

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended November 30, 2022

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)

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

(Address of Principal Executive Offices)

95-4863690

(I.R.S. Employer
Identification No.)

75219

(Zip Code)

(214) 556-2465

Registrant's telephone number, including area code

Applied Blockchain, Inc.

(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

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 Exchange Act). Yes No

APPLICABLE ONLY TO CORPORATE ISSUERS:

As of January 10, 2023, 94,474,316 shares of Common Stock, \$0.001 par value, were outstanding.



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Part I - Financial Information

Item 1. Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Condensed Consolidated Balance Sheets (Unaudited)

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

	November 30, 2022	May 31, 2022
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 18,074	\$ 46,299
Accounts receivable	276	227
Prepaid expenses and other current assets	2,397	1,336
Total current assets	20,747	47,862
Property and equipment, net	132,893	64,260
Right of use asset, net	12,353	6,408
Utility deposits	1,450	1,450
TOTAL ASSETS	\$ 167,443	\$ 119,980
LIABILITIES, MEZZANINE EQUITY AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable and accrued liabilities	\$ 7,472	\$ 13,260
Current portion of lease liability	3,664	1,004
Current portion of term loan	4,122	1,333
Customer deposits	24,689	9,524
Current deferred revenue	29,394	3,877
Sales and use tax payable	865	—
Total current liabilities	70,206	28,998
Deferred tax liability	260	540
Long-term portion of lease liability	8,631	5,310
Long-term term loan	16,376	5,897
Total liabilities	\$ 95,473	\$ 40,745
Commitments and contingencies		
Stockholders' equity (deficit):		
Common stock, \$ 0.001 par value, 166,666,667 shares authorized, 93,982,650 shares issued and 93,946,353 shares outstanding at November 30, 2022, and 97,837,703 shares issued and 97,801,406 shares outstanding at May 31, 2022	\$ 94	\$ 98
Additional paid in capital	150,695	128,293
Treasury stock, 36,300 shares at November 30, 2022 and May 31, 2022, at cost	(62)	(62)
Accumulated deficit	(87,218)	(56,070)
Total stockholders' equity attributable to Applied Digital Corporation	63,509	72,259
Noncontrolling interest	8,461	6,976
Total Stockholders' equity (deficit) including noncontrolling interest	\$ 71,970	\$ 79,235
TOTAL LIABILITIES AND SHAREHOLDERS' DEFICIT	\$ 167,443	\$ 119,980

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See Accompanying Notes to the Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES
Condensed Consolidated Statements of Operations (Unaudited)
(In thousands, except per share data)

	Three Months Ended		Six Months Ended	
	November 30, 2022	November 30, 2021	November 30, 2022	November 30, 2021
Revenues:				
Hosting revenue	\$ 12,340	\$ —	\$ 19,264	\$ —
Cost of revenues	\$ 11,812	\$ —	\$ 17,905	\$ —
Gross profit	528	—	1,359	—
Costs and expenses:				
Selling, general and administrative	\$ 26,502	\$ 1,181	\$ 31,212	\$ 14,216
Depreciation and amortization	703	174	1,001	177
Total costs and expenses	\$ 27,205	\$ 1,355	\$ 32,213	\$ 14,393
Operating loss	\$ (26,677)	\$ (1,355)	\$ (30,854)	\$ (14,393)
Other income (expense):				
Interest Expense	\$ (385)	\$ —	\$ (741)	\$ —
Loss on extinguishment of debt	—	—	(94)	(1,342)
Total other expense, net	(385)	—	(835)	(1,342)
Net loss from continuing operations before income tax expenses	(27,062)	(1,355)	(31,689)	(15,735)
Income tax benefit (expense)	312	(214)	280	(214)
Net loss from continuing operations	(26,750)	(1,569)	(31,409)	(15,949)
Net gain from discontinued operations, net of income taxes	—	1,398	—	1,681
Net loss including noncontrolling interests	(26,750)	(171)	(31,409)	(14,268)
Net loss attributable to noncontrolling interest	(133)	—	(261)	—
Net loss attributable to Applied Digital Corporation	\$ (26,617)	\$ (171)	\$ (31,148)	\$ (14,268)
Basic and diluted net (loss) gain per share:				
Continuing Operations	\$ (0.29)	\$ (0.03)	\$ (0.34)	\$ (0.32)
Discontinued Operations	\$ —	\$ 0.03	\$ —	\$ 0.03
Basic and diluted net loss per share	\$ (0.29)	\$ —	\$ (0.34)	\$ (0.29)
Basic and diluted weighted average number of shares outstanding	93,422,427	53,396,920	93,263,266	49,143,981

See Accompanying Notes to the Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES
Condensed Consolidated Statements of Changes in Stockholders' Equity (Unaudited)
(In thousands, except share data)

Three Months Ended November 30, 2022

	Common Stock		Additional Paid in Capital	Treasury Stock	Accumulated deficit	Total Stockholders Equity	Noncontrolling Interest	Total Equity
	Shares	Amount						
Balance, August 31, 2022	92,872,271	\$93	\$128,877	\$(62)	\$(60,601)	\$68,307	\$8,594	\$76,901
Stock-based compensation	1,110,379	1	21,818	—	—	21,819	—	21,819
Net Loss	—	—	—	—	(26,617)	(26,617)	(133)	(26,750)
Balance, November 30, 2022	93,982,650	\$94	\$150,695	\$(62)	\$(87,218)	\$63,509	\$8,461	\$71,970

Three Months Ended November 30, 2021

	Series C Convertible Redeemable Preferred Stock		Series D Convertible Redeemable Preferred Stock		Total Mezzanine Equity	Common Stock		Additional Paid in Capital	Treasury Stock	Accumulated Deficit	Total Stockholders Equity	Total Equity
	Shares	Amount	Shares	Amount		Shares	Amount					
Balance, August 31, 2021	660,000	15,135,000	1,304,000	29,902	45,037	53,396,920	53	43,925	(62)	(44,666)	(750)	44,287
Issuance of Preferred Stock	—	—	76,000	1,900	1,900	—	—	—	—	—	—	1,900
Issuance Costs of Preferred Stock	—	—	—	(228)	(228)	—	—	—	—	—	—	(228)
Net Loss	—	—	—	—	—	—	—	—	—	(171)	(171)	(171)
Balance, November 30, 2021	660,000	15,135,000	1,380,000	31,574	46,709	53,396,920	\$ 53	43,925	(62)	(44,837)	(921)	45,788

See Accompanying Notes to the Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES
Consolidated Statements of Changes in Stockholders' Deficit (Unaudited)
(In thousands, except per share data)

Six Months Ended November 30, 2022

	Common Stock		Additional Paid in Capital	Treasury Stock	Accumulated deficit	Total Stockholders Equity	Noncontrolling Interest	Total Equity
	Shares	Amount						
Balance, May 31, 2022	97,837,703	\$98	\$128,293	\$(62)	\$(56,070)	\$72,259	\$6,976	\$79,235
Stock-based compensation	1,110,379	1	22,397	—	—	22,398	—	22,398
Capital contribution to noncontrolling interest	—	—	—	—	—	—	1,746	1,746
Stock Cancellation	(4,965,432)	(5)	5	—	—	—	—	—
Net Loss	—	—	—	—	(31,148)	(31,148)	(261)	(31,409)
Balance, November 30, 2022	93,982,650	\$94	\$150,695	\$(62)	\$(87,218)	\$63,509	\$8,461	\$71,970

Six Months Ended November 30, 2021

	Series C Convertible Redeemable Preferred Stock		Series D Convertible Redeemable Preferred Stock		Total Mezzanine Equity	Series A Convertible Preferred Stock		Series B Convertible Preferred Stock		Common Stock		Additional Paid in Capital	Treasury Stock	Accumulated Deficit	Total Stockholders Deficit	Total Equity
	Shares	Amount	Shares	Amount		Amount	Shares	Amount	Shares	Amount	Shares					
Balance, May 31, 2021	660,000	\$ 15,135	—	\$ —	\$15,135	27,195	\$3,370	17,087	\$1,849	1,511,061	\$1	\$13,882	\$(62)	\$(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 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 Preferred Stock	—	—	1,380,000	34,500	34,500	—	—	—	—	—	—	—	—	—	—	34,500
Issuance Costs of Preferred Stock	—	—	—	(2,926)	(2,926)	—	—	—	—	—	—	—	—	—	—	(2,926)
Net Loss	—	—	—	—	—	—	—	—	—	—	—	—	—	(14,268)	(14,268)	(14,268)
Balance, November 30, 2021	660,000	\$ 15,135	1,380,000	\$31,574	\$46,709	—	\$ —	—	\$ —	53,396,920	\$ 53	\$ 43,925	\$(62)	\$(44,837)	\$(921)	\$45,788

See Accompanying Notes to the Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows (Unaudited)(In thousands of dollars)

	Six Months Ended	
	November 30, 2022	November 30, 2021
CASH FLOW FROM OPERATING ACTIVITIES		
Net loss attributable to Applied Digital Corporation	\$ (31,148)	\$ (14,268)
Net loss from discontinued operations, net of income taxes	—	1,681
Net Loss attributable to noncontrolling interest	(261)	—
Net Income (loss) from continuing operations	(31,409)	(15,949)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and Amortization	2,704	177
Loss on extinguishment of debt	94	1,342
Stock-Based Compensation	22,398	12,337
Lease Expense	97	28
Deferred Tax	(280)	214
Changes in assets and liabilities:		
Accounts receivable	(49)	—
Prepaid expenses and other current assets	(1,061)	(1,644)
Customer deposits	15,165	—
Deferred revenue	25,517	—
Accounts payable and accrued liabilities	(5,745)	5,254
Sales and use tax payable	865	—
Lease Assets and Liabilities	(317)	(25)
Net cash provided by operating activities of continuing operations	27,979	1,734
Net cash provided by operating activities of discontinued operations	—	600
NET CASH PROVIDED BY OPERATING ACTIVITIES	27,979	2,334
CASH FLOW FROM INVESTING ACTIVITIES		
Purchases of property and equipment	(70,305)	(10,314)
Deposit on equipment	—	(23,230)
Net cash used in investing activities of continuing operations	(70,305)	(33,544)
Net cash provided by investing activities of discontinued operations	—	1,931
NET CASH USED IN INVESTING ACTIVITIES	(70,305)	(31,613)
CASH FLOW FROM FINANCING ACTIVITIES		
Issuance of preferred stock	—	34,500
Repayment of finance leases	(778)	—
Preferred issuance costs	—	(2,926)
Term loan payoff	(7,056)	—
Proceeds from issuance of term loan	21,711	—
Term Loan Issuance Costs	(378)	—
Loan Payments	(1,102)	—
Payments of employee restricted stock tax withholdings	(43)	—
Equity contributions to subsidiaries	1,747	—
Net cash provided by financing activities of continuing operations	14,101	31,574
Net cash provided by financing activities of discontinued operations	—	—
CASH FLOW PROVIDED BY FINANCING ACTIVITIES	14,101	31,574
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	(28,225)	2,295
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	46,299	11,750
CASH AND CASH EQUIVALENTS, END OF PERIOD	18,074	14,045
Less: cash and cash equivalents of discontinued operations	—	—
Cash and cash equivalents of continuing operations	\$ 18,074	\$ 14,045
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest Paid	\$ 707	\$ —
SUPPLEMENTAL DISCLOSURE OF NON-CASH ACTIVITIES		
Right-of-use asset obtained by lease obligation	\$ 6,925	\$ 1,291
Fixed assets in accounts payable	\$ 3,466	\$ 513

See Accompanying Notes to the Financial Statements

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Condensed Consolidated Financial Statements (unaudited)

For the Three and Six Month Periods Ended November 30, 2022

1. BUSINESS AND ORGANIZATION

Applied Digital Corporation, f/k/a Applied Blockchain, Inc. (the “Company”), is a builder and operator of next-generation data centers across North America, which provide substantial computing power to high power computing applications such as blockchain infrastructure, nature language processing, and artificial intelligence. The Company has a colocation business model where customers place hardware they own into the Company’s facilities and the Company provides full operational and maintenance services for a fixed fee. The Company typically enters into long term fixed rate contracts with its customers.

On April 12, 2022, the Company effected a one-for-six (1:6) reverse split (the “Reverse Stock Split”) of shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”). All references to Common Stock, options to purchase common stock, restricted stock units, share data, per share data and related information contained in the condensed consolidated financial statements have been retrospectively adjusted to reflect the effect of the Reverse Stock Split for all periods presented. No fractional shares of the Company’s common stock were issued in connection with the Reverse Stock Split. Any fractional share resulting from the Reverse Stock Split was rounded down to the nearest whole share and the affected holder received cash in lieu of such fraction share.

On September 1, 2022, Company entered into a joint venture agreement with GMR Limited (“GMR”) to form Highland Digital Holdings, LLC (“Highland Digital”), which may acquire mining hardware and digital infrastructure assets. The Company and GMR each have a 50% ownership stake in Highland Digital. GMR is the controlling partner and will consolidate the results of Highland Digital in its financial statements. The Company will not consolidate Highland Digital in its financial statements, but will account for the entity under the equity method. As of November 30, 2022, the Company had a firm commitment of \$0.6 million to Highland Digital.

On October 13, 2022, the Company entered into a joint venture agreement with Foundry Technologies, Inc. (“Foundry”) to form SAI Computing, LLC (“SAI”). SAI will provide artificial intelligence and machine learning application customers with access to machines and a hosting environment. The Company is currently expanding capacity at the Jamestown, North Dakota datacenter facility to provide access to SAI and its customers. The Company has an 98% ownership interest in SAI and plans to consolidate the entity.

2. LIQUIDITY AND FINANCIAL CONDITION

As of November 30, 2022, the Company had approximate cash and cash equivalents of \$ 18.1 million and negative working capital of \$49.5 million. Historically the Company has incurred losses and has relied on equity 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 are issued.

3. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation:

The accompanying interim unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"), including the instructions to Form 10-Q and Article 10 of Regulation S-X. Certain information and footnote disclosures normally included in the Company's annual consolidated financial statements on Form 10-K have been condensed or omitted. The condensed consolidated balance sheet as of May 31,

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

2022 has been derived from the audited consolidated financial statements as of that date, but does not include all disclosures required for audited annual financial statements. For further information, please refer to and read these interim unaudited condensed Consolidated Financial Statements in conjunction with the Company's audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended May 31, 2022 filed with the SEC on August 29, 2022.

Significant Accounting Policies and Use of Estimates:

There were no material changes in the Company's significant accounting policies for the three and six months ended November 30, 2022 as compared to the year ended May 31, 2022. See Note 3 to the consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended May 31, 2022, as filed with the SEC, for additional information regarding the Company's significant accounting policies and use of estimates.

The preparation of the unaudited condensed consolidated 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 include estimates the valuation allowance associated with the Company's deferred tax assets.

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. The Company's cash equivalents in excess of federally insured limits potentially subject us to concentrations of credit risk, although the Company believes it is subject to minimal risk.

The Company has restricted cash related to its letter of credit. The Company is required to keep this balance in a separate account for the duration of the letter of credit agreement, which lasts through January 2024. The Company also has restricted cash related to its Starion Term Loan buy-down (as defined below). The following tables reconciles cash and cash equivalents and restricted cash to presentation on the balance sheet as of November 30, 2022, and May 31, 2022.

(in thousands)	November 30, 2022		May 31, 2022	
Net Cash & Equivalents	\$	10,512	\$	38,798
Restricted Cash	\$	7,562	\$	7,501
Total Cash & Cash Equivalents	\$	18,074	\$	46,299

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.

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

4. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following as of November 30, 2022, and May 31, 2022:

(in thousands)	Estimated Useful Life	November 30, 2022	May 31, 2022
Hosting Equipment			
Electric Generation and Transformers	15 years	\$ 4,519	\$ 4,338
Other Equipment and Fixtures	5 years-7 years	718	588
Construction in Progress		83,290	18,305
Information Systems and Software	5 years	11,116	9,608
Land & Building			
Land		2,152	1,074
Land Improvements	15 years	1,259	1,180
Building	39 years	32,519	30,176
Total cost of property and equipment		<u>135,572</u>	<u>65,269</u>
Accumulated Depreciation		<u>(2,679)</u>	<u>(1,009)</u>
Property Plant and Equipment, Net		<u>\$ 132,893</u>	<u>\$ 64,260</u>

Depreciation expense from continuing operations totaled \$0.8 million and \$0.2 million and for the three months ended November 30, 2022 and 2021, respectively. Depreciation expense from continuing operations totaled \$1.7 million and \$0.2 million and for the six months ended November 30, 2022 and 2021, respectively.

5. REVENUE FROM CONTRACTS WITH CUSTOMERS

The Company recognizes revenue when promised services are transferred to customers in an amount that reflects the consideration to which the Company expects to be received in exchange for those services. The Company notes all revenue recognized from continuing operations during the quarter was received through hosting revenue.

Below is a summary of the Company's revenue concentration by major customer for the three and six months ended November 30, 2022 and 2021, respectively.

Customer	Three Months Ended November 30,			
	2022		2021	
Customer A	32.6	%	—	%
Customer B	26.5	%	—	%
Customer C	16.2	%	—	%
Customer D	13.0	%	—	%
Customer E	11.8	%	—	%

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

Customer	Six Months Ended November 30,			
	2022		2021	
Customer A	33.7	%	—	%
Customer B	21.5	%	—	%
Customer C	17.9	%	—	%
Customer D	14.2	%	—	%
Customer E	12.7	%	—	%

Remaining Performance Obligations

As of November 30, 2022, the Company had \$29.4 million in deferred revenue, which represents the Company's remaining performance obligations. The Company expects to recognize \$29.4 million within the next 12 months.

Deferred Revenue

Changes in the Company's deferred revenue balances from hosting operations for the three and six months ended November 30, 2022 and 2021, respectively, are shown in the following table:

(in thousands) Three Months Ended November 30, 2022		(in thousands) Three Months Ended November 30, 2021	
Balance at August 31, 2022	\$ 19,193	Balance at May 31, 2021	\$ —
Advance billings	22,406	Advance billings	—
Revenue recognized	(12,340)	Revenue recognized	—
Other adjustments	\$ 135	Other adjustments	\$ —
Balance at November 30, 2022	\$ 29,394	Balance at November 30, 2021	\$ —

(in thousands) Six Months Ended November 30, 2022		(in thousands) Six Months Ended November 30, 2021	
Balance at May 31, 2022	3,877	Balance at May 31, 2021	\$ —
Advance billings	44,646	Advance billings	—
Revenue recognized	(19,264)	Revenue recognized	—
Other adjustments	\$ 135	Other adjustments	\$ —
Balance at November 30, 2022	\$ 29,394	Balance at November 30, 2021	\$ —

Customer Deposits

Changes in the Company's customer deposits balances for the three and six months ended November 30, 2022 and 2021, respectively, are shown in the following table:

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

(in thousands) Three Months Ended November 30, 2022		(in thousands) Three Months Ended November 30, 2021	
Balance at August 31, 2022	\$ 14,111	Balance at August 31, 2021	\$ —
Customer deposits received	10,713	Customer deposits received	—
Customer deposits refunded	—	Customer deposits refunded	—
Other adjustments	\$ (135)	Other adjustments	\$ —
Balance at November 30, 2022	\$ 24,689	Balance at November 30, 2021	\$ —

(in thousands) Six Months Ended November 30, 2022		(in thousands) Six Months Ended November 30, 2021	
Balance at May 31, 2022	\$ 9,524	Balance at May 31, 2021	\$ —
Customer deposits received	15,300	Customer deposits received	—
Customer deposits refunded	—	Customer deposits refunded	—
Other adjustments	\$ (135)	Other adjustments	\$ —
Balance at November 30, 2022	\$ 24,689	Balance at November 30, 2021	\$ —

6. RELATED PARTY TRANSACTIONS*Related Party Policy*

Parties are considered related to the Company if the parties, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with the Company. Related parties also include principal owners of the Company, its management, members of the immediate families of principal owners of the Company and its management and other parties with which the Company may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. The Company discloses all material related party transactions.

Related Party Note Payable

During the period ended November 30, 2021, a related party note payable was held by the CEO of the Company. During this period, the outstanding debt principal of \$0.5 million and accrued interest of \$ 1.6 million were converted to 5.1 million shares of Common Stock with a fair value of \$0.75 per share which resulted in a loss on extinguishment of \$ 1.3 million. Upon the consummation of an exchange agreement, the note payable was surrendered and cancelled, and all rights including rights to accrued interest due were extinguished.

Related Party Revenue

The Company has material transactions with two related parties Company A is a customer and is also the parent company of the minority member of the 1.21 Gigawatts joint venture.. Company B is a customer and is also the controlling member of the Highland Digital joint venture. Company B became a related party during September 2022. The following tables illustrate related party revenue for the three and six months ended November 30, 2022 and November 30, 2021.

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

<i>(in thousands)</i>	Revenue for the Three Months ended	
	November 30, 2022	November 30, 2021
Customer A	\$ 4,016	\$ —
Customer B	\$ 5,043	\$ —

<i>(in thousands)</i>	Revenue for the Six Months ended	
	November 30, 2022	November 30, 2021
Customer A	\$ 6,469	\$ —
Customer B	\$ 8,622	\$ —

The following tables illustrate related party deferred revenue and deposits balances as of November 30, 2022 and May 31, 2022.

<i>(in thousands)</i>	Customer A Balances as of	
	November 30, 2022	May 31, 2022
Deferred revenue	\$ 700	\$ 1,721
Customer Deposits	\$ 1,584	\$ 1,719

<i>(in thousands)</i>	Customer B Balances as of	
	November 30, 2022	May 31, 2022
Deferred revenue	\$ 2,279	\$ 888
Customer Deposits	\$ 7,024	\$ 6,508

7. DEBT*Letter of Credit*

As of November 30, 2022 and May 31, 2022, the Company had a letter of credit totaling \$ 7.5 million. As discussed in Footnote 3, the Company is required to maintain this amount in a separate cash balance, and therefore the cash is restricted. Further, the Company has no unused lines of credit as of November 30, 2022 or May 31, 2022, respectively.

Starion Term Loan

On July 25, 2022, APLD Hosting, LLC (the “Borrower”), a wholly-owned subsidiary of Applied Digital Corporation, entered into a Loan Agreement with Starion Bank (“Starion Lender”) 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 until May 31, 2024. At that time, the Company will

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

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 JDSC 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 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 (the “Borrower”), a wholly-owned subsidiary of the Company, entered into a Loan Agreement with Vantage Bank Texas (“Vantage Lender”) 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 Vantage Garden City Loan Agreement will be advanced in 16 installments for working capital needs for the Borrower’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 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 the date of this report, an aggregate amount of \$6.6 million has been advanced under the Vantage Garden City Loan Agreement. Total deferred costs related to the issuance of this loan total are \$0.2 million.

Below is a summary of the remaining principal payments due over the life of the Starion Loan Agreement and Vantage Garden City Loan Agreement notes as of November 30, 2022.

Year	Principal Payments (in thousands)	
FY23	\$	1,537
FY24		5,415
FY25		5,783
FY26		4,033
FY27		3,373
Thereafter		526
Total Term Loan Remaining Payments	\$	20,667

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

Below is a summary of Starion Loan Agreement Vantage Garden City Loan Agreement term loan balances, including current debt and deferred financing fees as of November 30, 2022 and May 31, 2022.

(in thousands)	November 30, 2022	May 31, 2022
Term Loan Balance	\$20,667	\$7,324
Less: Deferred Issuance Costs	(240)	(94)
Less: Current portion of Term Loan	(4,076)	(1,333)
Long-term Portion of Term Loan	\$16,351	\$5,897

8. STOCKHOLDERS' EQUITY (DEFICIT)**Common Stock**

The Company is authorized to issue 166,666,667 shares of Common Stock at \$0.001 par value per share. As of November 30, 2022, 93,982,650 shares of Common Stock were issued and 93,946,353 shares were outstanding and as of May 31, 2022, 97,837,703 shares of Common Stock were issued and 97,801,406 shares were outstanding. All shares of Common Stock in this report reflect the one-for-six reverse stock split disclosed in Note 1 - Business and Organization.

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 will recognize the cost of the restricted stock-based on the grant date fair value of the awards over the related vesting terms using a straight-line method when it is probable that the performance condition for the reserved underlying shares will be met.

The following is a summary of the activity and balances for unvested restricted stock awards granted for the six months ended November 30, 2022:

	Number of Shares	Weighted Average Grant Date Fair Value Per Share
Outstanding as of May 31, 2022	\$ 1,366,666	\$ 8.04
Granted	77,500	\$ 2.04
Vested	(952,500)	\$ 7.55
Forfeited	—	\$ —
Outstanding as of November 30, 2022	491,666	\$ 8.04

As of November 30, 2022, total expense to be recognized related to these awards was \$ 0.9 million and the weighted average remaining recognition period for the unvested awards was 3 months.

Restricted Stock Units

The Company has granted restricted stock unit awards ("RSUs") to certain consultants, in all cases as compensatory grants for consulting services rendered to the Company, which contain performance conditions that affect vesting. The Company will recognize the cost of these RSUs based on the grant date fair value of the awards when it is probable that the performance conditions will be achieved over the related vesting terms.

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

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 November 30, 2022, the Company had issued approximately 8.0 million awards under the plans.

The following is a summary of the activity and balances for unvested restricted stock units granted for the six months ended November 30, 2022:

	Number of Shares	Weighted Average Grant Date Fair Value Per Share	
Outstanding as of May 31, 2022	1,791,666	\$	8.04
Granted	7,897,907	\$	2.32
Vested	(179,166)	\$	8.04
Forfeited	(445,749)	\$	7.65
Outstanding as of November 30, 2022	9,064,658	\$	3.07

As of November 30, 2022, total expense to be recognized related to these awards was \$ 17.7 million and the weighted average remaining recognition period for the unvested awards was 23 months.

Share Forfeiture

On June 6, 2022, through an agreement between the Company and Sparkpool, Sparkpool agreed to forfeit shares of Common Stock that had been issued pursuant to the service agreement executed on March 19, 2021. Sparkpool 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 canceled by the Company.

9. LEASES

During the six months ended November 30, 2022, the Company entered into 18 new leases, bringing the total number of leases to 39. The Company considered the nature of the leases under ASC 842 *Leases* and determined each of these leases represent finance leases. The weighted average term of the leases is 31 months and the weighted average discount rate of the leases is 7.50%. Total ROU assets entered into during the six months ended November 30, 2022 totaled \$6.9 million.

10. COMMITMENTS AND CONTINGENCIES*Commitments*

As of November 30, 2022, the Company has commitments related to its term loan and lease agreements, which have been disclosed in Note 7 - Debt and Note 9 - Leases, respectively.

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

Energy Commitment

The Company also has a commitment of approximately \$ 24.2 million related to the energy services agreement for its Jamestown, North Dakota cohosting facility as of November 30, 2022. 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 year, as the Company commits to specific power consumption on an annual basis as part of the energy services agreement. The Company purchased approximately \$10.3 million and zero in power under the energy services agreement during the three months ended November 30, 2022 and 2021, respectively. The Company purchased approximately \$15.1 million and zero in power under the energy services agreement during the six months ended November 30, 2022 and 2021, respectively.

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 November 30, 2022 and May 31, 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.

11. 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. The table below shows the calculation for this quarter's earnings per share:

Basic and diluted loss per share:	Three Months Ended		Six Months Ended	
	November 30, 2022	November 30, 2021	November 30, 2022	November 30, 2021
Net loss from continuing operations	\$ (26,750)	\$ (1,569)	\$ (31,409)	\$ (15,949)
Net loss from discontinued operations, net of income taxes	—	1,398	—	1,681
Net loss including noncontrolling interests	(26,750)	(171)	(31,409)	(14,268)
Net loss attributable to noncontrolling interest	(133)	—	(261)	—
Net loss attributable to Applied Digital Corporation	<u>\$ (26,617)</u>	<u>\$ (171)</u>	<u>\$ (31,148)</u>	<u>\$ (14,268)</u>
Basic and diluted net (loss) gain per share:				
Continuing Operations	\$ (0.29)	\$ (0.03)	\$ (0.34)	\$ (0.32)
Discontinued Operations	\$ —	\$ 0.03	\$ —	\$ 0.03
Basic and diluted net loss per share	<u>\$ (0.29)</u>	<u>\$ —</u>	<u>\$ (0.34)</u>	<u>\$ (0.29)</u>
Basic and diluted weighted average number of shares outstanding	93,422,427	53,396,920	93,263,266	49,143,981

APPLIED DIGITAL CORPORATION AND SUBSIDIARIES

Notes to Consolidated Financial Statements

For the Three and Six Month Period Ended November 30, 2022

. DISCONTINUED OPERATIONS

During February 2022, the Company implemented plans to cease all cryptomining operations and start the sale process of all cryptomining equipment. The Company ceased all crypto mining operations and completed the sale of the assets during the year ended May 31, 2022. The Company has no plans to return to crypto mining operations in the future as the Company grows. The results of these operations have been displayed as discontinued operations. Operating results of discontinued operations are summarized below:

in thousands	Three Months Ended		Six Months Ended	
	November 30, 2022	November 30, 2021	November 30, 2022	November 30, 2021
Cryptoasset mining revenue, net	\$ —	\$ 1,426	\$ —	\$ 2,038
Cost of sales	—	433	—	782
Gross profit	—	993	—	1,256
Impairment of cryptocurrency assets	—	(145)	—	(165)
Gain on Extinguishment of Accounts Payable	—	285	—	325
Gain on Sale of Fixed Assets	—	265	—	265
Net gain from discontinued operations	\$ —	\$ 1,398	\$ —	\$ 1,681

As of November 30, 2022 and May 31, 2022, the Company did not hold any cryptoassets.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements

This Quarterly Report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as 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.

Forward-looking statements involve inherent uncertainty and may ultimately prove to be incorrect or false. These statements are based on our management’s beliefs and assumptions, which are based on currently available information. These assumptions could prove inaccurate. 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 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;
- concentration of customers in the crypto mining industry, which customer base may decline due to price volatility and uncertainties around regulation policy of cryptoasset prices;
- equipment failures, power or other supply disruptions; and

You should carefully review the risks described in Item 1A of the Company’s Annual Report on Form 10-K for the year ended May 31, 2022, which was filed on August 29, 2022, as well as any other cautionary language in this Quarterly Report on Form 10-Q, 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.

Executive Overview

The following discussion and analysis should be read in conjunction with our unaudited condensed consolidated financial statements and the related notes and other financial information included elsewhere in this Quarterly Report on Form 10-Q.

Business Overview

We design, build, and operate Next-Gen datacenters which are designed to provide massive computing power and support high-compute applications. Our first facility was constructed in Jamestown, North Dakota with 100 Megawatts (“MW”) of capacity. We signed an energy services agreement with a utility to power this facility. We provide energized space for customers to host computing equipment. Initially, these datacenters primarily hosted servers serving the Bitcoin network, but these facilities can also host hardware for other applications such as artificial intelligence, protein sequencing, drug discovery, machine learning and additional blockchain networks and applications. During the quarter ended November 30, 2022, we began tests for hosting other high-compute applications at our first facility. In addition to this facility, we have substantially completed construction on our second facility in Garden City, Texas, and are mid-construction on our third facility, which is located in Ellendale, North Dakota. We have a colocation business model where our customers place

hardware they own into our facilities and we provide full operational and maintenance services for a fixed fee. We typically enter into long-term fixed rate contracts with our customers.

Trends and Other Factors Affecting Our Business

Regulatory Environment

We have a material concentration of customers in the crypto mining industry. Our customers' businesses are subject to extensive laws, rules, regulations, policies and legal and regulatory guidance, including those governing securities, commodities, cryptoasset custody, exchange and transfer, data governance, data protection, cybersecurity and tax. Many of these legal and regulatory regimes were adopted prior to the advent of the Internet, mobile technologies, cryptoassets and related technologies. As a result, they do not contemplate or address unique issues associated with the crypto economy, are subject to significant uncertainty, and vary widely across U.S. federal, state and local and international jurisdictions. These legal and regulatory regimes, including the laws, rules and regulations thereunder, evolve frequently and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another. Moreover, the complexity and evolving nature of our business and the significant uncertainty surrounding the regulation of the crypto economy requires us to exercise our judgement as to whether certain laws, rules and regulations apply to us or our customers, and it is possible that governmental bodies and regulators may disagree with our or our customers' conclusions. To the extent we or our customers have not complied with such laws, rules and regulations, we could be subject to significant fines and other regulatory consequences, which could adversely affect our business, prospects or operations. As cryptoassets have grown in popularity and in market size, the Federal Reserve Board, U.S. Congress and certain U.S. agencies (e.g., the Commodity Futures Trading Commission, the SEC, the Financial Crimes Enforcement Network and the Federal Bureau of Investigation) have begun to examine the operations of cryptoasset networks, cryptoasset users and cryptoasset exchange markets. Other countries around the world are likewise reviewing and, in some cases, increasing regulation of the cryptoasset industry. For instance, on September 24, 2021, China imposed a ban on all crypto transactions and mining.

Ongoing and future regulatory actions could effectively prevent our customers' mining operations and our ongoing or planned co-hosting operations, limiting or preventing future revenue generation by us or rendering our operations and crypto mining equipment obsolete. Such actions could severely impact our ability to continue to operate and our ability to continue as a going concern or to pursue our strategy at all, which would have a material adverse effect on our business, prospects or operations.

Critical Accounting Policies and Estimates

Our unaudited condensed 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 unaudited condensed 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.

Our significant accounting policies are discussed in Note 3 – Basis of Presentation and Significant Accounting Policies, of the Notes to Consolidated Financial Statements of the Company's Annual Report on Form 10-K for the fiscal year ended May 31, 2022 filed with the SEC on August 29, 2022.

Hosting Operation Highlights

Applied Digital's first facility is in Jamestown, North Dakota with capacity of 100 MW. The entire 100 MW of capacity has been fully contracted on multi-year contracts with our customers, providing revenue visibility for the Company. Additionally, the facility is powered through a five-year energy services agreement with a local

utility, providing visibility into the cost structure as a stable pricing mechanism for energy costs has been negotiated.

The facility began energizing in late January 2022 and has over 90 MW online as of November 30, 2022. As previously reported in a Current Report on Form 8-K filed by the Company on July 18, 2022, there was an unexpected equipment failure at the substation powering the facility, resulting in a partial outage of approximately 50%. The power provider completed the required repairs in mid-August, fully restoring power capacity to Jamestown ahead of the schedule for early September. The Jamestown facility was not damaged and remains fully operational and capable of hosting the entire 100 MW of capacity. There were no reductions or interruptions in service for the three months ended November 30, 2022.

On July 12, 2022, the Company entered into a five-year hosting contract with Marathon Digital Holdings, Inc. ("Marathon") for 270 MW of mining capacity. As a result of this arrangement, the Company will supply Marathon with 90 MW of hosting capacity at its facility in Texas and 180 MW of hosting capacity at its second facility in North Dakota.

Discontinued Operations

During the fourth quarter of our last fiscal year, the Company ceased all crypto mining operations and completed the sale of all crypto mining equipment. The results of the crypto mining operations are accounted for as discontinued operations in our unaudited condensed consolidated financial statements.

Expansion Opportunities

On November 24, 2021, we entered into a letter of intent to develop a facility in Texas using 200 MW of wind power. 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 the Company 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 nearing completion and is expected to begin operating in the first calendar quarter of 2023. The 200 MW capacity is fully contracted with customers.

On August 8, 2022, the Company completed the purchase of 40 acres of land ("the Land") in Ellendale, North Dakota, for a total cost of \$1 million. The Company took possession of the Land on August 15, 2022, and is process of building a 180 MW datacenter on the Land, with completion scheduled for the first calendar quarter of 2023.

As our hosting operations expand, we believe our business structure will become conducive to a real estate investment trust ("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.

On September 1, 2022, Company entered into a joint-venture agreement with GMR Limited ("GMR") to form Highland Digital Holdings, LLC ("Highland Digital"), which may acquire mining hardware and digital infrastructure assets. Both the Company and GMR have a 50% ownership stake in Highland Digital. GMR is the controlling partner and will consolidate the results of Highland Digital. Therefore, the Company will not consolidate the Highland in their financial statements, but will report results based on the Company's ownership percentage in Highland Digital.

On October 13, 2022, the Company entered into a joint venture agreement with Foundry Technologies, Inc. ("Foundry") to form SAI Computing, LLC ("SAI"). SAI will provide artificial intelligence and machine learning application customers with access to machines and a hosting environment. The Company is currently expanding capacity at the Jamestown, North Dakota datacenter facility to provide access to SAI and its customers. The Company has an 98% ownership interest in SAI and plans to consolidate the entity.

On December 14, 2022, the Company began construction of its latest specialized processing center, a 5 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 the Company's current buildings and plans to host more traditional high performance computing ("HPC") applications, such as natural language processing, machine learning, and additional HPC developments.

Changes to Equity

On April 12, 2022, the Company effected a one-for-six (1:6) reverse split (the "Reverse Stock Split") of shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"). All references to Common Stock, options to purchase common stock, restricted stock units, share data, per share data and related information contained in the unaudited condensed consolidated financial statements have been retrospectively adjusted to reflect the effect of the Reverse Stock Split for all periods presented. No fractional shares of the Company's common stock were issued in connection with the Reverse Stock Split. Any fractional share resulting from the Reverse Stock Split was rounded down to the nearest whole share and the affected holder received cash in lieu of such fraction share.

On January 14, 2022, the Company granted restricted stock awards to directors and officers and restricted stock units to certain consultants. Each of these awards and units contained a vesting condition of an effective registration statement covering the resale of the Common Stock underlying these awards. On October 11, 2022, the Securities and Exchange Commission declared the Company's registration statement covering these awards to be effective. In conjunction with this registration statement being declared effective, awards for approximately 1.1 million shares of Common Stock vested.

Results of Operations Comparative Results for the Three and Six Months Ended November 30, 2022 and 2021:

The following table sets forth key components of the results of operations (in thousands) of Applied Digital during the three and six months ended November 30, 2022 and 2021.

	Three Months Ended		Six Months Ended	
	November 30, 2022	November 30, 2021	November 30, 2022	November 30, 2021
Revenues:				
Hosting revenue	\$ 12,340	\$ —	\$ 19,264	\$ —
Cost of revenues	\$ 11,812	\$ —	\$ 17,905	\$ —
Gross profit	528	—	1,359	—
Costs and expenses:				
Selling, general and administrative	\$ 26,502	\$ 1,181	\$ 31,212	\$ 14,216
Depreciation and amortization	703	174	1,001	177
Total costs and expenses	\$ 27,205	\$ 1,355	\$ 32,213	\$ 14,393
Operating loss	\$ (26,677)	\$ (1,355)	\$ (30,854)	\$ (14,393)
Other income (expense):				
Interest Expense	\$ (385)	\$ —	\$ (741)	\$ —
Loss on extinguishment of debt	—	—	(94)	(1,342)
Total other expense, net	(385)	—	(835)	(1,342)
Net loss from continuing operations before income tax expenses	(27,062)	(1,355)	(31,689)	(15,735)
Income tax benefit (expense)	312	(214)	280	(214)
Net loss from continuing operations	(26,750)	(1,569)	(31,409)	(15,949)
Net loss from discontinued operations, net of income taxes	—	1,398	—	1,681
Net loss including noncontrolling interests	(26,750)	(171)	(31,409)	(14,268)
Net loss attributable to noncontrolling interest	(133)	—	(261)	—
Net loss attributable to Applied Digital Corporation	\$ (26,617)	\$ (171)	\$ (31,148)	\$ (14,268)
Basic and diluted net (loss) gain per share:				
Continuing Operations	\$ (0.29)	\$ (0.03)	\$ (0.34)	\$ (0.32)
Discontinued Operations	\$ —	\$ 0.03	\$ —	\$ 0.03
Basic and diluted net loss per share	\$ (0.29)	\$ —	\$ (0.34)	\$ (0.29)
Basic and diluted weighted average number of shares outstanding	93,422,427	53,396,920	93,263,266	49,143,981
Adjusted Amounts (a)				
Adjusted Operating Loss from Continuing Operations	(3,700)	(1,004)	(6,596)	(403)
Adjusted Operating Margin from Continuing Operations	(30)%	—%	(34)%	—%
Adjusted Net Loss from Continuing Operations	(3,773)	(1,218)	(7,151)	(1,959)
Other Financial Data (a)				
EBITDA	(25,109)	(1,181)	(28,244)	(15,558)
as a percentage of revenues	(203)%	—%	(147)%	—%
Adjusted EBITDA	(2,132)	(830)	(3,986)	(1,568)
as a percentage of revenues	(17)%	—%	(21)%	—%
Adjusted Gross Profit	1,509	—	3,176	—
as a percentage of revenues	12%	—%	16%	—%

(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 and Six Months Ended November 30, 2022 and 2021

Revenues

Hosting revenues increased by \$12.3 million, or 100%, from zero for the three months ended November 30, 2021 to \$12.3 million for the three months ended November 30, 2022. Hosting revenues increased by \$19.3 million, or 100%, from zero for the six months ended November 30, 2021 to \$19.3 million for the six months ended November 30, 2022. The increase in hosting revenues was driven by our completion of our first hosting facility in Jamestown, North Dakota, which was brought online in phases during the final six months of the fiscal year ended May 31, 2022.

Cost of Revenues

Cost of revenues increased by \$11.8 million, or 100%, from zero for the three months ended November 30, 2021 to \$11.8 million for the three months ended November 30, 2022. Cost of revenues increased by \$17.9 million, or 100%, from zero for the six months ended November 30, 2021 to \$17.9 million for the six months ended November 30, 2022. The increase in cost of revenues was primarily driven by the initiation of our co-hosting business in late fiscal year ended May 31, 2022, which represents all of our continuing operations.

Cost of revenues for the three months ended November 30, 2022 consists of \$0.9 million of depreciation and amortization expense attributable to the property, plant and equipment at our Jamestown, North Dakota hosting facility, \$10.3 million of energy costs used to generate our hosting revenues, and \$0.7 million of personnel expenses for employees directly working at the hosting facility.

Cost of revenues for the six months ended November 30, 2022 consists of \$1.7 million of depreciation and amortization expense attributable to the property, plant and equipment at our Jamestown, North Dakota hosting facility, \$15.1 million of energy costs used to generate our hosting revenues, and \$1.1 million of personnel expenses for employees directly working at the hosting facility.

Operating Expenses

Selling, general and administrative expenses increased by \$25.3 million, or 2,142%, from \$1.2 million for the three months ended November 30, 2021 to \$26.5 million for the three months ended November 30, 2022. The three primary drivers of selling, general and administrative expense for the three months ended November 30, 2022 were \$1.5 million of employee salaries and benefits expense not directly attributable to revenues, \$1.2 million of professional service expenses incurred to support the growth of the business, and stock-based compensation expense of \$21.8 million. The stock-based compensation expense is primarily driven by restricted stock award and restricted stock unit grants made to directors, officers, and consultants in January 2022 that contained a vesting condition related to an effective registration statement of shares covering the resale of the shares of Common Stock underlying the awards. The registration statement covering the resale of these shares was deemed effective during the three months ended November 30, 2022, leading to a catch-up of expense as required by ASC 718. There was no stock-based compensation expense recognized during the three months ended November 30, 2021.

Selling, general and administrative expenses increased by \$17.0 million, or 120%, from \$14.2 million for the six months ended November 30, 2021 to \$31.2 million for the six months ended November 30, 2022. The three primary drivers of selling, general and administrative expense for the six months ended November 30, 2022 were \$2.8 million of employee salaries and benefits expense not directly attributable to revenues, \$2.3 million of professional service expenses incurred to support the growth of the business, and stock-based compensation expense of \$22.4 million. The stock-based compensation expense is primarily driven by restricted stock award

and restricted stock unit grants made to directors, officers, and consultants in January 2022 that contained a vesting condition related to an effective registration statement of shares covering the resale of the shares of Common Stock underlying the awards. The registration statement covering the resale of these shares was deemed effective during the six months ended November 30, 2022, leading to a catch-up of expense as required by ASC 718. During the six months ended November 30, 2021, the Company recognized stock-based compensation expense related to our service agreements with strategic partners, who provided advisory and consulting services in exchange for shares of common stock we issued to them. The awards were granted in June 2021 and vested immediately, as the services were fully rendered during the month of June 2021.

Depreciation and amortization expense not attributable to costs of sales increased \$0.5 million, or 304%, from \$0.2 million for the three months ended November 30, 2021 to \$0.7 million for the three months ended November 30, 2022. Depreciation and amortization expense not attributable to costs of sales increased \$0.8 million or 304%, from \$0.2 million for the six months ended November 30, 2021 to \$1.0 million for the six months ended November 30, 2022. Both changes were driven by a significant increase in assets placed in service between periods to support the growth of the business.

Other Expense

Interest expense increased \$0.4 million, or 100% , from zero for the three months ended November 30, 2021 to \$0.4 million for the three months ended November 30, 2022.

Interest expense increased \$0.7 million, or 100% , from zero for the six months ended November 30, 2021 to \$0.7 million for the six months ended November 30, 2022.

Both increases were driven by the increase in finance leases and change in the company's debt obligations between periods, as APLD Hosting, LLC ("Hosting"), a wholly-owned subsidiary of Applied Digital Corporation, entered into the Loan Agreement with Starion Bank ("Starion Lender") and the Company as Guarantor (the "Starion Loan Agreement") for a term loan (the "Starion Term Loan") in the three months ended November 30, 2022, and had previously entered into a term loan agreement with Vantage Bank, which was subsequently extinguished. The Starion Loan Agreement provides for an interest rate of 6.50% per annum. The Starion Term Loan is secured by a mortgage on the Company's Jamestown, North Dakota property, and a security interest in substantially all of the assets of the Company as set forth in the Security Agreement dated as of July 25, 2022 by and between Hosting and the Starion Lender and a security interest in the form of a collateral assignment of the Company's rights and interests in a master hosting agreement related to the Company's Jamestown, North Dakota property and records and data relating thereto as set forth in the Security Agreement dated as of July 25, 2022 by and among Hosting, the Company as Grantor and the Starion Lender. In addition, the Company unconditionally guaranteed the Company's obligations to the Starion Lender, including under the Starion Term Loan, pursuant to an Unlimited Commercial Corporate Guaranty of the Company dated as of July 25, 2022.

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 which buys down the Company's interest rate to 1.5% for a period of 13 months through a loan and community bond. The loan totals \$0.2 million and bears an interest rate of 2%, and the bond totals \$0.5 million.

On November 7, 2022, APLD – Rattlesnake Den I, LLC (the "Borrower"), a wholly-owned subsidiary of the Company, entered into a Loan Agreement with Vantage Bank Texas ("Vantage Lender") and the Company, as guarantor, which provides for a term loan in the principal amount of \$15 million (the "Vantage Garden City Loan Agreement"). The Vantage Garden City Loan Agreement will be advanced in 16 installments for working capital needs for the Borrower's datacenter in Garden City, Texas (the "Garden City Facility"), with each installment not exceeding \$0.9 million for the costs and expenses of a building at 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 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 the date of this report, an aggregate amount of \$6.6 million has been advanced under the Vantage Garden City Loan Agreement.

Loss on extinguishment of debt for the three months ended November 30, 2021 and for the three months ended November 30, 2022 was zero for both periods.

Loss on extinguishment of debt decreased \$1.2 million, or 93%, from \$1.3 million for the six months ended November 30, 2021 to \$0.1 million for the six months ended November 30, 2022. This decrease was driven by the extinguishment of our related party notes payable by conversion to common stock during the six months ended November 30, 2021, compared to a smaller extinguishment of term debt that was recognized in the six months ended November 30, 2022.

Income tax benefit (expense)

The income tax benefit increased \$0.5 million or 246% from a \$0.2 million expense for the three months ended November 30, 2021 to a \$0.3 million benefit for the three months ended November 30, 2022. Income tax benefit increased \$0.5 million or 231% from a \$0.2 million expense for the six months ended November 30, 2021 to approximately \$0.3 million benefit for the six months ended November 30, 2022. This change was driven by a change in valuation allowance for the periods ended November 30, 2022 compared to the periods ended November 30, 2021.

Gain from Discontinued Operations

Beginning in the quarter ended August 31, 2021 (the first quarter of the fiscal year ended May 31, 2022), we began cryptoasset mining operations, using Nvidia GPU miners which we hosted at a facility operated by Coinmint. In the fiscal year ended May 31, 2022, we made the strategic decision to discontinue our mining operations and focus on hosting operations in the future. As a result of this strategic shift, our mining operations were reclassified as discontinued operations.

Gain from discontinued operations decreased \$1.4 million, or 100%, from the three months ended November 30, 2021 to zero for the three months ended November 30, 2022. Gain from discontinued operations decreased \$1.7 million, or 100%, from the six months ended November 30, 2021 to zero for the six months ended November 30, 2022. The decrease was due to the fact that the Company no longer generates revenues from mining operations.

Non-GAAP Measures

Adjusted Operating Loss and Adjusted Net Loss

“Adjusted Operating Loss” and “Adjusted Net Loss” are non-GAAP measures that represents 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, and one-time professional service costs not directly related to the company's offering and therefore not deferred under the guidance in ASC 340 and SAB Topic 5A. 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 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.

Reconciliation of GAAP to Non-GAAP Measures

\$ in thousands	Three Months Ended		Six Months Ended	
	November 30, 2022	November 30, 2021	November 30, 2022	November 30, 2021
Adjusted operating loss				
Operating Loss from Continuing Operations (GAAP)	\$ (26,677)	\$ (1,355)	\$ (30,854)	\$ (14,393)
Add: Stock-based compensation	21,819	—	22,398	12,337
Add: Gain on Extinguishment of Accounts Payable	—	(285)	—	(325)
Add: Loss on Extinguishment of Debt	—	—	94	1,342
Add: Non-recurring professional service costs	664	636	1,072	636
Add: One-time electricity charges	114	—	114	—
Add: Other non-recurring expenses	380	—	580	—
Adjusted Operating Loss from Continuing Operations (Non-GAAP)	<u>\$ (3,700)</u>	<u>\$ (1,004)</u>	<u>\$ (6,596)</u>	<u>\$ (403)</u>
Adjusted operating margin from Continuing Operations	(30.0)%	— %	(34.2)%	— %
Adjusted net income (loss)				
Net Loss from Continuing Operations (GAAP)	\$ (26,750)	\$ (1,569)	\$ (31,409)	\$ (15,949)
Add: Stock-based compensation	21,819	—	22,398	12,337
Add: Gain on Extinguishment of Accounts Payable	—	(285)	—	(325)
Add: Loss on Extinguishment of Debt	—	—	94	1,342
Add: Non-recurring professional service costs	664	636	1,072	636
Add: One-time electricity charges	114	—	114	—
Add: Other non-recurring expenses	380	—	580	—
Adjusted net loss from Continuing Operations (Non-GAAP)	<u>\$ (3,773)</u>	<u>\$ (1,218)</u>	<u>\$ (7,151)</u>	<u>\$ (1,959)</u>
EBITDA and Adjusted EBITDA				
Net Loss from Continuing Operations (GAAP)	\$ (26,750)	\$ (1,569)	\$ (31,409)	\$ (15,949)
Add: Interest Expense	385	—	741	—
Add: Income Tax Benefit (Expense)	(312)	214	(280)	214
Add: Depreciation and Amortization	1,568	174	2,704	177
EBITDA (Non-GAAP)	<u>\$ (25,109)</u>	<u>\$ (1,181)</u>	<u>\$ (28,244)</u>	<u>\$ (15,558)</u>
Add: Stock-based compensation	21,819	—	22,398	12,337
Add: Gain on Extinguishment of Accounts Payable	—	(285)	—	(325)
Add: Loss on Extinguishment of Debt	—	—	94	1,342
Add: Non-recurring professional service costs	664	636	1,072	636
Add: One-time electricity charges	114	—	114	—
Add: Other non-recurring expenses	380	—	580	—
Adjusted EBITDA (Non-GAAP)	<u>\$ (2,132)</u>	<u>\$ (830)</u>	<u>\$ (3,986)</u>	<u>\$ (1,568)</u>
Adjusted Gross Profit				
Gross profit (GAAP)	\$ 528	\$ —	\$ 1,359	\$ —
Add: Depreciation and amortization in cost of revenues	867	—	1,703	—
Add: One-time electricity charges	114	—	114	—
Adjusted Gross Profit (Non-GAAP)	<u>\$ 1,509</u>	<u>\$ —</u>	<u>\$ 3,176</u>	<u>\$ —</u>

The Sources of Liquidity

We have primarily generated cash in the last 12 months from the proceeds of our term loans, proceeds from our initial public offering, and the receipt of contractual deposits and revenue prepayments from hosting customers. On April 18, 2022, we received approximately \$36 million in net proceeds from the issuance of 8 million shares of Common Stock in conjunction with the closing of our initial public offering. On July 25, 2022, the Company entered into the Starion Loan Agreement. The Starion Loan Agreement provides for the Starion Term Loan. A portion of the proceeds were used to pay down the Vantage term loan 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, APLD – Rattlesnake Den I, LLC (the “Borrower”), a wholly-owned subsidiary of the Company, entered into the Vantage Garden City Loan Agreement. As of the date of this report, an aggregate amount of \$6.6 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.

See Note 7 - Debt to the unaudited condensed consolidated financial statements included in this Quarterly Report on Form 10-Q for more information on the Starion Term Loan and Vantage Garden City Loan.

During the three and six months ended November 30, 2022, we received \$22.4 million and \$44.6 million, respectively, 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 three and six months ended November 30, 2022, we have generated revenue from co-hosting, but have incurred net losses from operations. As of November 30, 2022 and May 31, 2022, we had cash of \$18.1 million and \$46.3 million, respectively, and an accumulated deficit of \$87.2 million and \$56.1 million, respectively.

Funding Requirements

We have experienced net losses through the periods ended November 30, 2022. Our transition to profitability is dependent on the successful operation of our co-hosting facilities. We believe that amounts we received from proceeds from our term loans, proceeds from our initial public offering, and revenue payments we have begun to achieve in our co-hosting operations since our first co-hosting facility was brought online in February 2022, after planned expenditures with respect to the items described in the section titled “*Expansion Opportunities*” above, 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 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 will begin to decrease into calendar 2023 as we complete construction of additional capacity. We also expect that our revenues will increase as we continue to bring online additional capacity at our Jamestown, North Dakota, Garden City, Texas, and Ellendale, North Dakota locations.

We believe that our existing cash, together with the anticipated revenues from current operations and debt funding opportunities, will enable us to fund our operating expense requirements through at least 12 months as well as 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.

Summary of Cash Flows

The following table provides information about Applied Digital's net cash flow (in thousands) for the six months ended November 30, 2022 and 2021.

\$ in thousands	Six Months Ended	
	November 30, 2022	November 30, 2021
Net cash provided by operating activities	\$ 27,979	\$ 2,334
Net cash used in investing activities	(70,305)	(31,613)
Net cash provided by financing activities	14,101	31,574
Net change in cash and cash equivalents	(28,225)	2,295
Cash and cash equivalents at beginning of year	46,299	11,750
Cash and cash equivalents at end of period	\$ 18,074	\$ 14,045

The net cash generated by operating activities of \$28.0 million for the six months ended November 30, 2022 consisted primarily of the non-cash expense adjustment for stock-based compensation totaling \$22.4 million, and changes in customer deposits of \$15.2 million and deferred revenue of \$25.5 million, offset by a loss from continuing operations of \$31.4 million and a decrease in accounts payable and accrued liabilities of \$5.7 million. Both customer deposits and deferred revenue increased during the six months ended November 30, 2022 due to prepayments from new contracts as well as more cash being received than revenue recognized during the period.

The net cash generated by operating activities of \$2.3 million for the six months ended November 30, 2021 consisted primarily of non-cash expense adjustment for stock-based compensation totaling \$12.3 million, increase of accounts payable and accrued liabilities of \$5.3 million, and loss on extinguishment of debt of \$1.3 million, partially offset by an increase to prepaid expense and other current assets of \$1.6 million, losses from continuing operations of \$15.9 million and net cash used in operating activities of discontinued operations of \$0.6 million.

The net cash used in investing activities of \$70.3 million for the six months ended November 30, 2022 represents purchases of property and equipment.

The net cash used in investing activities of \$31.6 million for the six months ended November 30, 2021 consists of purchases of property and equipment of \$10.3 million and deposits on equipment of \$23.2 million, partially offset by net cash provided by investing activities of discontinued operations of \$1.9 million.

The net cash provided by financing activities of \$14.1 million for the six months ended November 30, 2022 is primarily driven by the proceeds from the Starion Term Loan and the Vantage Garden City Loan, which total \$21.7 million, as well as by equity contributions to 1.21 Gigawatts, a subsidiary of the Company, by noncontrolling interest of \$1.7 million, partially offset by the extinguishment of the Vantage term loan totaling \$7.1 million.

The net cash provided by financing activities of \$31.6 million for the six months ended November 30, 2021 represents proceeds from the issuance of preferred stock \$34.5 million, partially offset by issuance costs of \$2.9 million.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not Applicable

Item 4. Controls and Procedures

Management's 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 Quarterly Report on Form 10-Q, 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 November 30, 2022, 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.

In connection with our initial public offering, we identified the following material weaknesses in the design of our internal controls, which could adversely affect:

- Our ability to 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 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 are taking the following steps, among others:

1. continued hiring of 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.

Changes in Internal Control over Financial Reporting

There were no changes in internal control over financial reporting, other than the remediation steps described above that are in process, that occurred during the three months ended November 30, 2022, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II - Other Information

Item 1. Legal Proceedings

None

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

On June 6, 2022, through an agreement between the Company and Sparkpool, Sparkpool agreed to forfeit to the Company shares of Common Stock that had been issued pursuant to the service agreement executed on March 19, 2021. Sparkpool 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 canceled by the Company.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits [EXHIBIT LIST IS BEING CHECKED]

EXHIBIT INDEX

Exhibit Number	Description of Document
3.1*	Second Amended and Restated Articles of Incorporation, as amended to date.
31.1*	Chief Executive Officer's Certificate Pursuant to 15 U.S.C. Section 7241, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Chief Financial Officer's Certificate Pursuant to 15 U.S.C. Section 7241, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 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 Act 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 Act of 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.

** Furnished herewith.

Signatures

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.

APPLIED DIGITAL CORPORATION

Date: January 10, 2023

By: /s/ Wesley Cummins
Wesley Cummins Chief Executive Officer and Chairman of
the Board of Directors (Principal Executive Officer)

Date: January 10, 2023

By: /s/ David Rench
David Rench Chief Financial Officer (Principal Financial
Officer)

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

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. CEGAUSKE
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. Cegauske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	Filing Number 20222245441
	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; width: 80%;">Applied Blockchain, Inc.</div>		
	Entity or Nevada Business Identification Number (NVID): <div style="border: 1px solid black; padding: 2px; width: 80%;">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: <small>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</small>		
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: <small>Number of Common Stock: 198,999,999, 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</small>		
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: <small>(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.</small>		
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)	<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">X</div> <div style="flex-grow: 1;"> </div> <div style="margin-left: 10px;"> Chief Executive Officer 3-11-2022 </div> </div> <p style="font-size: small; margin-top: 5px;">Signature of Officer Title Date</p>		

If necessary, additional pages may be attached to this form.

Page 1 of 1
Revised: 1/1/2019

<https://www.sec.gov/Archives/edgar/data/1144879/000162828022023816/a04-12x2022appliedamende.htm>

2

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
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 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; align-items: center;"> <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>

DocuSign Envelope ID: 5AB838FE-6BF5-4751-95E3-3DF888B932FC



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 Developed by
Ms. Cegavske

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.

DocuSign Envelope ID: F89C73E1-58F5-4B9E-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 style="width: 100%;" type="text" value="Applied Blockchain, Inc."/>		
	Entity or Nevada Business Identification Number (NVID): <input style="width: 100%;" type="text" value="C13283-2001"/>		
2. Effective date and time:	For Certificate of Designation or Amendment to Designation Only (Optional):	Date: <input style="width: 100px;" type="text"/>	Time: <input style="width: 100px;" 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 style="width: 100%;" 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 style="width: 100%;" 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 style="width: 100%;" type="text" value="See Exhibit A attached hereto for Certificate of Designations for Series D Preferred Stock."/>		
7. Withdrawal:	Designation being Withdrawn: <input style="width: 150px;" type="text"/> Date of Designation: <input style="width: 100px;" 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: 100%;" type="text"/>		
8. Signature: (Required)	DocuSigned by: <input checked="" type="checkbox"/> <i>Wes Cummins</i> Signature of Officer		
	Date:	<input style="width: 100px;" 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

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)

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:

(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

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 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

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

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

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(c). 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.

(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

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).

(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.

(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.



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"/> (for entities currently on file)																		
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%;">Name</td> <td style="width: 20%;">Telephone</td> <td style="width: 20%;"></td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td>Nevada <input type="text" value="0"/></td> </tr> <tr> <td>Street Address</td> <td>City</td> <td>Zip Code</td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Mailing Address (only if different from above)</td> <td>City</td> <td>Zip Code</td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>	Name	Telephone		<input type="text"/>	<input type="text"/>	Nevada <input type="text" value="0"/>	Street Address	City	Zip Code	<input type="text"/>	<input type="text"/>	<input type="text"/>	Mailing Address (only if different from above)	City	Zip Code	<input type="text"/>	<input type="text"/>	<input type="text"/>
Name	Telephone																		
<input type="text"/>	<input type="text"/>	Nevada <input type="text" value="0"/>																	
Street Address	City	Zip Code																	
<input type="text"/>	<input type="text"/>	<input type="text"/>																	
Mailing Address (only if different from above)	City	Zip Code																	
<input type="text"/>	<input type="text"/>	<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"/> <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)	<p style="text-align: center;">I hereby accept appointment as Registered Agent for the above named Entity.</p> 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																		



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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.

NAME OF ENTITY

NV20011309405

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. Cegavske</i> Secretary of State State Of Nevada	Business Number C13283-2001
	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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 Secretary of State
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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:

Wesley Cummins **USA**
 Name Country

3811 Turtle Creek Blvd Suite 2100 **Dallas** **TX** **75219**
 Address City State Zip/Postal Code

CORPORATION, INDICATE THE TREASURER:

David Rench **USA**
 Name Country

3811 Turtle Creek Blvd Suite 2100 **Dallas** **TX** **75219**
 Address City State Zip/Postal Code

CORPORATION, INDICATE THE DIRECTOR:

Wesley Cummins **USA**
 Name Country

3811 Turtle Creek Blvd Suite 2100 **Dallas** **TX** **75219**
 Address City State Zip/Postal Code

CORPORATION, INDICATE THE PRESIDENT:

Wesley Cummins **USA**
 Name Country

3811 Turtle Creek Blvd Suite 2100 **Dallas** **TX** **75219**
 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 **President** **06/02/2021**
 Signature of Officer, Manager, Managing Member, Title Date
 General Partner, Managing Partner, Trustee,
 Subscriber, Member, Owner of Business,
 Partner or Authorized Signer FORM WILL BE RETURNED IF

UNSIGNED



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 Secretary of State
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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 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: <input style="width: 90%;" type="text" value="Applied Blockchain, Inc."/> Entity or Nevada Business Identification Number (NVID): <input style="width: 80%;" type="text" value="C13283-2001"/>		
2. Document:	Name of document with inaccuracy or defect: <input style="width: 90%;" type="text" value="Second Amended and Restated Articles of Incorporation"/>		
3. Filing Date:	Filing date of document which correction is being made: <input style="width: 80%;" type="text" value="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)	<table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none;"> <input checked="" type="checkbox"/> _____ Signature </td> <td style="width: 40%; border: none; vertical-align: bottom;"> <input style="width: 100%;" type="text" value="05/13/2021"/> Date </td> </tr> </table>	<input checked="" type="checkbox"/> _____ Signature	<input style="width: 100%;" type="text" value="05/13/2021"/> Date
<input checked="" type="checkbox"/> _____ Signature	<input style="width: 100%;" type="text" value="05/13/2021"/> Date		

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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 Secretary of State
 202 North Carson Street
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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 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 style="width: 90%;" type="text" value="Applied Blockchain, Inc."/> Entity or Nevada Business Identification Number (NVID): <input style="width: 60%;" type="text" value="C13283-2001"/>		
2. Document:	Name of document with inaccuracy or defect: <input style="width: 90%;" type="text" value="Certificate of Amendment"/>		
3. Filing Date:	Filing date of document which correction is being made: <input style="width: 60%;" 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)	<table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none;"> <input checked="" type="checkbox"/> _____ Signature </td> <td style="width: 40%; border: none; text-align: right;"> <input style="width: 80%;" type="text" value="04/15/2021"/> Date </td> </tr> </table>	<input checked="" type="checkbox"/> _____ Signature	<input style="width: 80%;" type="text" value="04/15/2021"/> Date
<input checked="" type="checkbox"/> _____ Signature	<input style="width: 80%;" 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.



BARBARA K. CEGAVSKE
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684-5708
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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 amending and restating only, 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.



BARBARA K. CEGAUSKE
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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 Title
Signature of Officer or Authorized Signer
X _____ Title
Signature of Officer or Authorized Signer
*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;

- (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 WITNESSS 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

EXHIBIT A
SERIES A DESIGNATION
[See attached.]

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4620
(775) 684 8708
Website: www.nvsos.gov

Filed in the Office of	Business Number
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Secretary of State	Filing Number
State Of Nevada	20090672030-99
	Filed On
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	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 - After
Revised: 9-8-08

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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

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

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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:

Title:

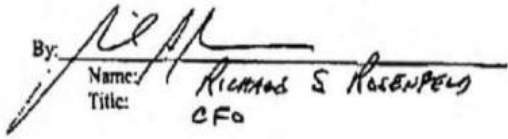

Richard S Rosenfeld
CFO

EXHIBIT B
SERIES B DESIGNATION
[See attached.]

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ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4820
(776) 684 5700
Website: www.nvsoas.gov

Filed in the Office of	Business Number
	C13283-2001
Secretary of State	Filing Number
State Of Nevada	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
Form 3-0-01

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**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

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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.

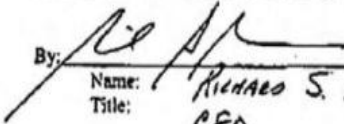
By: 
Name: Richard S. ROSENFELD
Title: CFO

EXHIBIT C
SERIES C DESIGNATION
[See attached.]

**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(c) 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(c)(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(c)(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.

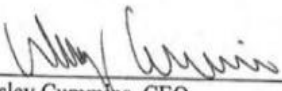
(g) Waiver; Amendment. Any of the rights, powers, privileges and other terms of the Series C Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series C Preferred Stock by the affirmative written consent or vote of the Requisite Holders.

(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 WITNESSS 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

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,

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

BARBARA K. CEGAVSKE
Secretary of State

Commercial Recording Division
202 N. Carson Street

<https://www.sec.gov/Archives/edgar/data/1144879/000114487922000081/aplieddigitalcorporatio.htm>

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

Filed in the Office of <i>Barbara K. Cegavske</i>	Business Number C13283-2001
Secretary of State State Of Nevada	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

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="NV20011309405"/>
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 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 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="80.8%"/> <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.

<https://www.sec.gov/Archives/edgar/data/1144879/000114487922000081/aplieddigitalcorporatio.htm>

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

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)
FIRST. The name of this corporation is Applied Digital Corporation.
(attach additional page(s) if necessary)

6. Signature: (Required)
X _____ CFO and Treasurer
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)

<https://www.sec.gov/Archives/edgar/data/1144879/000114487922000081/aplieddigitalcorporatio.htm>

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*

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

<https://www.sec.gov/Archives/edgar/data/1144879/000114487922000081/aplieddigitalcorporatio.htm>

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.



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

Certificate Number: B202211143157511

You may verify this certificate online at <http://www.nvsos.gov>

BARBARA K. CEGAVSKE
Secretary of State



<https://www.sec.gov/Archives/edgar/data/1144879/000114487922000081/aplieddigitalcorporatio.htm>

CERTIFICATION

I, Wesley Cummins, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended November 30, 2022 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: January 10, 2023

By: /s/ Wesley Cummins

Wesley Cummins, Chief Executive Officer, Treasurer, Chairperson
of the Board and Director (Principal Executive Officer)

4879-3802-1663v.1

CERTIFICATION

I, David Rench, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended November 30, 2022 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: January 10, 2023

By: /s/ David Rench

David Rench, Chief Financial Officer (Principal Financial and
Accounting Officer)

4879-3802-1663v.1

**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 Quarterly Report on Form 10-Q for the quarter ended November 30, 2022 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: January 10, 2023

By: /s/ Wesley Cummins
Chief Executive Officer, Treasurer, Chairperson of the Board and
Director (Principal 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 Quarterly Report on Form 10-Q for the quarter ended November 30, 2022 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: January 10, 2023

By: /s/ David Rench
Chief Financial Officer Chief Financial Officer (Principal Financial
and Accounting Officer)