

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

**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 14, 2024

**MARATHON DIGITAL HOLDINGS, INC.**

(Exact Name of Registrant as Specified in Charter)

Nevada (State or other jurisdiction of incorporation)	001-36555 (Commission File Number)	01-0949984 (IRS Employer Identification No.)
101 NE Third Avenue, Suite 1200 Fort Lauderdale, FL (Address of principal executive offices)		33301 (Zip Code)

Registrant's telephone number, including area code: (800) 804-1690

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

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. ☐

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	MARA	The Nasdaq Capital Market

**ITEM 1.01 Entry into a Material Definitive Agreement**

On March 14, 2024, MARA Garden City LLC, a Delaware limited liability company (“Buyer”) and a subsidiary of Marathon Digital Holdings, Inc., a Nevada corporation (the “Company” or the “Registrant”), entered into a Purchase and Sale Agreement (the “Purchase Agreement”) with APLD – Rattlesnake Den I LLC, a Delaware limited liability company (“Seller”), pursuant to which Buyer will acquire Seller’s data center in Garden City, Texas (the “Data Center”) and assume the ground lease of the land on which the Data Center sits. The Company is currently a customer of the Data Center.

Pursuant to and subject to the terms of the Purchase Agreement, Buyer will purchase from Seller the Data Center and certain related property (collectively, the “Transaction”) for a base purchase price of approximately \$87.3 million, subject to customary purchase price adjustments (the “Purchase Price”). Additionally, in connection with the closing of the Transaction (the “Closing”), Seller and the Company will terminate the existing Master Servicing Agreements governing the Company’s current use of the Data Center, and the Seller will be entitled to retain all security deposits posted by the Company thereunder.

The Purchase Agreement contains customary representations and warranties made by the parties, customary covenants and agreements, and customary post-Closing obligations of Seller, which have been guaranteed by Applied Digital Corporation, a Delaware corporation.

The Closing is subject to customary closing conditions, including the accuracy of each party’s representations and warranties, and each party’s compliance with or waiver of its covenants and agreements contained in the Purchase Agreement (in each case, subject to certain materiality and other exceptions). The Closing is not subject to any financing contingency.

The foregoing summary of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text thereof, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference.

The representations, warranties and covenants contained in the Purchase Agreement described above were made only for purposes of such agreement and as of the specified dates set forth therein, were solely for the benefit of the parties to the Purchase Agreement, may be subject to limitations agreed upon by those parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between those parties instead of establishing particular matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors should not rely on these representations, warranties or covenants or any descriptions thereof as characterizations of the actual state of facts or conditions of the Company, Seller or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the agreement containing them, which subsequent information may or may not be fully reflected in the Company’s public disclosures.

ITEM 8.01 Other Events

Press Release

On March 14, 2024, the Company issued a press release announcing the Transaction. A copy of the press release is attached as Exhibit 99.1 and incorporated herein by reference.

Forward-Looking Statements

This Current Report on Form 8-K and other reports filed by Registrant from time to time with the Securities and Exchange Commission (collectively, the Filings) contain or may contain forward-looking statements and information that are based upon beliefs of, and information currently available to, Registrant’s management as well as estimates and assumptions made by Registrant’s management. When used in the Filings the words “anticipate,” “believe,” “estimate,” “expect,” “future,” “intend,” “plan” or the negative of these terms and similar expressions as they relate to Registrant or Registrant’s management identify forward-looking statements. Such statements reflect the current view of Registrant with respect to future events and are subject to risks, uncertainties, assumptions and other factors relating to Registrant’s industry, Registrant’s operations and results of operations and any businesses that may be acquired by Registrant. Should one or more of these risks or uncertainties materialize, or should the underlying assumptions prove incorrect, actual results may differ significantly from those anticipated, believed, estimated, expected, intended or planned.

Although Registrant believes that the expectations reflected in the forward-looking statements are reasonable, Registrant cannot guarantee future results, levels of activity, performance or achievements. Except as required by applicable law, including the securities laws of the United States, Registrant does not intend to update any of the forward-looking statements to conform these statements to actual results.

ITEM 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description of Exhibit
10.1 <sup>†</sup>	<a href="#">Purchase and Sale Agreement, dated as of March 14, 2024, by and between APLD – Rattlesnake Den I LLC, and MARA Garden City LLC</a>
99.1	<a href="#">Press Release of Marathon Digital Holdings, Inc., dated as of March 14, 2024</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

<sup>†</sup> The schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5) and Item 1.01, Instruction 4 of Form 8-K. The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission upon its request.

SIGNATURES

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

Date: March 18, 2024

MARATHON DIGITAL HOLDINGS, INC.

By: /s/ Zabi Nowaid  
Name: Zabi Nowaid  
Title: General Counsel

EXECUTION VERSION

**PURCHASE AND SALE AGREEMENT**

**BETWEEN**

**APLD – RATTLESNAKE DEN I LLC,  
a Delaware limited liability company**

**AS SELLER**

**AND**

**MARA GARDEN CITY LLC,  
a Delaware limited liability company**

**AS PURCHASER**

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## **EXHIBITS AND SCHEDULES**

### **EXHIBITS**

Exhibit A	Legal Description
Exhibit B	Form of Form of Ground Lease Assignment
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### **SCHEDULES**

Schedule 6.1.3	Proceedings
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### **ANNEXES**

Annex 1	Defined Terms
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## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is entered into as of March 14, 2024 (the "**Effective Date**"), by and between APLD – RATTLESNAKE DEN I LLC a Delaware limited liability company, having a principal address at 3811 Turtle Creek Boulevard, Suite 2100, Dallas, Texas 75219 ("**Seller**"), and MARA GARDEN CITY LLC, a Delaware limited liability company, having a principal address at 101 NE 3rd Ave. #1200, Fort Lauderdale, FL 33301 ("**Purchaser**").

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, Seller and Purchaser hereby agree as follows:

### RECITALS

Seller is the holder of a ground leasehold interest in the real property located at 12022 Ranch Rd 33, Garden City, Texas 79739, as more particularly described in Exhibit A attached hereto, together with the data center located thereon (the "**Facility**"), pursuant to that certain Ground Lease, dated as of April 13, 2022 (the "**Ground Lease**"), between Seller, as tenant, and EDB, Ltd., a Texas limited liability company, as landlord ("**Ground Landlord**"). Seller desires to sell, and Purchaser desires to purchase, such leasehold interest and certain related property, on the terms and conditions set forth below.

### ARTICLE I DEFINED TERMS

Unless otherwise defined herein, any term with its initial letter capitalized in this Agreement has the meaning set forth in Annex 1 attached hereto.

### ARTICLE II PURCHASE AND SALE, PURCHASE PRICE AND DEPOSIT

**2.1 Purchase and Sale.** Seller agrees to sell and convey the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, all in accordance with the terms and conditions set forth in this Agreement. Notwithstanding anything to the contrary contained herein, Seller shall not sell, assign, transfer, convey or deliver to Purchaser, and Purchaser shall not purchase, and the Property shall not include, any of the Seller's right, title and interest in the Excluded Assets.

#### **2.2 Purchase Price and Deposit.**

**2.2.1** The total purchase price (the "**Purchase Price**") for the Property shall be an amount equal to Eighty Seven Million Three Hundred Twenty Eight Thousand Six Hundred Seventy Five and No/100 Dollars (\$87,328,675.00), payable by Purchaser, as follows:

(a) Prior to the Effective Date, Purchaser has delivered to Seller a deposit in the amount of Five Million and No/100 Dollars (\$5,000,000.00), and on the Effective Date has delivered to Seller an additional deposit in the amount of Twenty Million and No/100 Dollars (\$20,000,000.00), for a total deposit of Twenty Five Million and No/100 Dollars

(\$25,000,000.00) (the "**Deposit**"). The Deposit shall be held and applied by Seller in accordance with the terms of this Agreement.

(b) The amount by which the Purchase Price (subject to the prorations, credits and/or adjustments provided for in this Agreement) exceeds the Deposit shall be paid to and received by the Title Company by wire transfer of immediately available funds on the Closing Date.

2.2.2 All currency amounts set forth in this Agreement are expressed in United States Dollars.

**2.3 Allocation of Purchase Price.** Purchaser shall, within sixty (60) days following the Closing Date, prepare and deliver to Seller a draft of an allocation of the Purchase Price and other items (including any assumed liabilities) properly includible in the consideration for the Property for U.S. federal income tax purposes among the Property in a manner consistent with the principles of Section 1060 of the Code and the Treasury Regulations thereunder (such allocation, the "**Purchase Price Allocation**"), which shall be prepared in accordance with the principles set forth on Schedule 2.3 hereto. The Purchase Price Allocation shall become final and binding upon Purchaser and Seller on the thirtieth (30<sup>th</sup>) day following delivery thereof, unless Seller gives written notice of its disagreement with the Purchase Price Allocation to Purchaser prior to such date. If within thirty (30) days after delivery of the Purchase Price Allocation, Seller notifies Purchaser in writing that Seller objects to the Purchase Price Allocation, Purchaser and Seller shall use commercially reasonable efforts to resolve such dispute within twenty (20) Business Days. In the event Purchaser and Seller are unable to resolve any such dispute within such twenty (20) Business Day period, Purchaser and Seller will engage a certified public accountant reasonably acceptable to the parties to resolve such dispute as promptly as practicable. The parties shall (i) be bound by the Purchase Price Allocation as finalized or amended under this Section 2.3 for all U.S. federal and applicable state and local income Tax purposes; (ii) prepare and file all income Tax Returns (including but not limited to Internal Revenue Service Form 8594) in a manner consistent with the Purchase Price Allocation; and (iii) take no position inconsistent with the Purchase Price Allocation except to the extent required by a determination (as such term is used in Section 1313(a) of the Code) or any similar event with respect to state or local income taxes. In the case of any subsequent adjustment to the Purchase Price allocable to the Property or any other relevant item of consideration requiring an amendment to the Purchase Price Allocation, the Purchase Price Allocation shall be adjusted in accordance with the procedure set forth in this Section 2.3 and Seller and Purchaser, as applicable, shall file amended Internal Revenue Service Forms 8594 consistent with such amended Purchase Price Allocation. In the event that the Purchase Price Allocation is disputed by any taxing authority, the party receiving notice of such dispute shall promptly notify and consult with the other party and keep the other party apprised of material developments concerning the resolution of such dispute.

**2.4 Energization of the Data Center.** Seller and Purchaser acknowledge and agree that (1) included in the Improvements and Fixtures and Tangible Personal Property is a data center with 200 megawatts of power nameplate capacity (the "**Data Center**") and (2) the Data Center is only approved for and has 132 megawatts of power energized as of the Effective Date. In the event the Data Center is not conditionally approved by ERCOT for

200 megawatts of power energization by the Closing Date, \$25,000,000 from the Purchase Price (the "**Holdback Amount**") shall be held in escrow by the Title Company pursuant to the terms of the Holdback Escrow Agreement rather than disbursed to Seller at Closing. Upon conditional approval of the energization of the Data Center's 200 megawatts of power (such approval date, the "**Approval Date**"), the Title Company shall release to Seller the Holdback Amount within three (3) Business Days of the Approval Date pursuant to the Holdback Escrow Agreement; *provided that*, if the Approval Date does not occur within one hundred and twenty (120) days after the Closing Date (the "**Energization Expiration Date**"), the Purchase Price shall be permanently reduced by \$500,000 per megawatt of power under 200 megawatts (and in excess of 132 megawatts) that has not been approved for power energization (the "**Shortfall Amount**"), and such Shortfall Amount the Title Company shall release to Purchaser pursuant to the terms of the Holdback Escrow Agreement, with the balance of the Holdback Amount released to Seller. If such Shortfall Amount exceeds the Holdback Amount, then in addition to the release of the Shortfall Amount to Purchaser as aforesaid, Seller shall pay Purchaser an amount equal to the difference between the Shortfall Amount and the Holdback Amount within thirty (30) days after the Energization Expiration Date. By way of example, if on the Energization Expiration Date, the Data Center is only conditionally approved for 140 megawatts of power energization, the Title Company shall release the Holdback Amount to Purchaser and Seller shall pay Purchaser \$5,000,000 within thirty (30) days after the Energization Expiration Dates. From and after the Effective Date until the Energization Expiration Date, the parties shall reasonably cooperate, and shall use commercially reasonable efforts to cause the conditional approval of the power energization of the Data Center's entire 200 megawatts of power, all at each party's respective sole cost and expense, including, without limitation, executing such further documents and doing any further things as may be reasonably necessary to implement and carry out the intent of this paragraph. For the avoidance of doubt, however, in no event shall Seller be required to perform any work or cause any improvements to be made to the Data Center, the Property, or any other property, or to pay any sums or to otherwise compensate Purchaser therefor, and the obtaining of conditional approval from ERCOT for increased power energization shall not require any such performance or payment. This Section 2.4 shall survive the Closing. For all tax purposes, the parties agree to treat payments made pursuant to this Section 2.4 as an adjustment to the Purchase Price to the extent permitted by applicable law.

### ARTICLE III PURCHASER DILIGENCE

**3.1 Provision of Due Diligence Materials.** Seller has delivered to Purchaser diligence materials relative to the Property and its operation, to the extent that same exist and are in Seller's possession, custody, or control, including but not limited to, the Ground Lease, license agreement(s), occupancy agreements, and current contracts executed by Seller or on behalf of Seller pertaining to the operation of the Property, including service and maintenance agreements (collectively, the "**Due Diligence Materials**"). Notwithstanding anything to the contrary contained herein, the Due Diligence Materials shall expressly exclude (i) Seller's internal memoranda, accounting records, attorney-client privileged materials, internal appraisals, structural or physical inspection reports which are not in the possession or control of Purchaser or its Affiliates (but nothing herein shall be construed as giving Purchaser or its Affiliates permission to share such information except in accordance with Section 14.13), and (ii) any information which is the subject of a confidentiality

agreement between Seller and a third party (currently in effect and prohibiting disclosure of such information) which is not otherwise known to Purchaser or its Affiliates (the exclusions described in the foregoing clauses (i) and (ii), the "**Excluded Materials**").

**3.2 Conduct of Due Diligence.** Subject to all of the terms, conditions and restrictions set forth in this Agreement, Purchaser and the Purchaser Consultants shall be entitled, at Purchaser's sole cost and expense, to: (a) subject to the terms of the Ground Lease, enter onto the Property, during normal business hours and upon reasonable advance (but in no event less than one (1) business day) e-mail notice to Nick Phillips (tel: 423-567-8000, email: [nick@applieddigital.com](mailto:nick@applieddigital.com)) and Ray Huber (tel: 469-299-9575, email: [rhuber@applieddigital.com](mailto:rhuber@applieddigital.com)) to perform any inspections, investigations, studies and tests of the Property (including physical, structural, mechanical, architectural, engineering, soils, geotechnical and environmental tests); (b) review all Due Diligence Materials; and (c) perform such other investigations with respect to the Property as Purchaser may desire (Purchaser's and the Purchaser Consultants' inspections, investigations, studies and testing described in clauses (a) through (c), collectively, the "**Inspections**"); *provided that* Purchaser shall not (and Purchaser shall not permit any Person acting on behalf of Purchaser to) perform any physically invasive testing (including any Phase II environmental assessment) of any portion of the Property without first (i) submitting to Seller a reasonably detailed description of the scope of such testing and (ii) obtaining the prior written consent of Seller for such testing, in Seller's sole and absolute discretion. Purchaser shall have the right to elect to assume as of the Closing any of the Property Contracts by written notice to Seller delivered no later than expiration of the Inspection Period, and any Property Contracts so assumed shall be deemed Assigned Contracts. Seller shall cause any Property Contracts which are not Assigned Contracts to be terminated as of the Closing at its sole cost and expense.

**3.3 Diligence Termination Right.** During the Inspection Period, Purchaser shall be permitted to assess, examine, inspect, investigate, review and study any and all aspects of the Property (including the Due Diligence Materials) and confirm such matters as Purchaser deems appropriate in order to determine whether the Property is acceptable to Purchaser in its sole and absolute judgment. At any time prior to the expiration of the Inspection Period, Purchaser may elect, if and only if Purchaser discovers an issue during the Inspection Period that could reasonably be expected to have a material and adverse effect on the value of the Property or on Purchaser's contemplated use or operation thereof, to provide to Seller written notice (including a reasonably detailed explanation of the aforesaid issue) of Purchaser's election to terminate this Agreement, provided that Purchaser has previously advised Seller of the issue prior to termination. If Purchaser does not timely provide such notice to Seller, then Purchaser shall automatically and conclusively be deemed to have (x) elected to proceed with the Transaction, (y) waived its right to terminate this Agreement pursuant to this Section 3.3, and (z) acknowledged that they have received or had access to all Due Diligence Materials and conducted all Inspections in respect of the Property that Purchaser considers material. If Purchaser timely elects to terminate this Agreement pursuant to this Section 3.3, then the Deposit shall be returned to Purchaser and the Parties shall have no further obligations hereunder except for those obligations that expressly survive termination hereof.

**3.4 Purchaser's Responsibilities.** In conducting the Inspections pursuant to this Section 3.4, Purchaser shall (and shall cause any Person acting on behalf of Purchaser

to): (a) not materially interfere with the use, enjoyment or occupancy of the Property; (b) not damage any part of the Property or any personal property owned or held by Seller, any of its tenants or any their respective agents, guests, invitees, contractors or employees; (c) not injure or otherwise cause bodily harm to Seller, any of its tenants or any their respective agents, guests, invitees, contractors or employees; (d) comply in all material respects with applicable law and the terms of any leases theretofore provided to Purchaser with respect to the applicable portions of the Property; and (e) not permit any liens to attach to the Property by reason of any Inspections. Purchaser shall promptly pay when due the costs of, repair any damage to the Property resulting from, and indemnify, protect, defend and hold harmless the Seller and Seller Related Parties from and against any and all Damages in connection with or arising out of, any Inspections carried out by or on behalf of Purchaser pursuant to the terms hereof, and such obligations of Purchaser shall survive the Closing or any termination of this Agreement. Prior to any entry onto the Property, Purchaser shall provide Seller with evidence of commercially reasonable insurance coverage to Seller's reasonable satisfaction, and Purchaser and all parties entering onto the Property on behalf of Purchaser shall comply with Seller's reasonable rules and regulations, including, without limitation, with respect to security.

#### ARTICLE IV TITLE

**4.1 Title Documents.** Prior to the Effective Date, Purchaser has obtained a preliminary title report, or standard form commitment to provide a Title Policy, with respect to the Property (the "**Title Commitment**"), together with copies of all instruments identified as exceptions therein (together with the Title Commitment, collectively, the "**Title Documents**"), and has provided a copy of same to Seller.

**4.2 Survey.** Purchaser may, at its sole cost and expense, order a survey or update of an existing survey before or after the Effective Date (the "**Survey**").

**4.3 Permitted Exceptions.** The Property conveyed pursuant to this Agreement shall be subject to no exceptions, other than the following, all of which shall be deemed "**Permitted Exceptions**":

4.3.1 Matters created by or with the prior written consent of Purchaser;

4.3.2 Building, zoning and subdivision laws and regulations, ordinances and requirements;

4.3.3 Non-delinquent liens for real estate taxes and assessments for the Property and any liens for real estate taxes the payment of which is the responsibility of Ground Landlord under the Ground Lease; and

4.3.4 Any exceptions disclosed by the Title Commitment, the Survey and any Title Update, which is approved or deemed approved by Purchaser in accordance with this Article IV and any other exceptions to title disclosed by the public records or which would be disclosed by an inspection and/or survey of Property; provided that the foregoing shall not limit the rights of Purchaser to object to title defects pursuant to Section 4.5 or 4.6, or the obligation of Seller to Remove exceptions to the extent required pursuant to Section 4.4, 4.5 or 4.6.



Subject to the terms and conditions contained elsewhere in this Agreement and in any Other Document, by acceptance of the Ground Lease Assignment and the Closing of the purchase and sale of the Property, Purchaser agrees that Seller shall have conclusively satisfied its obligations with respect to title to the Property. The provisions of the foregoing sentence shall survive the Closing.

**4.4 Required Removal Items.** Notwithstanding the foregoing, Seller shall in any event be obligated to Remove on or before the Closing Date all matters or items that are: (i) mortgage or deed of trust liens, deeds to secure debt or security interests, in each case granted or assumed by Seller (and not by third parties), (ii) real estate tax liens, other than liens for taxes and assessments not yet delinquent or the payment of which is the responsibility of Ground Landlord under the Ground Lease, (iii) claims of mechanics' or materialmen's liens under contracts entered into by or on behalf of Seller, (iv) judgment liens against the Property, and (v) encumbrances (not including any of the items in (i) through (iv)) which have been placed against the Property by the free and voluntary act of Seller without Purchaser's consent as required by Section 7.2, including Seller's written consent to such encumbrances (and not by third parties without Seller's written consent) after the date of the Title Commitment delivered by Purchaser to Seller (which Title Commitment is dated March 13, 2024), and which are not otherwise permitted pursuant to the provisions hereof or required by applicable law ("**Voluntary Liens**"); and the items contained in clauses (i), (ii), (iii), (iv) and (v), being "**Required Curable Objections**"). Seller shall be entitled to apply the Purchase Price towards the payment or satisfaction of any Required Curable Objections *provided that* if its removal does not involve discharge by the payment thereof, including removal from the Title Policy issued to Purchaser at Closing by causing the Title Company to insure against collection of the same, Purchaser's approval, in its reasonable discretion, shall be required.

**4.5 Title and Survey Review.**

4.5.1 Purchaser shall notify Seller of any objections to title and survey matters no later than the date which is five (5) Business Days from the later of (x) the Effective Date, (y) Purchaser's receipt of the Title Commitment, and (z) Purchaser's receipt of the Survey, but in no event later than six (6) days prior to the expiration of the Inspection Period (each such specified objection, a "**Title Objection**") in a reasonably detailed writing (the "**Title Objection Letter**").

4.5.2 If Purchaser timely delivers the Title Objection Letter, then except in the case of Required Curable Objections as described in Section 4.4 (which are governed by Section 4.4 and not this Section 4.5.2), Seller may notify Purchaser as to whether Seller elects to Remove all or any of the Title Objections. If Seller elects to Remove any Title Objection, Seller shall Remove the same prior to Closing. If Seller does not deliver a written notice of its election to Remove any Title Objection prior to the date that is five (5) Business Days after Seller's receipt of the Title Objection Letter, then Seller shall automatically be deemed to have elected not to Remove such Title Objection. In such event, or if Seller delivers a written notice of its election to not Remove such Title Objection, Purchaser may elect by delivery of written notice to Seller to either (a) terminate this Agreement and receive a return of the Deposit from Seller minus One Hundred and No/Dollars \$100.00 (the "**Independent Consideration**"), which shall represent the independent consideration to support Purchaser's inspection rights contained herein and be retained by Seller, and neither party shall have any further obligation or liability to the other except

with respect to those provisions of this Agreement which expressly survive a termination of this Agreement, or (b) waive its objection to such Title Objection and proceed with the Transaction without a reduction in the Purchase Price, in which event Purchaser shall be deemed to have approved such Title Objection, and such Title Objection shall be a Permitted Exception.

#### **4.6 Subsequently Disclosed Exceptions**

4.6.1 Purchaser may order any updates, continuations of, and supplements to, the Title Commitment or Survey (each, a "**Title Update**") at Purchaser's sole cost and expense. Purchaser shall instruct Royal Abstract (the "**Title Company**"), as agent for First American Title Insurance Company and any surveyor to simultaneously deliver directly to Purchaser and Seller (and their respective counsel referenced in Section 14.6 of this Agreement) copies of each Title Update (including tax and departmental searches) ordered by Purchaser or otherwise issued by the Title Company or any surveyor, and copies of all underlying documentation referenced as an exception as soon as available. If, at any time after the Effective Date but prior to the Closing, any Title Update discloses any additional items that (a) are not Required Curable Objections under Section 4.4, (b) are not caused by or the result of any act or omission or fault of Purchaser, Purchaser's Affiliate(s) or any Purchaser Consultant, and (c) are not disclosed on any version of, or update to, the prior Title Commitment delivered by Purchaser as provided in Section 4.1 (each, a "**New Exception**"), Purchaser may notify Seller in writing of Purchaser's approval or disapproval of such New Exception not later than the date that is the earlier of (i) five (5) Business Days after the date of its receipt of such Title Update and (ii) the Closing Date (the "**New Exception Review Period Expiration Date**"). If Purchaser fails to deliver written notice of its approval or disapproval of any New Exception prior to the New Exception Review Period Expiration Date, such New Exception shall be deemed to be a Permitted Exception. If Purchaser disapproves of a New Exception prior to the New Exception Review Period Expiration Date, Seller may notify Purchaser as to whether Seller elects to Remove the New Exception. If Seller elects to Remove any New Exception, Seller shall Remove the same prior to Closing. If Seller fails to deliver to Purchaser a written notice of Seller's election within five (5) Business Days after receipt of Purchaser's written notice of disapproval of such New Exception, Seller shall be deemed to have elected not to Remove the New Exception. If Seller elects or is deemed to have elected not to Remove any New Exception or if Seller elects to seek to remove a non-Required Curable Objection and fails to do so at or prior to Closing, Purchaser may elect by delivery of written notice to Seller to either (x) terminate this Agreement and receive a return of the Deposit from Seller, minus the Independent Consideration, and neither party shall have any further obligation or liability to the other except with respect to those provisions of this Agreement which expressly survive a termination of this Agreement, or (y) waive its objection to the New Exception and proceed with the Transaction without a reduction in the Purchase Price, in which event Purchaser shall be deemed to have approved the New Exception and such New Exception shall be a Permitted Exception.

4.7 **Delivery of Title.** Delivery of title to the Property to Purchaser in accordance with the foregoing shall be evidenced by the irrevocable written commitment, subject to the sole condition of payment of the premium, of the Title Company to issue, at Closing, a TLTA Owner's Policy of Title Insurance (Form T-1) in the amount of the Purchase Price showing title to the Property vested in Purchaser, subject only to the Permitted Exceptions (the "**Title Policy**"). Without limiting the provisions of this Agreement relating to Required Curable Objections, the Title Policy may contain such endorsements as

reasonably required by Purchaser provided that the issuance of such endorsements shall not be a condition to Purchaser's obligations hereunder.

## **ARTICLE V CLOSING**

**5.1 Closing Date.** The Closing shall occur on the date which is thirty (30) days following the Effective Date or on such earlier date as may be mutually agreed upon by the Parties in writing (in any such case, such date, the "**Scheduled Closing Date**"; and the date on which the Closing occurs, "**Closing Date**") through an escrow with the Title Company, whereby Seller, Purchaser and their respective attorneys need not be physically present at the Closing and may deliver documents by overnight air courier or other means. Time shall be of the essence with respect to the parties' obligations to consummate the Closing on the Scheduled Closing Date.

**5.2 Seller Closing Deliveries.** Seller shall execute and deliver to the Title Company (or cause to be delivered to the Title Company) each of the following items on or prior to the Scheduled Closing Date:

5.2.1 A duly executed and acknowledged Assignment and Assumption of Ground Lease in the form attached as Exhibit B (the "**Ground Lease Assignment**").

5.2.2 A Bill of Sale for the benefit of Purchaser or Purchaser's designee(s), in the form attached as Exhibit C.

5.2.3 A general assignment to Purchaser or Purchaser's designee(s), in the form attached as Exhibit D (the "**General Assignment**").

5.2.4 A certificate in the form of Exhibit E attached hereto (a "**Bring-Down Certificate**").

5.2.5 Seller's counterpart signature to the closing statement prepared by the Title Company, which shall include the prorations, credits and adjustments calculated in accordance with the terms of this Agreement (the "**Closing Statement**").

5.2.6 A title affidavit substantially in the form attached hereto as Exhibit I (the "**Title Affidavit**").

5.2.7 A certification of Seller's regarded owner's non-foreign status pursuant to Section 1445 of the Code in the form of Exhibit F attached hereto.

5.2.8 Resolutions, certificates of good standing, and such other organizational documents as the Title Company shall reasonably require evidencing Seller's authority to consummate the Transaction.

5.2.9 An updated Property Contracts List effective as of a date no more than three (3) Business Days prior to the Closing Date.

5.2.10 An estoppel duly executed and delivered by Ground Landlord in substantially the form of Exhibit J attached hereto (the "**Ground Lease Estoppel**"), with such revisions thereto as may be made by Ground Landlord (unless such revisions allege a default of Seller under the Ground Lease or disclose a fact that is materially inconsistent with Seller's representations and warranties made in this Agreement), and with such changes as may be required to place same in recordable form.

5.2.11 If elected by Purchaser, a duly executed Transition Services Agreement in form and substance reasonably acceptable to Seller and Purchaser providing for a post-Closing cooperation period for sixty (60) days and commercially reasonable compensation to Seller (the "**Transition Services Agreement**").

5.2.12 A duly executed Holdback Escrow Agreement in furtherance of Section 2.4 in form and substance reasonably acceptable to Seller and Purchaser (the "**Holdback Escrow Agreement**").

All Purchaser designees pursuant to Section 5.2.1 through Section 5.2.4, inclusive, shall be Affiliates of Purchaser.

**5.3 Purchaser Closing Deliveries.** Purchaser shall deliver to the Title Company (or cause to be delivered to the Title Company) each of the following on or prior to the Scheduled Closing Date:

5.3.1 The Purchase Price, less the Deposit, plus or minus the adjustments, credits or prorations provided for in this Agreement.

5.3.2 Purchaser's counterpart signature to the Ground Lease Assignment.

5.3.3 Purchaser's counterpart signature to the General Assignment.

5.3.4 A Bring-Down Certificate executed by Purchaser.

5.3.5 Purchaser's counterpart signature to the Closing Statement.

5.3.6 If elected by Purchaser, Purchaser's counterpart signature to the Transition Services Agreement.

5.3.7 Purchaser's counterpart signature to the Holdback Escrow Agreement.

5.3.8 Resolutions, certificates of good standing, and such other organizational documents as the Title Company shall reasonably require evidencing Purchaser's authority to consummate the Transaction.

**5.4 Closing Prorations, Credits and Adjustments.**

5.4.1 General. All normal and customarily prorable items, including, without limitation, operating expenses and utility charges (but excluding real estate taxes, the payment of which is the responsibility of Ground Landlord under the Ground Lease), shall be prorated as of 11:59 p.m. (Local Time) on the day immediately prior to the Closing Date in accordance with this

Section 5.4 and the proration schedule agreed upon by Seller and Purchaser prior to Closing, the Parties agreeing that Seller shall be responsible and charged for all of the same attributable to the period up to the Closing Date (and credited for any amounts paid by Seller attributable to the period on or after the Closing Date) and Purchaser shall be responsible and charged for all of the same attributable to the period on and after the Closing Date (and credited for any amounts unpaid as of the Closing Date attributable to the period up to the Closing Date).

5.4.2 Operating Expenses and Certain Taxes. Any operating expenses shall be prorated on the basis of the actual number of days of the month (or other applicable time period) which shall have elapsed as of the Closing Date, with Purchaser being responsible for all such operating expenses attributable to dates from and after the Closing Date and Seller being responsible for all such operating expenses attributable to dates prior to the Closing Date. All personal property taxes and similar ad valorem obligations levied with respect to the Property for a taxable period which includes (but does not end on) the Closing Date (other than real estate taxes, the payment of which is the responsibility of Ground Landlord under the Ground Lease) shall be apportioned between Seller, on the one hand, and Purchaser, on the other hand, as of the Closing Date based on the number of days of such taxable period ending on the Closing Date (the "**Pre-Closing Tax Period**") and the number of days of such taxable period after the Closing Date (with respect to any such taxable period, the "**Post-Closing Tax Period**"). Seller shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Tax Period, and Purchaser shall be liable for the proportionate amount of such taxes that is attributable to the Post-Closing Tax Period.

5.4.3 Utilities. Water rates, water meter charges, sewer rents, utility charges and vault charges, if any, shall be prorated based on the most recently available bills therefor and reprorated after Closing pursuant to Section 5.5.

5.4.4 Insurance. No proration shall be made in relation to insurance premiums, and insurance policies will not be assigned to Purchaser.

5.4.5 Master Hosting Agreements. All payments made by MARA under the Master Hosting Agreements shall be prorated on the basis of the actual number of days of the month (or other applicable time period) which shall have elapsed as of the Closing Date, with Purchaser receiving a credit against the Purchase Price for all such payments attributable to dates from and after the Closing Date.

5.4.6 Closing Costs.

(a) All base title premium, including the cost of extended coverage, for the Title Policy (with coverage up to the amount of the Purchase Price) with so-called "Gap" endorsement, and any endorsement required to clear any existing title encumbrance shall be shared equally by Seller and Purchaser. The cost of any other title endorsements (but not including any endorsement required to clear any existing title encumbrance) and recording fees (other than to clear any Required Curable Objections and Title Objections that Seller elects or is required to Remove) shall be paid by Purchaser at Closing. Any escrow fees shall be split equally between Seller and Purchaser. Purchaser shall bear and pay, and shall reimburse Seller for, any sales, value added, use, transfer, ad valorem, privilege, gross receipts, registration, conveyance, excise, license, goods and services, stamp or similar taxes that arise out of, in connection with or are attributable

to the sale of the Property to Purchaser or any of the transactions contemplated herein (collectively, "**Transfer Taxes**"). Purchaser shall, at its own expense, file any necessary tax returns relating to Transfer Taxes and other documentation with respect to any Transfer Taxes. Seller shall provide Purchaser with such cooperation as Purchaser may reasonably request in connection with the preparation, execution and filing of such tax returns. In addition, Seller shall be responsible for payment of all fees of Seller's financial advisors, attorneys, accountants and other consultants, and Purchaser shall be responsible for payment of all fees of Purchaser's financial advisors, attorneys, accountants and other consultants and all other fees, costs and expenses incurred in connection with Purchaser's due diligence.

(b) All other costs and expenses incident to the Transaction and the closing thereof shall be paid by the party incurring the same. If any cost for which Seller (on the one hand) or Purchaser (on the other hand) is responsible pursuant to the foregoing provisions of this Section 5.4.6 shall have been paid by the other prior to the Closing, then the other shall receive a credit in the amount of such payment on the Closing Statement. The terms and provisions of this Section 5.4.6 shall survive the Closing and any earlier termination of this Agreement.

5.4.7 Possession. Seller shall deliver to Purchaser concurrently with the Closing (a) possession of the Property, subject to the Ground Lease, Assigned Contracts and Permitted Exceptions and (b) no later than five (5) Business Days after notice is delivered by Purchaser to Seller stating where such materials shall be delivered (but in no event prior to the Closing Date) (i) the originals and copies of the Ground Lease, Assigned Contracts, operating manuals, and keys and access codes to the Property, and (ii) to the extent reasonably available to Seller, all of Seller's lease files, warranties, guaranties, and books and records (other than materials that would be deemed Excluded Materials) primarily relating to the Property.

5.5 Post-Closing Adjustments. To the extent applicable, Seller and Purchaser, acting in good faith, shall reconcile with each other within ninety (90) days of the Closing Date, the amounts prorated and adjusted in this Article V using any new or updated information, including without limitation the reconciliation of estimated amounts with actual amounts, the correction of any errors and the inclusion of any items which should have been included at the Closing. All adjustments to be made based on the mutual agreement of the parties shall be paid to the party entitled to such adjustment within thirty (30) days after the final determination thereof. In the event the parties have not agreed with respect to the adjustments required to be made pursuant to this Section 5.5 within thirty (30) days following expiration of such ninety (90) day period, upon application by any such party, a certified public accountant reasonably acceptable to the parties shall determine any such adjustments which have not theretofore been agreed to between the parties. The charges of such accountant shall be borne by the party that does not prevail in such dispute. All adjustments to be made based on the final results of the adjustments shall be paid to the party entitled to such adjustment within thirty (30) days after the final determination thereof. Neither party shall have any obligation to re-adjust any items after the expiration of the periods set forth in this Section 5.5. For all tax purposes, the parties agree to treat payments made pursuant to this Section 5.5 as an adjustment to the Purchase Price to the extent permitted by applicable law.

**ARTICLE VI**  
**REPRESENTATIONS AND WARRANTIES OF SELLER AND PURCHASER**

**6.1 Seller's Representations.** For the purpose of inducing Purchaser to enter into this Agreement and to consummate the Transaction in accordance herewith, Seller represents and warrants the following (collectively, the "**Seller's Representations**") to Purchaser as of the Effective Date:

6.1.1 Seller is duly organized, validly existing and in good standing under the laws of the state of its formation; has the entity power and authority to sell and convey the Property, to execute and deliver the documents and instruments required of Seller herein, and to perform its obligations hereunder; and has taken (or will take) all corporate, partnership, limited liability company or equivalent entity actions required for the execution and delivery of this Agreement and the consummation of the Transaction. The execution, delivery and compliance with and fulfillment of the terms and conditions hereof will not result in a violation or breach of (a) any organizational document of Seller, or (b) in any material respect, any legal requirement or material contract applicable to Seller or by which Seller or the Property is bound. This Agreement is a valid and binding agreement, enforceable against Seller in accordance with its terms.

6.1.2 Seller (or, if Seller is a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Treasury Regulations, Seller's regarded owner) is not a "foreign person," as that term is used and defined in Section 1445 of the Code.

6.1.3 Other than as described on Schedule 6.1.3, there are no actions, proceedings, litigation, governmental investigations or condemnation actions for which Seller has received legal process or, to Seller's Knowledge, threatened in writing against Seller or the Property that would be binding upon Purchaser or the Property or that would reasonably be expected to (a) restrain the consummation of the Transaction or otherwise have a material adverse effect on Seller's ability to consummate the Transaction or (ii) declare illegal, invalid or non-binding any of Seller's obligations or covenants to Purchaser hereunder.

6.1.4 All Property Contracts are described on Exhibit G (the "**Property Contracts List**"). Other than matters reflected in the Title Documents, the Property Contracts List, the Assigned Contracts, the Operating Leases and the Permits identified on Schedule 6.1.4, Seller is not party to any contract, agreement, lease, license, sublicense or other arrangement relating to the use, ownership, management, operation, leasing, maintenance or repair of the Property which shall survive Closing. Seller has made available to Purchaser complete and correct copies of the Assigned Contracts. Seller has not received any notice of a Seller default nor has it delivered a notice of the other party's default under any Property Contracts which remains uncured

6.1.5 Neither Seller nor any of its Affiliates are or have been a party to any collective bargaining agreement, union agreement, employee retention agreement, employee benefit plan or other contract or agreement with any labor organization that will be binding upon Purchaser in connection with the Property or any portion thereof.

6.1.6 Seller has not entered into any lease, sublease, license, hosting agreement or other occupancy or use agreement with respect to all or any portion of the Property other than

the Master Hosting Agreements and agreements that will have been terminated at or prior to Closing.

6.1.7 Other than as described on Schedule 6.1.7, as of the Effective Date, Seller has received no written notice from any governmental authority with jurisdiction over the Property of any violation by the Property of any laws, ordinances or regulations applicable to the Property (including, without limitation, any Environmental Law) that remains uncured or unresolved.

6.1.8 Schedule 6.1.8 is a true, correct and complete list of all of the agreements, documents and instruments constituting (i) the Ground Lease, including all amendments, modifications, supplements and agreements related thereto, and (ii) all other agreements entered into by and between Seller (or any Affiliate thereof) and Ground Landlord (or any Affiliate thereof) in connection with the Ground Lease. Seller has delivered to Purchaser true, correct and complete copies of each of the agreements, documents and instruments listed on Schedule 6.1.8. The Ground Lease is in full force and effect. Neither Seller nor, to Seller's knowledge, Ground Landlord, is in default of any of its obligations under the Ground Lease, and there exists no fact or condition that would constitute such a default (in each case, with or without notice, the passage of time or both) by Seller or, to Seller's knowledge, by Ground Landlord. Seller has not received any written notice of a default on Seller's part under the Ground Lease which remains outstanding or in dispute. Seller has not delivered any written notice to Ground Landlord asserting that any default has occurred under the Ground Lease.

6.1.9 Except as disclosed in the Title Documents, (i) Seller has not submitted and, to Seller's knowledge, no other Person has submitted an application for the creation of any special taxing district affecting the Property (or any part thereof), or annexation thereby, or inclusion therein and (ii) Seller has not received written notice that any governmental authority has commenced or intends to commence construction of any special or off-site improvements or has imposed or increased or intends to impose or increase any special or other assessment against the Property (or any part thereof). There is no pending or, to Seller's knowledge, threatened request, application or proceeding to alter or restrict the zoning or other use restrictions applicable to the Property or any portion thereof. There are no pending tax certiorari proceedings involving Seller or the Property.

6.1.10 Seller has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, which remains pending, (d) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, which remains pending, (e) admitted in writing its inability to pay its debts as they come due, or (f) made an offer of settlement, extension or composition to its creditors generally.

6.1.11 Except as disclosed in the Title Documents, Seller has not granted any option, right of first refusal, first offer or first opportunity, or any similar right, to any party to acquire any fee or ground leasehold interest in any portion of the Property.

6.1.12 No consent, approval, order or authorization of, or registration, declaration or filing with, any applicable governmental authority is required to be obtained or made by Seller in connection with the execution and delivery of this Agreement or the consummation of the



Transaction except as shall be obtained or made, as applicable, by Seller at or prior to Closing in accordance with this Agreement.

6.1.13 Seller is not a Prohibited Person.

6.1.14 Each tangible asset included in the Property is in all material respects in good operating condition and repair, ordinary wear and tear excepted, is suitable for the purposes for which it is being used and currently planned to be used by the Seller and has been maintained in accordance with normal industry practice. The Property consisting of personal property is free and clear of all liens and encumbrances, other than the Operating Leases (which shall be terminated at or prior to Closing). Notwithstanding anything to the contrary set forth in this Agreement, in the event of any breach of this representation which is discovered by Purchaser following Closing, Purchaser agrees to use commercially reasonable efforts to resort to and exhaust any applicable warranties prior to making a claim against Seller under Section 13.1 (and, with respect to this Section 6.1.14 only, the Outside Claim Date shall toll on a day-for-day basis for the period of time that Purchaser is pursuing recovery under such warranties).

6.1.15 Seller has not received any written notice of any violations of, or any corrective, investigatory or remedial obligations arising under, Environmental Laws with respect to the Property. Seller is and has been in compliance with all applicable Environmental Laws with respect to the Property. During Seller's period of ground tenancy, there has been no release of, contamination by, or exposure of any person to any Hazardous Materials that has given or would give rise to any liability under Environmental Law.

6.1.16 All Operating Leases are described on Schedule 6.1.16 attached hereto. Seller has made available to Purchaser complete and correct copies of the Operating Leases. Seller has not received any notice of a Seller default nor has it delivered a notice of the other party's default under any Operating Lease which remains uncured.

6.1.17 The Property constitutes substantially all of the assets owned by Seller.

**6.2 AS-IS**

**6.2.1 PURCHASER ACKNOWLEDGES AND AGREES, AS A MATERIAL INDUCEMENT TO THE SELLER'S EXECUTION AND DELIVERY OF THIS AGREEMENT, THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY IS BEING PURCHASED AND SOLD "AS IS," "WHERE IS," AND "WITH ALL FAULTS."**

6.2.2 The Purchase Price and the terms and conditions set forth herein are the result of arm's-length bargaining between entities familiar with transactions of this kind, and the price, terms and conditions set forth in this Agreement reflect the fact that (except as otherwise expressly set forth in this Agreement) Purchaser is not relying upon any information provided by (or by any Person on behalf of) Seller or statements, representations or warranties, express or implied, made by (or by any Person on behalf of) Seller, including, without limitation, relating to the value of the Property, the physical or environmental condition of the Property, any state, federal, county or local law, ordinance, order or permit, or the suitability, compliance or lack of compliance of the Property with any regulation, or any other attribute of or matter relating to the Property. Except as otherwise expressly set forth in this Agreement, Purchaser agrees that Seller

shall not be responsible or liable to Purchaser (a) for any defects, errors or omissions in the Due Diligence Materials or (b) on account of any conditions affecting the Property.

6.2.3 Purchaser acknowledges and agrees that, except as otherwise expressly set forth in this Agreement, no representation has been made, and no responsibility is assumed, by Seller with respect to the financial earning capacity of the Property, the continued occupancy of the Property or any part thereof or the occupancy of the Property at Closing.

6.2.4 Purchaser agrees and acknowledges that, except as expressly set forth in the Seller's Representations, Seller makes no representations or warranties with respect to the Property (or any portion thereof), the operation, management and/or leasing of the Property or concerning any statements made or information delivered or made available to Purchaser (whether by Seller, any of its Affiliates or any agents, representatives, consultants or advisors of any of the foregoing, or any other Person) with respect to the Property (or any portion thereof) or the business of Seller, and all such representations and warranties are hereby expressly excluded and disclaimed. Purchaser further acknowledges and agrees that all materials, data and information delivered by Seller to Purchaser in connection with the transaction contemplated hereby are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser, except as otherwise expressly stated herein. Except as otherwise expressly provided herein, without limiting the generality of the foregoing provisions, Purchaser acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by Seller to Purchaser shall be for general informational purposes only, (b) Purchaser shall not have any right to rely on any such report delivered by Seller to Purchaser (unless the environmental consultant subsequently provides a reliance letter to Purchaser, but in no event shall Seller have any liability to Purchaser arising out of said reliance letter), but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Purchaser with respect thereto, and (c) neither Seller nor any Affiliate of Seller shall have any liability to Purchaser for any inaccuracy in or omission from any such report.

### **6.3 Purchaser's Independent Investigation; Seller's Knowledge**

6.3.1 Without limiting the express provisions hereof, by Purchaser not terminating this Agreement under Section 3.3, Purchaser will be deemed to have acknowledged and agreed that it has been given a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Purchaser's choosing, including, without limitation:

(a) All matters relating to title and survey, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.

(b) The physical condition and aspects of the Property, including, without limitation, the interior, the exterior, the square footage within the Improvements and within the tenant space therein, the structure, seismic aspects of the Property, the foundation, roof, paving, parking facilities, utilities, and all other physical and functional aspects of the Property. Such examination of the physical condition of the Property shall include an examination for the

presence or absence of Hazardous Materials, which shall be performed or arranged by Purchaser (subject to the provisions of Section 3.2 hereof) at Purchaser's sole expense.

- (c) Any easements and/or access rights affecting the Property.
- (d) The Ground Lease and all matters in connection therewith.
- (e) The Property Contracts and any other documents or agreements of significance affecting the Property.
- (f) All other matters of material significance affecting the Property, including, but not limited to, the Due Diligence Materials.

(b) Without limiting the above and other than in connection with Fraud, and subject to the representations and warranties of Seller contained in Section 6.1 hereof, Purchaser on behalf of itself and its successors and assigns waives its right to recover from, and forever releases and discharges Seller and Seller Related Parties from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, court costs and attorneys' fees and disbursements), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the physical condition of the Property including, without limitation, all structural and seismic elements, all mechanical, electrical, plumbing, sewage, heating, ventilating, air conditioning and other systems, the environmental condition of the Property and the presence of Hazardous Materials on, under or about the Property, or (ii) any law or regulation applicable to the Property, including, without limitation, any Environmental Law and any other federal, state or local law. Notwithstanding anything herein to the contrary (including the foregoing release), (A) Purchaser shall have the right to defend (but Purchaser has no right to assert, file or otherwise proceed with a contribution, indemnity or other claim against Seller) governmental and third-party claims by alleging that Seller, not Purchaser, is liable for such claims; and (B) Purchaser has not assumed and has no obligation to indemnify Seller for governmental or third party claims asserted after the Closing as a result of any act or omission taken or failed to be taken by or on Seller's behalf prior to the Closing.

BUYER'S INITIALS:

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6.3.2 The phrase "to Seller's Knowledge," or words of similar import in this Agreement, shall be deemed to refer exclusively to matters within the actual knowledge of David Rench and Nick Phillips (collectively, "Seller Knowledge Individuals") with no duty of inquiry or investigation on such individual's or Seller's part. Subject to the foregoing, neither the actual, present, conscious knowledge of any other individual or entity, nor the constructive knowledge of the Seller Knowledge Individuals or of any other Person, shall be imputed to the Seller Knowledge Individuals. No Seller Knowledge Individual is a party to this Agreement or shall be subject to any personal liability hereunder.

6.4 **Representations and Warranties of Purchaser.** For the purpose of inducing Seller to enter into this Agreement and to consummate the Transaction in accordance herewith, Purchaser represents and warrants to Seller the following (collectively, the "Purchaser's Representations") as of the Effective Date:

6.4.1 Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada; has the entity power and authority to acquire the Property, to execute and deliver the documents and instruments required of Purchaser herein, and to perform its obligations hereunder, and has taken all limited liability company actions required for the execution and delivery of this Agreement and the consummation of the Transaction. The execution, delivery and compliance with and fulfillment of the terms and conditions hereof will not result in a violation or breach of (a) Purchaser's organizational documents or (b) in any material respect, any legal requirement or material contract applicable to Purchaser or by which Purchaser or the property of Purchaser is bound. This Agreement is a valid and binding agreement, enforceable against Purchaser in accordance with its terms.

6.4.2 No pending or, to Purchaser's Knowledge, threatened litigation exists which would reasonably be expected to (a) restrain the consummation of the Transaction or otherwise have a material adverse effect on Purchaser's ability to consummate the Transaction or (ii) declare illegal, invalid or non-binding any of Purchaser's obligations or covenants to Seller hereunder.

6.4.3 Purchaser is not a Prohibited Person.

6.4.4 The funds transferred by Purchaser to Seller under this Agreement are not the property of, or beneficially owned, directly or indirectly, by a Prohibited Person or the proceeds of specified unlawful activity as defined by 18 U.S.C. §§ 1956-1957 (Laundering of Money Instruments), 18 U.S.C. §§ 981-986 (Federal Asset Forfeiture) or 21 U.S.C. § 881 (Drug Property Seizure), Executive Order November 13224, or the USA Patriot Act.

6.4.5 Purchaser is not acquiring the Property with the assets of an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974.

6.4.6 No consent, approval, order or authorization of, or registration, declaration or filing with, any applicable governmental authority is required to be obtained or made by Purchaser in connection with the execution and delivery of this Agreement or the consummation of the Transaction, which Purchaser has not already obtained or made.

6.4.7 As of the Closing Date, the assignment of the TerraForm Agreement by Seller to Purchaser pursuant to this Agreement shall be a "permissible assignment" to an "Assignee" pursuant to Section 16.1.3 of the TerraForm Agreement.

The phrase "**to Purchaser's Knowledge**," or words of similar import in this Agreement, shall be deemed to refer exclusively to matters within the knowledge, following reasonable due inquiry, of Adam Swick ("**Purchaser Knowledge Individual**"). Subject to the foregoing, neither the actual, present, conscious knowledge of any other individual or of entity, nor the constructive knowledge of the Purchaser Knowledge Individual or of any other Person, shall be imputed to the Purchaser Knowledge Individual. The Purchaser Knowledge Individual is not a party to this Agreement and shall not be subject to any personal liability hereunder.

6.5 **Modifications.** If, after the Effective Date, but before Closing, Seller becomes aware of any facts or changes in circumstances that would cause any of its representations and warranties in this Agreement to be materially untrue at Closing, Seller shall notify Purchaser in writing of such fact. In such case, or in the event Purchaser obtains

actual knowledge that any of Seller's representations and warranties are or will be materially inaccurate, untrue, or incorrect at Closing, Purchaser, as its sole and exclusive remedy, shall have the right to either (1) terminate this Agreement, in which case the Deposit, minus the Independent Consideration, shall be immediately returned to Purchaser and neither party shall have any rights or obligations under this Agreement (except for those which expressly survive termination of this Agreement); or (2) accept a qualification to Seller's representations and warranties as of the Closing Date and complete the purchase and sale of the Property without any rights to recovery for breach of the unqualified representation and warranty. Other than as set forth in the immediately preceding sentence, if Purchaser proceeds with Closing, Purchaser shall be deemed to have expressly waived any and all remedies for the breach of any representation or warranty discovered by Purchaser prior to the Closing.

**6.6 Survival.** Any claim which either Purchaser or Seller may have against the other for a breach of any such representation or warranty contained in this Article VI, whether such breach is known or unknown, which is not specifically asserted by written notice to the party being claimed to be in breach within the six (6) month period immediately following Closing (the "Outside Claim Date") shall not be valid or effective, and the party claimed to be in breach shall have no liability with respect thereto.

## **ARTICLE VII**

### **ADDITIONAL COVENANTS OF SELLER AND PURCHASER**

**7.1 Interim Operating Covenants.** Except as expressly contemplated by this Agreement, Seller shall operate the Facility in the ordinary course of business consistent with past practice, and Seller shall: (a) maintain the Facility in substantially its condition as of the Effective Date, reasonable wear and tear, and casualty and condemnation, excepted; (b) comply, in all material respects, with all applicable laws; (c) keep in full force and effect insurance policies with substantially the same terms as existing policies; (d) not dispose of all or any of the Property; (e) not enter into, renew, extend, amend, modify or terminate the Ground Lease or any lease, sublease or other contract, whether or not of record, for the use or occupancy of space or facilities at the Facility or any portion of the Property which will survive Closing, without Purchaser's prior written consent (which consent may be withheld in Purchaser's sole discretion); (f) not enter into, renew, extend, amend, modify or replace any other material contract with respect to the Property or any portion thereof, unless (i) such contract is terminable on not more than thirty (30) days' notice without payment of any fees, premium or penalty, (ii) such contract will not be binding on Purchaser from and after the Closing, or (iii) Purchaser consents thereto in writing (which consent may be withheld in Purchaser's sole discretion); and (g) not make any capital expenditures with respect to the Property other than repairs and replacements in the ordinary course of business to comply with clause (a) of this Section 7.1.

**7.2 Voluntary Liens.** Seller shall not create or cause to be created any Voluntary Lien without Purchaser's prior written consent, not to be unreasonably withheld, conditioned, or delayed prior to the expiration of the Inspection Period.

**7.3 Litigation: Violations.** Seller shall advise Purchaser promptly of Seller's receipt of written notice of any litigation, arbitration proceeding or administrative hearing

(including without limitation condemnation) which involves the Property or any portion thereof or Seller's ability to consummate the Transaction as contemplated by this Agreement. Seller shall deliver copies to Purchaser, promptly after receipt, of any written notices of violations regarding the Property or any portion thereof received by Seller. Seller may not settle any claim or compromise any litigation or proceeding which would be binding upon the Property or any portion thereof or affect in any material respect the operations thereof, without Purchaser's prior written consent (which consent may be withheld in Purchaser's sole discretion).

**7.4 TerraForm LOC.** At or prior to Closing, Purchaser shall post cash with TerraForm in the amount of the security required under Article 9 of the TerraForm Agreement and shall take all actions as are necessary to cause the release of the TerraForm LOC to Seller (and Seller shall cooperate in connection therewith).

**7.5 Vacant Possession.** Prior to Closing, Seller shall take peaceful possession of the entire Property and remove all existing occupants, users, tenants and subtenants thereat such that the Property is delivered to Purchaser in vacant and broom-clean condition with all leases, subleases, hosting agreements and agreements terminated.

**7.6 Bulk Sales Laws.** The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Property to Purchaser.

**7.7 Operating Leases.** At or prior to Closing, with respect to each Operating Lease, Seller shall terminate such Operating Lease and provide reasonably satisfactory evidence of such termination to Purchaser.

#### **ARTICLE VIII CONDITIONS PRECEDENT TO CLOSING**

**8.1 Purchaser's Conditions to Closing.** Without limiting any of the rights of Purchaser elsewhere provided for in this Agreement, Purchaser's obligation to consummate the Transaction shall be subject to and conditioned upon the satisfaction and fulfillment of the following conditions precedent on or prior to the Scheduled Closing Date, *provided that* Purchaser may, at its sole option, waive any or all of these conditions, in whole or in part, in writing or as otherwise provided in this Agreement:

8.1.1 All of the documents required to be delivered by Seller to Purchaser at the Closing pursuant to Section 5.2 shall have been delivered;

8.1.2 Each of Seller's Representations shall be true and correct in all material respects (other than Seller's Fundamental Representations, which shall be true and correct in all respects) as of the Scheduled Closing Date as though made on and as of the Scheduled Closing Date (except for Seller's Representations, if any, specifically made as of another stated date, in which case such Seller's Representations shall be true and correct as of such earlier date);

8.1.3 Seller is prepared to deliver to Purchaser full possession of the Property in vacant and broom-clean condition with all leases, subleases, hosting agreements and occupancy agreements terminated as contemplated by Section 7.5; and

8.1.4 The Title Company, subject only to payment of the premium therefor, being prepared to issue the Title Policy in the name of Purchaser in the amount of the Purchase Price (*provided that* Purchaser has complied with all Purchaser requirements of the Title Company in connection with said issuance), subject only to the Permitted Exceptions.

If any condition set forth in this Section 8.1 is not satisfied on or prior to the Scheduled Closing Date, Purchaser may, as its sole remedy, (a) waive any of the foregoing conditions and proceed to Closing with no offset or deduction from the Purchase Price, or (b) terminate this Agreement and receive a return of the Deposit from Seller, minus the Independent Consideration, and neither party shall have any further obligation or liability to the other except with respect to those provisions of this Agreement which expressly survive a termination of this Agreement. The foregoing shall not be construed as a waiver of any rights Purchaser may have under Section 10.2.

**8.2 Seller's Conditions to Closing.** Without limiting any of the rights of Seller provided for elsewhere in this Agreement, Seller's obligation to close under this Agreement shall be subject to, and conditioned upon, the satisfaction and fulfillment of the following conditions precedent on or prior to the Scheduled Closing Date, *provided that* Seller may, at its sole option, waive any or all of these conditions, in whole or in part, in writing or as otherwise provided in this Agreement:

8.2.1 All of the documents and funds required to be delivered by Purchaser to Seller at the Closing pursuant to Section 5.3 shall have been delivered;

8.2.2 Each of Purchaser's Representations shall be true and correct in all material respects as of the Scheduled Closing Date as though made on and as of the Scheduled Closing Date (except for Purchaser's Representations, if any, specifically made as of another stated date, in which case such Purchaser's Representations shall be true and correct as of such earlier date); and

8.2.3 Purchaser shall have complied with, fulfilled and performed, in all material respects, each of the covenants to be complied with, fulfilled or performed by Purchaser hereunder on or prior to the Closing Date.

If any condition set forth in this Section 8.2 is not satisfied on or prior to the Scheduled Closing Date, Seller may, as its sole remedy, (a) waive any of the foregoing conditions and proceed to Closing, or (b) terminate this Agreement, and neither party shall have any further obligation or liability to the other except with respect to those provisions of this Agreement which expressly survive a termination of this Agreement. The foregoing shall not be construed as a waiver of any rights Seller may have under Section 10.1.

## ARTICLE IX TERMINATION AND ABANDONMENT; CERTAIN PROCEDURES

**9.1 Termination of this Agreement.** This Agreement shall terminate if at any time prior to the Closing:

9.1.1 Seller and Purchaser mutually agree in writing to terminate this Agreement, in which case the Deposit shall be paid and released in accordance with the mutual direction of Seller and Purchaser;

9.1.2 Seller gives written notice of termination to Purchaser in the event of the occurrence of a Purchaser Default, in which case the Deposit shall be retained by Seller in accordance with Section 10.1;

9.1.3 Seller gives written notice of termination to Purchaser pursuant to Section 8.2, in which case the Deposit shall be paid and released in accordance with Section 10.1;

9.1.4 Purchaser gives written notice of termination to Seller in the event of the occurrence of a Seller Default, in which case the Deposit shall be paid and released in accordance with Section 10.2;

9.1.5 Purchaser gives written notice of termination to Seller pursuant to Section 4.5, 4.6, or 11.1 or Article XII, in which case the Deposit shall be paid and released in accordance with the provisions thereof; or

9.1.6 Purchaser gives written notice of termination to Seller pursuant to Section 8.1, in which case the Deposit shall be paid and released in accordance with Section 8.1.

**9.2 Procedure Upon Termination.** In the event this Agreement is terminated pursuant to Section 9.1, this Agreement shall immediately terminate and the Transaction shall be abandoned, without further action by any of the parties.

## ARTICLE X DEFAULTS AND REMEDIES

**10.1 Purchaser Default.** If, prior to the consummation of the Closing, Purchaser (a) defaults on its obligations hereunder to deliver to the Title Company the documents and Purchase Price as required pursuant to the terms of Section 5.3 and consummate the Transaction on the Closing Date for any reason other than the failure of a condition precedent set forth in Section 8.1, or (b) defaults in any material respect on any of its other representations, warranties or obligations under this Agreement, and such default continues until the earlier of the Scheduled Closing Date and ten (10) days after written notice from Seller (each, a "**Purchaser Default**"), then, at Seller's election and as Seller's exclusive remedy, Seller may terminate this Agreement immediately, upon which Purchaser shall forfeit the Deposit to Seller as liquidated damages resulting from the Purchaser Default (the parties agreeing that (i) quantifying the amount of Seller's losses pursuant to termination due to a Purchaser Default would be difficult, and (ii) such sum is not a penalty, but rather a reasonable measure of Seller's damages resulting from a termination due to a Purchaser Default).

**10.2 Seller Default.** If, prior to the consummation of the Closing, Seller (a) defaults on its obligations hereunder to deliver to the Title Company the documents as required pursuant to the terms of Section 5.2 and consummate the Transaction on the Closing Date for any reason other than the failure of a condition precedent set forth in Section 8.2, or (b) defaults in any material respect on any of its other representations, warranties or obligations under this Agreement, and such default continues until the earlier of the Scheduled Closing Date and ten (10) days after written notice from Purchaser (each, a "**Seller Default**"), then, at Purchaser's election and as Purchaser's exclusive remedy (subject to Section 14.23), Purchaser may either (i) terminate this Agreement, and the Deposit shall be



returned to Purchaser, minus the Independent Consideration, or (ii) seek specific performance of this Agreement by Seller. Purchaser hereby irrevocably waives any other right or remedy for any such default. In the event of a termination of this Agreement by Purchaser under this Section 10.2, the Deposit shall be returned to Purchaser, minus the Independent Consideration, and, thereafter, Purchaser and Seller shall be released and relieved of further obligations, liabilities or claims hereunder except as herein otherwise specified. Any action for specific performance instituted pursuant to the foregoing provisions must be instituted, if at all, within sixty (60) days after the breach or alleged breach by Seller and, if such action is not so instituted within such period of time, then such failure to timely commence such an action for specific performance within such sixty (60) day period shall be deemed a waiver by Purchaser of its right to commence an action for specific performance as well as a waiver by it of any right it may have to file or record a notice of *lis pendens* or notice of pendency of action or similar notice against the Property, and Purchaser shall be deemed to have elected to terminate this Agreement as provided above. The foregoing provisions shall not limit Purchaser's right to recover Purchaser's attorneys' fees pursuant to Section 14.23. Notwithstanding anything herein to the contrary, Purchaser shall have the right to bring an action seeking actual damages if (x) the Closing does not occur, (y) clause (a) or (b) of the first sentence of this Section 10.2 applies, and (z) the remedy of specific performance is not available either because Seller has conveyed the Property in breach of this Agreement or because of any other willful default by Seller under this Agreement. SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT THIS SECTION 10.2 IS INTENDED TO AND DOES LIMIT THE AMOUNT OF DAMAGES DUE PURCHASER AND THE REMEDIES AVAILABLE TO PURCHASER, AND SHALL BE PURCHASER'S EXCLUSIVE REMEDY (SUBJECT TO SECTION 14.23) AGAINST SELLER HEREUNDER AND BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO A BREACH BY SELLER COVERED BY THE FIRST SENTENCE OF THIS SECTION 10.2. SELLER FURTHER ACKNOWLEDGES AND AGREES THAT THE DAMAGES DUE PURCHASER HEREUNDER WILL NOT CONSTITUTE AN ADEQUATE REMEDY FOR PURCHASER AND THAT SPECIFIC PERFORMANCE IS AN APPROPRIATE REMEDY, AND WAIVES ANY OBJECTION TO THE SEEKING OR GRANTING OF SPECIFIC PERFORMANCE AND ANY REQUIREMENT TO POST SECURITY IN CONNECTION THEREWITH.

#### ARTICLE XI RISK OF CASUALTY

**11.1 Casualty.** In the event that any of the Property is damaged or destroyed by fire or other casualty prior to Closing, Seller shall promptly notify Purchaser of such damage or destruction. If the reasonably estimated cost of the Repairs with respect to such damage or destruction exceeds ten percent (10%) of the Purchase Price or if the proceeds from the insurance policies maintained by Seller for the Property plus Seller's deductible under such policies are insufficient to cover the cost of repair and replacement, Purchaser may elect by written notice to Seller to terminate this Agreement and receive a return of the Deposit from Seller, minus the Independent Consideration, and neither party shall have any further obligation or liability to the other except with respect to those provisions of this Agreement which expressly survive a termination of this Agreement. Subject to such termination right, the parties shall consummate the Transaction in accordance with the terms of this Agreement for the Purchase Price, notwithstanding any such damage or destruction, in which case (a)

Seller shall assign to Purchaser at Closing all of Seller's rights and obligations with respect to the insurance claims related to such damage or destruction, (b) Purchaser shall receive a credit against the Purchase Price at Closing for all insurance proceeds paid to Seller pertaining to such claim and for any deductible payable by Seller in connection therewith less the sum of (i) any out-of-pocket costs reasonably incurred by Seller in pursuing or collecting such claim and (ii) any amounts which may already have been spent by Seller for Repairs in accordance with Section 11.2. Seller shall not have the right to settle any claims related to any such damage or destruction without Purchaser's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

**11.2 Repairs.** To the extent that Seller elects to commence any Repairs with respect to any damage or destruction to the Property caused by fire or other casualty prior to Closing, then Seller shall be entitled to receive and apply available insurance proceeds to any portion of such Repairs commenced, completed or installed prior to Closing in accordance with this Section 11.2. To the extent that any Repairs have been commenced prior to Closing, then the Property Contracts shall include all construction and other contracts entered into by Seller in connection with such Repairs (the "Construction Contracts"). The Construction Contracts and all plans in connection with any Repairs must be approved by Purchaser, which approval shall not be unreasonably withheld, conditioned, or delayed. All Repairs undertaken by Seller pursuant to this Section 11.2 shall be performed in a first-class manner and in accordance with applicable law.

## **ARTICLE XII EMINENT DOMAIN**

In the event that, prior to Closing, any of the Property is acquired, or becomes subject to acquisition or a written threat of acquisition, by any governmental agency through the powers of eminent domain or transfer in lieu thereof (a "Taking"), Seller shall promptly notify Purchaser of such Taking. If such Taking would have a material adverse effect on the use, occupancy, accessibility or value of the Facility, Purchaser may elect by written notice to Seller to terminate this Agreement and receive a return of the Deposit from Seller, minus the Independent Consideration, and neither party shall have any further obligation or liability to the other except with respect to those provisions of this Agreement which expressly survive a termination of this Agreement. Subject to such termination right, the parties shall consummate the Transaction in accordance with the terms of this Agreement for the Purchase Price and Purchaser shall have all rights to, and receive the full benefit of, any condemnation award. Seller shall not have the right to settle any claims related to a Taking without Purchaser's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. A Taking shall be deemed "material" if it involves the loss of a material portion of the Property, or materially impairs access to the Property.

## **ARTICLE XIII SURVIVAL PROVISIONS; LIMITATION ON LIABILITIES**

**13.1 Effective Date; Survival.** All of the Seller's Representations and the Purchaser's Representations are made as of the Effective Date and shall be deemed remade as of the Closing Date pursuant to, and subject to, the Bring-Down Certificates of Seller and Purchaser, as applicable. All of the Seller's Representations and Purchaser's Representations

shall survive Closing until the Outside Claim Date, it being agreed that none of the covenants or agreements contained in this Agreement shall survive the Closing except as otherwise expressly provided herein. Any claim by Seller or Purchaser with respect to any breach of the Seller's Representations or the Purchaser's Representations, respectively, shall be effective and valid only if made after Closing in a written notice (specifying in reasonable detail the nature of the claim and the factual and legal basis for any such claim, and the provisions of this Agreement upon which such claim is made) delivered to the other party on or prior to the Outside Claim Date.

**13.2 Limitation on Liability.** Notwithstanding anything to the contrary contained herein (but subject to the next sentence), after the Closing: (a) the maximum aggregate liability of Seller, and the maximum aggregate amount which may be awarded to and collected by Purchaser, for any breach of any representation or warranty by Seller under this Agreement shall under no circumstances whatsoever exceed \$5,000,000 plus any amounts that Purchaser is entitled to receive under Section 14.23 below (the "**Seller Liability Cap**") and (b) no claim by Purchaser alleging a breach by Seller of any representation or warranty of Seller contained herein may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by Purchaser alleging a breach by Seller of any such representation or warranty is for an aggregate amount in excess of \$500,000 (the "**Seller Basket Amount**"), in which event Seller's liability respecting any final judgment concerning such claim or claims shall be for the entire amount thereof, subject to the limitation set forth in clause (a) above; *provided, however, that* if any such final judgment is for an amount that is less than or equal to the Seller Basket Amount, then Seller shall have no liability with respect thereto. The prorrations under Section 5.4 are not governed by this Section 13.2 and are not included in the computation of the limitations of liability set forth in this Section 13.2. Until Seller no longer has any liability to Purchaser under this Article XIII, but not otherwise, Seller shall remain in existence as a legal entity and covenants and agrees, following Closing, to retain capital, or access to capital, in the amount necessary to perform its obligations under this Article XIII, provided that after the Outside Claim Date, the amount may be reduced to an amount sufficient to satisfy all outstanding claims, if any. The forgoing limitations shall not apply in the event of Fraud; provided that in the event of Fraud the maximum amount of liability for the Seller shall in no event exceed the Purchase Price.

**13.3 Tax Treatment.** For all tax purposes, the parties agree to treat payments made pursuant to this Article XIII as an adjustment to the Purchase Price to the extent permitted by applicable law.

**13.4 Manner of Payment.** Any payments by Seller or Purchaser pursuant to this Article XIII shall be effected by wire transfer of immediately available funds to the accounts designated by the other party, within five (5) days after the final agreed determination of the amount due such party.

**13.5 Brokerage.** Seller and Purchaser each represents and warrants to the other that it has not dealt with or utilized the services of any real estate broker, sales person or finder in connection with this Agreement. Each party agrees to indemnify, hold harmless, and, if requested in the sole and absolute discretion of the indemnitee, defend (with counsel approved by the indemnitee) the other party from and against any breach of the terms of this

Section 13.6 and any Damages relating to brokerage commissions and finder's fees arising from or attributable to the acts or omissions of the indemnifying party.

#### ARTICLE XIV MISCELLANEOUS

**14.1 Binding Effect of Agreement.** This Agreement shall not be binding on either party until executed by both Purchaser and Seller. Subject to Section 14.3, this Agreement shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective successors and permitted assigns.

**14.2 Exhibits; Schedules; Annexes.** All Exhibits, Schedules and Annexes, whether or not annexed hereto, are a part of this Agreement for all purposes.

**14.3 Assignability.** This Agreement is not assignable by either party without first obtaining the prior written approval of the other party. Notwithstanding the foregoing, Purchaser may assign this Agreement, without first obtaining the prior written approval of Seller, to an Affiliate of Purchaser so long as Purchaser shall not be released from its liability hereunder and Purchaser provides written notice to Seller of any such proposed assignment not later than three (3) Business Days prior to the Closing Date. Without limiting and notwithstanding the above, in no event shall Purchaser have the right to assign its rights or obligations hereunder to any party which could not make the representation and warranty contained in Section 6.4.3 and Section 6.4.4, and in connection with any assignment pursuant to the terms hereof, the assignee shall reconfirm in a written instrument acceptable to Seller and delivered to Seller prior to the effective date of the assignment that said representations and warranties and that all other terms and conditions of this Agreement apply to such assignee.

**14.4 Captions.** The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions hereof.

**14.5 Number and Gender of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include any other gender where appropriate.

**14.6 Notices.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered; (b) sent by a nationally-recognized overnight delivery service; or (c) sent by electronic delivery with a copy sent for next day delivery via either of the aforesaid options (a) and (b). All notices shall be deemed effective when actually delivered; *provided, however, that* if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

To Purchaser: MARA Garden City LLC  
101 NE 3rd Ave. #1200  
Fort Lauderdale, Florida 33301  
Attention: Legal  
Email: [legal@mara.com](mailto:legal@mara.com)

and to: Paul, Weiss, Rifkind, Wharton & Garrison  
LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Harris Freidus  
Email: [hfreidus@paulweiss.com](mailto:hfreidus@paulweiss.com)

To Seller: APLD - Rattlesnake Den I LLC  
3811 Turtle Creek Boulevard, Suite 2100  
Dallas, Texas 75219  
Attention: David Rench, Chief Financial  
Officer  
Email: [david@applieddigital.com](mailto:david@applieddigital.com)

with a copy to: Lowenstein Sandler LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Attention: Steven E. Siesser, Esq.  
Email: [ssiesser@lowenstein.com](mailto:ssiesser@lowenstein.com)  
And  
Attention: Daniel A. Suckerman, Esq.  
Email: [dsuckerman@lowenstein.com](mailto:dsuckerman@lowenstein.com)

**14.7 Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without giving effect to any principles regarding conflict of laws to the extent such principles would require or permit the application of the laws of another jurisdiction. Each of Purchaser and Seller shall submit to the exclusive jurisdiction of the state courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York for the purposes of each and every suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof brought by the parties, it being expressly understood and agreed that this consent to jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Agreement or as otherwise permitted by such law, shall be necessary in order to confer jurisdiction upon a party in any such court. Each of Purchaser and Seller shall waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any suit, action or proceeding brought in any such court, any claim that either Purchaser or Seller is not subject personally to the jurisdiction of the above-named courts, that Purchaser's or Seller's property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would

hinder, fetter or delay the levy, execution or collection of any amount to which Seller, Purchaser or their successors or permitted assigns are entitled pursuant to the final judgment of any court having jurisdiction.

**14.8 Entire Agreement** This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and contracts, whether written or oral.

**14.9 Amendments** This Agreement shall not be amended, altered, changed, modified, supplemented or rescinded in any manner except by a written contract executed by all of the parties hereto.

**14.10 Severability** If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good-faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**14.11 Multiple Counterparts/Facsimile Signatures** This Agreement may be executed in a number of identical counterparts. This Agreement may be executed and/or delivered electronically, and such electronic execution and/or delivery shall be binding on the parties hereto.

**14.12 Construction** No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Agreement; both parties, being represented by counsel, having fully participated in the negotiation of this instrument.

**14.13 Confidentiality/Press Releases**

(a) Subject to the further provisions of this Section 14.13, each party hereto agrees that (i) the provisions of this Agreement, and (ii) all non-public information received from the other party or its Affiliates and relating to the other party or its Affiliates or the Property, shall be, and be kept, confidential, and shall not be disclosed to any other Person, except for disclosure (I) with the other party's consent, (II) by any party to such party's Affiliates; provided that such Affiliates are bound to a similar duty of confidentiality (it being agreed that such party shall be responsible and liable to the other party for any breach of this Section 14.13 by its Affiliates), (III) by any party to any directors, officers, employees, consultants, advisors, actual or potential investors or lenders, of such party or its Affiliates, who agree to hold confidential such information substantially in accordance with the terms of this Section 14.13 or who are otherwise bound by a duty of confidentiality to such party or its Affiliates (it being agreed that such party shall be responsible and liable to the other party for any breach of this Section 14.13 by its Affiliates), (IV) as required by legal requirements, including for internal audit, financial and tax purposes, and including disclosures to any governmental authority having jurisdiction to require disclosure or to any arbitral body to the extent required by same, or by any securities laws or stock exchange regulations applicable to such party or its Affiliates (provided that (A) prior to disclosing such

confidential information, such disclosing party shall use its reasonable best efforts to notify the other party thereof, which notice shall include the basis upon which such disclosing party believes the information is required to be disclosed, and (B) such disclosing party shall, if requested by the other party and to the extent practicable, reasonably cooperate with the other party to protect the continued confidentiality thereof), or (V) in the case of a proceeding to resolve a dispute between the parties. Nothing herein shall (i) prohibit Purchaser from disclosing information concerning the Property from and after the Closing (except for information pertaining to Seller and/or Seller's period of ground tenancy) or (ii) prohibit either party from disclosing such information described in Section 14.13(a)(IV).

(b) All publicity concerning the Transaction shall be jointly planned and each party shall reasonably cooperate and provide the other party and its counsel to review any planned publicity and consider in good faith the comments of the other party or such other party's representatives in connection with such planned publicity; provided, however, that nothing herein shall prohibit either party from making any press release or other public disclosure as may be permitted pursuant to Section 14.13(a).

(c) The confidentiality obligations set forth in this Section 14.13 shall survive for a period of two (2) years following the earlier to occur of (i) the Closing and (ii) the earlier termination of this Agreement.

**14.14 Time of the Essence.** It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement and any aspect hereof.

**14.15 Waiver.** No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing and all waivers must be in writing and signed by the waiving party.

**14.16 Time Periods.** Should the last day of a time period contemplated by this Agreement fall on a day other than a Business Day, the next Business Day thereafter shall be considered the end of the time period.

**14.17 Limitation on Personal Liability.** Except to the extent set forth in the Joinder attached to this Agreement, the obligations of Seller and Purchaser under this Agreement and under all of the Other Documents are intended to be binding only on the property of such party and shall not be personally binding upon, nor shall any resort be had to, the private properties of any Seller Related Parties or any Purchaser Related Parties. Each party acknowledges that such party's obligations with respect to any covenant, indemnity, representation or warranty under this Agreement which expressly survives the Closing shall be considered a "liability" for purposes of any distribution limitation imposed under organizational laws applicable to such party, its partners, members or shareholders and/or their respective partners, members or shareholders.

**14.18 Relationship of Parties.** Purchaser and Seller acknowledge and agree that the relationship established between the parties pursuant to this Agreement is only that of a

seller and a purchaser of property. Neither Purchaser nor Seller is, nor shall either hold itself out to be, the agent, employee, joint venturer or partner of the other party.

**14.19 Survival.** The provisions of Section 2.4, Section 3.4, Section 5.4, Section 7.4, Article XIII and this Article XIV shall survive the Closing.

**14.20 Drafts Not an Offer to Enter into a Legally Binding Contract.** The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Land pursuant to the terms of this Agreement only if and when both Seller and Purchaser have fully executed and delivered to each other a counterpart of this Agreement.

**14.21 No Partnership.** The relationship of the parties hereto is solely that of Seller and Purchaser with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

**14.22 No Third Party Beneficiary.** The provisions of this Agreement (other than Section 14.17) are not intended to benefit any third parties.

**14.23 Attorneys' Fees.** If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, whether prior to or after Closing, or if any party defaults in payment of its post-Closing financial obligations under this Agreement, then in connection with any judgment entered by a court of competent jurisdiction in connection with same, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

**14.24 WAIVER OF JURY TRIAL.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

*[Remainder of Page Intentionally Left Blank]*



NOW, THEREFORE, the parties hereto have executed this Agreement as of the Effective Date.

**Seller:**

APLD - RATTLESNAKE DEN I LLC,  
a Delaware limited liability company

By:   
Name: Wes Cummins  
Title: Manager

*[Signature Page to PSA (Garden City)]*

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**Purchaser:**

MARA GARDEN CITY LLC,  
a Delaware limited liability company

By: Salman Khan

Name: Salman Khan  
Title: Chief Financial Officer

*[Signature Page to PSA (Garden City)]*

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JOINDER BY APPLIED DIGITAL CORPORATION

Applied Digital Corporation, a Nevada corporation, hereby joins in the execution of this Agreement for the sole purpose of agreeing to guarantee and be jointly and severally liable with Seller for the obligations of Seller under Section 2.4 and for any claims against Seller made pursuant to Article XIII of this Agreement only.

**APPLIED DIGITAL CORPORATION,**  
a Nevada corporation

By:   
Name: Wes Cummins  
Title: CEO

*[Signature Page to PSA (Garden City)]*

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**EXHIBIT A**

**LEGAL DESCRIPTION**

FIELD NOTE DESCRIPTION OF A 50.00 ACRE TRACT OF LAND, SITUATED IN AND BEING OUT OF SECTION 11, BLOCK 34, TOWNSHIP 5 SOUTH, ABSTRACT 270, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, GLASSCOCK COUNTY, TEXAS, AND BEING OUT OF THAT SAME LAND AS CONVEYED IN A SPECIAL WARRANTY DEED RECORDED IN VOLUME 307 ON PAGE 634 OF THE DEED RECORDS OF SAID GLASSCOCK COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y): 10600710.85, E.(x): 1944710.27, A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET ON THE WEST RIGHT-OF-WAY LINE OF RANCH TO MARKET ROAD 33, AS DEDICATED IN A DEED RECORDED IN VOLUME 59 ON PAGE 444 OF SAID DEED RECORDS, FROM WHICH A ONE AND ONE HALF INCH GALVANIZED IRON PIPE FOUND FOR THE NORTHEAST CORNER OF SECTION 1, SAID BLOCK AND TOWNSHIP, BEARS N.39°27'18"E., 11302.61 FEET AND A ONE INCH IRON PIPE BY A STONE MARKED "NW 25 - K", AT THE SOUTHEAST CORNER OF SECTION 23, SAID BLOCK AND TOWNSHIP BEARS S.29°25'41"E., 14950.03 FEET, AND A ONE HALF INCH IRON ROD WITH AN ILLEGIBLE ORANGE PLASTIC CAP, AT OR NEAR THE NORTHEAST CORNER OF SAID SECTION 11, BEARS N.55°43'25"E., 4097.55 FEET, THIS BEING THE NORTHEAST CORNER HEREOF;

THENCE S.05°22'26"E., ALONG SAID RIGHT-OF-WAY, 2183.45 FEET TO AN "RPC" SET FOR THE SOUTHEAST CORNER HEREOF;

THENCE WEST, 1139.63 FEET TO AN "RPC" SET FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.01°52'09"E., 2175.00 FEET TO AN "RPC" SET FOR THE NORTHWEST CORNER HEREOF;

THENCE EAST, 864.20 FEET TO THE POINT OF BEGINNING, CONTAINING 50.00 ACRES OF LAND.

EXHIBIT A-1

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**EXHIBIT B**

**FORM OF GROUND LEASE ASSIGNMENT**

Prepared by and after recording return to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Harris Freidus, Esq.

**GROUND LEASE ASSIGNMENT AND ASSUMPTION**

**Ground Lease:** Ground Lease, dated as of April 13, 2022 (the “**Ground Lease**”), between EDB, Ltd., a Texas limited liability company, as landlord, and APLD – Rattlesnake Den I LLC, a Delaware limited liability company, as tenant (“**Seller**”)

This Ground Lease Assignment and Assumption Agreement (this “**Assignment and Assumption Agreement**”) is executed by and between Seller and MARA Garden City LLC, a Delaware limited liability company (“**Purchaser**”), as of [\_\_\_\_], 2024 (the “**Effective Date**”).

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement dated as of March 14, 2024 (as the same may have been supplemented, amended, restated or otherwise modified, the “**Purchase Agreement**”) with respect to the sale of certain property identified therein.

WHEREAS, pursuant to the Purchase Agreement, Seller has agreed to assign, without recourse or warranty (except as expressly set forth therein), to Purchaser all of Seller’s right, title and interest under, in and to the Ground Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Assignment. As of the Effective Date, Seller hereby assigns, sells and transfers, without recourse or warranty (except as expressly set forth in the Purchase Agreement), to Purchaser all of Seller’s right, title and interest under, in and to the Ground Lease.
2. Assumption. As of the Effective Date, Purchaser expressly agrees to assume and hereby assumes all liabilities and obligations of Seller under and in connection with the Ground Lease arising from and after the Effective Date.
3. Counterparts. This Assignment and Assumption Agreement may be executed in a number of identical counterparts. Signatures may be delivered by facsimile or electronic delivery, and such signatures shall be binding on the parties hereto.

EXHIBIT B-1

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4. Applicable Law. This Assignment and Assumption Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Remainder of Page Left Intentionally Blank]

EXHIBIT B-2

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption Agreement as of the Effective Date.

**Seller:**

**APLD – RATTLESNAKE DEN I LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Purchaser's Signature Page Follows]*

**Purchaser:**

**MARA GARDEN CITY LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT C**

**FORM OF BILL OF SALE**

THIS BILL OF SALE ("**Bill of Sale**") is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by APD - RATTLESNAKE DEN I LLC, a Delaware limited liability company ("**Seller**"), in favor of MARA GARDEN CITY LLC, a Delaware limited liability company ("**Purchaser**").

**WITNESSETH:**

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2024 (the "**Purchase Agreement**") with respect to the sale of certain Property identified therein. (Any capitalized term used, but not otherwise defined herein, has the meaning set forth in the Purchase Agreement.)

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Purchaser all of Seller's right, title and interest in and to the Fixtures and Tangible Personal Property, without representation or warranty of any kind whatsoever except as set forth in and subject to the terms of the Purchase Agreement.

WITH RESPECT TO ALL PROPERTY TRANSFERRED HEREBY, SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

This Bill of Sale shall be binding upon and inure to the benefit of the successors and permitted assigns of Purchaser and Seller.

This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of New York.

*[Remainder of page intentionally left blank.]*

EXHIBIT C-1

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the day and year first written above.

**Seller:**

APLD - RATTLESNAKE DEN I LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

## EXHIBIT D

### FORM OF GENERAL ASSIGNMENT

This General Assignment and Assumption (this "Assignment") is executed by and between **APLD - RATTLESNAKE DEN I LLC**, a Delaware limited liability company ("Seller"), and **MARA GARDEN CITY LLC**, a Delaware limited liability company ("Purchaser") as of \_\_\_\_\_, 2024 (the "Effective Date").

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2024 (the "Purchase Agreement") with respect to the sale of certain Property identified therein. (Any capitalized term used, but not otherwise defined herein, has the meaning set forth in the Purchase Agreement.)

WHEREAS, pursuant to the Purchase Agreement, Seller has agreed to assign, without recourse or warranty, to Purchaser all of Seller's right, title and interest, if any, in and to the Miscellaneous Property Assets, the Permits, and the Assigned Contracts, but excluding the Excluded Assets.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Assignment. As of the Effective Date, Seller hereby assigns, sells and transfers, without recourse or warranty, to Purchaser all of Seller's right, title and interest, if any, in and to the Miscellaneous Property Assets, the Permits and the Assigned Contracts, but excluding the Excluded Assets.
2. Assumption. As of the Effective Date, Purchaser hereby assumes all liabilities and obligations of Seller first arising from and after the Effective Date under the Miscellaneous Property Assets, the Permits and the Assigned Contracts, but excluding the Excluded Assets.
3. Counterparts. This Assignment may be executed in a number of identical counterparts. Signatures may be effected or delivered by electronic means, and such signatures shall be binding on the parties hereto.
4. Applicable Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of New York.
5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

WITH RESPECT TO ALL PROPERTY TRANSFERRED HEREBY, SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

*[Remainder of page intentionally left blank.]*

EXHIBIT D-1

IN WITNESS WHEREOF, the undersigned has executed this Assignment as of the day and year first written above.

**Seller:**

**APLD - RATTLESNAKE DEN I LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

*[Purchaser's Signature Page Follows]*

**Purchaser:**

**MARA GARDEN CITY LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT E**

**FORM OF BRING-DOWN CERTIFICATE**

**BRING-DOWN CERTIFICATE**

[APLD - RATTLESNAKE DEN I LLC, a Delaware limited liability company (“**Seller**”)] [MARA GARDEN CITY LLC, a Delaware limited liability company (“**Purchaser**”)], has entered into a certain Purchase and Sale Agreement dated as of March 14, 2024 (as amended or modified, the “**Agreement**”), [MARA GARDEN CITY LLC, a Delaware limited liability company (“**Purchaser**”)] [APLD - RATTLESNAKE DEN I LLC, a Delaware limited liability company (“**Seller**”)].

Pursuant to [Section 5.2.5] [Section 5.3.3] of the Agreement, [Seller] [Purchaser] hereby certifies to [Purchaser] [Seller] that each of the representations and warranties made by [Seller] [Purchaser] in the Agreement is correct in all material respects [(other than [Seller's] [Purchaser's] Fundamental Representations, which shall be true and correct in all respects)] as of the Closing Date, except as the same may be modified pursuant to the terms and provisions of the Agreement.

[APLD - RATTLESNAKE DEN I LLC, a Delaware limited liability company] [MARA GARDEN CITY LLC, a Delaware limited liability company]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT F**

**FORM OF CERTIFICATION OF NON-FOREIGN STATUS**

**FIRPTA AFFIDAVIT**

Date: [\_\_\_\_\_]

Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform MARA Garden City LLC, a Delaware limited liability company ("**Transferee**") that withholding of tax is not required upon the disposition of a U.S. real property interest by APLD - RATTLESNAKE DEN I LLC, a Delaware limited liability company ("**Transferor**"), the undersigned hereby certifies the following to Transferee on behalf of [NAME OF TRANSFEROR'S REGARDED OWNER] ("**Owner**"):

1. Owner is not a foreign corporation, foreign partnership, foreign trust, or foreign estate for purposes of the Code and the Income Tax Regulations promulgated thereunder.

2. Owner is not a disregarded entity as defined in Section §1.1445-2(b)(2)(iii) of the Code and the Income Tax Regulations promulgated thereunder.

3. Transferor is a disregarded entity as defined in Section §1.1445-2(b)(2)(iii) of the Code and the Income Tax Regulations promulgated thereunder whose separate existence from Owner is generally disregarded for federal income tax purposes;

3. Owner's U.S. employer identification number is [\_\_\_\_\_].

4. Owner's principal address is [\_\_\_\_\_].

5. Owner understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, the undersigned declares that the undersigned has examined this certification and to the best of the undersigned's knowledge and belief it is true, correct and complete. The undersigned further declares that the undersigned has the authority to sign this document on behalf of Owner.

EXHIBIT F-1

**TRANSFEROR:**

[\_\_\_\_\_] ,  
a [\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT G**

**PROPERTY CONTRACTS LIST**

Provider	Description of Services	Documents
1. Allied Universal Security	Security	Agreement dated 2/16/23
2. Elwood Staffing	Staffing services	Credit Application dated 9/20/22 Invoiced as needed
3. Oncor Electric Delivery Company	Electrical Energy	Letter of Agreement dated 6/29/22 Facilities Extension Agreement dated 7/25/22
4. Gexa Energy	Electrical Energy	Business Electricity Authorization dated 7/26/22
5. WTG Fuels	Fuel for on-site equipment and vehicles	Company Application dated 11/10/22
6. Nutrien	Herbicides	Credit Application dated 9/28/23 Invoiced as needed
7. [Farmer]	Maintenance of unused land on Property	Informal agreement
8. Wes-Tex	Internet service	Dedicated Internet Access Agreement dated 6/3/22

EXHIBIT G-1

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**EXHIBIT H**

**ASSIGNED CONTRACTS**

1. TerraForm Agreement
2. Oncor Electric Delivery Company – Letter of Agreement dated 6/29/22; Facilities Extension Agreement dated 7/25/22
3. Gexa Energy – Business Electricity Authorization dated 7/26/22
4. Such other Property Contracts as Purchaser may elect to assume pursuant to Section 3.2

EXHIBIT H-1

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**EXHIBIT I**

**FORM OF TITLE AFFIDAVIT**

*First American Title Insurance Company*

**TENANT'S AFFIDAVIT**

FIRST AMERICAN TITLE COMMITMENT NO(S). NCS-1210509-HOU1

BEFORE ME, the undersigned, personally appeared \_\_\_\_\_, ("Affiant")  
being the \_\_\_\_\_ of **APLD - RATTLESNAKE DEN I LLC**, a Delaware limited  
liability company ("Tenant"), who first being duly sworn, deposes and says on behalf of Tenant:

1. Affiant is duly authorized to make this Tenant's Affidavit Agreement ("Agreement") as Affiant on behalf of Tenant, and to make the statements herein for the benefit of First American Title Insurance Company ("First American"), under all representations and agreements stated herein.
2. Tenant is the holder of the ground leasehold interest in that certain real property described in the above-referenced Title Commitment.
3. Tenant has no knowledge of any unrecorded easements, or claims of easements affecting the Property, except as shown in commitments issued and surveys provided for the Property.
4. Tenant is not aware of any boundary line disputes or discrepancies affecting the Property, or any material encroachments of improvements located on the Property, other than described on surveys provided or described in commitments issued on said Property.
5. Tenant has not entered into any written agreement, nor is the Tenant aware of anyone else entering into any written agreement with any real estate broker, nor is Tenant aware of anyone who has provided licensed services that resulted in the procuring of a person or entity for the purpose of buying, selling, or otherwise conveying or acquiring any interest in the Property.
6. There are no unrecorded options or contracts to purchase, rights of first refusal, contracts for deed or mortgage commitments, or unrecorded deeds, easements or rights-of-way for users or adverse interest with respect to the Property.
7. There are no unrecorded existing tenancies, leases or other occupancies affecting the Property.
8. Tenant has received no written notice (except as may have been disclosed in the public records of the applicable jurisdiction) of an officially proposed or pending

EXHIBIT I-1

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special assessment or a pending taking of any portion of the Property by any governmental body; and to the undersigned's knowledge, there has been no work done on the Property, nor notice received that work is to be done on the Property by the municipality (county, city, borough or township), or at its discretion, including but not limited to the installation of water or sewer lines or of other utilities, or for water or sewer lines or of other utilities, or for improvements such as paving or repaving of streets or alleys, or the installation of curbs and sidewalks.

9. Tenant has received no written notice of any unrecorded labor, mechanics' or materialmen's liens against the Property, and no material has been furnished to or work or labor performed upon the Property within the 180 days preceding the date of closing, [except [\_\_\_\_\_]].

For and in consideration of First American and its agents issuing the policies to be issued under the Title Commitment without taking exception to or making requirements to remedy interests created by instruments first appearing of record after the effective date of the Title Commitment and prior to the effective date of the policies of title insurance to be issued under the Title Commitment ("**Gap Matters**"), Tenant hereby agrees (a) to promptly defend, remove, bond or otherwise dispose of any Gap Matter that is the result of any act or omission of Tenant and (b) to hold and save First American and its agents harmless, and to protect and indemnify First American and its agents, from and against any and all liabilities or claims of liability, losses, costs, charges, expenses and damages of any kind or character whatsoever, including, but not limited to reasonable attorney's fees, incurred or sustained, directly or indirectly, by First American and its agents by reason of or arising out of any Gap Matter that is the result of any act or omission of Tenant.

EXECUTED on \_\_\_\_\_, 2024

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF  
COUNTY OF

§  
§  
§

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EXHIBIT I-2

THIS INSTRUMENT was acknowledged before me on \_\_\_\_\_, 2024, by  
\_\_\_\_\_, the \_\_\_\_\_ of **APLD - RATTLESNAKE DEN I LLC**, a  
Delaware limited liability company.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary's Signature

**EXHIBIT J**

**FORM OF GROUND LEASE ESTOPPEL**

**GROUND LANDLORD'S ESTOPPEL CERTIFICATE**

This Ground Landlord's Estoppel Certificate (this "**Estoppel**") is made as of [\_\_\_\_], 2024 (the "**Effective Date**") by EBD, LTD., a Texas limited liability company ("**Landlord**"), with respect to that certain Ground Lease, dated as of April 13, 2022 (the "**Lease**"; capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Lease), by and between Landlord and APLD – RATTLESNAKE DEN I LLC, a Delaware limited liability company ("**Tenant**"). Landlord hereby certifies to MARA GARDEN CITY LLC, a Delaware limited liability company (together with its successors and assigns, "**Purchaser**") as of the Effective Date that:

1. The Lease is unmodified and in full force and effect and there has been no amendment, modification, supplement, or extension of any kind or nature varying the stated terms and conditions thereof.
2. The Commencement Date was May 2, 2022.
3. Rent has been paid through [\_\_\_\_], 2024.
4. Neither Landlord nor Tenant is in default under the terms of the Lease, and there exists no situation that with the giving of notice or passage of time, or both, would give rise to a default by Tenant or Landlord. No controversy presently exists between Landlord and Tenant, including any litigation or arbitration, with respect to the Lease. There are no existing or outstanding offsets, counterclaims, defenses, deductions, or credits whatsoever with respect to the Lease.
5. The assignment of the Lease by Tenant to Purchaser constitutes a Permitted Transfer under Section 25 of the Lease.
6. Landlord acknowledges that Purchaser is expressly permitted to rely upon the certifications contained in this Estoppel.

[Signature Page Follows]

EXHIBIT J

IN WITNESS WHEREOF, the Landlord has executed this Estoppel as of the  
Effective Date.

**EBD, LTD.,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name:  
Title:

## **ANNEX 1**

### **DEFINED TERMS**

**"Affiliate"** means, with respect to any Person, any other Person which Controls, is Controlled by or is under common Control with the first Person.

**"Agreement"** has the meaning set forth in the introductory paragraph.

**"APLD"** means Applied Blockchain, Inc., a Nevada corporation.

**"Approval Date"** has the meaning set forth in Section 2.4.

**"Assigned Contract"** means each Property Contract set forth on Exhibit H attached hereto.

**"Bring-Down Certificate"** has the meaning set forth in Section 5.2.4.

**"Business Day"** means any day other than a Saturday or Sunday, a federal holiday or a legal holiday in the State of Texas or New York.

**"Closing"** means the consummation of the purchase and sale and related transactions contemplated by this Agreement in accordance with the terms and conditions of this Agreement.

**"Closing Date"** has the meaning set forth in Section 5.1.

**"Closing Statement"** has the meaning set forth in Section 5.2.5.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

**"Construction Contracts"** has the meaning set forth in Section 11.2.

**"Control"** means, as applied to any Person, the possession, directly or indirectly, of the power to direct the management and policies of that Person, whether through ownership, voting control, by contract or otherwise.

**"Damages"** means all actions, suits, proceedings, governmental investigations, injunctions, demands, charges, claims, judgments, awards, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, liens, losses, fees and expenses (including court costs and reasonable and documented out-of-pocket attorneys' and accountants' fees and expenses); *provided, however, that* Damages will not include punitive, consequential, special or indirect damages, except to the extent that such damages are payable to a third party in a third-party claim.

**"Data Center"** has the meaning set forth in Section 2.4.

**"Deposit"** has the meaning set forth in Section 2.2.1(a).

**"Due Diligence Materials"** has the meaning set forth in Section 3.1.



**“Effective Date”** has the meaning set forth in the introductory paragraph.

**“Energization Expiration Date”** has the meaning set forth in Section 2.4.

**“Environmental Laws”** means the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act, the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq., and all other federal, state, county, municipal or administrative ordinances, rules, regulations, judgments and orders relating or pertaining to (a) the protection, preservation or reclamation of the environment or natural resources or (b) the management, release or threatened release of or exposure to Hazardous Materials.

**“Excluded Assets”** means (i) receivables, (ii) Permits that are nontransferable under applicable law, (iii) cash or other funds, whether in petty cash or house “banks,” or on deposit in bank accounts or in transit for deposit, (iv) refunds, rebates or other claims, or any interest thereon, for periods or events occurring prior to the Closing Date, (v) utility and other deposits, (vi) insurance or other prepaid items, and (vii) Seller’s proprietary books and records.

**“Excluded Materials”** has the meaning set forth in Section 3.1.

**“Facility”** has the meaning set forth in the Recitals.

**“Fixtures and Tangible Personal Property”** means all fixtures, furniture, furnishings, fittings, equipment, machinery, apparatus, appliances and other articles of tangible personal property located on the Land or in the Improvements as of the Closing Date, to the extent transferable, and used or usable primarily in connection with the occupation or operation of all or any part of the Property; provided, however, that the term “Fixtures and Tangible Personal Property” specifically excludes assets that are not owned or leased by Seller (including, without limitation, assets owned, or leased by a party other than Seller).

**“Fraud”** means Seller’s intentional or willful fraud with respect to making a misrepresentation of any material fact in a manner which constitutes common law fraud under applicable law, but only to the extent committed with actual knowledge (as opposed to imputed or constructive knowledge) and intent to deceive by the applicable Seller Knowledge Individual with respect to material representations and warranties of Seller set forth in Section 6.1, which intentional or willful fraud renders such representations and warranties false or misleading in any material respect.

**“General Assignment”** has the meaning set forth in Section 5.2.3.

**“Ground Landlord”** has the meaning set forth in the Recitals.

**“Ground Lease”** has the meaning set forth in the Recitals.

**“Ground Lease Assignment”** has the meaning set forth in Section 5.2.1.

**“Ground Lease Estoppel”** has the meaning set forth in Section 5.2.10.

**“Hazardous Materials”** means any and all substances, wastes, materials, pollutants, contaminants, compounds, chemicals or elements which are defined or classified as a “hazardous substance,” “hazardous material,” “toxic substance,” “hazardous waste,” “pollutant,” “contaminant” or words of similar import under any Environmental Law, including without limitation all dibenzodioxins and dibenzofurans, polychlorinated biphenyls (PCBs), petroleum hydrocarbon, including without limitation crude oil or any derivative thereof, asbestos-containing materials in any form, and radon gas.

**“Holdback Amount”** has the meaning set forth in [Section 2.4](#).

**“Holdback Escrow Agreement”** has the meaning set forth in [Section 5.2.12](#).

**“Improvements”** means all of Seller’s right, title and interest in and to all buildings and other improvements located on the Land (including the Facility), including all fixtures, electrical, heating, ventilating, air conditioning, plumbing, security, fire suppression and other mechanical systems.

**“Independent Consideration”** has the meaning set forth in [Section 4.5\(b\)](#).

**“Inspection Period”** means the period ending at 5:00 P.M. New York City time on March 31, 2024, as the same may be extended by written agreement of Purchaser and Seller

**“Inspections”** has the meaning set forth in [Section 3.2](#).

**“Land”** means all of those certain tracts of land described on [Exhibit A](#), and all rights, privileges and appurtenances pertaining thereto.

**“Leasehold Estate”** means all of Seller’s right, title and interest, in, to and under the Ground Lease.

**“MARA”** means Marathon Digital Holdings, Inc., a Nevada corporation.

**“Master Hosting Agreements”** means that certain (i) Master Hosting Agreement, dated as of July 12, 2022, between MARA and APLD and (ii) Master Hosting Agreement, dated as of August 20, 2022, between MARA and APLD.

**“Miscellaneous Property Assets”** means all warranties, plans, drawings and other items of intangible personal property relating to the ownership or operation of the Property and owned by Seller, including without limitation all of Seller’s rights, if any, in and to the Facility name.

**“New Exception”** has the meaning set forth in [Section 4.6](#).

**“New Exception Review Period Expiration Date”** has the meaning set forth in [Section 4.6](#).

**“Operating Lease”** means an operating lease for Fixtures and/or Tangible Personal Property.

**"Other Documents"** means any documents executed pursuant to this Agreement, including, without limitation, the Ground Lease Assignment, the Bill of Sale and the General Assignment.

**"Outside Claim Date"** has the meaning set forth in Section 6.5.

**"Permits"** means all licenses, permits and authorizations granted by any applicable governmental authority having jurisdiction over the Property owned by Seller and required in order to own and operate the Property.

**"Permitted Exceptions"** has the meaning set forth in Section 4.3.

**"Person"** means any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association, governmental authority or other entity.

**"Post-Closing Tax Period"** has the meaning set forth in Section 5.4.2.

**"Pre-Closing Tax Period"** has the meaning set forth in Section 5.4.2.

**"Prohibited Person"** means any of the following: (a) a Person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) (the **"Executive Order"**); (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (c) a Person that is named as a "specially designated national" or "blocked person" on the most current list published by the U.S. Treasury Department's Office of Foreign Assets Control (**"OFAC"**) at its official website, <http://www.treas.gov/offices/enforcement/ofac>; (d) a Person that is otherwise the target of any economic sanctions program currently administered by OFAC; or (e) a Person that is affiliated with any Person identified in clause (a), (b), (c) and/or (d) above.

**"Property"** means (a) the Leasehold Estate and all rights of Seller, if any, in and to all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Land and Improvements, (b) the Assigned Contracts, Permits (other than Permits that are nontransferable under applicable law), and the Fixtures and Tangible Personal Property, and (c) the Miscellaneous Property Assets owned by Seller which are located on the Property and/or used primarily in its operation, but specifically excluding the Excluded Assets.

**"Property Contracts"** means all currently outstanding contracts, agreements, equipment leases, purchase orders, maintenance, service, and similar contracts, regardless of whether entered into by Seller or an Affiliate thereof, which relate primarily to the ownership, maintenance, ongoing construction, repair and/or operation of the Property (or any portion thereof), whether or not assignable by their terms, but not including the Ground Lease.

**"Property Contracts List"** has the meaning set forth in Section 6.1.4.

**"Purchase Price"** has the meaning set forth in Section 2.2.

**"Purchase Price Allocation"** has the meaning set forth in Section 2.3.

**"Purchaser"** has the meaning set forth in the introductory paragraph.

**"Purchaser Consultants"** means Purchaser's agents, employees, and third party service providers retained by Purchaser to perform due diligence activities during the Inspection Period.

**"Purchaser Default"** has the meaning set forth in [Section 10.1](#).

**"Purchaser Knowledge Individual"** has the meaning set forth in [Section 6.4](#).

**"Purchaser's Knowledge"** has the meaning set forth in [Section 6.4](#).

**"Purchaser's Fundamental Representations"** shall mean those representations and warranties contained in [Section 6.4](#).

**"Purchaser Related Parties"** shall mean Purchaser's Affiliates, Purchaser's investment advisors, partners, trustees, beneficiaries, shareholders, members, managers, directors, officers, employees and agents and representatives of each of them, and their respective heirs, successors, personal representatives and assigns.

**"Purchaser's Representations"** means the representations set forth in [Section 6.4](#).

**"Remove"** means, with respect to any matter disclosed in the Title Documents, that Seller causes the Title Company to remove or affirmatively insure over (in a manner reasonably satisfactory to Purchaser) such matter as an exception to the Title Policy for the benefit of Purchaser, whether such removal or insurance is made available, at the sole discretion of Seller, in consideration of payment, bonding, indemnity of Seller or otherwise (*provided that* in the case of a mortgage or security interest granted by Seller, "Remove" means the delivery by the holder thereof of a recordable cancellation, release or a payoff letter satisfactory to the Title Company unconditionally obligating such holder to release or cancel upon repayment at Closing of the loan secured thereby).

**"Repairs"** means restoration and/or replacement of all or any portion of the Facility and the Property.

**"Required Curable Objections"** has the meaning set forth in [Section 4.4](#).

**"Scheduled Closing Date"** has the meaning set forth in [Section 5.1](#).

**"Seller"** has the meaning set forth in the introductory paragraph.

**"Seller Basket Amount"** has the meaning set forth in [Section 13.2](#).

**"Seller Default"** has the meaning set forth in [Section 10.2](#).

**"Seller Knowledge Individuals"** has the meaning set forth in [Section 6.3.2](#).

**"Seller Liability Cap"** has the meaning set forth in [Section 13.2](#).

**"Seller's Fundamental Representations"** shall mean those representations and warranties contained in [Sections 6.1.1, 6.1.8, and 6.1.11](#).

**“Seller’s Knowledge”** has the meaning set forth in Section 6.3.2.

**“Seller Related Parties”** shall mean Seller’s Affiliates, Seller’s investment advisor, partners, trustees, beneficiaries, shareholders, members, managers, directors, officers, employees and agents and representatives of each of them, and their respective heirs, successors, personal representatives and assigns.

**“Seller’s Representations”** has the meaning set forth in Section 6.1.

**“Shortfall Amount”** has the meaning set forth in Section 2.4.

**“Survey”** has the meaning set forth in Section 4.2.

**“Taking”** has the meaning set forth in Article XII.

**“TerraForm”** means TerraForm Renewable Energy Services, LLC, a Delaware limited liability company.

**“TerraForm Agreement”** means that certain Retail Energy Supply Agreement, dated as of November 14, 2023, between Seller and TerraForm.

**“TerraForm LOC”** means the letter of credit in the amount of \$12,000,000 that has been posted prior to the Effective Date as the initial “Buyer Security Amount” as defined in and pursuant to the TerraForm Agreement.

**“Title Affidavit”** has the meaning set forth in Section 5.2.7.

**“Title Commitment”** has the meaning set forth in Section 4.1.

**“Title Company”** has the meaning set forth in Section 4.6.

**“Title Documents”** has the meaning set forth in Section 4.1.

**“Title Objection”** has the meaning set forth in Section 4.5.

**“Title Objection Letter”** has the meaning set forth in Section 4.5.

**“Title Policy”** has the meaning set forth in Section 4.8.

**“Title Update”** has the meaning set forth in Section 4.6.

**“to Purchaser’s Knowledge”** has the meaning set forth in Section 6.4.6.

**“to Seller’s Knowledge”** has the meaning set forth in Section 6.3.2.

**“Transaction”** means the transactions contemplated by the terms of this Agreement.

**“Transfer Taxes”** has the meaning set forth in Section 5.4.6(a).

**“Voluntary Liens”** has the meaning set forth in Section 4.4.

**SCHEDULE 6.1.3**

**PROCEEDINGS**

None.

**SCHEDULE 6.1.4**

**PERMITS**

None.

**SCHEDULE 6.1.7**

**VIOLATIONS**

None.



**SCHEDULE 6.1.8**

**GROUND LEASE**

1. Ground Lease dated April 13, 2022, by and between EBD, Ltd., a Texas limited liability company, as landlord, and APLD – Rattlesnake Den I LLC, a Delaware limited liability company, as tenant.

**SCHEDULE 6.1.16**

**OPERATING LEASES**

[ATTACHED HERETO]

# OPERATING LEASES

ID	Equipment Description	Vendor	Document Date
001-6852454-004	See exhibit A	Dell Financial Services	1/1/2023
4078-005	Circ Tech: (190) WS-C2960S, (120) WS-C2960S-48Port, (100) ES-C2960X-48FPS-L, (820) GLC-T Modules	Tech Finance Co., LLC	3/23/2022
4078-007	Circ Tech: (114) WS-C2960X-48FPS-L, (25)WS-C2960S-48FPS/LPS, (278) GLC-T	Tech Finance Co., LLC	3/30/2022
4078-008	Circ Tech (100) WS-C2960S; (30) WS-C2960S, (260) GLC-T	Tech Finance Co., LLC	3/30/2022
4078-009	Cables & Kits (600) GLC-T, (119) 48 Port Switch 48TS-L, (170) 48 Port Switch 48TCL, and other switches and cables	Tech Finance Co., LLC	3/30/2022
4078-010	Circ Tech (50) WS-C2906X, (70) WS-C2960S, (240) GLC-T	Tech Finance Co., LLC	4/7/2022
4078-011	Circ Tech (140) WS-C2960C (80) WS-C2960S-48TS-L, (20) WS-C2960X, (480) GLC-T	Tech Finance Co., LLC	4/7/2022
4078-012	Circ Tech (1000) WS-C2960S	Tech Finance Co., LLC	4/8/2022
4078-013	Circ Tech (500) WS-C2960S	Tech Finance Co., LLC	4/14/2022
4078-014	Circ Tech (128) WS-C2960S	Tech Finance Co., LLC	4/20/2022
4078-015a	JSHP (24) 34.5 KV-416/240 Volt 3.5/4.375 MVA Substation Transformers	Tech Finance Co., LLC	4/26/2022
4078-016a	ASCO (15) Scissor Lifts	Tech Finance Co., LLC	4/27/2022
4078-018	Circ Tech (204) WS-C2960S, (80) WS-C2960S-48TS-L	Tech Finance Co., LLC	5/4/2022
4078-019	Circ Tech (293) WS C2960S, (60) ES-C2960S-48TS-L	Tech Finance Co., LLC	5/12/2022
4078-020	Circ Tech (1626) Cisco SFP Module	Tech Finance Co., LLC	5/23/2022

ID	Equipment Description	Vendor	Document Date
4078-021	Circ Tech (61) WS-C2960S, (47) ESC2960S-48TS-L	Tech Finance Co., LLC	5/23/2022
4078-022	Circ Tech (90) WS-C3750X	Tech Finance Co., LLC	5/26/2022
4078-023	Circ Tech (80) WS-C2960S (100) WS-C2960S, (300) Cisco SFP Module	Tech Finance Co., LLC	5/31/2022
4078-024	Circ Tech (120) WS-C2960S, (180) GLC-T	Tech Finance Co., LLC	6/7/2022
4078-025	Cables & Kits (200) GLC-T, (3) WS-C2960S-48TS-L, (97) WS-C2960G-48TC-L	Tech Finance Co., LLC	6/14/2022
4078-026a	Cables & Circ: Switches and Ports (see amendment A)	Tech Finance Co., LLC	6/21/2022
4078-027	Circ Tech (89) WS-C2960S-48 FPS /LPS 6(1) WS-C2960S-48TS-L (300) Cisco SFP Module	Tech Finance Co., LLC	6/28/2022
4078-028	Circ Tech (62) WS-C2960S-48 FPS /LPS (26) WS-C2960S-48TS-L (376) Cisco SFP Module	Tech Finance Co., LLC	7/13/2022
4078-029	Cables & Kits: Switches and Ports (see amendment A)	Tech Finance Co., LLC	7/22/2022
4078-030	Circ Tech (99) WS-C2960S-48 FPS / LPS 5(1) WS-C2960S-48TS-L (300) Cisco SFP Module	Tech Finance Co., LLC	7/26/2022
4078-031	Cables & Circ: (126) WS-C2960S-48 FPS/LPS; (34) WS-C2960S-48TS-L; (320) CISCO SFP Module	Tech Finance Co., LLC	8/2/2022
4078-032b	Island Tech - (2) 36kV Vacuum Circuit Breaker	Tech Finance Co., LLC	8/16/2022
4078-033	Circ Tech (99) WS-C2960S-48 FPS /LPS; (49) WS-C2960S-48TS-L; (296) Cisco SFP Module	Tech Finance Co., LLC	8/17/2022
4078-035	ESST Access Control System	Enterprise Security Solutions of Texas, Inc.	9/1/2022
4078-036	Circ Tech (80) WS-C2960S-48FPS/LPS, (70) ES-C2960S-48TS-6, (300) GLCT	Tech Finance Co., LLC	9/1/2022
4078-038b	REV: (16) 6000A Outdoor Switchgear	REV Engineering Ltd.	9/7/2022

ID	Equipment Description	Vendor	Document Date
4078-039	Cire Tech (212) WS-C2960S-48 FPS, (102) WS-C2960S-48TS, (628) Cisco SFP Module	Tech Finance Co., LLC	10/4/2022
4078-040	Cire Tech (145) WS-C2960S-48 FPS/LPS; (55) WS-C2960S-48TS-L; (400) Cisco SFP Module	Tech Finance Co., LLC	10/19/2022
4078-041	Cire Tech (118) WS-C2960S-48 FPS/LPS; (82) WS-C2960S-48TS-L; (400) Cisco SFP Module	Tech Finance Co., LLC	10/28/2022
4078-043	Cire Tech (131) WS-C2960S-48 FPS/LPS; (109) WS-C2960S-48TS-L; (480) Cisco SFP Module	Tech Finance Co., LLC	11/14/2022



## Marathon Digital Holdings Enters Definitive Agreement To Acquire 200-Megawatt Bitcoin Mining Data Center Adjacent to a Wind Farm

*All Cash Acquisition To Increase Marathon's Bitcoin Mining Portfolio to 1.1 Gigawatts, 54% of which Will Reside on Sites Directly Owned and Operated by the Company*

**Fort Lauderdale, FL – March 15, 2024 – Marathon Digital Holdings, Inc. (NASDAQ:MARA) (“Marathon” or “Company”),** one of the world’s largest publicly traded Bitcoin miners and a leader in supporting and securing the Bitcoin ecosystem, has entered into a definitive purchase agreement to acquire Applied Digital Corporation’s (“Applied Digital”) Bitcoin mining data center in Garden City, Texas, with a name plate capacity of 200 megawatts, for a purchase price of \$87.3 million, or approximately \$437,000 per megawatt, prior to any purchase price adjustments. Marathon will pay the purchase price in cash from its balance sheet.

This transaction is Marathon’s second major acquisition of data centers dedicated to Bitcoin mining in the last four months and increases the amount of self-owned and operated megawatts in Marathon’s Bitcoin mining portfolio to 54%. Prior to the acquisition of its first two data centers, which closed in January of this year, Marathon’s Bitcoin mining portfolio consisted of 584 megawatts, 3% of which resided on sites directly owned and operated by the Company. Following the close of this acquisition and the anticipated expansion of the site in 2024, Marathon will have increased the number of megawatts in its mining portfolio to 1.1 gigawatts, 54% of which will reside on sites directly owned and operated by the Company.

The Bitcoin mining data center in Garden City, Texas is located adjacent to a wind farm and uses predominantly renewable energy. It was constructed and energized in 2023 and supports a workforce of approximately 25 employees. At this site, Marathon is currently converting approximately 100 megawatts (c. 4.5 exahash of miners) into economic value via Bitcoin mining.

By acquiring this data center, Marathon will take direct ownership of its current on-site operations and will also gain an additional 100 megawatts of capacity in which to expand, 32 megawatts of which are expected to be available as of the closing date and the remainder of which are subject to regulatory approvals. Marathon expects to expand its presence at the site in 2024 by an additional 100 megawatts to accommodate a total of 200-megawatts of capacity dedicated exclusively to Marathon’s Bitcoin mining operations.



In addition to providing Marathon with more influential and secure ownership of its operations as well as expansion opportunities, this transaction is also expected to reduce the cost per coin of Marathon’s current operations at the site by approximately 20%.

The transaction is subject to customary closing conditions and is expected to close in the second quarter of 2024.

### Management Commentary

“After taking over ownership and operational control of the data centers we recently acquired in Granbury, Texas and Kearney Nebraska, we are building on that momentum by now acquiring the Bitcoin mining data center in Garden City, Texas from Applied Digital,” said Fred Thiel, Marathon’s chairman and CEO. “This transaction increases our influence over our current operations, reduces our cost per coin by approximately 20% at the site, and provides us with an additional 100 megawatts of capacity in which to expand.

“Following the close of this transaction and the anticipated expansion of the site this year, our Bitcoin mining portfolio will consist of approximately 1.1 gigawatts of capacity, 54% of which will reside on sites we directly own and operate, and all of which are diversified across eleven sites on three continents. As a result, we will directly own and operate more megawatts than we had in our entire Bitcoin mining portfolio in December 2023.

“As a close collaborator of Applied Digital, we are intimately familiar with the site’s operations. Therefore, we expect a smooth transition as we work to integrate this renewably powered data center into our diversified portfolio of Bitcoin mining assets.”

Wes Cummins, CEO and chairman of the board at Applied Digital, commented, “Marathon has been a valuable partner of ours since 2022, and we welcome them as the new stewards of this state-of-the-art bitcoin mining data center in Garden City, Texas. We look forward to closing this mutually beneficial transaction, which we believe allows both companies to pursue their long-term strategies more effectively.”

### Advisors

Paul, Weiss, Rifkind, Wharton & Garrison LLP is serving as legal advisor to Marathon in connection with the transaction and Lowenstein Sandler LLP is serving as legal advisor to Applied Digital.

### Investor Notice

Investing in our securities involves a high degree of risk. Before making an investment decision, you should carefully consider the risks, uncertainties and forward-looking statements described under “Risk Factors” in Item 1A of our most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on February 28, 2024. If any of these risks were to occur, our business, financial condition or results of operations would likely suffer. In that event, the value of our securities could decline, and you could lose part or all of your investment. The risks and uncertainties we describe are not the only ones facing us. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. In addition, our past financial performance may not be a reliable indicator of future performance, and historical trends should not be used to anticipate results in the future. See “Forward-Looking Statements” below.



### Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the federal securities laws. Forward-looking statements in this press release relate to the expected

timing and achievement of our growth targets, specifically relating to our anticipated hash rate and exahash growth. You can identify forward-looking statements by the use of words such as “may,” “will,” “could,” “anticipate,” “expect,” “intend,” “believe,” “continue,” or the negative of such terms, or other comparable terminology. Forward-looking statements include the assumptions underlying or relating to such statements. The Company has based these forward-looking statements largely on its current expectations and projections about future events and trends that we believe may affect its business, results of operations and financial condition. The outcomes of the events described in these forward-looking statements are subject to risks, uncertainties and other factors described under the heading “Risk Factors” in the reports the Company files with the Securities and Exchange Commission. The Company cannot assure you that the events and circumstances reflected in the forward-looking statements will be achieved or occur, and actual results could differ materially from those expressed or implied in the forward-looking statements. The forward-looking statements made in this press release relate only to events as of the date of this press release. The Company undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made.

#### **About Marathon Digital Holdings**

Marathon is a digital asset technology company that focuses on supporting and securing the Bitcoin ecosystem. The Company is currently in the process of becoming one of the largest and most sustainably powered Bitcoin mining operations in North America.

For more information, visit [www.mara.com](http://www.mara.com), or follow us on:

Twitter: [@MarathonDH](https://twitter.com/MarathonDH)

LinkedIn: [www.linkedin.com/company/marathon-digital-holdings](https://www.linkedin.com/company/marathon-digital-holdings)

Facebook: [www.facebook.com/MarathonDigitalHoldings](https://www.facebook.com/MarathonDigitalHoldings)

Instagram: [@marathondigitalholdings](https://www.instagram.com/marathondigitalholdings)

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#### **Marathon Digital Holdings Media Contact:**

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