and December commencing March 1, 2009; provided that if any such payment date is not a Business Day (as defined below) then such dividend shall be payable on the next Business Day. The initial dividend period for any Series A Preferred Shares shall commence on the day when such shares are issued. The term "Business Day" means a day other than a Saturday, Sunday or day on which banking institutions in New York are authorized or required to remain closed.

(c) Consent. For so long as any Series A Preferred Shares are outstanding, the Corporation shall not pay any dividends on any shares of Common Stock (except for dividends payable in Common Stock) or any shares of any other capital stock other than on Series B Preferred Shares in accordance with the provisions of the Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock of the Company, as in effect from time to time (the "Series B Certificate of Designations"), or repurchase any shares of Common Stock (other than the repurchase of shares of Common Stock issued pursuant to employment or consulting agreements with the Corporation, which are repurchased upon termination of employment or services for consideration no greater than the original issue price) or capital stock, without having received written consent of a majority of the votes attributable to the outstanding Preferred Shares (the "Required Holders"), voting separately from the holders of Common Stock.

3. Liquidation Events.

(a) Liquidation Preference. Upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or (ii) unless otherwise agreed by the

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Required Holders, (A) a merger or consolidation of the Corporation with or into another entity (except for a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the outstanding voting power of such surviving Corporation), (B) the sale or transfer of all or substantially all of the assets of the Corporation (for this purpose "substantially all" shall mean properties or assets with a fair market value equal to 60% or more of the fair market value of the Corporation's total properties or assets as of the end of the most recent fiscal quarter and "sale" shall not include a bona fide pledge of assets), (C) any issuance of shares of capital stock by the Corporation in one or more related transactions except for (x) an issuance of shares of capital stock in which the holders of capital stock of the Corporation immediately prior to such issuance of stock continue to hold at least 50% of the outstanding voting power of the Corporation after such issuance of shares of capital stock, (y) the issuance of Series B Preferred Shares on the "Original Issue Date" (as such term is defined in the Series B Certificate of Designation), or (z) the issuance of Series A Preferred Shares on the Original Issue Date (as such term is defined below), or (D) the repurchase by the Corporation of shares of capital stock of the Corporation (other than the Series B Preferred Shares in accordance with the provisions of the Series B Certificate of Designations or the Series A Preferred Shares in accordance with the terms hereof) such that the holders of capital stock of the Corporation immediately prior to such repurchase do not hold at least 50% of the outstanding voting power of the Corporation after such repurchase (each of the transactions or events described in Sections (i) and (ii) (A) - (D) of this Section 3(a) is referred to as a "**Liquidation Event**" herein), each holder of outstanding Series A Preferred Shares shall be entitled to be paid out of the consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example), as the case may be, whether such assets are capital, surplus or capital earnings, on the same priority as other holders of Preferred Shares, but prior and in preference to any payments being paid to holders of Common Stock of the Corporation or other shares ranking junior to the Series A Preferred Shares, an amount in cash equal to \$100.00 per share (the "**Original Purchase Price**") plus any declared or accrued but unpaid dividends thereon (collectively with the Original Purchase Price per share, the "**Preferred Share Liquidation Preference**"); *provided* that if, upon any Liquidation Event, the Preferred Share Liquidation Preference as provided in this Section 3(a) is not paid in full, the holders of the Preferred Shares shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled. For the avoidance of doubt, a sale of shares of capital stock of the Corporation by anyone other than the Corporation (for example a sale of shares of capital stock on the open market) shall not result in a Liquidation Event, notwithstanding a change of control of the Corporation, so long as such transaction does not otherwise fall under the provisions of (A) - (D) of this Section 3(a).

(b) Participation. After payment in the full of the Preferred Share Liquidation Preference, the holders of outstanding Preferred Shares and Common Stock shall share in any consideration payable to the stockholders of the Corporation (in the case of a stock repurchase, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example) pro rata (as if the Preferred Shares had been converted into Common Stock as of the date immediately prior to the date fixed for determination of stockholders entitled to receive such distribution). Notwithstanding the foregoing, if the amount which would be

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receivable if the Preferred Shares had been converted into Common Stock immediately prior to the Liquidation Event is greater than the amount which would be paid under the foregoing provisions of Section 3(a) and this Section 3(b), then the holders of the Preferred Shares shall be entitled to receive such greater amount.

(c) Surrender of Certificates. On the effective date of any Liquidation Event, the Corporation shall pay all consideration to which the holders of Series A Preferred Shares shall be entitled under this Section 3. Upon receipt of such payment, each holder of Series A Preferred Shares shall surrender the certificate or certificates representing such shares, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Corporation, or shall notify the Corporation or any transfer agent that such certificates have been lost, stolen or destroyed, whereupon each surrendered certificate shall be canceled and retired.

(d) Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series A Preferred Shares notice to each holder at its address shown on the records of the Corporation, together with a certificate prepared by the chief financial officer of the Corporation describing in reasonable detail the facts of such Liquidation Event, stating in reasonable detail the amount(s) per share of Series A Preferred Shares each holder of Series A Preferred Shares would receive pursuant to the provisions of Sections 3(a) and 3(b) hereof and stating in reasonable detail the facts upon which such amount was determined and describing (if applicable) in reasonable detail all material terms of such Liquidation Event, to the extent known by the Corporation, including without limitation the consideration to be delivered in connection with such Liquidation Event, the valuation of the Corporation at the time of such Liquidation Event and the identities of the parties to the Liquidation Event.

4. Conversion. The holders of the Series A Preferred Shares shall have optional conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Shares shall be convertible, in whole or in part, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Original Purchase Price by (ii) the Conversion Price (as defined below) in effect at the time of conversion; *provided, however*, that such conversion shall be mandatory in the event the Required Holders vote to convert all of the Preferred Shares. The "Conversion Price" for the Series A Preferred Shares shall initially be Seven Cents (\$0.07) on the Original Issue Date (as such term is defined below). Such Conversion Price, and the rate at which shares of Series A Preferred Shares may be converted into shares of Common Stock, shall be subject to adjustment as provided in Section 4(d) below.

(b) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

(i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued or deemed to be issued by the Corporation after the date upon

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which a share of the Series A Preferred Shares was first issued (the "Original Issue Date"), other than:

(A) shares of Common Stock issued or issuable by reason of a dividend or other distribution on (x) the Series B Preferred Shares pursuant to the Series B Certificate of Designations, (y) the Series A Preferred Shares pursuant to Section 2(a) above or (z) shares of Common Stock that is covered by Section 4(f) or Section 4(g) below;

(B) shares of Common Stock issued or issuable upon conversion of shares of Preferred Shares;

(C) shares of Common Stock actually issued (as opposed to deemed issued under Section 4(d)(iii)) upon exercise of any Option or Convertible Security outstanding on the Original Issue Date;

(D) shares of Common Stock issued or deemed issued upon the exercise of any warrants (the "Credit Agreement Warrants") issued or issuable pursuant to the Credit Agreement, dated as of June 19, 2009 (as in effect from time to time, the "Credit Agreement") by and among the Company, the subsidiaries of the Company from time to time party thereto and Cummins Family Holdings, LLC;

(E) shares of Common Stock issued or issuable to employees, directors or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; or

(F) shares of Common Stock designated as exempt from the definition of Additional Shares of Common Stock by the Required Holders.

(ii) "Appraisal Procedure" shall be the procedure to determine fair market value of any security or other property (in either case, the "valuation amount"). If the Required Holders and the Board of Directors are not able to agree on the valuation amount within a reasonable period of time (not to exceed 20 days), the valuation amount shall be determined by an investment banking firm, which firm shall be unaffiliated with the Corporation and shall be reasonably acceptable to the Board of Directors and the Required Holders. If the Board of Directors and the Required Holders are unable to agree upon an acceptable investment banking firm within 10 days after the date either party proposed that one be selected, the investment banking firm will be selected by an arbitrator located in New York, New York selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the investment banking firm (within 10 days of his appointment) from a list, jointly prepared by the Required Holders and the Board of Directors, of not more than four investment banking firms in the United States, of which no more than two may be named by the Board of Directors and no more

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than two may be named by the Required Holders. The arbitrator may consider, within the ten-day period allotted, arguments from the parties regarding which investment banking firm to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of four. The Board of Directors and the Required Holders shall submit their respective valuations and other relevant data to the investment banking firm, and the investment banking firm shall as soon as practicable thereafter make its own determination of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the investment banking firm, from among the valuation amounts submitted by the Corporation and the Required Holders and the valuation amount calculated by the investment banking firm. The determination of the final valuation amount by such investment banking firm shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the investment banking firm and arbitrator (if any) used to determine the valuation amount. If required by any such investment banking firm or arbitrator, the Corporation shall execute a retainer and engagement letter containing reasonable terms and conditions, including, without limitation, customary provisions concerning the rights of indemnification and contribution by the Corporation in favor of such investment banking firm or arbitrator and its officers, directors, partners, employees, agents and affiliates. If the valuation amount is for Common Stock of the Corporation, the valuation amount shall not include a discount for minority ownership or illiquidity or a control premium.

(iii) "As-Converted Basis" shall mean, for the purpose of determining the number of shares of Common Stock outstanding, a basis of calculation which takes into account (A) the number of shares of Common Stock actually issued and outstanding at the time of such determination, and (B) the number of shares of Common Stock that is then issuable upon the conversion of all outstanding Convertible Securities (as defined below), including without limitation, the Preferred Shares.

(iv) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(v) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Shares to convert shares of Preferred Shares into shares of Common Stock, such holder shall provide, at the office of the transfer agent for the Series A Preferred Shares (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Shares represented by the certificate or certificates held by such holder. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued; *provided*, that in the case the nominee is different than such holder, the holder shall also provide such

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additional documentation as the Corporation shall reasonably request to establish that such transfer is in compliance with the Securities Act of 1933, as amended. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, but in any event within 3 business days after the later of (A) the Conversion Date or (B) in the event the holder has requested that the shares be issued in the name of a nominee different than such holder, the date on which the holder provides such additional documentation as the Corporation shall reasonably request to establish that such transfer is in compliance with the Securities Act of 1933, as amended, issue and deliver at such office to such holder of Series A Preferred Shares, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. On the Conversion Date, each holder of record of shares of Series A Preferred Shares to be surrendered for conversion shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Series A Preferred Shares, notwithstanding that the certificates representing such shares of Series A Preferred Shares shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Preferred Shares, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(ii) At all times when any Preferred Shares are outstanding, the Corporation shall reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Shares, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Shares. The Corporation promptly will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including without limitation engaging in best efforts to obtain the requisite stockholder approval. Before taking any action which would cause an adjustment reducing any Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the applicable Preferred Shares, the Corporation will take any corporate action which may be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) All shares of Series A Preferred Shares which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Shares so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series A Preferred Shares accordingly.

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(iv) The Corporation shall pay any and all issue, transfer, stamp and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Shares pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Shares so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of the Series A Preferred Shares shall be made unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issuance or deemed issuance of such Additional Shares.

(ii) *Full Ratchet; Weighted Average.*

(A) *Full Ratchet.* If the Corporation at any time or from time to time prior to the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series B Preferred Shares as provided in the Series B Certificate of Designations or upon a dividend of Series A Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, the Conversion Price for the Series A Preferred Shares shall be lowered to equal such consideration per share. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of \$.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(B) *Weighted Average.* If the Corporation at any time or from time to time on or after the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series B Preferred Shares in the Series B Certificate of Designations or

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upon a dividend of Series A Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, then in such event the Conversion Price for the Series A Preferred Shares shall be lowered to an amount determined by multiplying the Conversion Price in effect immediately prior to such issue by a fraction, (x) the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis) plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Company for such Additional Shares of Common Stock would purchase at such Conversion Price, and (y) the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis) plus (2) the number of such Additional Shares of Common Stock so issued and/or deemed to be issued. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of \$.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(iii) *Issue of Securities, Deemed Issue of Additional Shares of Common Stock.* If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (other than (i) the Credit Agreement Warrants, (ii) Series B Preferred Shares issued as dividend as provided in the Series B Certificate of Designations or (iii) Series A Preferred Shares issued as a dividend as provided in Section 2(a) above), or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon (1) upon the exercise or conversion of any Options or Convertible Securities outstanding as of Original Issue Date; (2) upon the exercise of any Options by employees, directors, or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; (3) upon the conversion of the Series B Preferred Shares; (4) upon the conversion of the Series A Preferred Shares; or (5) in connection with the issuance or exercise of the Credit Agreement Warrants;

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(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

- 1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and
- 2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the

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adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the Conversion Price on the original adjustment date, or (2) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date) to increase the number of shares issuable thereunder or decrease the consideration to be paid upon exercise or conversion thereof, then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Section 4(d)(iii) shall apply.

(e) *Determination of Consideration.* For purposes of this Section 4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) *Cash and Property.* Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors, or if requested by the Required Holders, by agreement of the Board of Directors and the Required Holders, and if the Board of Directors and the Required Holders do not agree on such fair market value, in accordance with the procedures set forth in the definition of Appraisal Procedure; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(ii) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii) above, relating to Options and Convertible Securities, shall be determined by dividing:

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(A) the total amount, if any, received by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) *Adjustment for Stock Splits and Combinations.* If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, each Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, each Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) *Adjustment for Certain Dividends and Distributions.* In the event the Corporation at any time, or from time to time after the Original Issue Date, shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable solely in additional shares of Common Stock, then and in each such event each Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this paragraph as of the time of

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actual payment of such dividends or distributions.

(h) *Adjustment for Reclassification, Exchange, or Substitution.* If the Common Stock issuable upon the conversion of the Series A Preferred Shares shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Series A Preferred Shares shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Series A Preferred Shares might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(i) *Adjustment for Merger or Reorganization, Etc.* In case of any consolidation or merger of the Corporation with or into another company or the sale of all or substantially all of the assets of the Corporation to another company, each share of Series A Preferred Shares, if any, remaining outstanding after such consolidation, merger or sale shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series A Preferred Shares would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series A Preferred Shares, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly equivalent a manner as may be practicable as before the consolidation or merger. If any event occurs of the type contemplated by the provisions of this Section 4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate reduction in each Conversion Price so as to protect the rights of the holders of the Series A Preferred Shares.

(j) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Shares, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series A Preferred Shares.

(k) *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Shares. In lieu of any fractional shares to which the

holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of a share of Common Stock, as mutually agreed by the Board of Directors of the Corporation and the Required Holders; *provided, however*, that if such mutual agreement cannot be reached, such fair market value shall be determined by following the Appraisal Procedures. The determination of fractional shares shall be based on the aggregate number of shares of Series A Preferred Shares surrendered for conversion by any holder of Series A Preferred Shares and not on the individual shares of Series A Preferred Shares held by such holder.

(1) *Notice of Record Date.* In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another company, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Series A Preferred Shares, and shall cause to be mailed to the holders of the Series A Preferred Shares at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten (10) days prior to the date specified in (1) below or 20 days before the date specified in (2) below, a notice stating

(1) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(2) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. **Voting Rights.**

(a) *Preferred Shares Voting Together.* Except as provided in Section 5(d)(i), Section 5(d)(iv), Section 5(d)(v) and Section 5(d)(ix) below, the holders of Preferred Shares shall vote together on all matters as a single class, with each Preferred Share entitled to cast the

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number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificates of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares)).

(b) *Voting with Common.* Except as provided in Section 5(b) and Section 5(c) below or as otherwise expressly set forth herein, the holders of Preferred Shares shall vote together with the Common Stock on all matters as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which it may be converted (as adjusted from time to time pursuant to Section 4 hereof) as of the record date.

(c) *Common Voting First on Certain Matters.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by this Certificate, the Corporation shall not undertake (i) any transaction giving rise to a Liquidation Event or (ii) any redemption of Preferred Shares, without the prior approval of the Common Stock voting as a single class. If such transaction referred in clause (i) or (ii) hereof is first approved by the requisite number of holders of Common Stock, such matter shall then be put to the vote of the holders Preferred Shares and Common Stock, voting together as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of Common Stock into which it may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to the Section 4 hereof (with respect to the Series A Preferred Shares)) as of the record date. For purposes of such joint vote, (A) any shares of Common Stock voted in favor of the transaction when voting as a single class shall be considered to have voted in favor of the transaction when voting together with the Preferred Shares, (B) any shares of Common Stock voted against the transaction when voting as a single class shall be considered to have voted against the transaction when voting together with the Preferred Shares and (C) any shares of Common Stock not voted on the transaction when voting as a single class shall be considered to have not voted on the transaction when voting together with the Preferred Shares.

(d) *Voting as Separate Class.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by the Series B Certificate of Designation and this Certificate, the Corporation shall not, and shall not permit any company or trust of which the Corporation directly or indirectly owns at the time 50% or more of the outstanding shares that represent either 50% of the voting power, 50% of the economic power, or control of the board of directors of such company or trust, other than directors' qualifying shares (a "Subsidiary") to, without the prior written consent of Required Holders voting together as a single class:

(i) amend, modify or repeal the Series B Certificate of Designations or this Certificate of Designations (whether by reclassification, merger, consolidation, reorganization or otherwise); *provided, however,* that any such amendment, modification or repeal shall also require the prior written consent of holders of a majority of the votes attributable to each of the outstanding Series B Preferred Shares and the Series A Preferred Shares, voting separately, with each Preferred Share entitled to cast the number

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of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares));

(ii) enter into any reclassification, merger, consolidation or reorganization;

(iii) increase or decrease (whether by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) the number of authorized Preferred Shares;

(iv) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any class or series of capital stock or securities convertible into capital stock with equal or superior rights to those of the Series B Preferred Shares or the Series A Preferred Shares; *provided, however*, that if any such class or series of capital stock or securities convertible into capital stock is superior to the rights of either the Series B Preferred Shares or the Series A Preferred Shares, but not the other, such authorization and issuance must also be approved by holders of a majority of the votes attributable to such junior series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares));

(v) whether by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise, (i) alter, amend or waive any rights, preferences or privileges of the Preferred Shares or (ii) otherwise alter, amend or waive any provisions of the Corporation's Articles of Incorporation or by-laws in a manner adverse to the holders of the Preferred Shares; *provided, however*, that if only one of the Series A Preferred Shares or Series B Preferred Shares is affected, but not the other, such act must be approved by holders of a majority of the votes attributable to such affected series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations (with respect to the Series B Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series A Preferred Shares));

(vi) authorize, declare or pay any dividend (other than dividends payable solely in Common Stock) on any share of the capital stock of the Corporation or any Subsidiary, with the exception of the dividends on the Series B Preferred Shares set forth in the Series B Certificate of Designations or the Series A Preferred Shares set forth in Section 2 hereof;

(vii) redeem, purchase or otherwise acquire for value any share or shares of the capital stock of the Corporation or any Subsidiary;

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(viii) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any additional Series B Preferred Shares; or

(ix) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any additional Series A Preferred Shares; *provided, however*, that such and issuance must also be approved by holders of a majority of the votes attributable to the Series B Preferred Shares, voting separately, with each Series B Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series B Certificate of Designations).

6. **Notices.** The Corporation shall distribute to the holders of Series A Preferred Shares copies of all notices, materials, annual and quarterly reports, proxy statements, information statements and any other documents distributed generally to the holders of shares of Common Stock of the Corporation, at such times and by such method as such documents are distributed to such holders of such Common Stock.

7. **Replacement Certificates.** The certificate(s) representing the Series A Preferred Shares held by any holder of Series A Preferred Shares may be exchanged by such holder at any time and from time to time for certificates with different denominations representing an equal aggregate number of Series A Preferred Shares, as reasonably requested by such holder, upon surrendering the same. No service charge will be made for such registration or transfer or exchange.

8. **Attorneys' Fees.** In connection with enforcement by a holder of Series A Preferred Shares of any obligation of the Corporation hereunder, the prevailing party shall be entitled to recovery of reasonable attorneys' fees and expenses incurred.

9. **No Reissuance.** No Series A Preferred Shares acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

10. **Severability of Provisions.** If any right, preference or limitation of the Series A Preferred Shares set forth in this Certificate of Designations (as this Certificate of Designations may be amended from time to time) is found to be invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designations, which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation, shall nevertheless remain in full force and effect, and no right, preference or limitation herein set forth be deemed dependent upon any such other right, preference or limitation unless so expressed herein.

11. **Specific Performance.** The Corporation acknowledges and agrees that irreparable damage would occur in the event that the Corporation failed to perform any of the provisions of this Certificate in accordance with its specific terms. It is accordingly agreed that each holder of Series A Preferred Shares shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Certificate and to enforce specifically the terms

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and provisions hereof, this being in addition to any other remedy to which such holder may be entitled by law or equity.

Signed on September 9, 2009

FLIGHT SAFETY TECHNOLOGIES, INC.

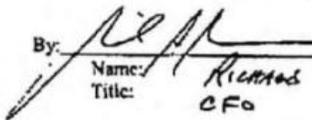
By: 
Name: Richard S Rosenfeld
Title: CFO

EXHIBIT B
SERIES B DESIGNATION
[See attached.]

[Exhibit B]

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4820
(775) 684 8700
Website: www.nvss.gov

Filed in the Office of 	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20090672028-56
	Filed On 09/09/2009
	Number of Pages 19

Certificate of Designation
(PURSUANT TO NRS 78.1955)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Designation For
Nevada Profit Corporations**
(Pursuant to NRS 78.1955)

1. Name of corporation:

FLIGHT SAFETY TECHNOLOGIES, INC.

2. By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.

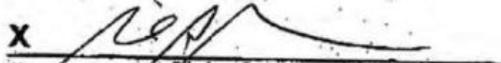
See attached Certificate of Designation of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series B Convertible Preferred Stock.

3. Effective date of filing: (optional)

[Empty box for effective date]

(must not be later than 90 days after the certificate is filed)

4. Signature: (required)

X 
Signature of Officer Richard S. Rosenfeld
Chief Financial Officer

Filing Fee: \$175.00

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State Stock Division
Revised: 3-6-08

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CFO

**CERTIFICATE OF DESIGNATIONS OF THE POWERS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS OF
PREFERRED STOCK AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS
THEREOF**

Of

SERIES B

CONVERTIBLE PREFERRED STOCK

for

FLIGHT SAFETY TECHNOLOGIES, INC.

FLIGHT SAFETY TECHNOLOGIES, INC., a Nevada corporation (the "Corporation"), pursuant to the provisions of Section 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Certificate of Designations and does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation, the Board of Directors duly adopted the following resolutions, which resolutions remain in full force and effect as of the date hereof:

RESOLVED, that, pursuant to Article Fourth of the Certificate of Incorporation of the Corporation, the Board of Directors hereby authorizes the issuance of, and fixes the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of preferred stock consisting of 50,000 shares, par value \$.001 per share, to be designated "Series B Convertible Preferred Stock" (the "Series B Preferred Shares"); and

RESOLVED, that each of the Series B Preferred Shares shall rank equally in all respects with the Series A Convertible Preferred Stock of the Company, par value \$.001 per share (the "Series A Preferred Shares," and together with the Series B Preferred Shares, the "Preferred Shares"), and that the Series B Preferred Shares shall be subject to the following terms and provisions:

1. **Designation.** There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Series B Convertible Preferred Stock", par value \$.001 per share. The number of shares constituting such series shall be 50,000 shares.

2. **Dividends.**

(a) **Dividend Rate.** For so long as any Series B Preferred Shares are outstanding, the Corporation shall pay, at its discretion either: (i) a dividend payable in cash at a per annum rate of 8% of the Original Purchase Price (as defined below) per share; or (ii) a dividend payable in additional shares of Series B Preferred Shares at a per annum rate of 10% of

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the Original Purchase Price per share; *provided, however*, that if the VWAP (as such term is defined below) for the common stock, par value \$.001 of the Corporation ("Common Stock") exceeds Fourteen Cents (\$0.14) per share with respect to any fiscal quarter, no dividends shall be due with respect to such fiscal quarter. Dividends shall be calculated on the basis of a 30-day month and a 360-day year. For purposes of calculating the number of Series B Preferred Shares to be issued as a dividend under Section 2(a)(ii) hereof, the Series B Preferred Shares to be issued shall be valued at a price per share equal to the Original Purchase Price. For purposes of this Certificate, the following terms shall have the meanings indicated:

"VWAP" means the quarterly volume-weighted average sale price per share of Common Stock on the principal market for any particular fiscal quarter as reported, as such figure may be adjusted for stock splits and combinations of the Common Stock.

(b) Dividend Payment Dates. The dividend payment dates for the Series B Preferred Shares are the first days of March, June, September, and December commencing December 1, 2009; provided that if any such payment date is not a Business Day (as defined below) then such dividend shall be payable on the next Business Day. The initial dividend period for any Series B Preferred Shares shall commence on the day when such shares are issued. The term "Business Day" means a day other than a Saturday, Sunday or day on which banking institutions in New York are authorized or required to remain closed.

(c) Consent. For so long as any Series B Preferred Shares are outstanding, the Corporation shall not pay any dividends on any shares of Common Stock (except for dividends payable in Common Stock) or any shares of any other capital stock other than on Series A Preferred Shares in accordance with the provisions of the Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Special Rights of Preferred Stock and Qualifications, Limitations and Restrictions Thereof of Series A Convertible Preferred Stock of the Company, as in effect from time to time (the "Series A Certificate of Designations"), or repurchase any shares of Common Stock (other than the repurchase of shares of Common Stock issued pursuant to employment or consulting agreements with the Corporation, which are repurchased upon termination of employment or services for consideration no greater than the original issue price) or capital stock, without having received written consent of a majority of the votes attributable to the outstanding Preferred Shares (the "Required Holders"), voting separately from the holders of Common Stock.

3. Liquidation Events.

(a) Liquidation Preference. Upon (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or (ii) unless otherwise agreed by the Required Holders, (A) a merger or consolidation of the Corporation with or into another entity (except for a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the outstanding voting power of such surviving Corporation), (B) the sale or transfer of all or substantially all of the assets of the Corporation (for this purpose "substantially all" shall mean properties or assets with a fair market value equal to 60% or more of the fair market value of the Corporation's total properties or assets as of the end of the most recent fiscal quarter and "sale" shall not include a bona fide pledge of assets), (C) any issuance of shares of capital stock by the

Corporation in one or more related transactions except for (x) an issuance of shares of capital stock in which the holders of capital stock of the Corporation immediately prior to such issuance of stock continue to hold at least 50% of the outstanding voting power of the Corporation after such issuance of shares of capital stock, (y) the issuance of Series A Preferred Shares on January 13, 2009, or (z) the issuance of Series B Preferred Shares on the Original Issue Date (as such term is defined below), or (D) the repurchase by the Corporation of shares of capital stock of the Corporation (other than the Series A Preferred Shares in accordance with the provisions of the Series A Certificate of Designations or the Series B Preferred Shares in accordance with the terms hereof) such that the holders of capital stock of the Corporation immediately prior to such repurchase do not hold at least 50% of the outstanding voting power of the Corporation after such repurchase (each of the transactions or events described in Sections (i) and (ii) (A) - (D) of this Section 3(a) is referred to as a "Liquidation Event" herein), each holder of outstanding Series B Preferred Shares shall be entitled to be paid out of the consideration payable to the stockholders of the Corporation (in the case of a merger or consolidation, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example), as the case may be, whether such assets are capital, surplus or capital earnings, on the same priority as other holders of Preferred Shares, but prior and in preference to any payments being paid to holders of Common Stock of the Corporation or other shares ranking junior to the Series B Preferred Shares, an amount in cash equal to \$100.00 per share (the "Original Purchase Price") plus any declared or accrued but unpaid dividends thereon (collectively with the Original Purchase Price per share, the "Preferred Share Liquidation Preference"); *provided that if, upon any Liquidation Event, the Preferred Share Liquidation Preference as provided in this Section 3(a) is not paid in full, the holders of the Preferred Shares shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled. For the avoidance of doubt, a sale of shares of capital stock of the Corporation by anyone other than the Corporation (for example a sale of shares of capital stock on the open market) shall not result in a Liquidation Event, notwithstanding a change of control of the Corporation, so long as such transaction does not otherwise fall under the provisions of (A) - (D) of this Section 3(a).*

(b) Participation. After payment in the full of the Preferred Share Liquidation Preference, the holders of outstanding Preferred Shares and Common Stock shall share in any consideration payable to the stockholders of the Corporation (in the case of a stock repurchase, for example) or of the consideration payable to the Corporation (net of obligations owed by the Corporation) together with all other available assets of the Corporation (in the case of an asset sale, for example) pro rata (as if the Preferred Shares had been converted into Common Stock as of the date immediately prior to the date fixed for determination of stockholders entitled to receive such distribution). Notwithstanding the foregoing, if the amount which would be receivable if the Preferred Shares had been converted into Common Stock immediately prior to the Liquidation Event is greater than the amount which would be paid under the foregoing provisions of Section 3(a) and this Section 3(b), then the holders of the Preferred Shares shall be entitled to receive such greater amount.

(c) Surrender of Certificates. On the effective date of any Liquidation Event, the Corporation shall pay all consideration to which the holders of Series B Preferred Shares shall be entitled under this Section 3. Upon receipt of such payment, each holder of Series B

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Preferred Shares shall surrender the certificate or certificates representing such shares, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Corporation, or shall notify the Corporation or any transfer agent that such certificates have been lost, stolen or destroyed, whereupon each surrendered certificate shall be canceled and retired.

(d) **Notice.** Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Series B Preferred Shares notice to each holder at its address shown on the records of the Corporation, together with a certificate prepared by the chief financial officer of the Corporation describing in reasonable detail the facts of such Liquidation Event, stating in reasonable detail the amount(s) per share of Series B Preferred Shares each holder of Series B Preferred Shares would receive pursuant to the provisions of Sections 3(a) and 3(b) hereof and stating in reasonable detail the facts upon which such amount was determined and describing (if applicable) in reasonable detail all material terms of such Liquidation Event, to the extent known by the Corporation, including without limitation the consideration to be delivered in connection with such Liquidation Event, the valuation of the Corporation at the time of such Liquidation Event and the identities of the parties to the Liquidation Event.

4. **Conversion.** The holders of the Series B Preferred Shares shall have optional conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Each share of Series B Preferred Shares shall be convertible, in whole or in part, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Original Purchase Price by (ii) the Conversion Price (as defined below) in effect at the time of conversion; *provided, however*, that such conversion shall be mandatory in the event the Required Holders vote to convert all of the Preferred Shares. The "Conversion Price" for the Series B Preferred Shares shall initially be Ten Cents (\$0.10) on the Original Issue Date (as such term is defined below). Such Conversion Price, and the rate at which shares of Series B Preferred Shares may be converted into shares of Common Stock, shall be subject to adjustment as provided in Section 4(d) below.

(b) **Special Definitions.** For purposes of this Section 4, the following definitions shall apply:

(i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued or deemed to be issued by the Corporation after the date upon which a share of the Series B Preferred Shares was first issued (the "Original Issue Date"), other than:

(A) shares of Common Stock issued or issuable by reason of a dividend or other distribution on (x) the Series A Preferred Shares pursuant to the Series A Certificate of Designations, (y) the Series B Preferred Shares pursuant to Section 2(a) above or (z) shares of Common Stock that is covered by Section 4(f) or Section 4(g) below;

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(B) shares of Common Stock issued or issuable upon conversion of shares of Preferred Shares;

(C) shares of Common Stock actually issued (as opposed to deemed issued under Section 4(d)(iii)) upon exercise of any Option or Convertible Security outstanding on the Original Issue Date;

(D) shares of Common Stock issued or deemed issued upon the exercise of any warrants (the "Credit Agreement Warrants") issued or issuable pursuant to the Credit Agreement, dated as of June 19, 2009 (as in effect from time to time, the "Credit Agreement") by and among the Company, the subsidiaries of the Company from time to time party thereto and Cummins Family Holdings, LLC;

(E) shares of Common Stock issued or issuable to employees, directors or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; or

(F) shares of Common Stock designated as exempt from the definition of Additional Shares of Common Stock by the Required Holders.

(ii) "Appraisal Procedure" shall be the procedure to determine fair market value of any security or other property (in either case, the "valuation amount"). If the Required Holders and the Board of Directors are not able to agree on the valuation amount within a reasonable period of time (not to exceed 20 days), the valuation amount shall be determined by an investment banking firm, which firm shall be unaffiliated with the Corporation and shall be reasonably acceptable to the Board of Directors and the Required Holders. If the Board of Directors and the Required Holders are unable to agree upon an acceptable investment banking firm within 10 days after the date either party proposed that one be selected, the investment banking firm will be selected by an arbitrator located in New York, New York selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the investment banking firm (within 10 days of his appointment) from a list, jointly prepared by the Required Holders and the Board of Directors, of not more than four investment banking firms in the United States, of which no more than two may be named by the Board of Directors and no more than two may be named by the Required Holders. The arbitrator may consider, within the ten-day period allotted, arguments from the parties regarding which investment banking firm to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of four. The Board of Directors and the Required Holders shall submit their respective valuations and other relevant data to the investment banking firm, and the investment banking firm shall as soon as practicable thereafter make its own determination of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the investment banking firm, from among the valuation amounts submitted by the

Corporation and the Required Holders and the valuation amount calculated by the investment banking firm. The determination of the final valuation amount by such investment banking firm shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the investment banking firm and arbitrator (if any) used to determine the valuation amount. If required by any such investment banking firm or arbitrator, the Corporation shall execute a retainer and engagement letter containing reasonable terms and conditions, including, without limitation, customary provisions concerning the rights of indemnification and contribution by the Corporation in favor of such investment banking firm or arbitrator and its officers, directors, partners, employees, agents and affiliates. If the valuation amount is for Common Stock of the Corporation, the valuation amount shall not include a discount for minority ownership or illiquidity or a control premium.

(iii) "As-Converted Basis" shall mean, for the purpose of determining the number of shares of Common Stock outstanding, a basis of calculation which takes into account (A) the number of shares of Common Stock actually issued and outstanding at the time of such determination, and (B) the number of shares of Common Stock that is then issuable upon the conversion of all outstanding Convertible Securities (as defined below), including without limitation, the Preferred Shares.

(iv) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(v) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Shares to convert shares of Preferred Shares into shares of Common Stock, such holder shall provide, at the office of the transfer agent for the Series B Preferred Shares (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), written notice that such holder elects to convert all or any number of the shares of the Series B Preferred Shares represented by the certificate or certificates held by such holder. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued; *provided*, that in the case the nominee is different than such holder, the holder shall also provide such additional documentation as the Corporation shall reasonably request to establish that such transfer is in compliance with the Securities Act of 1933, as amended. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, but in any event within 3 business days after the later of (A) the Conversion Date or (B) in the event the holder has requested that the shares be issued in the name of a nominee different than such holder, the date on which the holder provides such additional documentation as the Corporation shall reasonably request to establish that such transfer

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is in compliance with the Securities Act of 1933, as amended, issue and deliver at such office to such holder of Series B Preferred Shares, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. On the Conversion Date, each holder of record of shares of Series B Preferred Shares to be surrendered for conversion shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Series B Preferred Shares, notwithstanding that the certificates representing such shares of Series B Preferred Shares shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Preferred Shares, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(ii) At all times when any Preferred Shares are outstanding, the Corporation shall reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Shares, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Shares. The Corporation promptly will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including without limitation engaging in best efforts to obtain the requisite stockholder approval. Before taking any action which would cause an adjustment reducing any Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the applicable Preferred Shares, the Corporation will take any corporate action which may be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) All shares of Series B Preferred Shares which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Series B Preferred Shares so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series B Preferred Shares accordingly.

(iv) The Corporation shall pay any and all issue, transfer, stamp and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series B Preferred Shares pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series B Preferred Shares so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount

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of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of the Series B Preferred Shares shall be made unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issuance or deemed issuance of such Additional Shares.

(ii) *Full Ratchet; Weighted Average.*

(A) *Full Ratchet.* If the Corporation at any time or from time to time prior to the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series A Preferred Shares as provided in the Series A Certificate of Designations or upon a dividend of Series B Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, the Conversion Price for the Series B Preferred Shares shall be lowered to equal such consideration per share. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of \$.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(B) *Weighted Average.* If the Corporation at any time or from time to time on or after the one (1) year anniversary of the Original Issue Date shall issue any Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(iii) below but excluding shares issued as stock split or combination as provided in Section 4(f) below, issued upon a dividend or distribution as provided in Section 4(g) below or deemed to be issued upon a dividend of Series A Preferred Shares in the Series A Certificate of Designations or upon a dividend of Series B Preferred Shares as provided in Section 2(a) above) without consideration or for consideration per share lower than the Conversion Price in effect on the date of and immediately prior to such issue, then in such event the Conversion Price for the Series B Preferred Shares shall be lowered to an amount determined by multiplying the Conversion Price in effect immediately prior to such issue by a fraction, (x) the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-

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Converted Basis) plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Company for such Additional Shares of Common Stock would purchase at such Conversion Price, and (y) the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such issue (on an As-Converted Basis) plus (2) the number of such Additional Shares of Common Stock so issued and/or deemed to be issued. For purposes of this Section 4(d)(ii), any Additional Shares of Common Stock issued for no consideration shall be deemed to be issued for a consideration per share of \$.001, subject to adjustments for Common Stock splits, dividends, and combinations.

(iii) *Issue of Securities, Deemed Issue of Additional Shares of Common Stock.* If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (other than (i) the Credit Agreement Warrants, (ii) Series B Preferred Shares issued as provided in Section 2(a) above, or (iii) Series A Preferred Shares issued as provided in the Series A Certificate of Designations) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon (1) upon the exercise or conversion of any Options or Convertible Securities outstanding as of the Original Issue Date; (2) upon the exercise of any Options by employees, directors, or consultants pursuant to equity incentive plans approved by the board of directors of the Corporation and adopted by the shareholders of the Corporation; (3) upon the conversion of the Series A Preferred Shares; (4) upon the conversion of the Series B Preferred Shares; or (5) in connection with the issuance or exercise of the Credit Agreement Warrants;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the

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rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

- 1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and
- 2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the Conversion Price on the original adjustment date, or (2) the Conversion Price that would have resulted from any

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issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date) to increase the number of shares issuable thereunder or decrease the consideration to be paid upon exercise or conversion thereof, then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Section 4(d)(iii) shall apply.

(c) *Determination of Consideration.* For purposes of this Section 4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(i) *Cash and Property.* Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors, or if requested by the Required Holders, by agreement of the Board of Directors and the Required Holders, and if the Board of Directors and the Required Holders do not agree on such fair market value, in accordance with the procedures set forth in the definition of Appraisal Procedure; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors.

(ii) *Options and Convertible Securities.* The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(iii) above, relating to Options and Convertible Securities, shall be determined by dividing:

(A) the total amount, if any, received by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for

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Convertible Securities and the conversion or exchange of such Convertible Securities, by

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(f) *Adjustment for Stock Splits and Combinations.* If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, each Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, each Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) *Adjustment for Certain Dividends and Distributions.* In the event the Corporation at any time, or from time to time after the Original Issue Date, shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable solely in additional shares of Common Stock, then and in each such event each Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(h) *Adjustment for Reclassification, Exchange, or Substitution.* If the Common Stock issuable upon the conversion of the Series B Preferred Shares shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Series B

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Preferred Shares shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Series B Preferred Shares might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(i) *Adjustment for Merger or Reorganization, Etc.* In case of any consolidation or merger of the Corporation with or into another company or the sale of all or substantially all of the assets of the Corporation to another company, each share of Series B Preferred Shares, if any, remaining outstanding after such consolidation, merger or sale shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Series B Preferred Shares would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of the Series B Preferred Shares, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly equivalent a manner as may be practicable as before the consolidation or merger. If any event occurs of the type contemplated by the provisions of this Section 4 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate reduction in each Conversion Price so as to protect the rights of the holders of the Series B Preferred Shares.

(j) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series B Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Shares, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of Series B Preferred Shares.

(k) *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of the Series B Preferred Shares. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of a share of Common Stock, as mutually agreed by the Board of Directors of the Corporation and the Required Holders; *provided, however,* that if such mutual agreement cannot be reached, such fair market value shall be determined by following the Appraisal Procedures. The determination of fractional shares shall be based on the aggregate number of shares of Series B Preferred Shares surrendered for conversion by any holder of Series B Preferred Shares and not on the individual shares of Series B Preferred Shares held by such holder.

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(l) *Notice of Record Date.* In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another company, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Series B Preferred Shares, and shall cause to be mailed to the holders of the Series B Preferred Shares at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten (10) days prior to the date specified in (1) below or 20 days before the date specified in (2) below, a notice stating

(1) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(2) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

5. **Voting Rights.**

(a) *Preferred Shares Voting Together.* Except as provided in Section 5(d)(i), Section 5(d)(iv), Section 5(d)(v) and Section 5(d)(ix) below, the holders of Preferred Shares shall vote together on all matters as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificates of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares)).

(b) *Voting with Common.* Except as provided in Section 5(b) and Section 5(c) below or as otherwise expressly set forth herein, the holders of Preferred Shares shall vote together with the Common Stock on all matters as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which it

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may be converted (as adjusted from time to time pursuant to Section 4 hereof) as of the record date.

(c) *Common Voting First on Certain Matters.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by this Certificate, the Corporation shall not undertake (i) any transaction giving rise to a Liquidation Event or (ii) any redemption of Preferred Shares, without the prior approval of the Common Stock voting as a single class. If such transaction referred in clause (i) or (ii) hereof is first approved by the requisite number of holders of Common Stock, such matter shall then be put to the vote of the holders Preferred Shares and Common Stock, voting together as a single class, with each Preferred Share entitled to cast the number of votes equal to the number of Common Stock into which it may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to the Section 4 hereof (with respect to the Series B Preferred Shares)) as of the record date. For purposes of such joint vote, (A) any shares of Common Stock voted in favor of the transaction when voting as a single class shall be considered to have voted in favor of the transaction when voting together with the Preferred Shares, (B) any shares of Common Stock voted against the transaction when voting as a single class shall be considered to have voted against the transaction when voting together with the Preferred Shares and (C) any shares of Common Stock not voted on the transaction when voting as a single class shall be considered to have not voted on the transaction when voting together with the Preferred Shares.

(d) *Voting as Separate Class.* In addition to all other requirements imposed by Nevada law, and all other voting rights granted under the Corporation's Articles of Incorporation, as supplemented by the Series A Certificate of Designation and this Certificate, the Corporation shall not, and shall not permit any company or trust of which the Corporation directly or indirectly owns at the time 50% or more of the outstanding shares that represent either 50% of the voting power, 50% of the economic power, or control of the board of directors of such company or trust, other than directors' qualifying shares (a "Subsidiary") to, without the prior written consent of Required Holders voting together as a single class:

(i) amend, modify or repeal the Series A Certificate of Designations or this Certificate of Designations (whether by reclassification, merger, consolidation, reorganization or otherwise); *provided, however,* that any such amendment, modification or repeal shall also require the prior written consent of holders of a majority of the votes attributable to each of the outstanding Series A Preferred Shares and the Series B Preferred Shares, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares));

(ii) enter into any reclassification, merger, consolidation or reorganization;

(iii) increase or decrease (whether by amendment to the Articles of

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Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) the number of authorized Preferred Shares;

(iv) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any class or series of capital stock or securities convertible into capital stock with equal or superior rights to those of the Series A Preferred Shares or the Series B Preferred Shares; *provided, however*, that if any such class or series of capital stock or securities convertible into capital stock is superior to the rights of either the Series A Preferred Shares or the Series B Preferred Shares, but not the other, such authorization and issuance must also be approved by holders of a majority of the votes attributable to such junior series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares));

(v) whether by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise; (i) alter, amend or waive any rights, preferences or privileges of the Preferred Shares or (ii) otherwise alter, amend or waive any provisions of the Corporation's Articles of Incorporation or by-laws in a manner adverse to the holders of the Preferred Shares; *provided, however*, that if only one of the Series B Preferred Shares or Series A Preferred Shares is affected, but not the other, such act must be approved by holders of a majority of the votes attributable to such affected series, voting separately, with each Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to the Series A Certificate of Designations (with respect to the Series A Preferred Shares) and pursuant to Section 4 hereof (with respect to the Series B Preferred Shares));

(vi) authorize, declare or pay any dividend (other than dividends payable solely in Common Stock) on any share of the capital stock of the Corporation or any Subsidiary, with the exception of the dividends on the Series A Preferred Shares set forth in the Series A Certificate of Designations or the Series B Preferred Shares set forth in Section 2 hereof;

(vii) redeem, purchase or otherwise acquire for value any share or shares of the capital stock of the Corporation or any Subsidiary;

(viii) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation reorganization or otherwise) any additional Series B Preferred Shares; or

(ix) authorize or issue (by amendment to the Articles of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any additional Series A Preferred Shares; *provided, however*, that such an issuance must also be approved by holders of a majority of the votes attributable to the Series B Preferred

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Shares, voting separately, with each Series B Preferred Share entitled to cast the number of votes equal to the number of shares of Common Stock into which each may be converted (as adjusted from time to time pursuant to this Certificate).

6. **Notices.** The Corporation shall distribute to the holders of Series B Preferred Shares copies of all notices, materials, annual and quarterly reports, proxy statements, information statements and any other documents distributed generally to the holders of shares of Common Stock of the Corporation, at such times and by such method as such documents are distributed to such holders of such Common Stock.

7. **Replacement Certificates.** The certificate(s) representing the Series B Preferred Shares held by any holder of Series B Preferred Shares may be exchanged by such holder at any time and from time to time for certificates with different denominations representing an equal aggregate number of Series B Preferred Shares, as reasonably requested by such holder, upon surrendering the same. No service charge will be made for such registration or transfer or exchange.

8. **Attorneys' Fees.** In connection with enforcement by a holder of Series B Preferred Shares of any obligation of the Corporation hereunder, the prevailing party shall be entitled to recovery of reasonable attorneys' fees and expenses incurred.

9. **No Reissuance.** No Series B Preferred Shares acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

10. **Severability of Provisions.** If any right, preference or limitation of the Series B Preferred Shares set forth in this Certificate of Designations (as this Certificate of Designations may be amended from time to time) is found to be invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designations, which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation, shall nevertheless remain in full force and effect, and no right, preference or limitation herein set forth be deemed dependent upon any such other right, preference or limitation unless so expressed herein.

11. **Specific Performance.** The Corporation acknowledges and agrees that irreparable damage would occur in the event that the Corporation failed to perform any of the provisions of this Certificate in accordance with its specific terms. It is accordingly agreed that each holder of Series B Preferred Shares shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Certificate and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which such holder may be entitled by law or equity.

Signed on September 9, 2009

FLIGHT SAFETY TECHNOLOGIES, INC.

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FLIGHT SAFETY TECHNOLOGIES, INC.

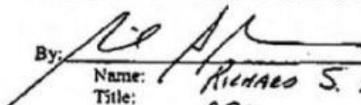
By: 
Name: Richard S. Rosenfeld
Title: CFO

EXHIBIT C
SERIES C DESIGNATION
[See attached.]

[Exhibit C]

**CERTIFICATE OF DESIGNATIONS
OF THE POWERS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER RESTRICTIONS
OF SERIES C PREFERRED STOCK
OF APPLIED BLOCKCHAIN, INC.**

Section 1.1 Designation. As of the effective date of this Certificate, there is hereby created out of the authorized preferred stock of the Corporation a series of preferred stock designated as "Series C Convertible Redeemable Preferred Stock" (the "*Series C Preferred Stock*"), par value \$0.001 per share. The Series C Preferred Stock shall rank senior in all respects to the Series A Convertible Preferred Stock of the Corporation (the "*Series A Preferred Stock*") and the Series B Convertible Preferred Stock of the Corporation (the "*Series B Preferred Stock*" and together with the Series A Preferred Stock, the "*Junior Preferred Stock*", and together with the Series A Preferred Stock and the Series C Preferred Stock, the "*Preferred Stock*"). The following rights, powers and privileges, and restrictions, qualifications and limitations, shall apply to the Series C Preferred Stock.

(a) Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(i) Payments to Holders of Series C Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or any Deemed Liquidation Event (as defined below), before any payment shall be made to the holders of the Junior Preferred Stock or Common Stock by reason of their ownership thereof, the holders of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the funds and assets available for distribution to the stockholders of the Corporation, an amount per share equal to the Stated Value (as defined below) for such share of Series C Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series C Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (as defined below). If upon any such liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation shall be insufficient to pay the holders of shares of Series C Preferred Stock the full amount to which they are entitled under this Section 1.1(a)(i), the holders of shares of Series C Preferred Stock shall share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of the shares of Series C Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. The "*Stated Value*" shall mean Twenty-Five United States Dollars and No Cents (\$25.00) per share, subject to an equitable adjustment for stock splits, stock combinations, recapitalizations and similar transactions.

(ii) Payments to Holders of Junior Preferred Stock and Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up or Deemed Liquidation Event of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series C Preferred Stock as provided in Section 1.1(a)(i), the remaining funds and assets available for distribution to the stockholders of the Corporation shall

be distributed among the holders of shares of the Junior Preferred Stock according to the terms thereof and then among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

(iii) Deemed Liquidation Events.

(A) Definition. Each of the following events shall be considered a “*Deemed Liquidation Event*” unless the holders of at least a majority of the outstanding shares of Series C Preferred Stock (voting as a single class on an as-converted basis) (the “*Requisite Holders*”) elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event:

(1) a merger or consolidation in which (I) the Corporation is a constituent party or (II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the equity securities of (x) the surviving or resulting party or (y) if the surviving or resulting party is a wholly owned subsidiary of another party immediately following such merger or consolidation, the parent of such surviving or resulting party; *provided* that, for the purpose of this Section 1.1(a)(iii)(A), all shares of Common Stock issuable upon exercise of options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, deemed to be converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged; or

(2) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or, if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation, except where such sale, lease, transfer or other disposition is to the Corporation or one or more wholly owned subsidiaries of the Corporation.

Notwithstanding the foregoing, a Significant Transaction Event (as defined below) shall not be considered a Deemed Liquidation Event.

(B) Public Offering or Listing Facilitation Transaction. Under no circumstances shall a public offering of the Corporation’s securities, including a public offering that results in a change of control of the Corporation, or a merger or other business combination or issuance of securities of the Corporation designed to increase the number of stockholders of the Corporation in order to facilitate a listing on a Trading Market (as such term is defined in that certain Registration Rights Agreement, dated as of [April 15], 2021, by and between the Corporation and the purchasers of the Series C Preferred Stock (the “*Registration Rights*”

Agreement")) be considered a voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

(C) Allocation of Escrow. In the event of a Deemed Liquidation Event pursuant to Section 1.1(a)(iii)(A)(1)(I), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow, the definitive agreement for such transaction shall provide that the portion of such consideration that is placed in escrow shall be allocated among the holders of capital stock of the Corporation pro rata based on the amount of such consideration otherwise payable to each stockholder (such that each stockholder has placed in escrow the same percentage of the total consideration payable to such stockholder as every other stockholder).

(D) Amount Deemed Paid or Distributed. The funds and assets deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer or other disposition described in this Section 1.1(a)(iii) shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board.

(b) Voting. Holders of shares of Series C Preferred Stock shall vote together with holders of Common Stock on an as-if converted to Common Stock basis on any matters coming before the stockholders of the Corporation for a vote. Notwithstanding the foregoing, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate) the written consent or affirmative vote of the Requisite Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(i) materially change the principal business of the Corporation unless in connection with a Significant Transaction Event; or

(ii) except in connection with a Significant Transaction Event, sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of the Corporation or permit any direct or indirect subsidiary to do so; provided, however, that no consent or vote of the Requisite Holders shall be required in connection with sales of mining equipment in the ordinary course of the Corporation's business and in a manner consistent with the principal business of the Corporation.

(c) Dividends.

(i) Dividends Generally. The holders of shares of Series C Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series C Preferred Stock equal (on an as if converted to Common Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. Except as set forth in this Section 1.1(c)(i) and for PIK Dividends (as defined below), no other dividends shall be paid on shares of Series C Preferred Stock.

(ii) PIK Dividends. The Corporation shall be required to pay a dividend in fully paid and non-assessable shares of Series C Preferred Stock (each a "*PIK Dividend*" and, collectively, the "*PIK Dividends*") equal to the percentage of Stated Value set forth below upon the occurrence of each of the following events:

(A) Failure to File. If the Corporation has not filed or confidentially submitted a registration statement (the "*Registration Statement*") to register the shares of Common Stock issuable upon conversion of the Series C Preferred Stock (the "*Registrable Securities*") on or before the date that is four (4) months following the date that the first share of Series C Preferred Stock is issued (the "*Original Issue Date*"), the Corporation shall accrue daily a PIK Dividend equal to ten percent (10%) per annum of Stated Value;

(B) Failure to be Declared Effective and to List. If the Registration Statement has not been declared effective by the U.S. Securities and Exchange Commission (the "*SEC*") on or before the date that is eight (8) months after the Original Issue Date and/or the Registrable Securities are not listed on a Trading Market on or before the date that is twelve (12) months after Original Issue Date, the Corporation shall accrue daily a PIK Dividend of twelve percent (12%) per annum of Stated Value, or fifteen percent (15%) per annum of Stated Value for each day such failure continues after eighteen (18) months after the Original Issue Date. Such PIK Dividend shall be instead of, and not in addition to, any PIK Dividend also accruing under Section 1.1(c)(ii)(A); and

(C) Mandatory Redemption Failure. If the Corporation fails to complete a Mandatory Redemption (as defined below) when required to do so, it shall continue to pay a PIK Dividend in accordance with Section 1.1(c)(ii)(B).

The PIK Dividends shall be paid by delivering to each record holder of Series C Preferred Stock a number of shares of Series C Preferred Stock determined by dividing (x) the total aggregate dollar amount of dividends accrued and unpaid with respect to Series C Preferred Stock owned by such record holder (rounded to the nearest whole cent) by (y) the Stated Value.

Notwithstanding the foregoing, PIK Dividends shall cease cumulating and accruing upon the earliest to occur of (1) the date of the satisfaction of the conditions set forth in Section 1.1(c)(ii)(A), Section 1.1(c)(ii)(B) and Section 1.1(c)(ii)(C) that gave rise to such PIK Dividend (any such date, a "*PIK Dividend Satisfaction Date*"), and (2) any Conversion Date (as defined below) or Optional Conversion Date (as defined below). Upon a simultaneous or consecutive occurrence of two or more events that trigger the accrual of PIK Dividends on one or more days, PIK Dividends shall accrue on each issued and outstanding share of Series C Preferred Stock as if only one triggering event had occurred, such that the accrual of PIK Dividends in accordance with this Section 1.1(c)(ii) shall not be doubled, tripled or otherwise multiplied due to the existence of multiple events causing the accrual of PIK Dividends.

Notwithstanding the foregoing, (I) if within six (6) months of the Original Issue Date, the Corporation enters into a binding definitive agreement or binding instrument relating to a Significant Transaction Event (a "*Definitive Instrument*"), then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date, and (II) if the Corporation has entered into a Definitive Instrument within six (6) months of the Original Issue Date and has consummated the

Significant Transaction Event within ten (10) months of the Original Issue Date, then the Corporation shall have no obligation to pay any PIK Dividends accrued or payable through such date. A "**Significant Transaction Event**" means a merger, share exchange, sale of all or substantially all of the assets of the Corporation or other business combination, restructuring or change of control transaction, including any such transaction intended to result in the Corporation becoming subject to the reporting requirements of Section 13 of 15(d) of the Exchange Act (or becoming a voluntary filer under the Exchange Act), a business combination intended to increase the number of shareholders of the Corporation to facilitate listing on a Trading Market, a business combination with a special purpose acquisition company, or a business combination with a company that is listed on a Trading Market.

(d) Automatic Conversion.

(i) Trigger Event. On the Conversion Date (as defined below), each share of Series C Preferred Stock shall be automatically converted (without the payment of additional consideration by the holder thereof), into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Conversion Date. The "**Conversion Price**" shall initially be equal to \$0.13. Such initial Conversion Price, and the rate at which shares of Series C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. For purposes hereof, "**Conversion Date**" means (A) the date that the Registration Statement is declared effective by the SEC or (B) the date on which a Significant Transaction Event occurs.

(ii) Mechanics of Conversion. All holders of record of Series C Preferred Stock shall be sent written notice of the Conversion Date and the place designated for conversion of all such shares of Series C Preferred Stock pursuant to this Section 1.1(d). Such notice need not be sent in advance of the occurrence of the Conversion Date. Upon receipt of such notice, each holder of Series C Preferred Stock shall, if such holder's shares are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series C Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer agent, duly executed by the registered holder of shares of Series C Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series C Preferred Stock converted pursuant to this Section 1.1(d) will terminate at the Conversion Date (notwithstanding the failure of the holder or holders of Series C Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series C Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(d)(ii). As soon as practicable after the Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series C Preferred Stock, the Corporation shall issue and deliver to such holder of Series C Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of

Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series C Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(iii) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series C Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of persons other than the holders of Series C Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 1.1(d)) upon the conversion of the then outstanding shares of Series C Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

(iv) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock. As to any fraction of a share which the holder of shares of Series C Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(v) Transfer Taxes and Expenses. The issuance of shares of Common Stock on conversion of the Series C Preferred Stock shall be made without charge to any holder of Series C Preferred Stock for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such shares of Common Stock, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such shares of Common Stock upon conversion in a name other than that of the holders of the Series C Preferred Stock of such shares of Series C Preferred Stock and the Corporation shall not be required to issue or deliver such shares of Common Stock unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all transfer agent fees required for same-day processing and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the shares of Common Stock.

(vi) Adjustments to Conversion Price for Diluting Issues.

(A) Special Definitions. For purposes of this Section 1.1(d), the following definitions shall apply:

(1) “Additional Shares of Common Stock” shall mean all shares of Common Stock issued (or, pursuant to Section 1.1(d)(vi)(C) below, deemed to be issued) by the Corporation after the Original Issue Date, other than (x) the following shares of Common Stock and (y) shares of Common Stock deemed issued pursuant to the following Options (as defined below) and Convertible Securities (as defined below) (clauses (x) and (y), collectively, “Exempted Securities”);

a. as to any series of Preferred Stock, shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock; or

b. shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 1.1(d)(vii); or

c. shares of Common Stock, Options or other equity-linked securities or awards issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation; or

d. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security; or

e. shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction; or

f. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; or

g. shares of Common Stock, Options, Convertible Securities or other equity or equity-linked issued in connection with a Significant Transaction Event; or

(2) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(3) "***Option***" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(C) Deemed Issue of Additional Shares of Common Stock.

(1) If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(2) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (II) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (2) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (x) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (y) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(3) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) (either because the consideration per share (determined pursuant to Section 1.1(d)(vi)(E)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (I) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (II) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible

Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 1.1(d)(vi)(C)(1)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(4) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D), the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(5) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 1.1(d)(vi)(C) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (2) and (3) of this Section 1.1(d)(vi)(C)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 1.1(d)(vi)(C) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 1.1(d)(vi)(C)), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(1) "CP₂" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock;

(2) "CP₁" shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(3) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock, other than Exempted Securities, issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(4) "B" shall mean the number of shares of Common Stock, excluding Exempted Securities, that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP₁ (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP₁); and

(5) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(E) Determination of Consideration. For purposes of this Section 1.1(d)(vi), the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

b. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

c. in the event Additional Shares of Common Stock are issued together with other shares or securities, excluding Exempted Securities, or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses a. and b. above, as determined in good faith by the Board of Directors of the Corporation.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 1.1(d)(vi)(C), relating to Options and Convertible Securities, shall be determined by dividing:

a. The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the

exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

b. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number), excluding Exempted Securities, issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(F) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 1.1(d)(vi)(D) then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(vii) Certain Other Adjustments.

(A) Stock Dividends and Stock Splits. If the Corporation, at any time while the Series C Preferred Stock is outstanding: (1) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other common stock equivalents (which, for avoidance of doubt, shall not include any PIK Dividends or shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Series C Preferred Stock), (2) subdivides outstanding shares of Common Stock into a larger number of shares, (3) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (4) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 1.1(d)(vii)(A) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(B) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 1.1(d)(vii)(A) above, if at any time the Corporation grants, issues or sells any common stock equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the holder of shares of Series C Preferred Stock thereof will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the holder of shares of Series C Preferred Stock could have acquired if the holder of shares of Series C Preferred Stock had held the number of shares of Common Stock acquirable upon complete conversion of such holder's Series C Preferred Stock immediately before the date on which a record is taken for the

grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such purchase.

(C) **Fundamental Transaction.** If, at any time while the Series C Preferred Stock is outstanding, (1) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another person, other than a Significant Transaction Event, (2) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, other than a Significant Transaction Event, (3) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding capital stock of the Corporation, other than a Significant Transaction Event, (4) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, other than a Significant Transaction Event, or (5) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another person whereby such other person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other person or other persons making or party to, or associated or affiliated with the other persons making or party to, such stock or share purchase agreement or other business combination), other than a Significant Transaction Event (each a "**Fundamental Transaction**"), then, upon any subsequent conversion of the Series C Preferred Stock, the holders of shares of Series C Preferred Stock shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "**Alternate Consideration**") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Series C Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the holder of shares of Series C Preferred Stock shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series C Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file an amended and restated Articles of Incorporation or Certificate of Designation with the same terms and conditions and issue to the holders of shares of Series C Preferred Stock new preferred stock consistent with the foregoing provisions and evidencing the holders' right to convert such preferred stock into Alternate

Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "**Successor Entity**") to assume in writing all of the obligations of the Corporation under this Certificate in accordance with the provisions of this Section 1.1(d)(vii)(C) pursuant to written agreements entered into prior to such Fundamental Transaction and shall deliver to the holder of shares of Series C Preferred Stock in exchange for the Series C Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series C Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of the Series C Preferred Stock prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series C Preferred Stock immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate with the same effect as if such Successor Entity had been named as the Corporation herein.

(viii) Calculations. All calculations under this Section 1.1(d) shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 1.1(d), the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(ix) Notice to the Holders. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 1.1(d), the Corporation shall promptly deliver to each holder of shares of Series C Preferred Stock a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series C Preferred Stock, and shall cause to be delivered to each holder of shares of Series C Preferred Stock at its last address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (1) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is

not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (2) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice.

(c) Optional Conversion.

(i) Optional Conversion Rights. At any time or times on or after the Original Issue Date, each holder of Series C Preferred Stock shall be entitled to convert any portion of the outstanding Series C Preferred Stock held by such holder and any PIK Dividends (without the payment of additional consideration by the holder thereof) into such number of fully paid and non-assessable shares of Common Stock as determined for any such holder by dividing (A) the sum of (I) the aggregate Stated Value of all outstanding shares of Series C Preferred Stock being converted by such holder, (II) the aggregate Stated Value of all shares of Series C Preferred Stock due and owing to such holder as PIK Dividends which such holder is converting, and (III) the aggregate amount of cash dividends due and owing to such holder that such holder is converting by (B) the Conversion Price in effect on the Optional Conversion Date (as defined below), as adjusted in accordance with Section 1.1(d).

(ii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock pursuant to this Section 1.1(e). As to any fraction of a share which the holder of shares of Series C Preferred Stock would otherwise be entitled to purchase upon such conversion, the Corporation shall round up to the next whole share.

(iii) Mechanics of Conversion.

(A) To convert a share of Series C Preferred Stock and/or PIK Dividends into shares of Common Stock pursuant to this Section 1.1(e) on any date (an "**Optional Conversion Date**"), the holder of such shares of Series C Preferred Stock and/or PIK Dividends shall deliver to the Corporation (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of such conversion in the form attached hereto as Exhibit A (the "**Optional Conversion Notice**"). Within three (3) Trading Days (as defined below) of the Optional Conversion Date such holder that delivered the Optional Conversion Notice shall, if such holder's shares of Series C Preferred Stock are certificated, surrender his, her or its certificate or certificates for all such shares (or, if such holder of Series C Preferred Stock alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation and its transfer agent to indemnify the Corporation and/or its transfer agent against any claim that may be made against the Corporation and/or its transfer agent on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation or its transfer agent, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation or its transfer

agent, duly executed by the registered holder of shares of Series C Preferred Stock or by his, her or its attorney duly authorized in writing. All rights with respect to the Series C Preferred Stock converted pursuant to this Section 1.1(e) will terminate at the Optional Conversion Date (notwithstanding the failure of the holder or holders of Series C Preferred Stock to surrender any certificates at or prior to such time), except only for the rights of the holders of Series C Preferred Stock, upon surrender, if applicable, of their certificate or certificates (or lost certificate affidavit and agreement), to receive the items provided for in the next sentence of this Section 1.1(e)(iii). As soon as practicable after the Optional Conversion Date and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series C Preferred Stock, the Corporation shall issue and deliver to such holder of Series C Preferred Stock, or to his, her or its nominees, a notice of issuance of uncertificated shares and, may, upon written request, issue and deliver a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. Such converted Series C Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of its Preferred Stock accordingly.

(B) On or before the third (3rd) Trading Day following the date of receipt of a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Optional Conversion Notice) (the "**Share Delivery Deadline**"), the Corporation shall (1) provided that its then current transfer agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which such converting holder shall be entitled to such holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such holder or its designee, for the number of shares of Common Stock to which such holder shall be entitled. If the number of shares of Series C Preferred Stock represented by the Series C Preferred Stock Certificate(s) submitted for conversion pursuant to Section 1.1(e)(3)(A) is greater than the number of shares of Series C Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than three (3) Trading Days after receipt of the Series C Preferred Stock Certificate(s) and at its own expense, issue and deliver to such holder (or its designee) a new Series C Preferred Stock Certificate representing the number of shares of Series C Preferred Stock not so converted. The person or entity entitled to receive the shares of Common Stock issuable upon an optional conversion of Series C Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(iv) "**Trading Day**" means any day on which the Common Stock is traded on the principal securities exchange securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day

is otherwise designated as a Trading Day in writing by the holder converting the relevant shares of Series C Preferred Stock pursuant to this Section 1.1(e).

(v) Corporation's Failure to Timely Convert. If the Corporation shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to issue to a holder a certificate for the number of shares of Common Stock to which such holder is entitled and register such shares of Common Stock on the Corporation's share register or to credit such holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such holder is entitled upon such holder's conversion pursuant to this Section 1.1(e) (a "**Conversion Failure**"), and if on or after such Share Delivery Deadline such holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that such holder so anticipated receiving from the Company, then, in addition to all other remedies available to such holder, the Company shall, within three (3) Trading Days after receipt of such holder's request and in such holder's discretion, either: (I) pay cash to such holder in an amount equal to such holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other individual or entity in respect, or on behalf, of such holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder would have been entitled upon such holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such holder a certificate or certificates representing such shares of Common Stock or credit such holder's balance account with DTC for the number of shares of Common Stock to which such holder is entitled upon such holder's conversion hereunder (as the case may be) and pay cash to such holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II).

(f) Redemption.

(i) Mandatory Redemption. Unless prohibited by Nevada law governing distributions to stockholders of a corporation, the Series C Preferred Stock shall be redeemed (a "**Mandatory Redemption**") by the Corporation at a price equal to the Stated Value for such share of Series C Preferred Stock, plus an amount per share equal to the Stated Value of any shares of Series C Preferred Stock that are issuable as the result of accrued, but unpaid, PIK Dividends (the "**Redemption Price**"), if the Requisite Holders provide written notice of redemption to the Corporation on or after the eighteen (18) month anniversary of the Original Issue Date, which notice may only be so provided if on or after such date the Common Stock of the Corporation is not listed on a Trading Market (the date selected by the Corporation that is within thirty (30) days following the date that the Corporation receives such notice is referred to as the "**Redemption Date**"). If on the Redemption Date Nevada law governing distributions to stockholders of a corporation prevents the Corporation from redeeming all outstanding shares of Series C Preferred Stock to be redeemed, the Corporation shall ratably redeem the maximum number of shares of Series C Preferred Stock that

it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law. If the Corporation fails to pay the Redemption Price in full and redeem all outstanding shares of Series C Preferred Stock on the Redemption Date, then PIK Dividends shall accrue as specified in Section 1.1(c)(ii) hereof.

(ii) Redemption Notice. The Corporation shall send written notice of the Mandatory Redemption (the "**Redemption Notice**") to each holder of record of Series C Preferred Stock not less than ten (10) days prior to the Redemption Date. The Redemption Notice shall state:

(A) the number of shares of Series C Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(B) the Redemption Date and the Redemption Price; and

(C) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series C Preferred Stock to be redeemed.

(iii) Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Series C Preferred Stock to be redeemed on the Redemption Date, shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof.

(iv) Redeemed or Otherwise Acquired Shares. Any shares of Series C Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred.

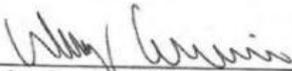
(g) Waiver; Amendment. Any of the rights, powers, privileges and other terms of the Series C Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series C Preferred Stock by the affirmative written consent or vote of the Requisite Holders.

(h) Notices. Except as otherwise provided herein, any notice required or permitted by the provisions of this Section 1.1 to be given to a holder of shares of Series C Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with Section 78 of the Nevada Revised Statutes, and shall be deemed sent upon such mailing or electronic transmission.

Section 1.2 Withholding. The Corporation agrees that, provided that a holder of the Corporation's capital stock delivers to the Corporation a properly executed IRS Form W-9 certifying as to such holder's complete exemption from backup withholding (or, if such holder is a disregarded entity for U.S. federal income tax purposes, its regarded owner's complete exemption from backup withholding), under current law the Corporation (including any paying agent of the Corporation) shall not be required to, and shall not, withhold on any payments or deemed payments to any such holder. In the event that any holder of the Corporation's capital stock fails to deliver to the Corporation such properly executed IRS Form W-9, the Corporation reasonably believes that a previously delivered IRS W-9 is no longer accurate and/or valid, or there is a change in law that affects the withholding obligations of the Corporation, the Corporation and its paying agent shall be entitled to withhold taxes on all payments made to the relevant holder in the form of cash or to request that the relevant holder promptly pay the Corporation in cash any amounts required to satisfy any withholding tax obligations. In the event that the Corporation does not have sufficient cash with respect to any such holder from withholding on cash payments otherwise payable to such holder and cash paid to the Corporation by such holder to the Corporation pursuant to the immediately preceding sentence, the Corporation and its paying agent shall be entitled to withhold taxes on deemed payments, including PIK Dividends and constructive distributions, on the Series C Preferred Stock to the extent required by law, and the Corporation and its paying agent shall be entitled to satisfy any required withholding tax on non-cash payments (including deemed payments) through a sale of a portion of the Series C Preferred Stock received as a PIK Dividend or from cash dividends or sales proceeds subsequently paid or credited on the Series C Preferred Stock.

[Remainder of Page Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned officer, for and on behalf of Applied Blockchain, Inc., has signed this Certificate of Designations this 15th day of April, 2021.



Wesley Cummins, CEO

[Signature Page to Certificate of Designations]

BARBARA K. CEGAVSKE
Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for
Commercial Recordings

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701
Telephone (775) 684-5708
Fax (775) 684-7138
North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888

Business Entity - Filing Acknowledgement

11/14/2022

Work Order Item Number: W2022111400480-2510962
Filing Number: 20222755529
Filing Type: Amendment After Issuance of Stock
Filing Date/Time: 11/14/2022 9:29:00 AM
Filing Page(s): 3

Indexed Entity Information:

Entity ID: C13283-2001 **Entity Name:** Applied Digital Corporation
Entity Status: Active **Expiration Date:** None

Commercial Registered Agent
CAPITOL CORPORATE SERVICES, INC.
202 SOUTH MINNESOTA STREET, Carson City, NV 89703, USA

The attached document(s) were filed with the Nevada Secretary of State, Commercial Recording Division. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Respectfully,

BARBARA K. CEGAVSKE
Secretary of State

Page 1 of 1

Commercial Recording Division
202 N. Carson Street

DocuSign Envelope ID: 3B244D46-47FD-4894-846C-3739C242E86A



BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Table with filing information: Filed in the Office of Barbara K. Cegavske, Business Number C13283-2001, Filing Number 20222755529, Filed On 11/14/2022 9:29:00 AM, Number of Pages 3.

Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

Form sections: 1. Entity information: Applied Blockchain, Inc. NV20011309405; 2. Restated or Amended and Restated Articles; 3. Type of Amendment Filing Being Completed: Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock) 80.8%.

This form must be accompanied by appropriate fees.

DocuSign Envelope ID: 3B244D46-47FD-4894-846C-3739C242E86A



BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
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Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

4. Effective Date and Time: (Optional)

Date: Time:
(must not be later than 90 days after the certificate is filed)

5. Information Being Changed: (Domestic corporations only)

Changes to takes the following effect:
 The entity name has been amended.
 The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
 The purpose of the entity has been amended.
 The authorized shares have been amended.
 The directors, managers or general partners have been amended.
 IRS tax language has been added.
 Articles have been added.
 Articles have been deleted.
 Other.
The articles have been amended as follows: (provide article numbers, if available)

(attach additional page(s) if necessary)

6. Signature: (Required)

X
Signature of Officer or Authorized Signer
Title
X
Signature of Officer or Authorized Signer
Title

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:
(attach additional page(s) if necessary)

This form must be accompanied by appropriate fees.

BARBARA K. CEGAVSKE
Secretary of State

KIMBERLEY PERONDI
*Deputy Secretary for
Commercial Recordings*

STATE OF NEVADA



**OFFICE OF THE
SECRETARY OF STATE**

*Commercial Recordings Division
202 N. Carson Street
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North Las Vegas City Hall
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, NV 89030
Telephone (702) 486-2880
Fax (702) 486-2888*

Name Reservation - Filing Acknowledgement

10/19/2022

Work Order Item Number: W2022101900468 - 2457475
Filing Number: 20222698990
Filing Type: Name Reservation
Filing Date/Time: 10/19/2022 09:18:47 AM
Filing Page(s): 1
Entity Number: E26989922022-2

Indexed Entity Information:

Name: Applied Digital Corporation **Reservation ID:** NR20221019-18633
Name Reservation Expiration Date : 01/17/2023

N/A

The attached document(s) were filed with the Nevada Secretary of State, Commercial Recording Division. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Respectfully,

BARBARA K. CEGAVSKE
Secretary of State

Page 1 of 1

Commercial Recording Division
202 N. Carson Street
Carson City, Nevada 89701-4201
Telephone (775) 684-5708
Fax (775) 684-7138

SECRETARY OF STATE



NEVADA STATE BUSINESS LICENSE

Applied Digital Corporation

Nevada Business Identification # NV20011309405

Expiration Date: 05/31/2023

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

Valid until the expiration date listed unless suspended, revoked or cancelled in accordance with the provisions in Nevada Revised Statutes. License is not transferable and is not in lieu of any local business license, permit or registration.

License must be cancelled on or before its expiration date if business activity ceases. Failure to do so will result in late fees or penalties which, by law, cannot be waived.



Certificate Number: B202211143157511

You may verify this certificate online at <http://www.nvsos.gov>

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on 11/14/2022.

BARBARA K. CEGAVSKE
Secretary of State

DESCRIPTION OF CAPITAL STOCK

The following descriptions are summaries of the material terms of our Second Amended Articles of Incorporation (the “Articles”) and our amended and restated bylaws (the “Bylaws”).

Reference is made to the more detailed provisions of, and the descriptions are qualified in their entirety by reference to, our Articles and Bylaws, forms of which are filed with the SEC as exhibits to the registration statement of which this prospectus is a part, and applicable law.

We effected a one-for-six reverse stock split in connection with our listing on the Nasdaq Global Select Market pursuant to which holders of our issued and outstanding common stock immediately prior to listing our common stock on Nasdaq Global Select Market had every six shares of our common stock reclassified as one share of our common stock. No fractional shares were issued. We refer to this as the “Reverse Stock Split”.

General

We are authorized to issue 171,666,666 shares of capital stock, \$0.001 par value per share, of which 166,666,666 are designated as common stock (the “Common Stock”) and 5,000,000 are designated as preferred stock (the “Preferred Stock”).

Common Stock

As of July 25, 2023, there were 103,950,005 shares of our Common Stock issued and outstanding and we had (i) 15,792,688 shares reserved for issuance under the 2022 Incentive Plan, (ii) 1,359,229 shares reserved for issuance under the 2022 Non-Employee Director Stock Plan, (iii) 545,836 shares reserved for issuance under restricted stock unit awards to certain consultants and (iv) 4,965,432 shares in treasury.

Dividend Rights

Subject to preferences that may be applicable to any then outstanding Preferred Stock, holders of our Common Stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by our Board of Directors (the “Board”) out of legally available funds.

Voting Rights

Each holder of our Common Stock is entitled to one vote for each share owned of record on all matters voted upon by stockholders, subject to any rights of our Preferred Stock, or series of our Preferred Stock, to vote together as a single class.

Liquidation Rights

In the event of our liquidation, dissolution or winding-up, the holders of our Common Stock are entitled to share equally and ratably in our assets, if any, remaining after the payment of all of our debts and liabilities and the liquidation preference of any outstanding Preferred Stock.

Other Rights

Our Common Stock has no preemptive rights, no cumulative voting rights and no redemption, sinking fund or conversion provisions.

Preferred Stock

We are authorized to issue 5,000,000 shares of Preferred Stock at \$0.001 par value per share. As of the date hereof, 2,120,578 shares of Preferred Stock have been issued and retired, 0 shares of Preferred Stock are outstanding and 2,879,422 shares of Preferred Stock remain available and authorized for issuance. Each series of Preferred Stock to be issued, if any, will have such number of shares, designations, preferences, powers and qualifications and special or relative rights or privileges as will be determined by our Board, which may include, among others, dividend rights, voting rights, redemption and sinking fund provisions, liquidation preferences, conversion rights and preemptive rights. The rights of the holders of our Common Stock will be subject

to the rights of holders of any Preferred Stock outstanding and issued in the future. The issuance of Preferred Stock, while providing desirable flexibility in connection with the possible acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from acquiring, a majority of our outstanding voting stock.

Terms

The specific terms of any Preferred Stock being offered will be described in the prospectus supplement relating to that Preferred Stock. The following summaries of the provisions of the Preferred Stock are subject to, and are qualified in their entirety by reference to, the certificate of designation relating to the particular class or series of Preferred Stock offered with that prospectus supplement for specific terms, including:

- the designation of the Preferred Stock;
- the number of shares of the Preferred Stock being offered, the liquidation preference per share and the offering price of the Preferred Stock;
- the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculating these items applicable to the Preferred Stock
- the place or places where dividends will be paid, whether dividends will be cumulative or noncumulative, and, if cumulative, the date from which dividends on the Preferred Stock will accumulate, if applicable;
- the procedures for any action and remarketing of the Preferred Stock;
- the provision of a sinking fund, if any, for the Preferred Stock;
- the provision for redemption, if applicable, of the Preferred Stock;
- any listing of the Preferred Stock on any securities exchange;
- the terms and conditions, if applicable, upon which the Preferred Stock will be convertible into or exchangeable for Common Stock, and whether at our option or the option of the holder;
- whether the Preferred Stock will rank senior or junior to or on a parity with any other class or series of Preferred Stock;
- the voting rights, if any, of the Preferred Stock;
- any other specific terms, preferences, rights, limitations or restrictions of the Preferred Stock; and
- a discussion of the United States federal income tax considerations applicable to the Preferred Stock.

Series E Preferred Stock

Our Board has created out of the authorized and available shares of our Preferred Stock, a series of convertible redeemable preferred stock, designated as the Series E Redeemable Preferred Stock (the "Series E Preferred Stock"). The following is a brief description of the terms of the Series E Preferred Stock. The Board has authorized the sale of up to 2,000,000 shares of Series E Preferred Stock. The Board may choose, in its sole discretion, to offer an additional 2,000,000 shares of Series E Preferred Stock for sale.

Dividend Rights

The holders of the Series E Preferred Stock shall be entitled to receive, and we shall pay, out of legally available funds, dividends on each share of Series E Preferred Stock at an annual rate of 8.0% of the Stated Value (as defined below). Dividends will be declared and accrued monthly. Such dividends shall be payable upon Board approval, which may not be monthly, out of legally available funds in cash or our Common Stock.

Liquidation Rights

Subject to the liquidation preference stated in the ranking section in the Certificate of Designations for the Series E Preferred Stock, Series E Preferred Stock will be entitled to be paid out of the funds and assets available for distribution, an amount per share equal to the "Stated Value," or \$25.00, plus an amount per share that is issuable as the result of accrued or unpaid Dividends. After payment to the holders of our Series E Preferred Stock, the remaining funds and assets available for distribution to our stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder.

Redemption Rights

Each holder of shares of Series E Preferred Stock is entitled to redeem any portion of the outstanding Series E Preferred Stock held by such holder at any time in cash or our Common Stock. Additionally, we may redeem a share of Series E Preferred Stock at our option at any time from time to time upon not less than 10 calendar days written notice to the holders prior to the date fixed for redemption thereof, at a redemption price of 100% of the Stated Value of the shares of Series E Preferred Stock to be redeemed plus accrued but unpaid dividends.

Other Rights

Our Series E Preferred Stock has no preemptive rights, no voting rights and no sinking fund or conversion provisions.
Limitations on Liability and Indemnification Matters

Our Bylaws contain provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by the Nevada Revised Statute, or NRS.

Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law;
- under the NRS for the unlawful payment of dividends; or
- for any transaction from which the director derives an improper personal benefit.

Our Bylaws require us to indemnify our directors and officers to the maximum extent not prohibited by the NRS and allows us to indemnify other employees and agents as set forth in the NRS. Subject to certain limitations, our Bylaws also require us to advance expenses incurred by our directors and officers for the defense of any action for which indemnification is required or permitted.

We believe that provisions of our Bylaws are necessary to attract and retain qualified directors, officers, and key employees. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our Bylaws may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers, or persons controlling us, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Transfer Agent

The transfer agent and registrar for our Common Stock and our Series E Preferred Stock is Computershare Trust Company, N.A.. The transfer agent's address and phone number is: 150 Royall Street, Canton, MA 02021, telephone number: (781) 575-2000.

Listing

Our common stock is presently quoted on The Nasdaq Global Select Market under the symbol "APLD."

**FIRST AMENDMENT
TO THE APPLIED BLOCKCHAIN, INC.
2022 NON-EMPLOYEE DIRECTOR STOCK PLAN**

In accordance with Section 12.1 of the Applied Blockchain, Inc. 2022 Non-Employee Director Stock Plan, Effective January 20, 2022 (the “Plan”), the Plan is hereby amended as follows:

1. The Plan is amended to reflect the current name of the Company and is renamed the “Applied Digital Corporation 2022 Non-Employee Director Stock Plan.”

2. Section 2.13 of the Plan is amended in its entirety to read as follows:

“**Compensation Year**” means the 12-month period commencing on the date of the Company’s Annual Meeting each year, during which period Directors’ Cash Compensation is paid.”

3. Section 6.1 of the Plan is amended in its entirety to read as follows:

“**6.1 Annual Grants.** As of the date of the Company’s Annual Meeting each year after the November 10, 2022 Meeting, the Company shall make a Grant of Shares to each Director. The number of Shares granted to each Director each year (i) shall equal the number of Shares that, as of the Grant Date, has a Fair Market Value of \$160,000, and (ii) such number of Shares to be rounded up to the nearest whole Share, *provided, however*, that the Corporation may revise the foregoing formula for any year without shareholder approval, subject to the Plan’s overall Share limits. Except as provided herein, the Shares shall remain unvested and forfeitable.”

4. The following new **Section 6.1A** shall be added to the Plan to read as follows:

“**6.1A Special 2022 Grant.** A special one-time Share Grant shall be made to Directors who were elected at the 2022 annual meeting of shareholders. The special Grant pursuant to this Section 6.1A shall be in the amount of **76,191** Shares per eligible Director. Except as otherwise provided herein, the Shares Granted pursuant to this Section 6.1A shall remain unvested and forfeitable, and shall be subject to the remaining provisions of this Plan including, but not limited to, the Vesting provisions of Section 6.4, and Forfeiture of Nonvested Shares provisions of Section 6.7.”

5. The provisions of this First Amendment to the Plan shall be effective as of November 10, 2022.

IN WITNESS WHEREOF, the Corporation by its duly authorized officer has caused these presents to be signed this 4th day of April, 2023.

APPLIED DIGITAL CORPORATION

By: /s/David Rench
Chief Financial Officer of the
Corporation and Administrator of the Plan

GROUND LEASE

THIS GROUND LEASE (the "Ground Lease") is made and entered into as of the 13th day of April, 2022 (the "Effective Date"), by and between **EDB, Ltd., a Texas Limited Liability Company** ("Landlord"), and **APLD – Rattlesnake Den I LLC or its assigns** ("Tenant").

NOW, THEREFORE, in consideration of the agreements, promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **ACCEPTANCE**: The submission of this Ground Lease for examination does not constitute a reservation or option for the Demised Premises and this Ground Lease becomes effective as a binding agreement only upon Tenant's receipt of a Ground Lease fully executed by all parties hereto. Execution and delivery of this Ground Lease by exchange of electronic copies bearing the signature of a party shall constitute a valid and binding execution and delivery of the Ground Lease by such party.
 2. **DEMISED PREMISES**: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon the terms, covenants and agreements and subject to the conditions set forth herein, all of the premises located in Garden City, Glasscock County, Texas, containing approximately fifty (50) acres of vacant land (the "Demised Premises") and as more particularly described by the "Legal Description" to be incorporated into **Exhibit "A"** and shown outlined as a plot plan ("Plot Plan") in **Exhibit "B"**, together with any and all buildings, improvements, benefits, rights of way and easements benefiting the Demised Premises now existing and hereafter erected thereon or for the benefit thereof and all rights, privileges and appurtenances belonging thereto for the purposes permitted in Section 27 of this Ground Lease. **Exhibits "A" and "B"** shall be verified by Tenant's survey described herein. Notwithstanding the foregoing, (i) the exact Legal Description for the Demised Premises to be used in this Ground Lease shall be the legal description provided for pursuant to the survey described in Section 8 of this Ground Lease and (ii) common use roadways, right of ways, and utility easements, including any easements pertaining to oil and gas, or mineral right easements.
 3. **TERM OF GROUND LEASE**: The term of this Ground Lease (the "Term") shall be for a period of up to ninety-nine (99) years, which shall commence on the first business day of the month following the Effective Date (the "Commencement Date"), and shall end on the last day of the month following ninety-nine (99) years after the Commencement Date, unless sooner terminated or extended as herein provided. Subject
-

to this Ground Lease, Tenant may use and enjoy the Demised Premises for the purposes permitted and described in Section 27 of this Ground Lease free from payments of Rent and Additional Rent until the said Commencement Date.

Tenant shall have the right to terminate this Ground Lease as to all of the Demised Premises at any time following the sixtieth (60th) month of the Term of this Ground Lease upon twelve (12) months prior written notice from Tenant to Landlord. Upon such termination, neither Landlord nor Tenant shall have any rights or obligations under this Ground Lease, other than those that expressly survive the expiration or termination of this Ground Lease pursuant to the terms of this Ground Lease.

Tenant shall have the right to record a written Short Form Lease, in form and substance reasonably acceptable to Tenant and Landlord, at any time after the Effective Date. Landlord shall execute and deliver to Tenant a Short Form Lease within ten (10) days after Tenant's request.

4. **OPTIONS TO EXTEND:** Landlord hereby grants to Tenant one (1) separate option to extend the Term for ninety-nine (99) years (the "Extension Period") on the same terms and conditions as are provided herein for the Term except for Rent (as defined herein), provided Tenant shall deliver written notice to Landlord of Tenant's election to exercise the extension option ("Extension Notice") not less than three (3) months prior to the expiration date of the original Term; and if Tenant fails to timely deliver an Extension Notice to Landlord, then Tenant shall automatically be deemed to have irrevocably waived and relinquished the extension option. Upon any such extension, the Extension Period shall become part of the Term.

5. **RENT:** (a) **Rent:** Tenant shall pay the following as "Rent" to Landlord during the Term, in advance, beginning on the Commencement Date, and at each anniversary of the Commencement Date thereafter during the Term:

(i) \$3,000.00 per acre (with the total acreage to be determined by Tenant's survey referenced in Section 8 of this Ground Lease) or (ii) \$150,000.00, whichever is greater, per year with annual increases of the greater of (i) three percent (3%) and (ii) the amount of upward percentage change, if any, between the effective date of the then current year and expiration of such year, in the Consumer Price Index for All Urban Consumers (the "CPI-U Index"), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or any comparable successor index, beginning in year 2 of the Term and continuing on an annual basis thereafter for the remainder of the Term.

All Rent and other sums due and payable to Landlord hereunder shall be paid to the order of Landlord whose Federal Employer Identification Number is 75-2503006, unless written notice specifies payment to some other person or entity or to another address within the continental United States which shall be given to

Tenant by Landlord in writing at least ten (10) days prior to the date when the next Rent payment is due. Landlord shall accurately complete, sign and deliver to Tenant an Internal Revenue Service Form W-9.

5.1 **MAINTENANCE OF THE DEMISED PREMISES:** During the Term of this Ground Lease, Tenant shall maintain the Demised Premises and all improvements thereon at Tenant's sole expense. In connection with the foregoing, Tenant shall also maintain lighting, cleaning, repairing, replacing, and administering the Demised Premises and shall bear the cost of utility expenses; the cost of snow, trash, rubbish, garbage, and other refuse and debris removal; the cost of licenses, permits, and other governmental fees and charges; the cost of all Tenant's maintenance and service contracts; signage costs; the cost of gardening and landscaping services and supplies; subsidies, surcharges, and other payments, which the Demised Premises is required to pay to or by public or quasi-governmental bodies; and the cost of complying with all laws, rules, regulations, and ordinances. Tenant will maintain the Demised Premises in good and workmanlike condition, reasonable wear and tear and damage by casualty or condemnation excepted, at all times and remove all trash and other debris. Tenant shall, at all times, use care and reasonable safeguards to prevent its operations from causing or contributing to damages on Landlord's adjacent property. Tenant shall clean up, remove, remedy, and repair as soon as safely possible, any soil or ground water contamination in violation of applicable local, state and federal environmental laws and damage caused by its operations on the Demised Premises.

6. **ACCEPTANCE AND DELIVERY:** Landlord shall deliver the Demised Premises to Tenant vacant, free and clear of any and all Hazardous Substances, underground storage tanks, debris and trash and in full compliance with all applicable laws, rules, ordinances and regulations on the Commencement ("ACCEPTANCE AND DELIVERY"). ACCEPTANCE AND DELIVERY shall occur upon the delivery of the Demised Premises to Tenant in the condition required by this Ground Lease.

7. **TITLE AND QUIET POSSESSION:** (a) Landlord hereby covenants and represents to Tenant that Landlord has good, marketable, insurable and indefeasible fee simple title to the Demised Premises and has the full right and lawful authority to make this Ground Lease. Landlord warrants and represents that, to Landlord's actual knowledge, there are no liens, security interests, easements, restrictions, leases, encumbrances, laws, ordinances, governmental rules or regulations, title restrictions, zoning or any other matters whatsoever which will preclude or otherwise materially and adversely affect Tenant's intended use of the Demised Premises, except those items filed of record as of the Effective Date. Tenant shall have quiet

and peaceful possession and enjoyment of the Demised Premises and of all easements, rights and appurtenances belonging thereto.

(b) Landlord agrees not to amend existing easements, restrictions, leases or encumbrances of record or encumber the Demised Premises with any additional conditions, covenants, or restrictions that affect the Demised Premises, without Tenant's prior written consent, not to be unreasonably withheld, conditioned or delayed. Landlord shall not and may not install or maintain or permit anyone other than Tenant to install or maintain any signs on any part of the Demised Premises or within the air space above the Demised Premises. Landlord represents and warrants to Tenant that no third party (other than governmental authorities) has any approval rights over the use, construction, operation or modification to the Demised Premises.

8. **DUE DILIGENCE:** (a) **Title Examination and Survey:** After the Effective Date and during the Inspection Period, Tenant may order, (i) at Tenant's expense, an examination of the title to the Demised Premises and a commitment for title insurance on Tenant's leasehold estate in the Demised Premises, together with complete and legible copies of all documents which create exceptions to title set forth therein and (ii) a survey, at Tenant's expense, of the Demised Premises with the topographical information and other information required by Tenant. Tenant shall have thirty (30) days after receipt of said commitment and final and complete survey, together with complete and legible copies of all documents creating such exceptions, but in no event later than July 1, 2022, within which to notify Landlord of Tenant's objections to any exceptions to title and survey thus disclosed to Tenant. The Legal Description to be used for the Demised Premises shall be the metes and bounds legal description provided with the survey described herein. If the results of any of the foregoing are unacceptable to Tenant, then Tenant may terminate this Ground Lease without owing any liability to Landlord, or Tenant may require Landlord to remove said objections pursuant to the provisions stated below. Landlord may (but has no obligation to) attempt to remove and/or eliminate any and all objections to title and survey contained in Tenant's notice within fifteen (15) days following the date of Tenant's notice of objection, at Landlord's sole cost and expense. Tenant shall promptly notify Landlord of any other objections by Tenant to exceptions to title and/or survey discovered by Tenant which were not disclosed to Tenant on the original commitment and/or survey ordered and received by Tenant hereunder. If any of the exceptions to title and/or survey objected to by Tenant are not eliminated within the time limits stated above, then Tenant may (a) elect to terminate this Ground Lease without owing any liability to Landlord, (b) extend said timeframes or (c) withdraw its objections and continue this Ground Lease without modification.

The policy of title insurance shall be in form approved by Tenant, insuring Tenant's leasehold estate in the Demised Premises with general, standard and pre-printed exceptions deleted (and/or covered by an

endorsement) and shall specifically insure the boundary lines of the Demised Premises and/or shall specifically insure the survey's metes and bounds legal description of the Demised Premises (and any easements appurtenant thereto) and shall be paid for by Tenant.

Upon request, Landlord shall execute and deliver to the title insurer a customary Landlord's affidavit and such other documents as may be reasonably requested by Tenant and/or the title insurer insuring Tenant's title to the Demised Premises in order to issue the leasehold title insurance policy as required in this Ground Lease, or Tenant may terminate this Ground Lease without owing any liability to Landlord.

(b) **Inspection Period:** Tenant may order, at Tenant's expense, soil borings, sampling and laboratory tests containing information required by Tenant's architects and engineers, endangered species reports, and environmental assessments, reports, studies, surveys and tests, including, but not limited to, sampling and testing for Hazardous Substances (as defined herein), in order to determine whether the Demised Premises is suitable for Tenant's purposes. If Tenant, in its sole discretion, determines the Demised Premises is for any reason, or no reason, not suitable for Tenant's purposes, then Tenant may terminate this Ground Lease prior to 5:00 p.m. Central time on the last day of the Inspection Period (as defined herein) by providing written notice to Landlord, and the parties shall have no further obligation to each other hereunder. The period between the Effective Date and July 1, 2022 being referred to herein as the "Inspection Period". Tenant shall have the option to extend the Inspection Period for one (1) additional period of up to one (1) year from the last day of the Inspection Period by providing written notice to Landlord prior to the expiration of the initial Inspection Period. In the event Tenant terminates the Lease during the Inspection Period, as may be extended, Landlord shall retain the Rent previously paid to Landlord. Tenant shall promptly repair and restore, to the extent reasonably possible, any and all damage caused by entries upon the Demised Premises for the purposes described in this Section. Notwithstanding anything contained herein to the contrary, Tenant shall not be liable nor responsible for any Hazardous Substances discovered on the Demised Premises during Tenant's due diligence during the Inspection Period nor shall Tenant be liable to Landlord for any diminution in value to the Demised Premises resulting from any findings or determinations resulting from Tenant's due diligence hereunder. As independent consideration for Tenant's option to terminate as provided in this Section as well as for any other option to terminate contained in this Ground Lease, Tenant has paid to Landlord the aggregate sum of \$100.00 cash, the receipt of which sum Landlord hereby acknowledges.

9. **PERMITS AND APPROVALS:** (a) Tenant is to have until the expiration of the Inspection Period, as the same may be extended hereunder, to receive all authorizations and permits, including, but not limited to, curb cut and building permits, signage permits, zoning and subdivision interpretations and confirmations, platting, permits and approvals and all variances, utility permits,

authorizations and easements necessary for Tenant's intended use as described herein and in order to locate Tenant's improvements to the west of State Route 33 (collectively, the "Approvals"). Landlord shall, within five (5) days after Tenant's request, execute any and all documentation in support of such application for said Approvals. Notwithstanding the above or anything contained herein to the contrary, if Tenant has not received or is denied or refused any such Approvals necessary for Tenant's intended use and to locate its improvements to the west of State Route 33, as determined in Tenant's sole discretion, or if adequate utilities and related facilities, including, without limitation, water, storm water/sewage disposal, telephone service and energy sources, to service the Demised Premises and any improvements thereto for Tenant's intended use or easements therefore are not available to the satisfaction of Tenant, then Tenant may terminate this Ground Lease without owing any liability to Landlord by furnishing written notice to Landlord prior to 5:00 p.m. Central time on the last day of the Inspection Period, or Tenant may elect to continue this Ground Lease in effect.

(b) If the Demised Premises must be replatted in order for Tenant to obtain any of its Approvals, Tenant shall bear the costs of all such replatting, including all engineering costs related thereto. The replatting shall be undertaken and completed by Tenant during the Inspection Period, and in the event the replatting is not complete by the last day the Inspection Period despite Tenant's commercially reasonable good faith efforts to complete same or otherwise for reasons outside of Tenant's control, then the Inspection Period shall be extended day to day pending completion, and Tenant shall continue to diligently pursue same. Landlord shall cooperate with Tenant with respect to all applications for replatting.

(c) In the event development of the Demised Premises for Tenant's use shall require offsite easements for utilities, drainage or access to be located on Landlord's remaining or adjacent property, Landlord agrees to grant such easements, in commercially reasonable form, within fifteen (15) days after Tenant's request, provided that such easements shall be located on Landlord's remaining or adjacent property in areas already utilized for easements or otherwise in such locations as shall not unreasonably interfere with the usage of Landlord's remaining or adjacent property. Landlord and Tenant shall execute an Access Easement Agreement, in form and substance reasonably acceptable to Landlord and Tenant, prior to the end of the Inspection Period sufficient to grant access to exit the substation to reach Tenant's Demised Premises. Landlord shall also use commercially reasonable efforts to assist Tenant in easement clearing or the acreage location of the Demised Premises to accommodate for easements and encumbrances that cannot be relocated.

(d) Tenant may submit, at its sole cost and expense, electrical interconnection, permitting and other relevant applications that may require Landlord approval. Landlord shall approve such applications within five (5) days of Tenant's request.

9.1 **SIGNAGE.** Subject to governmental approval, Landlord grants the right to Tenant, at Tenant's sole expense, to erect and maintain signage on the Demised Premises to the maximum extent permitted by law.

10. **TAXES.** Landlord shall pay all real estate taxes ("Taxes") assessed against the Demised Premises which accrue during the Term or any Extension Period prior to delinquency. Landlord shall pay any transfer tax, documentary transfer tax and/or any other similar leasehold or excise tax under state law that may be associated with this Ground Lease, if any. Landlord shall not seek or join in any request for a special assessment or an assessment or benefit district or improvements resulting in a special assessment or an assessment or benefit district affecting Tenant or the Demised Premises without either (a) the prior written consent of Tenant or (b) Landlord's written agreement (in form satisfactory to Tenant) that Landlord, and not Tenant, shall be responsible for payment of such special assessments or other assessments applicable to Tenant or the Demised Premises. Without in any way diminishing the prohibition above, if Landlord, unless required by law, directly or indirectly causes Tenant and/or the Demised Premises to become, or consents to the Demised Premises becoming, a part of any assessment or benefit district, Landlord shall, unless Tenant consents to such district in writing in Tenant's sole discretion, reimburse Tenant for any and all taxes and special assessments levied or assessed against Tenant and/or the Demised Premises by reason thereof within thirty (30) days after Tenant's demand therefor.

11. **SUBORDINATION AND NON-DISTURBANCE:** If this Ground Lease is subordinate to the lien of Landlord's lender on the Effective Date, Landlord shall obtain an executed subordination, non-disturbance and attornment agreement ("SNDA") from Landlord's lender within thirty (30) days following the Effective Date, in form and substance reasonably satisfactory to Tenant. In the event that Landlord fails to obtain an SNDA executed by its lender within such thirty (30) day period, Tenant shall have the right thereafter to terminate this Ground Lease upon written notice to Landlord, in which event Landlord will reimburse Tenant for any and all actual out-of-pocket expenses incurred by Tenant in connection with this Ground Lease, including, without limitation, Tenant's due diligence costs and costs to negotiate this Ground Lease, within thirty (30) days following Tenant's written request and providing reasonable documentation of same. Notwithstanding the foregoing, Tenant's termination will be without effect if Landlord delivers an SNDA executed by its lender within five (5) business days after Tenant's notice of termination. Within ten (10) business days after receiving a written request from Landlord, Tenant will subordinate its rights hereunder to the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the Demised Premises, and to all advances made or hereafter to

be made upon the security thereof; provided, however, Tenant's obligation to subordinate this Ground Lease is contingent upon the lienholder delivering to Tenant a commercially reasonable subordination and non-disturbance agreement in form and substance reasonably acceptable to Tenant which provides that Tenant's possession of the Demised Premises and Tenant's use and enjoyment of the Demised Premises shall not be disturbed so long as no Event of Default (as herein defined) by Tenant has occurred and is continuing.

12. **TENANT'S RIGHT TO MORTGAGE:** Tenant may mortgage, collaterally assign, or otherwise encumber any interest that Tenant has in this Ground Lease or in Tenant's improvements as security for indebtedness to a mortgagee. If Tenant's lender provides notice to Landlord (given in the manner provided for notices in this Ground Lease) of the execution of a mortgage and names the place to which service of notice may be made on the lender, then Landlord shall transmit to such lender, simultaneously with service on Tenant, a copy of any notice which Landlord may desire or be required to give to Tenant pursuant to this Ground Lease relating to Tenant's default under this Ground Lease.

13. **RIGHT TO BUILD:** (a) Subject to the provisions of this Ground Lease and applicable law, Tenant may, from time to time, erect on the Demised Premises a building and/or buildings, or any other improvements as it may desire, and may remove, reconstruct, improve, alter, or add to such building and/or buildings and improvements during the Term or any Extension Period. Tenant shall also have the right, but not the obligation, to do any and all demolition, grading, drainage and pavement work on the Demised Premises, and Tenant is authorized to remove, raze and destroy such trees, plants, shrubs and top soil as Tenant deems necessary or appropriate, and to excavate and remove earth from the Demised Premises in such quantities as Tenant deems necessary to accomplish the Use set forth in Section 27. During the Term of this Ground Lease, title to all such improvements shall remain in Tenant alone and Tenant shall be entitled to claim all depreciation to any improvements constructed on the Demised Premises by Tenant. Upon the termination or expiration of this Ground Lease, title to all improvements which are abandoned by Tenant (except, without limitation, Tenant's trade fixtures, equipment, furnishings, merchandise and inventory any or all of which Tenant may remove at its sole option) shall vest in Landlord. Notwithstanding the above, Tenant shall not be obligated to make any repairs or replacements to any building, equipment or fixtures at the Demised Premises at the expiration or termination of the Ground Lease and Landlord agrees to accept same in its then existing condition. Notwithstanding the foregoing, upon written request by Landlord delivered prior to the termination or expiration of this Ground Lease, Tenant shall have 180 days following the termination or expiration of this Ground Lease (such period shall not be considered a holdover by Tenant) in which to remove all of the improvements placed on the Demised Premises and Tenant shall restore the surface of the Demised Premises, to the extent changed or damaged by Tenant, as nearly as reasonably

practical to its original condition at reasonable cost. Subject to applicable law, Tenant may paint, erect or authorize the installation of signs (which Tenant deems necessary) on the Demised Premises. Tenant shall, at its own expense, make any and all repairs, alterations and improvements deemed necessary by Tenant in compliance with all applicable laws.

(b) Landlord represents and warrants that the lease with the current tenant for land owned by Landlord on the west side of State Route 33 terminated as of February 28, 2022 pursuant to its terms, and Landlord shall provide Tenant with evidence reasonably acceptable to Tenant of such termination. Tenant will enter into a separate buy-out agreement, in form and substance acceptable to Tenant, with the existing lease holder wherein Tenant shall agree to pay such existing lease holder an amount equal to \$100,000.00 to compensate such lease holder for lost net profits.

14. **DEFAULT BY TENANT:** Each of the following events will be considered an “Event of Default” by Tenant:

(a) **Default in Rent:** Tenant’s failure to pay any Rent due within ten (10) days after receiving written notice from Landlord notifying Tenant of the delinquency. If Landlord has given Tenant one (1) such notice in any twelve (12) month period, no further notice need be given, and Tenant shall be in default under this Ground Lease if Tenant fails to make any such payment when due;

(b) **Mitigation:** Landlord will mitigate its damages in the event of any Tenant default.

14.1 **LANDLORD’S REMEDIES.** If an Event of Default by Tenant exists, then Landlord may, in addition to all other rights and remedies at law or in equity, exercise any one or more of the following remedies, without further notice or demand, while such Event of Default is continuing or remains uncured, subject to Tenant’s right to remove its personal property and identifying marks as set forth in this Section 14.1 below, Landlord may (a) declare the Term ended, and enter into the Demised Premises and expel Tenant or any person occupying the Demised Premises and repossess and enjoy the Demised Premises as in Landlord’s former estate; and/or (b) re-let the Demised Premises, applying the rent from the new tenant to this Ground Lease, and Tenant will be responsible for only the balance that is due, should a balance exist. Notwithstanding the foregoing, Tenant shall have thirty (30) days following the expiration or termination of this Ground Lease, or termination of Tenant’s right to possess the Demised Premises, to remove Tenant’s personal property located in or on the Demised Premises, including but not limited to equipment and movable or installed trade fixtures, Tenant identifying marks, signage or design elements from the Demised Premises and to remove Tenant branded items from the Demised Premises.

14.2 **RELETTING**: Following re-entry or abandonment, Landlord may relet the Demised Premises and in that connection may make any suitable alterations or refurbish the Demised Premises, or both, or change the character or use of the Demised Premises, but Landlord shall not be required to relet to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Demised Premises, alone or in conjunction with other properties, for a term longer or shorter than the remaining Term of this Ground Lease (including exercised Extension Period), upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

15. **RESPONSIBILITY OF LANDLORD**: If Landlord fails to pay any installment of taxes or assessments or any interest, principal, costs or other charges upon any Landlord mortgage or other liens, security interests and encumbrances affecting the Demised Premises when any of the same become due, or if Landlord fails to make any repairs or do or complete any work, covenant or agreement required of it under any of the provisions of this Ground Lease or any agreement affecting the Demised Premises, then Tenant, after the continuance of any such failure or default for thirty (30) days after written notice thereof is given by Tenant to Landlord, may elect to pay said taxes, assessments, interest, principal, costs and other charges or cure such defaults on behalf of and at the expense of Landlord and do all necessary work and make all necessary payments in connection therewith. This shall include, without limitation, the payment of any attorney's fees, and costs and charges of or in connection with any legal action which may be brought by Tenant, and Tenant may further take such other proceedings at law or in equity (including injunctive relief) as Tenant deems necessary, notwithstanding any other remedy provided herein. Notwithstanding anything contained herein to the contrary, Landlord agrees to pay to Tenant any amount so paid by Tenant under this Section, and agrees that Tenant may withhold any and all Rent and Additional Rent due and becoming due after the expiration of the aforesaid notice period to Landlord pursuant to the provisions of this Ground Lease and may apply the same to the payment of such indebtedness of Landlord until such indebtedness is fully paid or until Landlord's default is cured. Nothing contained herein shall preclude Tenant from proceeding to collect the amount so paid by it, as aforesaid, without waiting for Rent offsets to accrue. In addition, nothing shall require Tenant to wait the above timeframes in order to cure a default of Landlord in an emergency situation. If at the expiration of the Term or any Extension Period, there shall be any sums owing by Landlord to Tenant, then this Ground Lease may, at the election of Tenant, be extended and continued in full force and effect until the last day of the month following the date when the indebtedness of Landlord to Tenant shall have been fully paid. If any alleged non-monetary default by Landlord is of such a nature that it cannot be completely remedied or cured within the thirty (30) day period above provided, then notwithstanding the provisions of this Section to the contrary, Tenant shall not have a right to enforce any of the remedies herein

set forth if Landlord shall commence curing such default within such thirty (30) day period and shall proceed with diligence in good faith to complete the curing thereof.

16. **INSURANCE:** During the entire Term of the Ground Lease, Tenant shall, at Tenant's sole cost and expense, maintain commercial general liability insurance against claims occurring upon or within any building on the Demised Premises, such insurance to afford single limit protection of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury, death or property damage. Said insurance may be in the form of a general coverage or floater policy covering these and other premises, provided that Landlord is named an additional insured in said policy. After the Commencement Date and upon written request of Landlord, Tenant shall deliver to Landlord a certificate of such insurance naming Landlord as an additional insured and an agreement by the insurer that said policy may not be canceled without ten (10) days prior written notice delivered to Landlord.

17. **WAIVER AND SUBROGATION:** Landlord and Tenant shall obtain from their respective insurers endorsements whereby the insurers agree to waive any right of subrogation against Landlord or Tenant, as the case may be, in connection with fire or other risks or casualties covered by said insurance, Landlord agrees that it shall make no claim nor authorize any claim to be made against Tenant, its employees, servants or agents in connection with any fire, explosion or other casualty damaging improvements to the Demised Premises. Tenant agrees that it shall make no claim nor authorize any claim to be made against Landlord, its employees, servants or agents in connection with any fire, explosion or other casualty damaging the Demised Premises.

18. **INDEMNITY:** (a) During the Term of this Ground Lease and except for Landlord's obligations hereunder, the building on the Demised Premises shall be kept by Tenant in a clean, safe condition. **TENANT SHALL INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, INVESTIGATION FEES, REASONABLE ATTORNEYS' FEES, AND RELATED EXPENSES) OF ANY NATURE WHICH MAY BE ASSERTED AGAINST OR INCURRED BY LANDLORD ARISING OUT OF OR IN ANY MANNER OCCASIONED BY TENANT'S ACTIVITIES ON THE DEMISED PREMISES, INCLUDING DAMAGE TO OR LOSS OF PROPERTY OWNED OR USED BY TENANT OR TENANT'S (I) EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR ANY OTHER PERSON OR ENTITY WHOSE PRESENCE ON THE DEMISED PREMISES IS RELATED DIRECTLY OR INDIRECTLY TO TENANT'S PRESENCE ON THE**

DEMISED PREMISES, AND (II) INJURY TO OR DEATH OF ANY OF THE TENANT'S EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES OR ANY OTHER PERSON WHOSE PRESENCE ON THE DEMISED PREMISES IS RELATED DIRECTLY OR INDIRECTLY TO TENANT'S PRESENCE ON THE DEMISED PREMISES. TENANT'S INDEMNITY UNDER THIS PROVISION SHALL NOT EXTEND TO ANY CLAIMS, LIABILITIES, LOSSES, COSTS OR EXPENSES ARISING DIRECTLY OUT OF A WILLFUL, WRONGFUL ACT OF LANDLORD OR THE GROSS NEGLIGENCE OF LANDLORD. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY SHALL HAVE ANY OBLIGATIONS WITH RESPECT TO THIS AGREEMENT, OR OTHERWISE IN CONNECTION HEREWITH, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES. EACH OF THE PARTIES HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.; provided that, Tenant shall only be obligated with respect to Hazardous Substances as stated herein.

(b) Landlord shall indemnify, defend and hold Tenant harmless at all times from and against any and all claims arising from any violation or alleged violations of any and all Governmental Laws by Landlord, excepting however, any specific obligations of Tenant to comply with the Governmental Laws as provided in this Ground Lease with respect to the Demised Premises or any breach by Landlord of its obligations under this Ground Lease.

19. **HAZARDOUS SUBSTANCES:** (a) As used herein, the term "Hazardous Substances" shall mean, without limitation, any substance that is biologically or chemically active or any hazardous, toxic, or dangerous waste, substance (including, but not limited to, asbestos, lead based paint, radon, PCBs or petroleum derivative substances), or material defined as such in (or for purposes of) (i) any state, federal or local environmental laws, interpretive letters, regulations, decrees or ordinances, (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (iii) the Resource Conservation and Recovery Act, (iv) any of the so-called state or local "Super Fund", "Super Lien" or "Cleanup Lien" laws or (v) any other federal, state or local statute, law, ordinance, code, rule, interpretive letter, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any such substances or materials or any amendments or successor statutes with respect to any of the foregoing.

(b) Tenant represents and warrants, during the Term of this Ground Lease no Hazardous Substances will be stored on the Demised Premises and further that no Hazardous Substances will be discharged on the Demised Premises by Tenant. Tenant shall indemnify, save, defend, and hold Landlord

harmless from and against any and all costs (including, without limitation, court costs and reasonable attorneys' fees), expenses, and damages arising out of any claim for any loss or damage to property, injuries to or death of persons, any contamination of or adverse effects on the environment or any violation of any environmental or other law, caused by any breach by Tenant of the representations and warranties contained in this Section 19(b). This indemnification precedes, is concurrent with, and survives the expiration or termination of this Ground Lease in all respects.

(c) Landlord shall indemnify, save, defend, and hold Tenant harmless from and against any and all costs (including, without limitation, court costs and reasonable attorneys' fees), expenses, and damages arising out of any claim for any loss or damage to property, injuries to or death of persons, any contamination of or adverse effects on the environment or any violation of any environmental or other law, caused by or resulting from any hazardous waste, Hazardous Substance or any leakage or contamination from underground tanks on or under the Demised Premises that are a direct result of Landlord's activities on the Demised Premises. This indemnification precedes, is concurrent with, and survives the expiration or termination of this Ground Lease in all respects. Notwithstanding anything contained herein to the contrary, so long as Tenant is not in violation of Section 19(b) above, Landlord hereby agrees that under no circumstances whatsoever, by statute or otherwise, shall Tenant be held liable as an owner of any Hazardous Substance.

(d) Furthermore, Landlord represents and warrants to Tenant that Landlord has no actual knowledge of: (1) the presence of any Hazardous Substances on, under or within the Demised Premises; (2) any spills, releases, discharges or disposals of Hazardous Substances that have occurred or are presently occurring on or onto the Demised Premises; (3) any spills or disposal of Hazardous Substances that have occurred or are occurring adjacent to the Demised Premises as a result of any construction on or operation and use of the Demised Premises; (4) any failure to comply with any or all applicable local, state and federal environmental laws, regulations, ordinances, interpretive letters, and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances on the Demised Premises, or any property located adjacent thereto; or (5) the presence of any underground storage tanks or septic tanks now or in the past on the Demised Premises.

20. **CONDEMNATION:** If the whole of the Demised Premises shall be taken or appropriated under any right of eminent domain or under any other legal right whereby the taking authority is obligated to compensate Landlord therefor, then Tenant may terminate and cancel this Ground Lease without owing any liability to Landlord to be effective as of the date on which the condemning authority takes physical possession upon giving to Landlord written notice of such election to terminate and cancel. Landlord agrees to give Tenant written notice after any notice of intended or actual taking or appropriation is received,

providing to Tenant full details of such taking or appropriation, including, without limitation, copies of all condemnation plans or surveys submitted by the condemning authority and such other information as might be necessary to enable Tenant to determine its future course of conduct. If this Ground Lease shall be terminated and canceled as a result of any taking or appropriation, Tenant shall be released from any further liability and Rent and Additional Rent for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any sums paid in advance. At the time of such taking or appropriation, the amount of the award attributable to Tenant's improvements to the Demised Premises shall be payable to Tenant out of any award, subject and subordinate to the rights of any Tenant mortgagee. Tenant's right to receive compensation for loss of business, moving or similar expenses, or damages for its fixtures and its personal property shall not be affected in any manner whatsoever by this provision of this Ground Lease. In addition, Landlord shall not agree to any award affecting the Demised Premises without the prior written consent of Tenant, which shall not be unreasonably withheld.

If part of the Demised Premises shall be acquired or condemned by use of the power of eminent domain or if access to any street is blocked or restricted by governmental action or requirement and if such partial taking or loss or restriction of access shall render the Demised Premises unusable for the business of Tenant, in its sole and absolute opinion, or if such taking involves a taking of Tenant's building, then Tenant, at its option, may terminate this Ground Lease without owing any liability to Landlord to be effective as of the date title is vested in the public body, or the date the access is blocked or restricted and the rights of Landlord and Tenant shall be as set forth above for the taking of the whole. If such partial taking is not sufficiently extensive to render the Demised Premises unusable for the business of Tenant in the sole and absolute opinion of Tenant, Rent and Additional Rent shall be prorated and adjusted based on the percentage of such partial taking relative to the original size of the Demised Premises.

21. **BROKERAGE:** TENANT AND LANDLORD EACH REPRESENTS AND WARRANTS TO THE OTHER THAT NO BROKER, AGENT, COMMISSION SALESMAN OR OTHER PERSON HAS REPRESENTED THE WARRANTING PARTY IN THE NEGOTIATIONS FOR AND PROCUREMENT OF THIS GROUND LEASE AND OF THE DEMISED PREMISES, AND THAT NO COMMISSIONS, FEES OR COMPENSATION OF ANY KIND ARE DUE AND PAYABLE IN CONNECTION HEREWITH TO ANY SUCH PERSON OR ENTITY. EACH OF LANDLORD AND TENANT AGREES TO INDEMNIFY, DEFEND AND HOLD THE OTHER, AND ITS RESPECTIVE SUCCESSORS AND ASSIGNS HARMLESS FROM ANY AND ALL CLAIMS, COSTS, COMMISSIONS, FEES OR DAMAGES BY ANY PERSON OR FIRM CLAIMING TO HAVE NEGOTIATED, INSTITUTED OR BROUGHT ABOUT THIS GROUND

LEASE OR OTHERWISE RESULTING FROM A BREACH BY THE INDEMNIFYING PARTY OF THE REPRESENTATIONS IN THIS SECTION 21.

22. **LIENS:** Tenant will promptly remove and discharge, at its cost and expense, all mechanic's liens, or other liens, for labor performed or materials furnished with respect to the Demised Premises by or for Tenant.

23. **USE OF EXISTING WATER WELLS:** Tenant is permitted to use any water wells existing on the Demised Premises as of the Effective Date solely for use in its operations thereon. In no event is Tenant permitted to drill any additional water wells on the Demised Premises. Further, Tenant shall not, without the prior consent of Landlord, and subject to any conditions, compensatory or otherwise, sell, or otherwise allow use of, water from water wells on the Demised Premises to or by any other party.

24. **INTENTIONALLY OMITTED.**

25. **ASSIGNMENT:** Except for a Permitted Transfer (as defined herein), Tenant may assign this Ground Lease or sublease all or any part of the Demised Premises only with the prior written consent of Landlord, such consent not to be unreasonably withheld. The terms of any assignment or sublease pursuant to this Section 25 shall be set by Tenant in its sole and absolute discretion, provided that nothing in the assignment or sublease may alter, amend, or in any other way change the terms of this Ground Lease or relieve Tenant of its obligations under this Ground Lease. Tenant shall give Landlord notice of any assignment or sublease within ten (10) days after the effective date of such assignment or sublease. Notwithstanding the foregoing and for purposes of this Lease, the following transfers shall not require Landlord's prior written consent: (i) (if Tenant is a corporation) the addition of stockholders and the withdrawal of stockholders in the normal course of Tenant's business or (ii) the assignment of this Lease to any successor of Tenant (a) by merger, consolidation, or reorganization, (b) arising from the transfer of Tenant's interest under this Lease made in conjunction with the transfer of a majority of the assets and liabilities of Tenant, (c) arising from the acquisition of the assets and liabilities of another corporation by Tenant or any entity owned or controlled by Tenant, or (d) such assignment is made to an entity controlled by, controlling, or under common control with Tenant (each a "Permitted Transfer"), , provided that Tenant shall remain fully jointly and severally liable with any such assignee for all obligations, responsibilities or liabilities with respect to this Lease or the Demised Premises

26. **LANDLORD'S REPRESENTATIONS:** Landlord hereby covenants, warrants and represents to Tenant that:

(a) Landlord has the sole right, legal power and authority to enter into this Ground Lease.

(b) All requisite individual, corporate, limited liability company or partnership actions or any other required action have been taken and satisfied by Landlord to authorize the execution and performance of this Ground Lease. No other proceedings or actions on the part of Landlord are necessary to authorize this Ground Lease or to carry out the transactions contemplated hereby. This Ground Lease constitutes the legal, valid and binding obligation of Landlord enforceable against Landlord in accordance with its terms.

(c) The individual(s) executing this Ground Lease, on behalf of Landlord, has (or have) the full right, legal power and actual authority to bind Landlord to the terms and conditions hereof.

(d) Neither the execution nor the provisions of this Ground Lease violates or breaches or shall violate or breach any term or provision of any agreement, written or oral, between Landlord and any third party, and that if legal proceedings are instituted by any party to prohibit the use, operation or enjoyment of the Demised Premises, or any part thereof, as provided in this Ground Lease, Landlord shall assume the defense of any such legal proceedings and shall indemnify Tenant from and against any and all claims arising from or out of any such legal proceedings and/or the total or partial loss of the use, operation or enjoyment of the Demised Premises.

(e) Landlord is a Limited Partnership duly organized, validly existing and in good standing under the laws of the state of its formation and is duly qualified and in good standing under the laws of the jurisdiction where the Demised Premises is located.

(f) Landlord has the express authority to authorize Tenant to undertake all actions provided for in Section 8 of this Ground Lease and Tenant is granted a temporary easement to enter the Demised Premises for the purpose of conducting said activities contemplated by Section 8 hereof.

27. **USE:** For the purpose of this Ground Lease, Tenant's use of the Demised Premises is defined as, and specifically limited to, construction of building(s) and related improvements acceptable to Tenant and the operation and maintenance therein of a data center, technology repair center and related operations and uses associated therewith, including repair center, warehouse, storage, housing for employees and family members, office, research and development center for a data center, repair of company owned equipment and vehicles, cafeteria and the Colocation of customer equipment.

28. **FORCE MAJEURE:** If either party is delayed or prevented from performing any of its non-monetary obligations under this Ground Lease by reason of strike, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, terrorism, governmental orders, regulations, or moratoriums, Federal, State and/or local governmental regulations, procedures and enforcement relating to epidemics or pandemics

(including, without limitation SARS-CoV-2 and/or COVID-19) or any other cause beyond that party's control ("Force Majeure"), the period of such delay or such prevention shall be deemed added to the time period herein provided for the performance of any such obligation by that party.

29. **NOTICES:** All notices and demands required or permitted to be given or served pursuant to this Ground Lease shall be deemed to have been given or served only if in writing forwarded by Certified U.S. Mail or via national overnight delivery service (such as Fed Ex) with all postage and other applicable shipping charges prepaid and addressed as follows:

Tenant:

APLD – Rattlesnake Den I LLC
3811 Turtle Creek Boulevard, Suite 2100
Dallas, Texas 75219
ATTN: David Rench

Landlord:

EDB, Ltd.
P.O. Box 1541
Athens, Texas 75751
ATTN: Brenda Nix

Landlord, Tenant, any mortgagee and any other person to whom any such notice, instrument or communication may be given, shall each have the right to specify, from time to time, as its address for purposes of this Ground Lease, any address in the 48 contiguous States of the United States of America upon giving fifteen (15) days' notice thereof to each other person then entitled to receive notices, instruments or communications hereunder.

30. **ESTOPPEL CERTIFICATES:** Landlord and Tenant shall, from time to time upon thirty (30) days' request by the other (but not to exceed more than two (2) times in any given calendar year), execute, acknowledge and deliver a statement, dated currently, certifying that this Ground Lease is unmodified and in full, force and effect (or, if there have been modifications, that this Ground Lease is in full effect as modified, and identifying such modifications) and the dates to which the Rent and Additional Rent have been paid, and that, to the best of its knowledge, no default exists in the observance of this Ground Lease and no event of default has occurred and is continuing, or specifying each such default or event of default of which Landlord or Tenant may have knowledge, it being intended that any such statement may be relied upon by Landlord's

or Tenant's mortgagees, any prospective purchaser of the interest of Landlord or Tenant in their respective premises described herein or any assignee or sublessee of Tenant.

31. **TRANSFER OF TITLE:** If there shall be any change in or transfer of title in or to the Demised Premises or any part thereof, Tenant shall continue to make all payments to Landlord, without owing any liability to any other party whatsoever, unless notified in writing by Landlord of such change in title which shall accompany satisfactory proof and given at least ten (10) days before the next such payment is due. Thereafter, Tenant shall submit such payment to the party properly entitled to receive it, without owing any liability to any other party. Landlord agrees to deliver to Tenant an agreement signed by any party or parties who may purchase or succeed to all or any part of Landlord's interest in the Demised Premises, which agreement shall formally recognize the obligations of such party or parties as purchasers from and successors to Landlord and the assumption by such party or parties of all of Landlord's obligations, responsibilities and duties hereunder.

32. **GENERAL PROVISIONS:** (a) This Ground Lease (and the documents referred to herein) constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings, oral or otherwise, between or among the parties with respect to the matters contained herein.

(b) This Ground Lease shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, legatees, distributees, legal representatives, successors and assigns.

(c) This Ground Lease shall not be modified, amended or supplemented, in whole or part, without the prior written consent of the parties hereto. Each and every waiver of any covenant, representation, warranty or any other provision hereof must be in writing and signed by each party whose interests are adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

(d) If any legal action or other proceeding is brought for the enforcement hereof, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions hereof, the successful or prevailing party or parties shall be entitled to recover attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

(e) The parties hereby agree that each party and its attorneys have reviewed and revised this Ground Lease and that the normal rule of construction, to the effect that any ambiguities are resolved against the drafting party, shall not be employed in the interpretation of this Ground Lease and no other rule of strict

construction shall be used against any party. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated herein by reference, as fully as if copied herein verbatim.

(f) This Ground Lease shall be governed by the internal laws of the State of Texas without regard to and excluding its principles of conflicts of laws.

(g) The parties further agree that upon request, they shall do such further acts and deeds, and shall execute, acknowledge, deliver and record such other documents and instruments, as may be reasonably necessary from time to time to evidence, confirm or carry out the intent and purposes of this Ground Lease.

(h) Unless the context in which used clearly requires another construction, throughout this Ground Lease, the masculine gender shall be deemed to include the neuter of feminine or both, the neuter gender shall include the masculine or both, and the singular of terms shall include the plural and vice versa. The section headings are for convenience only and shall not affect the construction hereof.

(i) If any one or more of the provisions hereof shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity or enforceability of any other provision hereof, which shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties intend that if any provision hereof is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(j) Time is of the essence in the performance of each parties' respective obligations.

(k) This Ground Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same instrument, and it shall not be necessary that any single counterpart bear the signatures of all parties.

(l) Unless expressly stated to be exclusive, no remedy conferred herein shall be deemed to be exclusive of any other remedy conferred herein or any other remedy now or hereafter available at law or equity. All remedies conferred herein, and all remedies now or hereafter available at law or equity, shall be deemed to be cumulative and not alternative, and may be enforced concurrently or successively.

(m) All provisions of this Ground Lease shall be construed as covenants and agreements where used in each separate provision hereof and shall bind and enure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns and shall run with the land.

(n) If more than one person or entity is named as Landlord in this Ground Lease and executed the same as Landlord, then the word "Landlord" whenever used herein shall refer to all such persons or entities, and the liability of such persons or entities for compliance with or for the performance of all terms, conditions, covenants and provisions hereof shall be joint and several.

(o) All periods of time shall include Saturdays, Sundays and legal holidays; provided that, if the last day to perform any act or give notice falls on a Saturday, Sunday or legal holiday, then such act or notice shall be timely performed if given on the next succeeding business day. As used herein, "business day" or "business days" means any day of the week except a Saturday, a Sunday or a or legal holiday or a holiday in the state in which the Demised Premises is located on which banks and schools are closed.

(p) Any holding over by Tenant of the Demised Premises after the expiration or termination of this Ground Lease shall operate and be construed as a tenancy from month to month on all terms of this Ground Lease, terminable by either party upon thirty (30) days prior written notice to the other.

(q) There shall be no merger of this Ground Lease or of the leasehold estate hereby created by any other estate or interest in the Demised Premises or any portion thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, (a) this Ground Lease or the leasehold estate hereby created or any interest in this Ground Lease or such leasehold estate, and (b) any such other estate or interest in the Demised Premises or any portion thereof, and this Ground Lease shall not be terminated for any cause or reason whatsoever except as expressly provided herein or unless mutually agreed upon by the parties.

(r) Upon request by Tenant, Landlord shall promptly furnish to Tenant Landlord's tax identification number(s) so that Tenant may report the payments made by Tenant to Landlord hereunder as required by applicable governmental authorities.

(s) Nothing contained in this Ground Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and no provision contained in this Ground Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

(t) The words "hereof", "herein", "hereunder", and other words of similar import refer to this Agreement as a whole and not to any specific article, section or subsection hereof. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated by reference into this Agreement, as fully as if copied herein verbatim. The word "party" or "parties" means only those persons or entities who are signatories to this Agreement. The terms "include," "includes," "including," or words of like import, shall be construed as being without limitation to the matters or items thereafter specified, notwithstanding any rule of construction to the contrary, unless an intention to be so limited is clearly expressed. Unless expressly otherwise provided herein, the terms "and" and "or" as used in this Agreement means one or other or both, or any one or ones or all, of the items, entities or persons in connection with which the words are used.

(u) THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, ARISING FROM OR RELATING TO THE SUBJECT MATTER HEREOF. THE PARTIES HERETO WAIVE ANY RIGHT TO ANY PUNITIVE DAMAGES, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO SUCH DAMAGES.

The following exhibits are attached hereto and incorporated herein by reference:

Exhibit "A" Legal Description
Exhibit "B" Plot Plan
Exhibit "C" Title Exceptions

The remainder of this page intentionally left blank
Signatures to follow

IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease as of the day and year first above written.

LANDLORD

E.D.B., Ltd.,
a Texas Limited Liability Company

By: Glasscock Properties, L.L.C.,
its general partner

By: Brenda Cook Nix
By: Brenda Cook Nix, President of
Glasscock Properties, L.L.C.,
general partner of E.D.B., Ltd.,
a Texas limited partnership

TENANT

APLD – Rattlesnake Den I LLC,
a Delaware limited liability company

By: DR
Name: David Rensch

Its: Chief Financial Officer

EXHIBIT "A"

LEGAL DESCRIPTION

FIELD NOTE DESCRIPTION OF A 50.00 ACRE TRACT OF LAND, SITUATED IN AND BEING OUT OF SECTION 11, BLOCK 34, TOWNSHIP 5 SOUTH, ABSTRACT 270, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, GLASSCOCK COUNTY, TEXAS, AND BEING OUT OF THAT SAME LAND AS CONVEYED IN A SPECIAL WARRANTY DEED RECORDED IN VOLUME 307 ON PAGE 634 OF THE DEED RECORDS OF SAID GLASSCOCK COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y): 10600710.85, E.(x): 1944710.27, A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET ON THE WEST RIGHT-OF-WAY LINE OF RANCH TO MARKET ROAD 33, AS DEDICATED IN A DEED RECORDED IN VOLUME 59 ON PAGE 444 OF SAID DEED RECORDS, FROM WHICH A ONE AND ONE HALF INCH GALVANIZED IRON PIPE FOUND FOR THE NORTHEAST CORNER OF SECTION 1, SAID BLOCK AND TOWNSHIP, BEARS N.39°27'18"E., 11302.61 FEET AND A ONE INCH IRON PIPE BY A STONE MARKED "NW 25 - K", AT THE SOUTHEAST CORNER OF SECTION 23, SAID BLOCK AND TOWNSHIP BEARS S.29°25'41"E., 14950.03 FEET, AND A ONE HALF INCH IRON ROD WITH AN ILLEGIBLE ORANGE PLASTIC CAP, AT OR NEAR THE NORTHEAST CORNER OF SAID SECTION 11, BEARS N.55°43'25"E., 4097.55 FEET, THIS BEING THE NORTHEAST CORNER HEREOF;

THENCE S.05°22'26"E., ALONG SAID RIGHT-OF-WAY, 2183.45 FEET TO AN "RPC" SET FOR THE SOUTHEAST CORNER HEREOF;

THENCE WEST, 1139.63 FEET TO AN "RPC" SET FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.01°52'09"E., 2175.00 FEET TO AN "RPC" SET FOR THE NORTHWEST CORNER HEREOF;

THENCE EAST, 864.20 FEET TO THE POINT OF BEGINNING, CONTAINING 50.00 ACRES OF LAND.

EXHIBIT "C"

TITLE EXCEPTIONS

Mortgages:

Landlord covenants that within thirty (30) days following the Effective Date of this Ground Lease, the mortgages described below shall either be discharged of record or the mortgagees shall execute an agreement in accordance with the Section in this Ground Lease entitled SUBORDINATION AND NON-DISTURBANCE:

"NONE"

Landlord warrants that there are no easements, restrictions, or other matters that will affect or limit the use of the Demised Premises by Tenant in accordance with the terms of this Ground Lease, except as follows:

"NONE"

Subsidiaries

Name of Subsidiary	Jurisdiction of Organization	Percent Owned
APLD Hosting, LLC	Nevada	100%
1.21 Gigawatts, LLC	Delaware	80%
APLD Rattlesnake Den I LLC	Delaware	80%
APLD Rattlesnake Den II LLC	Delaware	80%
APLD – JTND Phase II, LLC	Delaware	80%
APLD ELN-01 LLC	Nevada	100%
Applied Talent Resources LLC	Nevada	100%
APLD GPU-01 LLC	Delaware	100%
APLD HPC-01 LLC	Delaware	100%
Sai Computing Holdings LLC	Delaware	100%
Sai Computing LLC	Delaware	100%
Sai - Foundry Computing LLC	Delaware	98%
Highland Digital Holdings LLC	Delaware	50%

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statement of Applied Digital Corporation on Form S-3 File No. 333-272023, 333-267478, 333-258818 and Form S-8 File No. 333-267811 of our report dated July 27, 2023, with respect to our audits of the consolidated financial statements of Applied Digital Corporation as of August 2, 2023 and 2022 and for each of the two years in the period ended May 31, 2023, which report is included in this Annual Report on Form 10-K of Applied Digital Corporation for the year ended May 31, 2023.

/s/ Marcum LLP

Marcum LLP
New York, NY
August 2, 2023

**SECTION 302 CERTIFICATION OF CHIEF EXECUTIVE OFFICER
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Wesley Cummins, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended May 31, 2023 of Applied Digital Corporation;
 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.
-

Date: August 2, 2023

By: /s/ Wesley Cummins

Wesley Cummins, Chief Executive Officer, Treasurer, Chairperson
of the Board and Director (Principal Executive Officer)

**SECTION 302 CERTIFICATION OF CHIEF FINANCIAL OFFICER
CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David Rench, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended May 31, 2023 of Applied Digital Corporation;
 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.
-

Date: August 2, 2023

By: /s/ David Rench

David Rench, Chief Financial Officer (Principal Financial and
Accounting Officer)

SECTION 906 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K for the year ended May 31, 2023 of Applied Digital Corporation (the “Company”) as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Wesley Cummins, Chief Executive Officer of the Company, certifies, to the best of his knowledge, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 2, 2023

By: /s/ Wesley Cummins
Chief Executive Officer, Treasurer, Chairperson of the Board and
Director (Principal Executive Officer)

SECTION 906 CERTIFICATION OF CHIEF FINANCIAL OFFICER

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K for the year ended May 31, 2023 of Applied Digital Corporation (the “Company”) as filed with the Securities and Exchange Commission on the date hereof (the “Report”), David Rench, Chief Financial Officer of the Company, certifies, to the best of his knowledge, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 2, 2023

By: /s/ David Rench
Chief Financial Officer Chief Financial Officer (Principal Financial
and Accounting Officer)