

**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): December 15, 2023

**AULT ALLIANCE, INC.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

001-12711  
(Commission File Number)

94-1721931  
(I.R.S. Employer Identification No.)

11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141  
(Address of principal executive offices) (Zip Code)

(949) 444-5464  
(Registrant's telephone number, including area code)

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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	AULT	NYSE American
13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value \$0.001 per share	AULT PRD	NYSE American

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.

## Item 1.01 Entry into a Material Definitive Agreement.

On December 14, 2023 (the “**Closing Date**”), Ault Alliance, Inc., a Delaware corporation (the “**Company**”), pursuant to the Securities Purchase Agreement (the “**Agreement**”) entered into with Ault & Company, Inc., a Delaware corporation (the “**Purchaser**”) on November 6, 2023 (the “**Execution Date**”), sold, in three separate closings that occurred on the Closing Date, an aggregate of 41,500 shares of Series C convertible preferred stock (the “**Series C Convertible Preferred Stock**”), and warrants (the “**Series C Warrants**”) to purchase 306,725,795 shares (the “**Warrant Shares**”) of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”) to the Purchaser, for a total purchase price of \$41.5 million (the “**Financing**”). The Agreement provides that the Purchaser may purchase up to \$50 million of Series C Convertible Preferred Stock and Series C Warrants in one or more closings.

The Purchaser is an affiliate of the Company. The material terms of the Agreement, Series C Convertible Preferred Stock and the Series C Warrants were described in the Form 8-K filed with the Securities and Exchange Commission (the “**Commission**”) on November 7, 2023 and are incorporated herein by reference.

At the first closing, the Purchaser purchased 21,500 shares of Series C Convertible Preferred Stock and Series C Warrants to purchase 158,906,135 shares of Common Stock, for a purchase price of \$21.5 million, paid in cash (the “**Initial Closing**”). Immediately upon the Initial Closing, the Company paid \$20,432,876 to satisfy in full the outstanding secured convertible notes issued to JGB Capital, LP (“**JGB Capital**”), JGB Partners, LP (“**JGB Partners**”) and JGB (Cayman) Buckeye Ltd. (“**JGB Cayman**” and collectively, the “**Lenders**”) pursuant to the Loan and Guarantee Agreement, dated November 7, 2022, as amended on July 19, 2023 (the “**Prior Secured Loan**”).

Promptly thereafter, at the second closing (the “**Second Closing**”), the Purchaser purchased 10,000 shares of Series C Convertible Preferred Stock and Series C Warrants to purchase 73,909,830 shares of Common Stock, for a purchase price of \$10.0 million, paid in cash. Immediately upon the Second Closing, the Company paid \$10.0 million to partially satisfy the outstanding senior secured convertible promissory note issued to the Purchaser on October 13, 2023 pursuant to a note purchase agreement (the “**Secured Convertible Note**”). The material terms of the Secured Convertible Note and related transaction documents were described in the Form 8-K filed with the Commission on October 16, 2023 and are incorporated herein by reference.

Promptly thereafter, at the third closing (the “**Third Closing**”), the Purchaser purchased another 10,000 shares of Series C Convertible Preferred Stock and Series C Warrants to purchase another 73,909,830 shares of Common Stock, for a purchase price of \$10.0 million, paid in cash. Immediately upon the Third Closing, the Company paid \$7,524,796.53 to satisfy the remaining outstanding balance on the Secured Convertible Note.

On the Closing Date, the Company, along with its wholly owned subsidiaries Sentinum, Inc. (“**Sentinum**”), Third Avenue Apartments LLC (“**Third Avenue**”), Alliance Cloud Services, LLC (“**Alliance Cloud**”), BNI Montana, LLC (“**BNI Montana**”), Ault Lending, LLC (“**Ault Lending**”), Ault Aviation, LLC (“**Ault Aviation**”) and Ault Global Real Estate Equities, Inc. (“**AGREE**” and collectively with the Company, Sentinum, Third Avenue, Alliance Cloud, BNI Montana, Ault Lending and Ault Aviation, the “**Guarantors**”) entered into a Loan and Guaranty Agreement (the “**Loan Agreement**”) with the Lenders, pursuant to which the Purchaser borrowed \$36 million and issued secured promissory notes to the Lenders in the aggregate amount of \$38,918,919 (collectively, the “**Notes**”; and the transaction, the “**Loan**”).

Pursuant to the Agreement, the Guarantors, as well as Milton C. Ault, III, the Company’s Executive Chairman and the Chief Executive Officer of the Purchaser, agreed to act as guarantors for repayment of the Notes.

In addition, certain Guarantors entered into various agreements as collateral in support of the guarantee of the Notes, including (i) a security agreement (the “**Sentinum Security Agreement**”) by Sentinum, pursuant to which Sentinum granted to the Lenders a security interest in (a) 19,226 Antminers (the “**Miners**”), (b) all of the digital currency mined or otherwise generated from the Miners and (c) the membership interests of Alliance Cloud, (ii) a security agreement (the “**Security and Pledge Agreement**”) by the Company, Ault Lending, BNI Montana and AGREE, pursuant to which those entities granted to the Lenders a security interest in substantially all of their assets, as well as a pledge of equity interests in Ault Aviation, AGREE, Sentinum, Third Avenue, Ault Energy, LLC, a wholly owned subsidiary of the Company, Ault Disruptive Technologies Company, LLC, a wholly owned subsidiary of the Company, Eco Pack Technologies, Inc., a wholly owned subsidiary of the Company, and Circle 8 Holdco, LLC (“**Circle 8**”), a majority owned subsidiary of the Company, (iii) a mortgage and security agreement (the “**Florida Mortgage**”) by Third Avenue on the real estate property owned by Third Avenue in St. Petersburg, Florida (the “**Florida Property**”), (iv) a future advance mortgage (the “**Michigan Mortgage**”) by Alliance Cloud on the real estate property owned by Alliance Cloud in Dowagiac, Michigan (the “**Michigan Property**”), (v) an aircraft mortgage and security agreement (the “**Aircraft Mortgage**”) by Ault Aviation on a private aircraft owned by Ault Aviation (the “**Aircraft**”), and (vi) deposit account control agreements over certain bank accounts held by certain subsidiaries of the Company.

In addition, pursuant to the Loan Agreement, the Company agreed to establish a segregated deposit account (the “**Segregated Account**”), which would be used as a further guarantee of repayment of the Notes. \$3.5 million of cash was paid into the Segregated Account on the Closing Date. The Company is required to have the minimum balance in the Segregated Account be not less than \$7 million, \$15 million, \$20 million and \$27.5 million on the four month, nine month, one year and two year anniversaries of the Closing Date, respectively. In addition, starting on March 31, 2024, the Company is required to deposit \$300,000 monthly into the Segregated Account, which increases to \$400,000 monthly starting March 31, 2025. Further, the Company agreed to deposit into the Segregated Account, (i) up to the first \$7 million of net proceeds, if any, from the sale of the Hilton Garden Inn in Madison West, the Residence Inn in Madison West, the Courtyard in Madison West, and the Hilton Garden Inn in Rockford; (ii) 50% of cash dividends (on a per dividend basis) received from Circle 8 on or after June 30, 2024; (iii) 30% of the net proceeds from any bond offerings by the Company, which shall not exceed \$9 million in the aggregate; and (iv) 25% of the net proceeds from cash flows, collections and revenues from loans or other investments made by Ault Lending (including but not limited to sales of loans or investments, dividends, interest payments and amortization payments), which shall not exceed \$5 million in the aggregate. In addition, if the Company decides to sell certain assets, the Company further agreed to deposit funds into the Segregated Account from the sale of those assets, including, (i) \$15 million from the sale of the Florida Property, (ii) \$11 million from the sale of the Aircraft, (iii) \$17 million from the sale of the Michigan Property, (iv) \$350 per Miner, subject to a de minimis threshold of \$1 million, and (v) \$10 million from the sale of Circle 8.

The representations, warranties and covenants contained in the Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to the agreements and are subject to limitations agreed upon by the contracting parties. Accordingly, the Agreement is incorporated herein by reference only to provide investors with information regarding the terms of the Agreement and not to provide investors with any other factual information regarding the Company or its business and should be read in conjunction with the disclosures in the Company’s periodic reports and other filings with the Commission.

The foregoing descriptions of the Loan Agreement (which includes the Notes), the Sentinum Security Agreement, the Security and Pledge Agreement, the Florida Mortgage, the Michigan Mortgage and the Aircraft Mortgage, do not purport to be complete and are qualified in their entirety by reference to their respective forms which are annexed hereto as **Exhibits 10.1, 10.2, 10.3, 10.4, 10.5** and **10.6**, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. The foregoing does not purport to be a complete description of the rights and obligations of the parties thereunder and such descriptions are qualified in their entirety by reference to such exhibits.

**Item 2.03            Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference to this Item 2.03.

**Item 3.02            Unregistered Sales of Equity Securities.**

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference to this Item 3.02. Series C Convertible Preferred Stock and the Series C Warrants described in this Current Report on Form 8-K were offered and sold to the Purchaser in reliance upon exemption from the registration requirements under Section 4(a)(2) under the Securities Act of 1933.

**Item 7.01            Regulation FD Disclosure.**

On December 15, 2023, the Company issued a press release announcing the closing of the Financing, the repayment of the Prior Secured Loan, the repayment of the Secured Convertible Note and the guaranteeing of the Loan. A copy of the press release is furnished herewith as **Exhibit 99.1** and is incorporated by reference herein.

In accordance with General Instruction B.2 of Form 8-K, the information under this item shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing. This report will not be deemed an admission as to the materiality of any information required to be disclosed solely to satisfy the requirements of Regulation FD.

The Securities and Exchange Commission encourages registrants to disclose forward-looking information so that investors can better understand the future prospects of a registrant and make informed investment decisions. This Current Report on Form 8-K and exhibits may contain these types of statements, which are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, and which involve risks, uncertainties and reflect the Registrant’s judgment as of the date of this Current Report on Form 8-K. Forward-looking statements may relate to, among other things, operating results and are indicated by words or phrases such as “expects,” “should,” “will,” and similar words or phrases. These statements are subject to inherent uncertainties and risks that could cause actual results to differ materially from those anticipated at the date of this Current Report on Form 8-K. Investors are cautioned not to rely unduly on forward-looking statements when evaluating the information presented within.

**Item 9.01 Financial Statements and Exhibits.**

**(d) Exhibits:**

<b>Exhibit No.</b>	<b>Description</b>
10.1	<a href="#">Form of Loan and Guaranty Agreement, dated December 14, 2023.</a>
10.2	<a href="#">Form of Security Agreement.</a>
10.3	<a href="#">Form of Security Agreement.</a>
10.4	<a href="#">Form of Florida Mortgage.</a>
10.5	<a href="#">Form of Michigan Mortgage.</a>
10.6	<a href="#">Form of Aircraft Mortgage.</a>
99.1	<a href="#">Press Release issued on December 15, 2023.</a>
101	Pursuant to Rule 406 of Regulation S-T, the cover page is formatted in Inline XBRL (Inline eXtensible Business Reporting Language).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101).

**SIGNATURE**

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

**AULT ALLIANCE, INC.**

Dated: December 15, 2023

/s/ Henry Nisser  
\_\_\_\_\_  
Henry Nisser  
President and General Counsel

**THE INDEBTEDNESS GOVERNED HEREBY HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR U.S. FEDERAL INCOME TAX PURPOSES. FOR FURTHER INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF SUCH INDEBTEDNESS, THE HOLDER OF THIS NOTE SHOULD CONTACT THE OFFICE OF THE CHIEF FINANCIAL OFFICER OF AULT & COMPANY, INC. PURSUANT TO THE NOTICES SECTION HERETO, WHO WILL MAKE SUCH INFORMATION AVAILABLE.**

## LOAN AND GUARANTY AGREEMENT

This LOAN AND GUARANTY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”) dated as December 14, 2023 (the “**Closing Date**”), is entered into among **AULT & COMPANY, INC.**, a Delaware corporation (“**Borrower Representative**”) and each other Person from time to time party hereto as a borrower, collectively, “**Borrowers**”, and each, a “**Borrower**”), **THIRD AVENUE APARTMENTS LLC**, a Delaware limited liability company (the “**Florida Property Owner**”), **ALLIANCE CLOUD SERVICES, LLC**, Delaware limited liability company (the “**Michigan Property Owner**”), **SENTINUM, INC.**, a Nevada corporation (“**Sentinum**”), **AULT ALLIANCE, INC.**, a Delaware corporation (“**Ault Alliance**”), **AULT AVIATION, LLC**, a Nevada limited liability company (“**Aviation**”), **BNI MONTANTA, LLC**, a Delaware limited liability company (“**BNI**”), **AULT LENDING, LLC**, a California limited liability company (“**Ault Lending**”), **AULT GLOBAL REAL ESTATE EQUITIES, INC.**, a Nevada corporation (“**AG**”), **MILTON “TODD” AULT, III**, a natural person (“**Personal Guarantor**”) and together with the Florida Property Owner, the Michigan Property Owner, Sentinum, Ault Alliance, Aviation, BNI, Ault Lending, AG and each other party from time to time party hereto as a guarantor or otherwise acting as a guarantor with respect to the Obligations, collectively, “**Guarantors**” and each, a “**Guarantor**”), **JGB CAPITAL, LP**, a Delaware limited partnership, **JGB PARTNERS, LP**, a Delaware limited partnership and **JGB (CAYMAN) BUCKEYE LTD.**, a Cayman Islands exempted company, and any other lender from time to time party hereto (collectively, “**Lenders**”, and each, a “**Lender**”), and **JGB COLLATERAL LLC**, as administrative agent and collateral agent for Lenders (in such capacity, together with its successors, “**JGB Agent**”).

## AGREEMENT

The parties hereto hereby agree as follows:

### **1. ACCOUNTING AND OTHER TERMS**

Accounting terms not defined in this Agreement shall be construed in accordance with GAAP, and calculations and determinations shall be made following GAAP, consistently applied. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth on Exhibit A. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. As used in the Loan Documents, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. Unless otherwise specified, all references in this Agreement or any Annex or Schedule hereto to a “Section,” “subsection,” “Exhibit,” “Annex,” or “Schedule” shall refer to the corresponding Section, subsection, Exhibit, Annex, or Schedule in or to this Agreement. For purposes of the Loan Documents, whenever a representation or warranty is made to a Person’s knowledge or awareness, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer of such Person. As appropriate, amounts specified herein as amounts in dollars shall be or include any relevant Dollar Equivalent amount.

### **2. LOAN AND TERMS OF PAYMENT**

**2.1 Promise to Pay.** Each Borrower hereby unconditionally promises to pay each Lender, ratably, the outstanding principal amount of all Loans, accrued and unpaid interest, fees and charges thereon and to pay all Obligations as and when due in accordance with this Agreement.

#### **2.2 Availability and Repayment of the Loans.**

- (a) Availability.
-

Subject to the terms and conditions of this Agreement, each Lender agrees, severally and not jointly, to make to Borrowers one or more advances on the Closing Date in the principal amount equal to its Term Loan Commitment (the “**Term Loan**”) less the Original Issue Discount as provided in the Disbursement Letter. Lenders’ commitments to make the Term Loan shall terminate upon the funding of the Term Loan on the Closing Date.

Borrower Representative shall use the net proceeds of the Term Loan to (i) fund part of the price for 41,500 shares of newly issued shares of Series C Convertible Preferred Stock and warrants of Ault Alliance (the “**Preferred Stock**”) for an aggregate purchase price of \$41,500,000 and (ii) repay in full its indebtedness to Oree Lending Company, LLC (the “**Oree Debt**”) and Helios Funds, LLC (the “**Helios Debt**”) in the aggregate amount equal to \$12,615,482.04. Ault Alliance will use the proceeds from sale of the Preferred Stock to (a) repay in full its 8.5% secured promissory notes due 2024 (“**Secured Notes**”), which are owned by Borrower Representative, in an aggregate amount equal to \$17,524,796.53 (the “**Ault & Co Note**”), (b) repay in full all of its obligations and those of its subsidiaries under the Loan and Guaranty Agreement (the “**Prior Loan Agreement**”) with JGB Capital, LP, JGB Partners, LP and JGB (Cayman) Buckeye Ltd. dated November 7, 2022, as amended on July 19, 2023, and (c) for working capital purposes. The closings on the Term Loan and foregoing payments shall occur in the sequence set forth in the disbursement letter executed by the parties hereto (the “**Disbursement Letter**”).

(b) Repayment.

(i) Payment of Interest. Commencing on the Closing Date, and continuing thereafter on each Payment Date through the earlier of (x) Term Loan Maturity Date and prepayment of the Term Loan pursuant to Section 2.2(c) or (d), Borrowers shall make consecutive monthly payments of interest.

(c) Mandatory Prepayment Upon an Acceleration. If (x) the Loans are accelerated following the occurrence and during the continuance of an Event of Default or (y) there occurs a Change in Control, Borrowers shall immediately pay to Lenders, an amount equal to the sum of:

- (i) all outstanding principal plus accrued and unpaid interest thereon, plus
- (ii) if such Mandatory Prepayment is made pursuant to the preceding clause (y), the Prepayment Premium, if any, plus
- (iii) if such Mandatory Prepayment is made pursuant to the preceding clause (x), the Default Premium, plus
- (iv) all other sums, if any, that shall have become due and payable, including interest at the Default Rate with respect to

any past due amounts.

(d) Permitted Prepayment of Loans. Borrowers shall have the option to prepay all or a portion of the Term Loan, provided that Borrowers give written notice to the JGB Agent of its election to prepay the Loans at least five (5) Business Days prior to such prepayment, and pay, on the date of such prepayment, to Lenders, ratably, an amount equal to the sum of:

- (i) all, or the applicable portion, of the outstanding principal amount of the Term Loan plus accrued and unpaid interest
- (ii) the Prepayment Premium, if any, plus
- (iii) all other sums, if any, that shall have become due and payable, including interest at the Default Rate with respect to

thereon, plus

any past due amounts.

### 2.3 Payment of Interest.

(a) Interest Rate. Subject to Section 2.3(b), the outstanding principal amount of the Loans shall accrue interest from and after the Closing Date, at the Applicable Rate, and Borrowers shall pay such interest monthly in arrears in cash on each Payment Date commencing on December 31, 2023.

(b) **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, the Applicable Rate shall be increased by eight percentage points (8.0%) above the rate that is otherwise applicable thereto (the “**Default Rate**”). Fees and expenses which are required to be paid by Borrowers pursuant to the Loan Documents (including, without limitation, Lender Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable at such time to any of the Loans. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies pursuant to the Loan Documents. Each Borrower agrees that interest at the Default Rate is a reasonable calculation of Lenders’ lost profits in view of the difficulties and impracticality of determining actual damages resulting from an Event of Default.

(c) **Payment; Interest Computation.** Interest is payable monthly in arrears on each Payment Date and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 4:00 p.m. Eastern Time on any day shall be deemed received at the opening of business on the next Business Day and (ii) the date of the making of any Loan shall be included and the date of payment shall be excluded.

(d) **Maximum Interest.** Notwithstanding any provision in this Agreement or any other Loan Document, it is the parties’ intent not to contract for, charge or receive interest at a rate that is greater than the maximum rate permissible by law that a court of competent jurisdiction shall deem applicable hereto (the “**Maximum Rate**”). If a court of competent jurisdiction shall finally determine that a Borrower has actually paid to or for the benefit of Lenders an amount of interest in excess of the amount that would have been payable if all of the Obligations had at all times borne interest at the Maximum Rate, then such excess interest actually paid by Borrowers shall be applied as follows: first, to the payment of principal outstanding in respect of the Loans; second, after all principal is repaid, to the payment of accrued interest, third, to the payment of Lender Expenses and any other Obligations; and fourth, after all Obligations are repaid, the excess (if any) shall be refunded to Borrowers or paid to whomsoever may be legally entitled thereto, provided that amounts payable to Lenders, shall be paid ratably.

**2.4 Original Issue Discount; Expenses; Monitoring Payment.** Borrowers shall pay to Lenders ratably, or solely with respect to clause (c) below, to JGB Agent for its own account:

(a) **Original Issue Discount.** The Term Loan will be funded with aggregate original discount of Two Million Nine Hundred and Eighteen Thousand Nine Hundred and Nineteen dollars (\$2,918,919) (the “**Original Issue Discount**”). The Borrowers acknowledge and agree that the Original Issue Discount is not a fee for services, but compensation to the Lenders for the foregone use of money. The Original Issue Discount shall be fully earned by the Lenders on the Closing Date and for the avoidance of doubt, shall be deemed part of the outstanding principal balance.

(b) **Expenses.** All Lender Expenses (including reasonable attorneys’ fees and expenses for documentation and negotiation of this Agreement and the other Loan Documents) incurred through and after the Closing Date, when due (or, if no stated due date, within ten (10) Business Days after written demand by JGB Agent), provided that the deposit in the amount of One Hundred and Twenty-Five Thousand dollars (\$125,000) previously paid (the “**Good Faith Deposit**”) shall be applied towards Lender Expenses incurred through the Closing Date.

(c) **Monitoring Payment.** From and after the Closing Date, the Borrowers shall pay the JGB Agent a monthly monitoring payment equal to 0.29% of the lesser of (i) the original principal balance of the Term Loan advanced on the Closing Date, which was \$38,918,919 or (ii) the outstanding balance of the Term Loan. Such monitoring payment shall be due and payable in arrears on each Payment Date.

**2.5 Payments; Application of Payments; Withholding.**

(a) All payments to be made by Loan Parties under any Loan Document, including payments of principal and interest and all fees, charges, expenses, indemnities and reimbursements, shall be made in immediately available funds in Dollars, without setoff, recoupment or counterclaim, before 4:00 p.m. Eastern Time on the date when due. Payments of principal and/or interest received after 4:00 p.m. Eastern Time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) No Loan Party shall have a right to specify the order or the loan accounts to which a Lender shall allocate or apply any payments made by a Loan Party to or for the benefit of such Lender or otherwise received by such Lender under this Agreement when any such allocation or application is not expressly specified elsewhere in this Agreement.



- (c) The parties hereto hereby agree to the terms and conditions set forth on Schedule 3 hereto.

**2.6 Promissory Notes.** Borrowers agree that: (a) on the Closing Date the Borrowers shall deliver a promissory note to each requesting Lender to evidence the Loans and other Obligations owing or payable to such Lender, in substantially the form attached hereto as Exhibit C, and (b) upon any Lender's written request, and in any event within three (3) Business Days of any such request, the Borrowers and receipt of the existing notes subject to such request, the Borrowers shall execute and deliver to such Lender new notes and/or divide the notes in exchange for then existing notes in such smaller amounts or denominations as such Lender shall specify in its sole and absolute discretion; provided, that the aggregate principal amount of such new notes shall not exceed the aggregate outstanding principal amount of the applicable Loans made by such Lender. Whether or not any such promissory notes are issued, this Agreement shall nonetheless evidence the Loans and other Obligations owing or payable by Borrowers to each Lender.

### **3. CONDITIONS OF LOANS**

**3.1 Conditions Precedent to the Term Loan.** Each Lender's obligation to make the Term Loan is subject to the condition precedent that Lender shall have received, in form and substance satisfactory to JGB Agent, such documents, and completion of such other matters, as JGB Agent may reasonably deem necessary or appropriate, including, without limitation:

(a) the representations and warranties in this Agreement and the other Loan Documents shall be true, accurate, and complete in all material respects on the Closing Date; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

- (b) no Default or Event of Default shall have occurred and be continuing or result from the Term Loan;
- (c) duly executed signatures and delivery of the Disbursement Letter;
- (d) duly executed signatures to this Agreement;
- (e) duly executed signatures to the Security Agreement;
- (f) duly executed signatures to the Warrant;
- (g) duly executed signatures to the Florida Mortgage;
- (h) duly executed signatures to the Michigan Mortgage;
- (i) duly executed signatures to the Michigan Subordination Agreement;
- (j) duly executed signatures to the Personal Guarantor Pledge Agreement;
- (k) the duly executed signatures to the Aircraft Mortgage;
- (l) duly executed signatures to the Sentinum Security Agreement;
- (m) duly executed signatures and delivery of the pay-off letter for Indebtedness under the Ault & Co Note;
- (n) duly executed signatures and delivery of the pay-off letter for Indebtedness under the Oree Debt;

- (o) duly executed signatures and delivery of the pay-off letter for Indebtedness under the Helios Debt;
- (p) duly executed signatures and delivery of the pay-off letter for Indebtedness under the Prior Loan Agreement;

(q) American Land Title Association (ALTA) mortgagee title insurance policies (the “Title Policies”) issued by Chicago Title Insurance Company or another title insurance company acceptable to the JGB Agent (the “Title Company”), in an amount not less than the amount reasonably required therefor by the Agent, insuring fee simple title to the Real Property Collateral and assuring the JGB Agent, as applicable, that the Florida Mortgage creates a valid and enforceable first priority mortgage lien on the Florida Property and the Michigan Mortgage creates a valid and enforceable first priority lien on the Michigan Property, which Title Policies shall also include an endorsement for mechanics’ liens and for any other matters reasonably requested by the Agent;

(r) a certificate of each Loan Party, duly executed by a Responsible Officer, certifying and attaching (i) the Operating Documents, (ii) resolutions duly approved by the Board, (iii) any resolutions, consent or waiver duly approved by the requisite holders of such Loan Party’s Equity Interests, if applicable, and (iv) a schedule of incumbency; and

- (s) payment of Lender Expenses then due as specified in Section 2.4(b).

### **3.2 Covenant to Deliver.**

(a) Each Loan Party agrees to deliver each item required to be delivered under this Agreement as a condition precedent to the Term Loan. Each Loan Party expressly agrees that a Term Loan made prior to the receipt of any such item shall not constitute a waiver by JGB Agent of any Loan Party’s obligation to deliver such item, and the making of any Term Loan in the absence of a required item shall be in JGB Agent’s sole discretion.

(b) Each Loan Party agrees to deliver the items set forth on Schedule 2 hereto within the timeframe set forth therein (or by such other date as JGB Agent may approve in writing), in each case, in form and substance reasonably acceptable to JGB Agent.

### **3.3 Reserved.**

**3.4 Lender Status.** In connection with the making of the Term Loan and the acquisition of the Note, the Warrants and the shares of Common Stock issuable upon exercise of the Warrants (the “Securities”), each Lender hereby represents and warrants to the Loan Parties that (a) such Lender is an “accredited investor” within the meaning of Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended, (b) such Lender is making the Term Loan and acquiring the Securities for investment purposes for its own account and has no present intention to distribute all or any part thereof, (iii) such Lender did not learn of the transactions contemplated by this Agreement through any general solicitation and (iv) such Lender Investor understands that no Governmental Authority has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

## **4. REPRESENTATIONS AND WARRANTIES**

Each Loan Party represents and warrants as follows:

### **4.1 Due Organization, Authorization; Power and Authority.**

(a) Each Loan Party and each of its Subsidiaries are duly existing and in good standing as a Registered Organization in their respective jurisdictions of formation and are qualified and licensed to do business and are in good standing in any other jurisdiction in which the conduct of their respective business or ownership of property require that they be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 4.1(a) correctly sets forth each Loan Parties’ present name, former names and locations (if any) for the five (5) years prior to the Closing Date), place of formation, tax identification number, organizational identification number and other information, as may be updated by the Borrower Representative in a written notice (including any Compliance Certificate) provided to JGB Agent after the Closing Date.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with such Loan Party's Operating Documents or other organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Loan Party or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which such Loan Party is bound. No Loan Party is in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a Material Adverse Effect.

(c) Borrower Representative has authorized share capital consisting of 20,000,000 shares of Common Stock, 10,000,000 shares of Class B Common Stock and 5,000,000 shares of preferred stock, of which 3,000 are designated as Series A Convertible Preferred Stock. As of December 14, 2023, there were approximately 43,500 shares of Common Stock issued and outstanding, 9,287,500 shares of Class B Common Stock issued and outstanding and 113 shares of Series A Convertible Preferred Stock issued and outstanding.

#### **4.2 Collateral.**

(a) Each Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien pursuant to the applicable Loan Documents to which it is a party, free and clear of any and all Liens except Permitted Liens.

(b) Schedule 4.2(b) contains an accurate list of each piece of Equipment subject to the Lien of the JGB Agent pursuant to the Security Agreement and the Sentinum Security Agreement and the serial or other identifying number of each such piece of Equipment. The Personal Property Collateral is located only at the locations set forth on Schedule 4.2(b). The Personal Property Collateral is not in the possession of any third party except as otherwise set forth on Schedule 4.2(b).

**4.3 Litigation and Proceedings.** Except as set forth on Schedule 4.3(b) or as disclosed in writing pursuant to Section 5.2(f), there are no actions, suits, litigations or proceedings, at law or in equity, pending, or, to the knowledge of any Responsible Officer, threatened in writing, by or against any Loan Party or any of its Subsidiaries, officers or directors which, individually or in the aggregate for all related proceedings, could reasonably be expected to (i) result in liability or damages in excess of Two Hundred Fifty Thousand dollars (\$250,000) or (ii) have any Material Adverse Effect.

**4.4 Financial Statements; Financial Condition.** All consolidated and consolidating financial statements for the Borrower Representative and Ault Alliance, respectively, delivered to JGB Agent fairly present in all material respects the consolidated and consolidating financial condition and results of operations of the Borrower Representative and Ault Alliance, respectively, as of the respective dates and for the respective periods then ended, and there are no material liabilities (including any contingent liabilities) which are not reflected in such financial statements. There has not been any material deterioration in the consolidated and consolidating financial condition of the Borrower Representative and Ault Alliance, respectively, or the Collateral since the date of the most recent financial statements submitted to JGB Agent.

**4.5 Solvency.** The fair salable value of the aggregate assets of the Loan Parties, taken as a whole, exceeds the fair value of aggregate liabilities of the Loan Parties, taken as a whole. The Loan Parties, taken as a whole, will not be left with unreasonably small capital after the transactions in this Agreement and the Loan Parties, taken as a whole, are able to pay their debts (including trade debts) as they mature in the Ordinary Course of Business.

**4.6 Consents; Approvals.** Except for (A) applicable requirements, if any, of the Exchange Act, including the filing of a Current Report on Form 8-K, (B) state securities or "blue sky" laws, and (C) any filings required under the rules and regulations of the NYSE American, each Loan Party and each of its Subsidiaries have obtained all third party consents, approvals, waivers, made all declarations or filings with, given all notices to, and obtained all consents, licenses, permits or other approvals from all Governmental Authorities that are necessary (i) to enter into the Loan Documents and consummate the transactions contemplated thereby, and (ii) to continue their respective businesses as currently conducted, except (with respect to this clause (ii)) where failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**4.7 Tax Returns and Payments.** Each Loan Party has timely filed all required material tax returns and reports (or appropriate extensions therefor), and such Loan Party has timely paid all foreign, federal, state and material local Taxes, assessments, deposits and contributions owed by such Loan Party, except if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed One Hundred Thousand dollars (\$100,000.00). As of the date hereof, no Loan Party is aware of any claims or adjustments proposed for any prior tax years of any Loan Party which could result in a material amount of additional Taxes becoming due and payable by a Loan Party.

**4.8 Pledged Interest.** The Borrower Representative has full power and authority to create a first lien on the Pledged Interests and the Circle 8 Pledged Interests and no disability or contractual obligation exists that would prohibit the Borrower Representative from pledging the Pledged Interests or the Circle 8 Pledged Interests pursuant to the Security Agreement. There are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Pledged Interests. The Pledged Interests and the Circle 8 Pledged Interests are not the subject of any present or, to the Borrower Representative's knowledge, threatened in writing suit, action, arbitration, administrative or other proceeding, and the Borrower Representative knows of no reasonable grounds for the institution of any such proceedings.

**4.9 Compliance with Laws.**

(a) No Loan Party is or has been in violation of any statute, rule, ordinance or regulation of any Governmental Authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, applicable to such Loan Party, except in each case as would not reasonably be expected to result in a Material Adverse Effect.

(b) No Loan Party is required to register as an "investment company", as such terms are defined in the Investment Company Act of 1940 as amended.

(c) No Borrower is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect (such securities being referred to herein as "**Margin Stock**"). None of the proceeds of the Loans or other extensions of credit under this Agreement have been (or will be) used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry any Margin Stock or for any other purpose which might cause any of the Loans or other extensions of credit under this Agreement to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board. Borrower currently does not own any Margin Stock. Ault Lending will not receive any proceeds of the Term Loan.

(d) Neither the making of the Loans hereunder nor Loan Parties' use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto. No Loan Party, nor any of its Subsidiaries, nor any Affiliate of any Loan Party or of any Subsidiary, nor any controlling holder of Equity Interests of any of the foregoing (i) is a Person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the United States Department of Treasury ("**OFAC**") or in Section 1 of the Anti-Terrorism Order or similar sanctions laws of any other Governmental Authority including of any other applicable jurisdiction, (ii) is a resident of any country that is subject to embargo or trade sanctions enforced by OFAC, (iii) is, or will become, a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of the Anti-Terrorism Order, or (iv) engages in any dealings or transactions, or is otherwise associated, with any such Person.

(e) Each Loan Party and its Subsidiaries are in compliance, in all material respects, with the USA Patriot Act. No part of the proceeds from the Loans made hereunder has been (or will be) used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended or similar laws of any other Governmental Authority including of any other applicable jurisdiction.

#### 4.10 Real Property.

(a) The Michigan Property Owner owns the Michigan Property in fee simple and has good and marketable title to the Michigan Property, free and clear of all Liens, except Permitted Liens. The Michigan Property Owner is the sole owner of the Michigan Property and no Person other than the Michigan Property Owner has any possessory ownership or interest in the Michigan Property or right to occupy the same except under and pursuant to the provisions of existing leases set forth on Schedule 4.10(a). No Person has an option, right of first refusal, or right of first offer to purchase the Michigan Property, or any interest in the Michigan Property. The Michigan Property is not located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law (collectively, the “**Flood Acts**”) or, if located within any such area, the Michigan Property Owner has and will maintain the insurance prescribed in the Michigan Mortgage. The Michigan Property Owner has all necessary (i) certificates, licenses, and other approvals, governmental and otherwise, for the operation of the Michigan Property and the conduct of its business and (ii) zoning, building code, land use, environmental and other similar permits or approvals, all of which are currently in full force and effect and not subject to revocation, suspension, forfeiture, or modification. The Michigan Property and its use and occupancy are in full compliance with all applicable federal, state and local laws, and the Michigan Property Owner has received no notice of any violation or potential violation of such laws which has not been remedied or satisfied, and the zoning classification of the Michigan Property permits the use of the Michigan Property as intended. The Michigan Property is served by all utilities (including water and sewer) required for its use. All public roads and streets necessary to serve the Michigan Property for its use have been completed, are serviceable, are legally open, and have been dedicated to and accepted by the appropriate Governmental Authorities. The Michigan Property is free from damage caused by fire, water, wind or other casualty or form of loss. All costs and expenses for labor, materials, supplies, and equipment used in the construction of any improvements to the Michigan Property have been paid in full except for the Permitted Liens. The Michigan Property is assessed for real estate tax purposes as one or more wholly independent tax lot(s), separate from any adjoining land or improvements, and no other land or improvements are assessed and taxed together with the Michigan Property. The Michigan Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components are in good condition, order and repair in all material respects. There exists no structural or other material defects or damages in the Michigan Property, whether latent or otherwise, and the Michigan Property Owner has not received notice from any insurance company or bonding company of any defects or inadequacies in the Michigan Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(b) The Florida Property Owner owns the Florida Property in fee simple and has good and marketable title to the Florida Property, free and clear of all Liens, except Permitted Liens. The Florida Property Owner is the sole owner of the Florida Property and no Person other than the Florida Property Owner has any possessory ownership or interest in the Florida Property or right to occupy the same except under and pursuant to the provisions of existing leases set forth on Schedule 4.10(b). No Person has an option, right of first refusal, or right of first offer to purchase the Florida Property, or any interest in the Florida Property, except as set forth on Schedule 4.10(b). The Florida Property is not located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood hazards pursuant to the Flood Acts or, if located within any such area, the Florida Property Owner has and will maintain the insurance prescribed in the Florida Mortgage. The Florida Property Owner has all necessary (i) certificates, licenses, and other approvals, governmental and otherwise, for the operation of the Florida Property and the conduct of its business and (ii) zoning, building code, land use, environmental and other similar permits or approvals, all of which are currently in full force and effect and not subject to revocation, suspension, forfeiture, or modification. Except Permitted Liens, the Florida Property and its use and occupancy are in full compliance with all applicable federal, state and local laws, and the Florida Property Owner has received no notice of any violation or potential violation of such laws which has not been remedied or satisfied, and the zoning classification of the Florida Property permits the use of the Florida Property as intended. The Florida Property is served by all utilities (including water and sewer) required for its use. All public roads and streets necessary to serve the Florida Property for its use have been completed, are serviceable, are legally open, and have been dedicated to and accepted by the appropriate Governmental Authorities. The Florida Property is free from damage caused by fire, water, wind or other casualty or form of loss. All costs and expenses for labor, materials, supplies, and equipment used in the construction of any improvements to the Florida Property have been paid in full except for the Permitted Liens. The Florida Property is assessed for real estate tax purposes as one or more wholly independent tax lot(s), separate from any adjoining land or improvements, and no other land or improvements are assessed and taxed together with the Florida Property. There exists no structural or other material defects or damages in the Florida Property, whether latent or otherwise, and the Florida Property Owner has not received notice from any insurance company or bonding company of any defects or inadequacies in the Florida Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

#### 4.11 Intentionally Omitted.

**4.12 Brokers.** No brokerage or finder's fees or commissions are or will be payable by any Loan Party to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Loan Documents. The Lenders shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 4.12 that may be due in connection with the transactions contemplated by the Loan Documents.

### 5. AFFIRMATIVE COVENANTS

Each Loan Party shall do all of the following:

**5.1 Government Compliance.** Maintain its legal existence and good standing in its jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect; comply with all laws, ordinances and regulations to which it is subject except where a failure to do so could not reasonably be expected to have a Material Adverse Effect; obtain all of the material Governmental Approvals required in connection with such Loan Party's business and for the performance by each Loan Party of its obligations under the Loan Documents to which it is a party and the grant of a security interest in accordance therewith, and comply, in all material respects, with the terms and conditions with respect to such Governmental Approvals.

**5.2 Financial Statements, Reports, Certificates.** Provide JGB Agent with the following:

#### 5.2.1

(a) Quarterly Financial Statements. Within fifty-five (55) days after the last day of each of the first three fiscal quarters of each fiscal year, a company prepared unaudited consolidated and consolidating balance sheet, income statement and statement of cash flows covering the Borrower Representative's operations for such fiscal quarter, in form reasonably acceptable to JGB Agent, certified by a Responsible Officer as having been prepared in accordance with GAAP, consistently applied, except for the absence of footnotes, and subject to normal year-end adjustments.

(b) Annual Financial Statements. As soon as available, but no later than one hundred twenty (120) days after the last day of Borrower Representative's fiscal year, a company prepared unaudited consolidated and consolidating balance sheet, income statement and statement of cash flows covering the Borrower Representative's operations for such fiscal year, in form reasonably acceptable to JGB Agent, certified by a Responsible Officer as having been prepared in accordance with GAAP, consistently applied.

(c) Compliance Certificates. Simultaneously with the delivery of each set of financial statements referred to in clauses (a) and (b) of this Section 5.2.1, a duly completed Compliance Certificate signed by a Responsible Officer of Borrower Representative.

(d) Other Statements. Within five (5) Business Days of delivery, copies of all material statements, reports and notices generally made available to all stockholders.

(e) Legal Action Notice. A prompt report of any legal actions initiated or threatened in writing that occur after the Closing Date against any Loan Party that could reasonably result in damages or costs to any Loan Party, individually or in the aggregate for all related proceedings, of Three Hundred Fifty Thousand dollars (\$350,000) or more, and with respect to any legal action existing or threatened action in writing as of the Closing Date or initiated thereafter, a prompt report of any material adverse development with respect thereto.

## 5.2.2

(a) **Quarterly Financial Statements.** Within fifty-five (55) days after the last day of each of the first three fiscal quarters of each fiscal year, in the event Ault Alliance has not otherwise filed its Quarterly Report on Form 10-Q, a company prepared unaudited consolidated and consolidating balance sheet, income statement and statement of cash flows covering Ault Alliance's operations for such fiscal quarter, in form reasonably acceptable to JGB Agent, certified by a Responsible Officer as having been prepared in accordance with GAAP, consistently applied, except for the absence of footnotes, and subject to normal year-end adjustments.

(b) **Annual Audited Financial Statements.** As soon as available, but no later than one hundred ten (110) days after the last day of Ault Alliance's fiscal year, in the event Ault Alliance has not otherwise filed its Annual Report on Form 10-K, audited consolidated financial statements of Ault Alliance prepared in accordance with GAAP, consistently applied, together with any management letter with respect thereto.

(c) **Compliance Certificates.** Simultaneously with the delivery of each set of financial statements referred to in clauses (a) and (b) of this Section 5.2.2, a duly completed Compliance Certificate signed by a Responsible Officer of Ault Alliance.

(d) **Other Statements.** Within five (5) Business Days of delivery, copies of all material statements, reports and notices generally made available to all stockholders unless such statements, reports and notices are filed with the SEC or a link to such filing is posted on Ault Alliance's website.

(e) **SEC Filings.** Within five (5) Business Days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Ault Alliance with the SEC, provided that such filings shall be deemed to have been delivered on the date on which Ault Alliance posts such documents on Borrower Representative's website.

(f) **Legal Action Notice.** A prompt report of any legal actions initiated or threatened in writing that occur after the Closing Date against any Loan Party that could reasonably result in damages or costs to any Loan Party, individually or in the aggregate for all related proceedings, of Two Hundred Fifty Thousand dollars (\$250,000) or more, and with respect to any legal action existing or threatened action in writing as of the Closing Date or initiated thereafter, a prompt report of any material adverse development with respect thereto.

**5.3 Taxes; Pensions.** Timely file, unless subject to a valid extension, all required material Tax returns and reports and timely pay all foreign, federal, state, and material local Taxes, assessments, deposits and contributions owed by such Loan Party, except for Taxes in an aggregate amount that do not exceed One Hundred Thousand dollars (\$100,000) and shall deliver to JGB Agent, on written demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**5.4 Insurance.** Keep its business and the Collateral insured for risks and in amounts standard for companies in the Loan Parties' industry and location and as JGB Agent may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of any Loan Party, and in amounts that are reasonably satisfactory to JGB Agent.

**5.5 Litigation Cooperation.** From the Closing Date and continuing through the termination of this Agreement, make available to JGB Agent and any Lender, without expense to JGB Agent or any Lender, as applicable, each Loan Party and its officers, employees and agents and each Loan Party's books and records, to the extent that JGB Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against JGB Agent or any Lender with respect to any Collateral or relating to any Loan Party.

**5.6 Access to Collateral; Books and Records.** Allow JGB Agent or its agents to inspect the Collateral. Such inspections shall be conducted upon reasonable notice, during normal business hours and no more often than once every six (6) months unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as JGB Agent shall determine is necessary.

**5.7 Access to Management.** Any representative of JGB Agent shall have the right to meet with management and officers of Loan Parties, upon reasonable notice, during normal business hours, to discuss such books of account and records.

**5.8 Segregated Account.**

**5.8.1** At or prior to the Closing Date, Ault Alliance shall deposit Three Million Five Hundred Thousand dollars (\$3,500,000) in the Segregated Account. Ault Alliance shall have no access to the Segregated Account and shall not be permitted to make withdrawals therefrom for any reason without the consent of JGB Agent. At or prior to the four month anniversary, the nine month anniversary, the one year anniversary and the two year anniversary of the Closing Date, Ault Alliance shall deposit the required funds such that the balance in the Segregated Account shall not be less than (i) Seven Million dollars (\$7,000,000), (ii) Fifteen Million dollars (\$15,000,000), (iii) Twenty Million dollars (\$20,000,000) and (iv) Twenty-Seven Million Five Hundred Thousand dollars (27,500,000), respectively.

**5.8.2** Ault Alliance shall deposit in the Segregated Account: (i) Three Hundred Thousand dollars (\$300,000) on each Payment Date commencing on March 31, 2024 and ending on February 28, 2025; and (ii) Four Hundred Thousand dollars (\$400,000) on each Payment Date commencing on March 31, 2025 and ending on the earlier of (x) the Term Loan Maturity Date, (y) prepayment of the Term Loan in full pursuant to Section 2.2(c) or (d) and (z) the balance of the Segregated Account exceeds 110% of the outstanding balance of the Term Loan. For clarity, deposits to the Segregated Account pursuant to Section 5.9 cannot satisfy any requirement under this Section 5.8.2.

**5.8.3** Ault Alliance shall further deposit in the Segregated Account: (i) up to the first Seven Million dollars (\$7,000,000) of net proceeds, if any, from the sale of the Hilton Garden Inn in Madison West, the Residence Inn in Madison West, the Courtyard in Madison West, and the Hilton Garden Inn in Rockford; (ii) 50% of cash dividends (on a per dividend basis) received from Circle 8 Pledged Interests on or after June 30, 2024; (iii) 30% of the net proceeds from bond offerings by any Borrower, which shall not exceed Nine Million dollars (\$9,000,000) in the aggregate; and (iv) 25% of the net proceeds from cash flows, collections and revenues from loans or other investments made by Ault Lending (including but not limited to sales of loans or investments, dividends, interest payments and amortization payments) which shall not exceed Five Million dollars (\$5,000,000) in the aggregate.

**5.8.4** For clarity, the Segregated Accounts and all funds deposited therein are collateral for the Obligations and Ault Alliance has granted a security interest therein to the JGB Agent pursuant to the Security Agreement and the other Loan Documents.

**5.9 Release of Collateral.** Ault Alliance shall deposit the proceeds received and paid to Ault Alliance (corresponding to the applicable Release Price) from the Transfer of, or otherwise derived from, the Collateral referred to in this Section 5.9, into the Segregated Account. For clarity, only funds received from the Transfer or otherwise derived from each item of Collateral referred to in subsections (i) through (v) will be permitted to pay the applicable Release Price for such item of Collateral and JGB Agent will not release its Lien and security interest on such item of Collateral with funds paid by Ault Alliance from any other source (including any other item of Collateral). The JGB Agent shall, upon written request of the Borrowers and provided that no Event of Default has occurred and is continuing, release the Lien and security interest of the JGB Agent in (i) the Florida Property in the event that the Borrowers have delivered funds to the Agent for deposit to the Segregated Account equal to the Release Price A, (ii) the Aircraft, provided that the Borrowers have delivered funds to the Agent for deposit to the Segregated Account equal to Release Price B, (iii) the Michigan Property, provided that the Borrowers have delivered funds to the Agent for deposit to the Segregated Account equal to Release Price C, (iv) all or a portion of the Equipment, provided that the Borrowers have delivered funds to the Agent for deposit to the Segregated Account equal to Release Price D, and (v) Circle 8 Pledged Interests provided that the Borrowers have delivered funds to the Agent for deposit to the Segregated Account equal to Release Price E. For clarity, the Lien and security interest of the JGB Agent to be released in each of the foregoing shall each be independent and based upon the amount specified in the preceding sentence and not cumulative. For further clarity, any deposit to the Segregated Account pursuant to this Section 5.9 shall be in addition to, and shall not reduce or otherwise be in substitution for, any amounts required to be deposited to the Segregated Account pursuant to Section 5.8.

**5.10 Maintenance of Properties.** Each Loan Party shall maintain, preserve, protect and keep in good condition and working order all of its material properties and equipment, including (as applicable) the Equipment, the Aircraft (including, for the avoidance of doubt, ensuring that the Aircraft maintains its warranty under the applicable Rolls-Royce engine program), the Florida Real Property and the Michigan Real Property, ordinary wear and tear excepted and (b) make all necessary repairs thereto in accordance with sound industry practice.



**5.11 Deposit Accounts.** Borrowers shall provide Collateral Agent written notice within three (3) Business Days after establishing any Deposit Account at or with any bank or other financial institution identifying the name, address of each bank or other institution, the name in which the account is held and the complete account number therefor, provided that no balance in excess of \$50,000 for any one account and \$300,000 in the aggregate across all accounts shall be transferred to such new Deposit Account prior to obtaining an Account Control Agreement as required in accordance with this Section. Within 30 days from the Closing Date, for each Deposit Account that Borrowers at any time maintains except Excluded Accounts, Borrowers shall cause the applicable bank, broker or financial institution at or with which any Deposit Account is maintained to execute and deliver an Account Control Agreement or other appropriate instrument with respect to such Deposit Account to perfect Collateral Agent's Lien in such Deposit Account in accordance with the terms hereunder.

**5.12 Further Assurances.** Execute any further instruments and take further action as JGB Agent may reasonably request to carry out and/or effect the purposes of this Agreement and the other Loan Documents.

**5.13 Conditions Subsequent.**

(a) As soon as practicable after the date hereof, the Loan Parties shall obtain UCC lien search reports from the Secretary of State of the State of Nevada for each Loan Party that is organized and existing under the laws of the State of Nevada. It shall be an Event of Default hereunder if such lien search reports reveal any financing statements or other lien filings in respect of Liens exceeding \$300,000, individually or in the aggregate, unless such Liens (other than Permitted Liens) are satisfied within 5 Business Days after the date of such lien search reports.

(b) The Loan Parties shall cause any Notice of Commencement which is an exception to the title insurance policy insuring the Florida Mortgage to be terminated by not later than May 31, 2024.

**6. NEGATIVE COVENANTS**

No Loan Party shall do any of the following:

**6.1 Dispositions.** Convey, sell, lease, transfer, assign, contribute, or otherwise dispose of (collectively, "Transfer") all or any part of the Collateral to any Person, including, for the avoidance of doubt, to an Affiliate or Subsidiary of such Loan Party; provided that unless an Event of Default has occurred and is continuing, each Loan Party shall be entitled to Transfer any Digital Currency to any third party at a commercially reasonable price not less than the lowest competitive and generally accepted market price for such Digital Currency at the time of such Transfer.

**6.2 Amalgamations, Mergers.** Amalgamate, merge or consolidate with any other Person unless such Loan Party is the surviving entity of such amalgamation, merger or consolidation.

**6.3 Encumbrance.** Create, incur, allow, or suffer any Lien except for Permitted Liens, provided that this Section 6.3 shall not apply to any item of Collateral which JGB Agent has released its Lien and security interest on pursuant to Section 5.9.

**6.4 Indebtedness.** Permit or allow (i) BNI, Aviation, the Michigan Property Owner or the Florida Property Owner to create, incur, assume or be liable for any Indebtedness other than Permitted Indebtedness, (ii) Borrowers to create, incur, assume or be liable for any (x) Indebtedness that is secured by Collateral unless such Indebtedness is subordinated to the interests of JGB Agent pursuant to a written subordination acceptable to the JGB Agent or (y) Indebtedness unless such Indebtedness is subordinated to the interests of JGB Agent pursuant to a written subordination acceptable to the JGB Agent and has a maturity date beyond the term of the Term Loan Maturity Date or (iii) Borrower Representative to create, incur, assume or be liable for any unsecured Indebtedness other than Permitted Indebtedness, provided that this Section 6.4 shall not apply to any item of Collateral which JGB Agent has released its Lien and security interest on pursuant to Section 5.9.

**6.5 Distributions.** Pay any dividends or make any distribution or payment on any capital stock of a Loan Party or redeem, retire or purchase any Equity Interests; provided, however, (i) Ault Alliance may pay dividends in shares of its Common Stock and distribute securities to its stockholders in Permitted Spin-Offs, (ii) pay dividends on Ault Alliance's then issued and outstanding 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value \$0.001 per share, not to exceed \$2,000,000 per fiscal quarter, (iii) Loan Parties, directly or indirectly, shall be entitled to purchase up to \$2,000,000 of Equity Interests of Ault Alliance per fiscal quarter, and (iv) Ault Alliance or Circle 8 may pay dividends on Circle 8 Pledged Interests pursuant to the terms of Section 5.8.3. This Section 6.5 shall not apply to any item of Collateral which JGB Agent has released its Lien and security interest on pursuant to Section 5.9.

**6.6 Compliance.** Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940, as amended, or, except for Ault Lending, undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Loan for that purpose; take any action or fail to take any action (or suffer any other Person to do so), to the extent the same would cause the representations set forth in Section 4.9(c) to be untrue, in any material respect; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply, in all material respects, with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Effect; withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any material liability of a Loan Party or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**6.7 Pledged Interests.** Issue or permit the issuance of additional Equity Interests in Michigan Property Owner, Aviation, Florida Property Owner and/or Circle 8 or transfer or permit the transfer of any outstanding Pledged Interests, except in accordance with the Michigan Mortgage or Florida Mortgage, as applicable.

**6.8 [Reserved].**

**6.9 Transfer of Collateral.** Transfer or permit the transfer of any Collateral unless the applicable Release Price has been paid for such item of Collateral pursuant to Section 5.9.

## **7. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

**7.1 Payment Default.** Any Loan Party fails to (a) make any payment of principal or interest on any Loan when due within three (3) Business Days, or (b) pay any other Obligations within five (5) Business Days after such Obligations are due and payable.

**7.2 Covenant Default.**

(a) A Loan Party fails or neglects to perform any obligation in Section 5 or violates any covenant in Section 6.

(b) A Loan Party fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in clause (a) of this Section 7.2) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the earlier of: (i) notice of the occurrence thereof has been given to the Borrower Representative by the JGB Agent or (ii) the date which a Loan Party knew or would reasonably be expected to have known thereof.

(c) A default or event of default occurs under any other Loan Document and such default or event of default is not cured within the applicable grace period (if any) set forth in such other Loan Document.

**7.3 Material Adverse Effect.** An event or circumstance has occurred which could be expected to have a Material Adverse Effect.

**7.4 Attachment; Levy; Restraint on Business.** (i) Any Collateral is attached, seized, levied on, or comes into possession of a trustee or receiver and is not dismissed or stayed within thirty (30) days; provided, if the value of such Collateral exceeds One Million dollars (\$1,000,000) then such attachment, seizure, levy on, or coming into possession of a trustee or receiver shall be an immediate Event of Default hereunder or (ii) any court order enjoins, restrains, or prevents a Loan Party or any of its Subsidiaries from conducting all or any material part of its business and is not dismissed or stayed within thirty (30) days.

**7.5 Insolvency.** The Loan Parties, taken as a whole, are unable to pay their debts (including trade debts) as they become due or otherwise becomes insolvent, the realizable value of the Loan Parties' assets, taken as a whole, is less than the aggregate sum of the liabilities of the Loan Parties, taken as a whole; (b) a Loan Party or Personal Guarantor begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against a Loan Party or Personal Guarantor and is not dismissed or stayed within thirty (30) days.

**7.6 Other Agreements.** There is, under any agreement to which a Loan Party is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually in excess of One Million Five Hundred Thousand dollars (\$1,500,000) or in the aggregate in excess of Three Million dollars (\$3,000,000); or (b) any breach or default by a Loan Party or a Subsidiary of such Loan Party, the result of which could reasonably be expected to have a Material Adverse Effect.

**7.7 Judgments; Penalties.**

(a) One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually in excess of One Million Five Hundred Thousand dollars (\$1,500,000) or in the aggregate in excess of Three Million dollars (\$3,000,000) (to the extent not covered by independent third-party insurance as to which the insurer has been notified and the insurer has confirmed in writing its responsibilities to cover such amounts) shall be rendered against a Loan Party or the Personal Guarantor by any Governmental Authority, and the same are not, within thirty (30) days after the entry, assessment or issuance thereof, vacated, or after execution thereof, stayed or bonded pending appeal, (provided that no Loans will be made prior to the vacation, stay, or bonding of such fine, penalty, judgment, order or decree).

(b) Personal Guarantor, a Loan Party, a Subsidiary of a Loan Party or any officer or director of a Loan Party or Subsidiary of a Loan Party shall be indicted, convicted or have a judgment entered against it (including in a settled action) for any intentional or willful violation of either (i) state or federal laws or (ii) any anti-fraud provisions of state or federal securities law.

**7.8 Misrepresentations.** Any Loan Party makes any representation, warranty, or other statement in this Agreement, any Loan Document or any Compliance Certificate, and such representation, warranty, or other statement is incorrect in any material respect when made.

**7.9 Guaranty.** Any guaranty of any Obligations terminates or ceases for any reason to be in full force and effect.

**8. ACCELERATION**

**8.1 Acceleration.** Upon the occurrence and during the continuance of an Event of Default, JGB Agent, is entitled, to declare all Obligations immediately due and payable (but if an Event of Default described in Section 7.5 occurs all Obligations are immediately due and payable without any action by JGB Agent).

**9. NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, or email address indicated below. JGB Agent, Lenders and Loan Parties may change their respective mailing or electronic mail addresses by giving the other party written notice thereof in accordance with the terms of this Section 9.

If to Loan Parties:	AULT & COMPANY, INC. 11411 Southern Highlands Pkwy #240 Las Vegas, Nevada 89141 Attention: Email:
With a copy to (which shall not constitute notice):	AULT & COMPANY, INC. 100 Park Avenue, Suite 1658A New York, NY 10017 Attention: Email:
If to JGB Agent or Lenders:	<b>JGB MANAGEMENT INC.</b> 21 Charles Street Westport, CT 06880 Attention: Email:
With a copy to (which shall not constitute notice):	<b>HAYNES AND BOONE, LLP</b> 30 Rockefeller Plaza, 26 <sup>th</sup> Floor New York, New York 10112 Attention: Greg Kramer E-mail: greg.kramer@haynesboone.com

**10. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

Except as otherwise expressly provided in any of the Loan Documents, this Agreement and the other Loan Documents shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflicts of law. Each Loan Party hereby submits to the exclusive jurisdiction of the State and Federal courts in New York County, City of New York, New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude JGB Agent from enforcing a judgment or other court order in favor of JGB Agent or any Lender. Each Loan Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Loan Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each Loan Party hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to such Loan Party at the address set forth in, or subsequently provided by such Loan Party in accordance with, Section 9 and that service so made shall be deemed completed upon the earlier to occur of Loan Parties' actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper postage prepaid. Each Loan Party hereby expressly waives any claim to assert that the laws of any other jurisdiction govern this Agreement.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANYWHERE ELSE, EACH LOAN PARTY AGREES THAT IT SHALL NOT SEEK FROM JGB AGENT OR ANY LENDER UNDER ANY THEORY OF LIABILITY (INCLUDING ANY THEORY IN TORTS), ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

This Section 10 shall survive the termination of this Agreement.

**11. GENERAL PROVISIONS**

**11.1 Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than contingent indemnification obligations as to which no claim has been asserted or is known to exist and any other obligations which, by their express terms, are to survive the termination of this Agreement) have been satisfied in full, in cash and all commitments to extend credit pursuant to this Agreement have terminated.

## 11.2 Successors and Assigns.

(a) Successors and Assigns Generally. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. No Loan Party may assign this Agreement or any rights or obligations under it without JGB Agent's prior written consent (which may be granted or withheld in JGB Agent's discretion). Each Lender has the right, without the consent of or notice to Loan Parties, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, such Lender's obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrant, as to which assignment, transfer and other such actions are governed by the terms thereof).

(b) Assignment by Lenders. Each Lender may at any time assign to one or more eligible assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its commitment and the Loans at the time owing to it), subject to any restrictions on such assignment set forth in clause (a) above and the other Loan Documents. Each such Lender shall notify the JGB Agent of such assignment and deliver to the JGB Agent a copy of any assignment and assumption agreement entered into in connection thereto.

(c) Register; Participant Register. JGB Agent, acting solely for this purpose as an agent of the Loan Parties, shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amounts (and stated interest) of the Term Loan owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Loan Parties, JGB Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Loan Parties, any Lender and JGB Agent at any reasonable time and from time to time upon reasonable prior notice. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Loan Parties, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Term Loan or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, JGB Agent (in its capacity as administrative agent) shall have no responsibility for maintaining a Participant Register.

**11.3 Indemnification.** Each Loan Party agrees to indemnify, defend and hold JGB Agent and each Lender and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Lender (each, an "**Indemnified Person**") harmless against all obligations, demands, claims, and liabilities (including such claims, costs, expenses, damages and liabilities based on liability in tort, including strict liability in tort) (collectively, "**Claims**") claimed or asserted by any third party in connection with the transactions contemplated by the Loan Documents, except for Claims and/or losses to the extent directly caused by or resulting from, (x) such Indemnified Person's gross negligence or willful misconduct or (y) any dispute solely among Indemnified Persons. This Section 11.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run and, for the avoidance of doubt, shall survive the resignation or replacement of JGB Agent. This Section 11.3 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

**11.4 Borrower Liability.** Each Borrower hereunder shall be jointly and severally obligated to repay all Loans made hereunder, regardless of which Borrower actually receives said Loan, as if each Borrower hereunder directly received all Loans. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require JGB Agent to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. JGB Agent may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of JGB Agent under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by such Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by such Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Lenders and such payment shall be promptly delivered to JGB Agent, for the ratable benefit of Lenders, for application to the Obligations, whether matured or unmatured.

**11.5 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**11.6 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**11.7 Intentionally Omitted.**

**11.8 Amendments in Writing; Waiver; Integration.** No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be effective except, pursuant to an agreement in writing by the parties thereto, and in case of this Agreement, pursuant to an agreement in writing entered into by Loan Parties, JGB Agent, the Required Lenders. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations among the parties about the subject matter of the Loan Documents merge into the Loan Documents.

**11.9 Counterparts; Electronic Execution of Documents.** This Agreement and any other Loan Documents, except to the extent otherwise required pursuant to the terms thereof, may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is of the same force and effect as an original, and all taken together, constitute one Agreement. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act. Delivery of an executed counterpart of a signature page of any Loan Document by electronic means including by email delivery of a ".pdf" format data file shall be as effective as delivery of an original executed counterpart of such Loan Document.

**11.10 Publicity.** Other than with respect to 'deal tombstones', neither the Loan Parties nor the Lenders shall publicize or use the other's name or logo, or hyperlink to the other's website, describe the relationship of the Loan Parties to the Lenders or the transaction contemplated by this Agreement, in written and oral presentations, advertising, promotional and marketing materials, client lists, public relations materials or on its web site (together, the "Publicity Materials") without such Loan Party or Lender, as applicable, providing prior written notice to the other that is the subject of the proposed Publicity Materials, together with a draft (or, if Publicity Materials are not proposed to be delivered in written form, an outline of the content to be included) so as to provide the recipient a reasonable opportunity to review prior to publication, and each party agrees, in connection with any Publicity Materials proposed by a party to reasonably consider requested changes or corrections requested by the party that is the subject of such Publicity Materials in good faith, and upon request, to provide the final form prior to publication or other dissemination.

**11.11 Borrower Representative.** Each of the Borrowers hereby appoints Borrower Representative to act as its exclusive agent for all purposes under the Loan Documents (including, without limitation, with respect to all matters related to the borrowing and repayment of any Loan). Each of the Borrowers acknowledges and agrees that (a) Borrower Representative may execute such documents on behalf of any Borrower as Borrower Representative deems appropriate in its sole discretion and each Borrower shall be bound by and obligated by all of the terms of any such document executed by Borrower Representative on its behalf, (b) any notice or other communication delivered hereunder to Borrower Representative shall be deemed to have been delivered to each Borrower and (c) JGB Agent and any Lender shall accept (and shall be permitted to rely on) any document or agreement executed by Borrower Representative on behalf of Borrowers (or any of them). Borrowers must act through the Borrower Representative for all purposes under this Agreement and the other Loan Documents. Notwithstanding anything contained herein to the contrary, to the extent any provision in this Agreement requires any Borrower to interact in any manner with JGB Agent or any Lender, such Borrower shall do so through Borrower Representative.

**11.12 Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**11.13 Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**11.14 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

**11.15 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement, in each case other than Indemnified Persons.

**11.16 Appointment of JGB Agent.**

(a) Each Lender hereby appoints JGB Agent to act on behalf of Lenders as administrative agent under this Agreement and the other Loan Documents and appoints JGB Agent to act on behalf of Lenders as collateral agent, and to hold and enforce any and all Liens on the Collateral granted pursuant thereto by the applicable Loan Parties to secure the Obligations. The provisions of this Section 11.16 are solely for the benefit of JGB Agent and Lenders and no Loan Party nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, JGB Agent does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Loan Party or any other Person. JGB Agent shall not have any duties or responsibilities except for those expressly set forth in this Agreement and the other Loan Documents, together with such powers as are reasonably related thereto. The duties of JGB Agent shall be mechanical and administrative in nature and JGB Agent shall not have, or be deemed to have, by reason of this Agreement, any other Loan Document or otherwise a fiduciary relationship in respect of any Lender.

(b) If JGB Agent shall request instructions from Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, then JGB Agent shall be entitled to refrain from such act or taking such action unless and until it shall have received instructions from the Required Lenders, and JGB Agent shall incur no liability to any Person by reason of so refraining. JGB Agent shall be fully justified in failing or refusing to take any action hereunder or under any other Loan Document for any reason. Without limiting the foregoing, no Lender shall have any right of action whatsoever against JGB Agent as a result of JGB Agent's acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of Lenders.

(c) JGB Agent may perform any and all of its duties and exercise its rights and powers hereunder by or through any one or more sub-agents appointed by JGB Agent. JGB Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective related parties. The exculpatory provisions of this Section 11.16 shall apply to any such sub-agent and to the related parties of JGB Agent and any such sub-agent. JGB Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that JGB Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(d) Neither JGB Agent nor any of its Affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for damages solely caused by its or their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Without limitation of the generality of the foregoing, JGB Agent: (i) may consult with legal counsel, independent chartered accountants and other experts and consultants selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants, experts or consultants; (ii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Loan Party or to inspect the Collateral (including the books and records) of any Loan Party; (iv) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (v) shall incur no liability under or in respect of this Agreement or the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by email) believed by it to be genuine and signed or sent by the proper party or parties.

(e) With respect to its Commitments and Loans hereunder, JGB Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any other Lender and may exercise the same as though it were not JGB Agent; and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated, include JGB Agent in its individual capacity (to the extent it holds any Obligations owing to Lenders or Commitments hereunder). JGB Agent and each of its Affiliates may lend money to, invest in, and generally engage in any kind of business with, any Loan Party, any of their Affiliates and any Person who may do business with or own securities of any Loan Party or any such Affiliate, all as if JGB Agent was not JGB Agent and without any duty to account therefor to Lenders. JGB Agent and its Affiliates may accept fees and other consideration from any Loan Party for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

(f) Each Lender acknowledges that it has, independently and without reliance upon JGB Agent or any other Lender, made its own credit and financial analysis of the Loan Parties and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon JGB Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. Each Lender acknowledges the potential conflict of interest of each other Lender as a result of Lenders holding disproportionate interests in the Loans, and expressly consents to, and waives any claim based upon, such conflict of interest.

(g) Each Lender agrees to indemnify JGB Agent (to the extent not reimbursed by Loan Parties and without limiting the obligations of Loan Parties hereunder), ratably according to its respective Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against JGB Agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by JGB Agent in connection therewith; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from JGB Agent’s gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Without limiting the foregoing, each Lender agrees to reimburse JGB Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including reasonable and documented counsel fees) incurred by JGB Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Loan Document, to the extent that JGB Agent is not reimbursed for such expenses by the Loan Parties.



(h) JGB Agent may resign at any time by giving not less than thirty (30) days' prior written notice thereof to Lenders and Borrowers. Upon any such resignation, Lenders shall have the right to appoint a successor JGB Agent. If no successor JGB Agent shall have been so appointed by Lenders and shall have accepted such appointment within thirty (30) days after JGB Agent's giving notice of resignation, then JGB Agent may, on behalf of Lenders, appoint a successor JGB Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or a subsidiary of a commercial bank or financial institution if such commercial bank or financial institution has combined capital of at least \$300,000,000. If no successor JGB Agent has been appointed pursuant to the foregoing, by the 30<sup>th</sup> day after the date such notice of resignation was given by the resigning JGB Agent, such resignation shall become effective and Lenders shall thereafter perform all the duties of JGB Agent hereunder until such time, if any, as Lenders appoint a successor JGB Agent as provided above. Upon the acceptance of any appointment as JGB Agent hereunder by a successor JGB Agent, such successor JGB Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning JGB Agent. Upon the earlier of the acceptance of any appointment as JGB Agent hereunder by a successor JGB Agent or the effective date of the resigning JGB Agent's resignation, the resigning JGB Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents, except that any indemnity, expense reimbursement or other rights in favor of such resigning JGB Agent shall continue. After any resigning JGB Agent's resignation hereunder, the provisions of this Section 11.16 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was JGB Agent under this Agreement and the other Loan Documents. Notwithstanding the foregoing, as long as JGB is a Lender pursuant to this Agreement, JGB Collateral LLC shall not resign as JGB Agent unless a successor JGB Agent is appointed concurrently with such resignation, which successor JGB Agent shall have the wherewithal to perform, and shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning JGB Agent under this Agreement and the other Loan Documents.

(i) In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, with the prior written consent of JGB Agent, each Lender and each holder of any Obligation is hereby authorized at any time or from time to time, without notice to any Loan Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all balances held by it at any of its offices for the account of any Loan Party or any Subsidiary of a Loan Party (regardless of whether such balances are then due to such Loan Party or such Subsidiary) and any other properties or assets any time held or owing by that Lender or that holder to or for the credit or for the account of any Loan Party or any Subsidiary of a Loan Party against and on account of any of the Obligations which are not paid when due. Any Lender or holder of any Obligation exercising a right to set off or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof in accordance with the terms of this Agreement relating to the priority of the repayment of the Obligations shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so set off or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares and in accordance with the terms of this Agreement relating to the priority of the repayment of the Obligations. Each Loan Party agrees, to the fullest extent permitted by law, that (i) any Lender or holder may exercise its right to set off with respect to amounts in excess of its Pro Rata Share of the Obligations and may sell participations in such amount so set off to other Lenders and holders and (ii) any Lender or holders so purchasing a participation in the Loans made or other Obligations held by other Lenders or holders may exercise all rights of set-off, bankers' Lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Loans and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the set-off amount or payment otherwise received is thereafter recovered from Lender that has exercised the right of set-off, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

(j) Nothing in this Agreement or the other Loan Documents shall be deemed to require JGB Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Borrowers may have against any Lender as a result of any default by such Lender hereunder. To the extent that JGB Agent advances funds to Borrowers on behalf of any Lender and is not reimbursed therefor on the same Business Day as such advance is made, JGB Agent shall be entitled to retain for its account all interest accrued on such advance until reimbursed by the applicable Lender.

(k) If JGB Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by such JGB Agent from Borrowers and such related payment is not received thereby, then such JGB Agent will be entitled to recover such amount from such Lender on demand without set-off, counterclaim or deduction of any kind.

(l) If JGB Agent determines at any time that any amount received thereby under this Agreement shall be returned to Borrowers or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, JGB Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to JGB Agent on demand any portion of such amount that JGB Agent has distributed to such Lender, together with interest at such rate, if any, as JGB Agent is required to pay to Borrowers or such other Person, without set-off, counterclaim or deduction of any kind.

(m) JGB Agent will use reasonable efforts to provide Lenders with any written notice of Event of Default received by JGB Agent from, or delivered by JGB Agent to, any Loan Party; provided, however, that JGB Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable solely to JGB Agent's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(n) Anything in this Agreement or any other Loan Document to the contrary notwithstanding, each Lender hereby agrees with each other Lender and with JGB Agent that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any other Loan Document (including exercising any rights of set-off) without first obtaining the prior written consent of the Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the other Loan Documents shall be taken in concert and at the direction or with the consent of JGB Agent at the request of Required Lenders.

## **12. GUARANTY**

**12.1 Guaranty.** Each Guarantor, who has executed this Agreement as of the date hereof, jointly and severally, unconditionally and irrevocably, guarantees the prompt and complete payment and performance by Borrowers and the other Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations. In furtherance of the foregoing, and without limiting the generality thereof, each Guarantor agrees as follows:

(a) each Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon any exercise or enforcement of any remedy of any Secured Party or that any Secured Party may have against a Borrower, or any other Guarantor or other Person liable in respect of the Obligations, or all or any portion of the Collateral; and

(b) JGB Agent, on behalf of Lenders, may enforce this guaranty notwithstanding the existence of any dispute between any Secured Party and any Loan Party with respect to the existence of any Event of Default.

**12.2 Maximum Liability.** Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal or state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 12.5).

**12.3 Termination.** The guaranty pursuant to this Section 12 shall remain in full force and effect until the date the Obligations have been paid in full in cash, and all commitments to extend credit have been terminated.

**12.4 Unconditional Nature of Guaranty.** No payment made by a Borrower, Guarantor, any other guarantor or any other Person or received or collected by any Secured Party from a Borrower, Guarantor, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment, remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the date the Obligations are paid in full in cash .

### **12.5 Right of Contribution**

(a) If in connection with any payment made by any Guarantor hereunder any rights of contribution arise in favor of such Guarantor against one or more other Guarantors, such rights of contribution shall be subject to the terms and conditions of Section 12.6 The provisions of this Section 12.5 shall in no respect limit the obligations and liabilities of any Guarantor pursuant to the Loan Documents, and each Guarantor shall remain liable for the full amount guaranteed by such Guarantor hereunder.

(b) Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by any Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of any Secured Party against any Loan Party or any collateral security or guarantee or right of offset held by any Secured Party for the payment of the Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from any Loan Party in respect of payments made by such Guarantor hereunder, in each case, until the Obligations are paid in full and all commitments to extend credit have been terminated. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time prior to the time that the Obligations are paid in full and all commitments to extend credit have been terminated, such amount shall be held by such Guarantor in trust for the ratable benefit of the Secured Parties, shall be segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to JGB Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to JGB Agent, if required), to be applied to the Obligations, irrespective of the occurrence or the continuance of any Event of Default.

**12.6 Amendments, etc. with respect to the Obligations.** Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Obligations made by any Secured Party may be rescinded and any of the Obligations continued, and the Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and this Agreement, the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, in accordance with their respective terms, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Obligations or for the guarantee pursuant to this Section 12 or any property subject thereto.

**12.7 Guarantee Absolute and Unconditional; Guarantor Waivers; Guarantor Consent.** Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by any Secured Party upon the guaranty contained in this Section 12 or acceptance of this guaranty. The Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this guaranty. All dealings between Borrowers, Guarantors and any Secured Party shall be conclusively presumed to have been had or consummated in reliance upon this guaranty. Each Guarantor further waives:

- (a) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon any Borrower or any of the other Guarantors with respect to the Obligations;
- (b) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Obligations;
- (c) any defense arising by reason of any lack of corporate or other authority or any other defense of any Borrower, such Guarantor or any other Person;
- (d) any defense based upon errors or omissions by any Secured Party in the administration of the Obligations;
- (e) any rights to set-offs and counterclaims;
- (f) any claim or defense that the Guaranty was made without consideration or is not supported by adequate consideration;
- (g) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any Lien or security interest with respect to, or any other dealings with, any Collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Obligations, including any impairment of such Guarantor's recourse against any Person or Collateral;
- (h) any and all rights to which any Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require the JGB Agent to take prior recourse or proceedings against any Collateral, security or Person whatsoever;
- (i) any rights or defenses that may be available by reason of any election of remedies by the JGB Agent or the Lender (including, without limitation, any such election which in any manner impairs, effects, reduces, releases, destroys or extinguishes any Guarantor's subrogation rights, rights to proceed against any Borrower for reimbursement, or any other rights of any Guarantor to proceed against any other person, entity or security);

(j) any defense based upon an election of remedies (including, if available, an election to proceed by nonjudicial foreclosure) which destroys or impairs the subrogation rights of such Guarantor or the right of such Guarantor to proceed against any Borrower or any other obligor of the Obligations for reimbursement; and

(k) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law that limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement.

Each Guarantor understands and agrees that the guarantee contained in this Section 12 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (i) the validity or enforceability of this Agreement or any other Loan Document, any of the Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by any Secured Party, (ii) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Borrower or any other Person against any Secured Party, or (iii) any other circumstance whatsoever (with or without notice to or knowledge of any Loan Party) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Borrower for the Obligations, or of such Guarantor under this guaranty, in bankruptcy or in any other instance, (iv) any Insolvency Proceeding with respect to any Loan Party or any other Person, (v) any amalgamation, merger, acquisition, consolidation or change in structure of any Loan Party or any other Person, or any sale, lease, transfer or other disposition of any or all of the assets or Equity Interests of any Loan Party or any other Person, (vi) any assignment or other transfer, in whole or in part, of Secured Parties' interests in and rights under this Agreement or the other Loan Documents, including the right to receive payment of the Obligations, or any assignment or other transfer, in whole or in part, of any Secured Party's interests in and to any of the Collateral, (vii) any Secured Party's vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding related to any of the Obligations, and (viii) any other guaranty, whether by such Guarantor or any other Person, of all or any part of the Obligations or any other indebtedness, obligations or liabilities of any Guarantor to Secured Parties. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, Secured Parties may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any Loan Party or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto. Any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from any Loan Party or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of any Loan Party or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

**12.8 Reduction.** If the JGB Agent and/or the Lender foreclose on any real property pledged by any Borrower or any other guarantor or other Loan Party:

(a) the amount of the debt may be reduced only by the price for which that Collateral is sold at the foreclosure sale, even if the Collateral is worth more than the sale price, and

(b) the JGB Agent and/or the Lender may collect from such Guarantor even if the JGB Agent and/or the Lender, by foreclosing on the real property Collateral, has destroyed any right such Guarantor may have to collect from any Borrower or any other guarantor or other Loan Party. This is an unconditional and irrevocable waiver of any rights, benefits and defenses such Guarantor may have because the Borrower's or any other guarantor's or other Loan Party's obligations are secured by real property.

**12.9 Modifications of Obligations.** Each Guarantor further unconditionally consents and agrees that, without notice to or further assent from any Guarantor: (a) the principal amount of the Obligations may be increased or decreased and additional indebtedness or obligations of a Borrower or any other Persons under the Loan Documents may be incurred, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise; (b) the time, manner, place or terms of any payment under any Loan Document may be extended or changed, including by an increase or decrease in the interest rate on any Obligation or any fee or other amount payable under such Loan Document, by an amendment, modification or renewal of any Loan Document or otherwise; (c) the time for a Borrower's (or any other Loan Party's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as the applicable Secured Party may deem proper; (d) in addition to the Collateral, Secured Parties may take and hold other security (legal or equitable) of any kind, at any time, as collateral for the Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (e) Secured Parties may discharge or release, in whole or in part, any other Guarantor or any other Loan Party or other Person liable for the payment and performance of all or any part of the Obligations, and may permit or consent to any such action or any result of such action, and shall not be obligated to demand or enforce payment upon any of the Collateral, nor shall any Secured Party be liable to any Guarantor for any failure to collect or enforce payment or performance of the Obligations from any Person or to realize upon the Collateral, and (f) Secured Parties may request and accept other guaranties of the Obligations and of any other indebtedness, obligations or liabilities of a Borrower or any other Loan Party to any Secured Party and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; in each case (a) through (f), as the applicable Secured Parties may deem advisable, and without impairing, abridging, releasing or affecting this Agreement.

**12.10 Reinstatement.** The guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of a Loan Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, a Loan Party or any substantial part of its property, or otherwise, all as though such payments had not been made.

**12.11 No Waiver by Course of Conduct; Cumulative Remedies.** No Secured Party shall by any act (except in writing in accordance with Section 11.9), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default, as applicable. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which any Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

**12.12 Enforcement Expenses; Indemnification.** Each Guarantor agrees to pay or reimburse Secured Parties for all its documented and reasonable costs and out-of-pocket expenses incurred in collecting against such Guarantor under this guaranty or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including, without limitation, the reasonable fees and disbursements of counsel provided that no Guarantor shall be liable for indemnification of any expenses under this Section 12.12 to the extent such expenses arise as a result of the gross negligence or willful misconduct of a Secured Party.

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[SIGNATURE PAGE TO LOAN AND GUARANTY AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Closing Date.

**BORROWERS:**

**AULT & COMPANY, INC.**

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

**GUARANTORS:**

**AULT LENDING, LLC**

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

**MILTON C. AULT, III**

By: \_\_\_\_\_

**AULT ALLIANCE, INC.**

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

**SENTINUM, INC.**

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

**THIRD AVENUE APARTMENTS LLC**

By: **AULT GLOBAL REAL ESTATE EQUITIES, INC.,** its manager

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

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**ALLIANCE CLOUD SERVICES, LLC**

By: **ALLIANCE CLOUD MANAGEMENT, LLC**, its manager

By: **AC MANAGEMENT, INC.**, its managing member

By: \_\_\_\_\_

Name:

Title:

**AULT AVIATION, LLC**

By: **AULT ALLIANCE, INC.**, its managing member

By: \_\_\_\_\_

Name:

Title:

**BNI MONTANA, LLC**

By: **SENTINUM, INC.**, its manager

By: \_\_\_\_\_

Name:

Title:

**AULT GLOBAL REAL ESTATE EQUITIES, INC.**

By: \_\_\_\_\_

Name:

Title:

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[SIGNATURE PAGE TO LOAN AND GUARANTY AGREEMENT]

**JGB AGENT:**  
**JGB COLLATERAL LLC**

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

**LENDERS:**

**JGB CAPITAL, LP**

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

**JGB PARTNERS, LP**

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

**JGB (CAYMAN) BUCKEYE LTD.**

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

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## EXHIBIT A

### DEFINITIONS

As used in this Agreement, the following capitalized terms have the following meanings:

“**Account Control Agreement**” means any control agreement entered into among the depository institution at which a Borrower maintains a deposit account, such Borrower, and JGB Agent pursuant to which JGB Agent, for the benefit of Lenders, obtains control (within the meaning of the Code) over such account in form and substance satisfactory to the JGB Agent.

“**Affiliate**” means, with respect to any Person, each other Person controls, directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agreement**” has the meaning set forth in the preamble.

“**Agreement to Provide Insurance**” means the Agreement to Provide Insurance dated the date hereof between the JGB Agent and Aviation.

“**Aircraft**” means 2005 Gulfstream GV-SP (G550) aircraft, serial number 5094, registration number N623MS, with two (2) Rolls-Royce BR700-710C4-11 (G550) engines, serial numbers 15287 (L) and 15286 (R) and one (1) Honeywell RE220 APU, serial number P-414, together with all avionics, appliances, parts, instruments, accessions, accessories, furnishings or other equipment or property attached thereto and associated therewith as further described in the Aircraft Mortgage. The Aircraft includes all log books (which shall be complete), maintenance records (which shall be continuous and up-to-date), wiring diagrams (complete from the date of manufacture), engineering and maintenance, manuals, engine covers (if any), loose equipment (if any), tool kit(s) (if any), all issued FAA Form 337’s (if any) and all other accessories associated with the aircraft that are described in the Aircraft Mortgage.

“**Aircraft Mortgage**” means that certain Aircraft Mortgage and Security Agreement by and between the JGB Agent and Alliance with respect to the Aircraft.

“**Airdrop**” means a distribution of a new token or tokens of Digital Currency resulting from the ownership of a pre-existing token of Digital Currency.

“**Anti-Terrorism Order**” means Executive Order No. 13,224 as of September 24, 2001, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, 66 U.S. Fed. Reg. 49,079 (2001), as amended.

“**Applicable Rate**” means an annual rate of eleven and one-half percent (11.50%).

“**Ault Alliance Pledged Interests**” means the Equity Interests of the Michigan Property Owner, the Florida Property Owners, Aviation and Sentinum.

“**Ault Lending**” has the meaning set forth in the preamble.

“**BNI**” means BNI Montana, LLC, a Delaware limited liability company.

“**Board**” means, with respect to any Person, the board of directors, board of managers, managers or other similar bodies or authorities performing similar governing functions for such Person. Unless the context otherwise requires, each reference to a Board herein shall be a reference to the Board of Borrower Representative.

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“**Borrower**” and “**Borrowers**” has the meaning set forth in the preamble.

“**Borrower Representative**” has the meaning set forth in the preamble.

“**Borrower Representative Pledged Interests**” means the Equity Interests of the Borrower Representative in Ault Alliance.

“**Business Day**” means any day that is not a Saturday, Sunday or a day on which commercial banks in the State of New York are required or permitted to be closed.

“**Change in Control**” means any of the following (or any combination of the following) whether arising from any single transaction event or series of related transactions or events that, individually or in the aggregate, result in: (a) the holders of Borrower Representative’s Equity Interests who were holders of Equity Interest as of the Closing Date, ceasing to own at least fifty-one percent (51%) of the Voting Stock of Borrower Representative; (b) any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Exchange Act) becoming the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of a sufficient number of Equity Interests of Borrower Representative ordinarily entitled to vote in the election of directors, empowering such “person” or “group” to elect a majority of the members of the Board of Borrower Representative, who did not have such power before such transaction; or (c) the Transfer of all or substantially all assets of any Loan Party or of a material business line of Loan Parties except where such Transfer is to another Loan Party; or (d) Borrower Representative ceasing to own and control, free and clear of any Liens (other than Permitted Liens), directly or indirectly, a majority of the Equity Interests in each of the other Loan Parties or failing to have the power to direct or cause the direction of the management and policies of each such Loan Party, provided, however, that no Change in Control shall apply in connection with any Permitted Spin-Off.

“**Circle 8**” means Circle 8 Holdco, LLC, a Delaware limited liability company.

“**Circle 8 Pledged Interests**” means the Equity Interests of Ault Alliance in Circle 8.

“**Claims**” has the meaning set forth in Section 11.3.

“**Closing Date**” has the meaning set forth in the preamble.

“**Code**” means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York.

“**Collateral**” means any and all assets of any Loan Party subject to a security interest, pledge, charge or other encumbrance pursuant to a Loan Document to secure the Obligations, including without limitation, the Michigan Real Property, the Florida Real Property, the Aircraft and the Personal Property Collateral, substantially all assets of BNI, all other assets referred to in Section 5.9, all Digital Currency owned by Sentinum, the Segregated Account and all proceeds of each of the foregoing.

“**Commitment**” means, as to any Lender, the aggregate principal amount of the Term Loan committed to be made by such Lender, as set forth on Schedule 1 hereto.

“**Common Stock**” means the class A common stock of Borrower Representative.

“**Compliance Certificate**” means that certain certificate in the form attached hereto as Exhibit B.

“**Contingent Obligation**” means, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

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“**Default**” means any circumstance, event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Premium**” means an amount equal to fifteen percent (15.00%) of the outstanding principal balance of the Term Loan.

“**Default Rate**” has the meaning set forth in Section 2.3(b).

“**Deposit Account**” means any “deposit account” as defined in the Code with such additions to such term as may hereafter be made, and includes any checking account, savings account or certificate of deposit.

“**Digital Currency**” means (i) Bitcoin (BTC) or other digital currency or cryptocurrency arising therefrom due to a Hard Fork, Airdrop or otherwise, (ii) Stablecoin or (iii) if the parties agree, Bitcoin Cash (BCH), Ether (ETH), Ether Classic (ETC) and Litecoin (LTC) and other digital currency or cryptocurrency arising therefrom due to a Hard Fork, Airdrop or otherwise.

“**Disbursement Letter**” has the meaning set forth in Section 2.2(a).

“**Dollars,**” “**dollars**” or use of the sign “**\$**” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “**\$**” sign to denote its currency or may be readily converted into lawful money of the United States.

“**Dollar Equivalent**” means, on any date of determination, (a) with respect to any amount denominated in dollars, such amount, and (b) with respect to an amount denominated in any other currency, the equivalent in dollars of such amount determined by reference to the relevant exchange rate in effect on the applicable date of determination. As appropriate, amounts specified herein as amounts in dollars shall be or include any relevant Dollar Equivalent amount.

“**Equity Interests**” means, with respect to any Person, any of the shares of capital stock of (or other ownership, membership or profit interests in) such Person, any of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership, membership or profit interests in) such Person, any of the securities convertible into or exchangeable for shares of capital stock of (or other ownership, membership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and any of the other ownership, membership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**Equipment**” means the Mining Equipment as defined in the Sentinum Security Agreement.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, and its regulations.

“**Event of Default**” has the meaning set forth in Section 7.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Excluded Accounts**” means (i) Deposit Accounts with a balance or maintaining assets valued not greater than \$50,000 individually and \$300,000 in the aggregate at any time, or (ii) Deposit Accounts used exclusively for payroll, payroll taxes and other employee wage and benefit payments, provided that the aggregate balance maintained in such Deposit Accounts shall not exceed the amount necessary to pay payroll, payroll taxes and other employee wage and benefit payments in the then-next payroll period.

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“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System, or any successor thereto.

“**Flood Acts**” has the meaning set forth in Section 4.10(a).

“**Florida Mortgage**” means the Mortgage and Security Agreement of even date herewith by and between the Florida Property Owner and JGB Agent with respect to the Florida Property.

“**Florida Property**” means the parcel or real property identified on Schedule 4 and all improvements thereon.

“**Florida Property Owner**” has the meaning set forth in the preamble.

“**GAAP**” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination, provided, however, that if there occurs after the Closing Date any change in GAAP that affects in any respect the calculation of any covenant or threshold in this Agreement, JGB Agent and Borrowers shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant or threshold with the intent of having the respective positions of Lender and Borrowers after such change in GAAP conform as nearly as possible to their respective positions as of the Closing Date, and, until any such amendments have been agreed upon, such covenants and thresholds shall be calculated as if no such change in GAAP has occurred.

“**Good Faith Deposit**” has the meaning set forth in Section 2.4(b).

“**Governmental Approval**” means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority, including for the testing, manufacturing, marketing and sales of a Product.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization established by statute.

“**Guarantor**” has the meaning set forth in the preamble.

“**Guaranty**” means any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Hard Fork**” means a permanent divergence in the blockchain (e.g., when non-upgraded nodes cannot validate blocks created by upgraded nodes that follow newer consensus rules, or an Airdrop or any other event which results in the creation of a new token of Digital Currency).

“**Indebtedness**” means (a) indebtedness for borrowed money or the deferred price of property or services (excluding trade payables that are not past due), (b) any reimbursement and other obligations for surety bonds and letters of credit, (c) obligations evidenced by notes, bonds, debentures or similar instruments, (d) capital lease obligations, (e) any obligation arising with respect to any other transaction that is the functional equivalent of borrowing but which does not or would not constitute a liability on the balance sheet of the Person incurring such obligation, and (f) Contingent Obligations.

“**Indemnified Person**” has the meaning set forth in Section 11.3.

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**“Insolvency Proceeding”** means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, proceedings seeking an order to stay the rights of creditors, or proceedings seeking reorganization, arrangement, or other relief.

**“JGB Agent”** has the meaning set forth in the preamble.

**“Lender”** has the meaning set forth in the preamble.

**“Lender Expenses”** means all audit fees and expenses as provided in Section 2.3(b), costs, and expenses (including reasonable, documented and out-of-pocket attorneys’ fees and expenses) of JGB Agent or Lenders for preparing, amending, negotiating, administering, filing or recording any Loan Document (including financing statements) and any documented and out of pocket expenses incurred in, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to a Loan Party.

**“Lien”** means a claim, mortgage, deed of trust, levy, charge, pledge, security interest, hypothec or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**“Loan Documents”** means, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Security Agreement, the Sentinum Security Agreement, the Warrant, the Personal Guarantor Pledge Agreement, the Michigan Mortgage, the Florida Mortgage, the Aircraft Mortgage, the Michigan Subordination Agreement, any note, or notes or guaranties executed by a Loan Party, and any other present or future agreement by a Loan Party with or for the benefit of JGB Agent or any Lender in connection with this Agreement, all as amended, modified, supplemented, extended or restated from time to time.

**“Loan Party”** or **“Loan Parties”** means, each Borrower from time-to-time party hereto, and any Guarantor (other than the Personal Guarantor).

**“Margin Stock”** has the meaning set forth in Section 4.9(b).

**“Material Adverse Effect”** means (a) a material impairment in the perfection or priority of the Lien in the Collateral pursuant to the Loan Documents to which the Loan Parties are a party or in the value of the Collateral; or (b) a material adverse effect upon: (i) the business, operations, properties, assets or condition (financial or otherwise) of a Loan Party; (ii) the prospect of repayment of any part of the Obligations; or (iii) the ability to enforce any rights or remedies with respect to any Obligations, in each case, as determined by JGB Agent.

**“Maximum Rate”** has the meaning set forth in Section 2.3(d) hereof.

**“Michigan Mortgage”** means the Mortgage of even date herewith, by and between the Michigan Property Owner and the JGB Agent with respect to the Michigan Property.

**“Michigan Property”** means the parcel of real property identified on Schedule 5 and all improvements thereon (but, for the avoidance of doubt, not including any Bitcoin machines owned by Sentinum, Inc. located therein).

**“Michigan Property Owner”** has the meaning set forth in the preamble.

**“Michigan Subordination Agreement”** means the Subordination Agreement dated the date hereof by and among the Michigan Property Owner, Ault Lending, the Lenders and the JGB Agent.

**“Obligations”** means all of Borrowers’ and each other Loan Party’s obligations to pay the Loans when due, including principal, interest, Original Issue Discount, fees, Prepayment Premiums (if applicable), Default Premiums (if applicable), Lender Expenses, any other amounts due to be paid by a Borrower or any other Loan Party, and each Loan Party’s obligation to perform its duties under the Loan Documents (other than the Warrant), and any other debts, liabilities and other amounts any Loan Party owes to any Lender at any time under the Loan Documents or otherwise in connection therewith (but excluding obligations arising under the Warrant), including, without limitation, interest or Lender Expenses accruing after Insolvency Proceedings begin (whether or not allowed), and any debts, liabilities, or obligations of any Loan Party assigned to any Lender, which shall be treated as secured or administrative expenses in the Insolvency Proceedings to the extent permitted by applicable law.

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“OFAC” has the meaning set forth in Section 4.9(c).

“**Operating Documents**” means, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of formation, organization or incorporation on a date that is no earlier than thirty (30) days prior to the Closing Date and, (a) if such Person is a corporation, its bylaws or Articles of Association in current form, (b) if such Person is a limited liability company, its limited liability company agreement or operating agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments, restatements and modifications thereto.

“**Ordinary Course of Business**” means, in respect of any transaction involving any Person, the ordinary course of such Person’s business as conducted by any such Person in accordance with (a) the usual and customary customs and practices in the kind of business in which such Person is engaged, and (b) the past practice and operations of such Person, and in each case, undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

“**Original Issue Discount**” has the meaning set forth in Section 2.4(a).

“**Payment Date**” means the last Business Day of each calendar month.

“**Permitted Indebtedness**” means:

- (a) each Loan Party’s Indebtedness under this Agreement and the other Loan Documents;
  - (b) Indebtedness existing on the Closing Date;
  - (c) Subordinated Debt;
  - (d) lease obligations and purchase money indebtedness of up to \$2,500,000, in the aggregate, incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets;
  - (e) trade accounts payable incurred in the ordinary course of business;
  - (f) endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;
  - (g) vendor payment guarantees entered into in the ordinary course of business and consistent with past practices;
  - (h) Indebtedness in respect of obligations relating to corporate credit cards, purchase cards or bank card products;
  - (i) Unsecured Indebtedness consisting of intercompany loans and advances among the Loan Parties and their Subsidiaries; and
  - (j) Indebtedness not otherwise permitted pursuant to this defined term, in an aggregate amount outstanding not to exceed Two Hundred Fifty Thousand dollars (\$250,000).
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**“Permitted Liens”** means:

- (a) Liens arising under the other Loan Documents;
- (b) Liens existing on the Closing Date and shown on Schedule 6.3 or as set forth in the Title Policies;
- (c) Liens of Ault Lending in the Michigan Property subject always to the Michigan Subordination Agreement;
- (d) Liens for taxes, fees, assessments or other government charges or levies, either not yet delinquent;
- (e) Liens arising from leases or subleases of real property granted in the Ordinary Course of Business of such Person; and
- (f) mechanics, materialmen’s and similar Liens with respect to any amounts not yet due and payable, but in no event to exceed \$500,000 in the aggregate at any time.

**“Permitted Spin-Off”** means (A) the dividend or other distribution of the Equity Interests of any direct or indirect Subsidiary of Ault Alliance (other than a Loan Party) and any corporate restructurings, reorganizations and other transactions completed in connection with the foregoing and (B) other spin-off transactions described on Schedule 6.

**“Person”** means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**“Personal Guarantor”** has the meaning set forth in the preamble.

**“Personal Guarantor Pledge Agreement”** means one or more pledge agreements of even date herewith by and between the Personal Guarantor and the JGB Agent, with respect to the Personal Guarantor Pledged Interests.

**“Personal Guarantor Pledged Interests”** means the Equity Interests of the Personal Guarantor in the Borrower Representative and Ault Alliance.

**“Personal Property Collateral”** means the Equipment and all substitutions therefor.

**“Pledged Interests”** means collectively, the Borrower Representative Pledged Interests, the Ault Alliance Pledged Interests and the Personal Guarantor Pledged Interests.

**“Preferred Stock”** has the meaning set forth in Section 2.2(a).

**“Prepayment Premium”** means, if all or a part of a Term Loan is prepaid (x) prior to the first anniversary of the Closing Date, an amount equal to fifteen percent (15.00%) of such amount of the Term Loan being prepaid, (y) subsequent to the first anniversary of the Closing Date and prior to the second anniversary of the Closing Date, an amount equal to ten percent (10.00%) of such amount of the Term Loan being prepaid and (z) subsequent to the second anniversary of the Closing Date and prior to the third anniversary of the Closing Date, an amount equal to three percent (3.00%) of such amount of the Term Loan being prepaid.

**“Pro Rata Share”** means, with respect to any Lender and as of any date of determination, the percentage obtained by dividing (i) the aggregate Commitments of such Lender by (ii) the aggregate Commitments of all Lenders provided, that to the extent any Commitment has expired or been terminated, with respect to such Commitment, the applicable outstanding balance of the Loans made pursuant to such Commitment held by such Lender and all Lenders, respectively, shall be used in lieu of the amount of such Commitment, provided further, that with respect to all matters relating to a particular Loan, the Commitment or outstanding balance of the applicable Loan, shall be used in lieu of the aggregate Commitment or outstanding balance of all Loans in the foregoing calculation. “Ratable” and related terms shall mean, determined by reference to such Lender’s Pro Rata Share.

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“**Registered Organization**” means any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“**Release Price A**” means aggregate payments to the Lenders of Fifteen Million dollars (\$15,000,000) with respect to the Florida Property.

“**Release Price B**” means aggregate payments to the Lenders of Eleven Million dollars (\$11,000,000) with respect to the Aircraft.

“**Release Price C**” means aggregate payments to the Lenders of Seventeen Million dollars (\$17,000,000) with respect to the Michigan Property.

“**Release Price D**” means aggregate payments to the Lenders of Three Hundred and Fifty dollars (\$350) per item of Equipment with the aggregate amount paid at any one time subject to a de minimis threshold of One Million dollars (\$1,000,000).

“**Release Price E**” means aggregate payments to the Lenders of Ten Million dollars (\$10,000,000) upon the sale of Circle 8 Pledged Interests.

“**Release Price**” means collectively Release Prices A through E.

“**Required Lenders**” means, as of any date of determination, Lenders holding more than 50% of the sum of the aggregate principal amount of all Loans outstanding and the aggregate amount of all unfunded commitments to make Loans, at such date of determination.

“**Requirement of Law**” means as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Responsible Officer**” means with respect to any Person, any of the Chief Executive Officer, President or Chief Financial Officer of such Person. Unless the context otherwise requires, each reference to a Responsible Officer herein shall be a reference to a Responsible Officer of Borrower Representative.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Secured Notes**” shall have the meaning set forth in Section 2.2(a).

“**Secured Parties**” means, collectively, JGB Agent and each Lender.

“**Security Agreement**” means that certain Security Agreement, dated as of the date hereof, by and among the Borrower Representative, Ault Alliance, AG, Ault Lending, BNI and JGB Agent, as amended, restated, supplemented or otherwise modified from time to time.

“**Sentinum Security Agreement**” means that certain Security Agreement, dated as of the date hereof, by and among Sentinum and JGB Agent, as amended, restated, supplemented or otherwise modified from time to time.

“**Segregated Account**” means a segregated account of the JGB Agent entitled “JGB Collateral LLC – Ault Alliance Collateral Account” with First Republic Bank and established by JGB Agent prior to the Closing Date, under the sole control and dominion of JGB Agent.

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“**Sentinum**” has the meaning set forth in the preamble.

“**Subordinated Debt**” means Indebtedness on terms and to holders satisfactory to JGB Agent and incurred by the Michigan Property Owner or the Florida Property Owner, as the case may be, that is subordinated in writing to all of the Obligations, pursuant to a Subordination Agreement.

“**Subordination Agreement**” means any subordination agreement in form and substance satisfactory to JGB Agent entered into from time to time with respect to Subordinated Debt.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company or joint venture in which (i) any general partnership interest or (ii) more than fifty percent (50%) of the stock, limited liability company interest, joint venture interest or other Equity Interest which by the terms thereof has the ordinary voting power to elect the Board of that Person, at the time as of which any determination is being made, is owned or controlled by such Person, directly or indirectly. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower Representative.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any value added taxes, interest, additions to tax or penalties applicable thereto.

“**Term Loan**” has the meaning set forth in Section 2.2(a)(i).

“**Term Loan Commitment**” means, as to any Lender, the aggregate principal amount of the Term Loan committed to be made by such Lender, as set forth on Schedule 1 hereto.

“**Term Loan Maturity Date**” means the date that is thirty-six (36) months after the Closing Date.

“**Transfer**” has the meaning set forth in Section 6.1.

“**Voting Stock**” means, with respect to any Person, all classes of Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors or managers (or Persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

“**Warrant**” means, collectively, the Warrant to purchase Common Stock dated as of the Closing Date executed by Borrower Representative in favor of each Lender, as amended, modified, supplemented, extended or restated from time to time.

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EXHIBIT B-1

COMPLIANCE CERTIFICATE

TO: JGB COLLATERAL LLC, as JGB Agent
FROM: AULT & COMPANY, INC.

Date: \_\_\_\_\_

Reference is made to that certain Loan and Guaranty Agreement, dated \_\_, 2023 (as amended, restated, supplemented or otherwise modified, from time to time, the "Agreement"), among Ault & Company, Inc., a Delaware corporation ("Borrower Representative" and each other Person from time to time party hereto as a borrower, collectively, "Borrowers", and each, a "Borrower"), Third Avenue Apartments LLC, a Delaware limited liability company (the "Florida Property Owner"), Alliance Cloud Services, LLC, a Delaware limited liability company (the "Michigan Property Owner"), Sentinum, Inc., a Nevada corporation ("Sentinum"), Ault Alliance, Inc., a Delaware corporation ("Ault Alliance"), Ault Aviation, LLC, a Nevada limited liability company ("Aviation"), BNI Montana, LLC, a Delaware limited liability company ("BNI"), Ault Lending, LLC, a California limited liability company ("Ault Lending"), Ault Global Real Estate Equities, Inc., a Nevada corporation ("AG"), Milton "Todd" Ault, III, a natural person ("Personal Guarantor" and together with the Florida Property Owner, the Michigan Property Owner, Sentinum, Ault Alliance, Aviation, BNI, Ault Lending, AG and each other party from time to time party hereto as a guarantor or otherwise acting as a guarantor with respect to the Obligations, collectively, "Guarantors" and each, a "Guarantor"), JGB CAPITAL, LP, a Delaware limited partnership, JGB PARTNERS, LP, a Delaware limited partnership and JGB (CAYMAN) BUCKEYE LTD., a Cayman Islands exempted company, and any other lender from time to time party hereto (collectively, "Lenders", and each, a "Lender"), and JGB COLLATERAL LLC, as administrative agent and collateral agent for Lenders (in such capacity, together with its successors, "JGB Agent"). Capitalized terms have meanings as defined in the Agreement.

The undersigned authorized officer of Borrower Representative, hereby certifies in accordance with the terms of the Agreement as follows:

(1) Each Borrower is in compliance for the period ending \_\_\_\_\_ with all covenants set forth in the Agreement; (2) no Event of Default has occurred and is continuing; and (3) the representations and warranties in the Agreement are true and correct in all material respects on this date; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

The undersigned certifies that all financial statements delivered herewith are prepared in accordance with GAAP (other than, with respect to unaudited financials for the absence of footnotes and being subject to normal year-end adjustments), consistently applied from one period to the next.

Please indicate compliance status by circling Yes/No under "Complies" column.

Table with 3 columns: Reporting Covenants, Required, and Complies. Rows include Quarterly financial statements, Annual financial statements and any management letters, Statements, reports and notices to stockholders, and Legal action notices and updates.

**Other Matters**

Please list any SEC filings made since the most recently delivered Compliance Certificate:

Yes

No

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Has any Loan Party changed its legal name, jurisdiction of organization, chief executive office or principal place of business?  
If yes, please complete details below:

Yes

No

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The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

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BORROWER REPRESENTATIVE:

AULT & COMPANY, INC.

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

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**EXHIBIT B-2**

**COMPLIANCE CERTIFICATE**

TO: JGB COLLATERAL LLC, as JGB Agent  
 FROM: AULT ALLIANCE, INC.

Date: \_\_\_\_\_

Reference is made to that certain Loan and Guaranty Agreement, dated \_\_, 2023 (as amended, restated, supplemented or otherwise modified, from time to time, the “**Agreement**”), among **Ault & Company, Inc.**, a Delaware corporation (“**Borrower Representative**” and each other Person from time to time party hereto as a borrower, collectively, “**Borrowers**”, and each, a “**Borrower**”), **Third Avenue Apartments LLC**, a Delaware limited liability company (the “**Florida Property Owner**”), **Alliance Cloud Services, LLC**, a Delaware limited liability company (the “**Michigan Property Owner**”), **Sentinum, Inc.**, a Nevada corporation (“**Sentinum**”), **Ault Alliance, Inc.**, a Delaware corporation (“**Ault Alliance**”), **Ault Aviation, LLC**, a Nevada limited liability company (“**Aviation**”), **BNI Montana, LLC**, a Delaware limited liability company (“**BNI**”), **Ault Lending, LLC**, a California limited liability company (“**Ault Lending**”), **Ault Global Real Estate Equities, Inc.**, a Nevada corporation (“**AG**”), **Milton “Todd” Ault, III**, a natural person (“**Personal Guarantor**” and together with the Florida Property Owner, the Michigan Property Owner, Sentinum, Ault Alliance, Aviation, BNI, Ault Lending, AG and each other party from time to time party hereto as a guarantor or otherwise acting as a guarantor with respect to the Obligations, collectively, “**Guarantors**” and each, a “**Guarantor**”), **JGB CAPITAL, LP**, a Delaware limited partnership, **JGB PARTNERS, LP**, a Delaware limited partnership and **JGB (CAYMAN) BUCKEYE LTD.**, a Cayman Islands exempted company, and any other lender from time to time party hereto (collectively, “**Lenders**”, and each, a “**Lender**”), and **JGB COLLATERAL LLC**, as administrative agent and collateral agent for Lenders (in such capacity, together with its successors, “**JGB Agent**”). Capitalized terms have meanings as defined in the Agreement.

The undersigned authorized officer of Ault Alliance, hereby certifies in accordance with the terms of the Agreement as follows:

The undersigned certifies that all financial statements delivered herewith are prepared in accordance with GAAP (other than, with respect to unaudited financials for the absence of footnotes and being subject to normal year-end adjustments), consistently applied from one period to the next.

**Please indicate compliance status by circling Yes/No under “Complies” column.**

<b><u>Reporting Covenants</u></b>	<b><u>Required</u></b>	<b><u>Complies</u></b>
Quarterly financial statements	Quarterly, within 55 days (unless Borrower filed its Quarterly Report on Form 10-Q)	Yes No
Annual audited financial statements and any management letters	Annually, within 110 days of fiscal year end (unless Borrower filed its Annual Report on Form 10-K)	Yes No
Statements, reports and notices to stockholders	Within 5 Business Days of delivery (unless filed with the SEC or a link to such filing is posted on Borrower Representative’s website)	Yes No
SEC filings	Within 5 Business Days after filing with SEC (provided such filings will be deemed to have been delivered on the date on which Borrower Representative posts such documents on Borrower Representative’s website)	Yes No
Legal action notices and updates	Promptly	Yes No

**Other Matters**

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

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AULT ALLIANCE, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT C**  
**FORM OF**  
**SECURED PROMISSORY NOTE**

**\$38,918,919**

**Issue Date:** \_\_, 2023

FOR VALUE RECEIVED, the undersigned, **AULT & COMPANY, INC.**, a Delaware corporation (“**Borrower Representative**” and each other Person from time to time party hereto as a borrower, collectively, “**Borrowers**”, and each, a “**Borrower**”), promise to pay to **JGB CAPITAL, LP, JGB PARTNERS, LP** and **JGB (CAYMAN) BUCKEYE LTD** (together with its successors and assigns, the “**Holder**”) at the times, in the amounts and at the address set forth in the Loan and Guaranty Agreement, dated as of \_\_, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”; capitalized terms used herein without definition have the meanings assigned to such terms in the Loan Agreement), among Borrowers, the other Loan Parties party thereto, the Holder, any other lender from time to time party thereto (collectively, “**Lenders**”), and **JGB COLLATERAL LLC**, as administrative agent and collateral agent for Lenders (in such capacity, together with its successors and assigns, “**JGB Agent**”), the principal amount of **THIRTY-EIGHT MILLION NINE HUNDRED EIGHTEEN THOUSAND NINE HUNDRED NINETEEN** Dollars (**\$38,918,919**). Borrowers further, jointly and severally, promise to pay interest in accordance with Section 2.3 of the Loan Agreement and any other fees or expenses (including Lender Expenses) when due from time to time pursuant to the Loan Agreement. In no event shall interest hereunder exceed the maximum rate permitted under applicable law. All payments of principal, interest and any other amounts due shall be made as set forth in Section 2.5 of the Loan Agreement. Accordingly, the outstanding principal amount of the Loans may be less than the amount set forth in this Note. The entire outstanding principal balance of this Note and all accrued and unpaid interest thereon and other amounts under the Loan Agreement shall be due and payable in full on the Term Loan Maturity Date, as may be extended pursuant to the Loan Agreement.

The Obligations evidenced by this Secured Promissory Note (as amended, restated, supplemented or otherwise modified from time to time, this “**Note**”) are subject to acceleration in accordance with Section 8.1 of the Loan Agreement. Each Borrower hereby waives presentment, demand, notice of default or dishonor, notice of payment and nonpayment, protest and all other demands and notices except as required by the Loan Agreement in connection with the execution, delivery, acceptance, performance, default or enforcement of this Note.

This Note is secured by a security interest in the Collateral of the Loan Parties granted to the applicable JGB Agent pursuant to the Loan Documents, for the ratable benefit of Lenders.

The terms of Section 11 of the Loan Agreement are incorporated herein, *mutatis mutandis*.

For purposes of Sections 1272, 1273 and 1275 of the IRC, this Note is being issued with “original issue discount.” Please contact \_\_\_\_\_ at \_\_\_\_\_ to obtain information regarding the issue price, issue date, amount of original issue discount and yield to maturity.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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[SIGNATURE PAGE TO SECURED PROMISSORY NOTE]

IN WITNESS WHEREOF, each Borrower has caused this Note to be duly executed and delivered on the date set forth above by the duly authorized representative of such Borrower.

**BORROWER:**  
**AULT & COMPANY, INC.**

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

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SCHEDULE 1  
COMMITMENTS

LENDER	TOTAL TERM LOAN COMMITMENTS
JGB CAPITAL LP	\$4,000,000
JGB PARTNERS, LP	\$21,729,730
JGB (CAYMAN) BUCKEYE LTD.	\$13,189,189
TOTAL:	\$38,918,919.00

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SCHEDULE 2

POST-CLOSING DELIVERIES

1. Within 10 days of the Closing Date or as promptly as reasonably practicable, the original signature page to the Warrant and the Note, any pledged stock certificates or stock powers, and any other Loan Documents with respect to which JGB Agent has requested delivery of original signature pages.
  2. Within 20 days of the Closing Date, copies of all insurance policies with respect to the Michigan Property required under Section 8 of the Michigan Mortgage and a mortgagee loss payable endorsement with respect to such policies in favor of the JGB Agent, all in a form acceptable to the Agent.
  3. Within 20 days of the Closing Date, copies of all insurance policies with respect to the Florida Property required under Section 5 of the Florida Mortgage and a mortgagee loss payable endorsement with respect to such policies in favor of the JGB Agent, all in a form acceptable to the Agent.
  4. Within 30 days of the Closing Date, the deposit account control agreements with respect to the (i) Ault Alliance deposit account duly executed by Ault Alliance and the relevant account bank, (ii) the Ault Lending deposit account duly executed by Ault Lending and the relevant account bank, and (iii) the Michigan Property owner's deposit accounts used for the collection of Rents and Accounts (as defined in the Michigan Mortgage) duly executed by the Michigan Property Owner and the relevant account bank.
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## SCHEDULE 3

### TAXES; INCREASED COSTS

#### 1. **Defined Terms.** For purposes of this Schedule 3:

(a) “**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

(b) “**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office or business activities located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes (ii) Taxes attributable to such Recipient’s failure to comply with Section 7 of this Schedule 3 and (iii) any withholding Taxes imposed under FATCA.

(c) “**FATCA**” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

(d) “**Foreign Lender**” means a Lender that is not a U.S. Person.

(e) “**Indemnified Taxes**” means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Loan Parties under any Loan Document and (ii) to the extent not otherwise described in clause (i), Other Taxes.

(f) “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

(g) “**IRS**” means the United States Internal Revenue Service.

(h) “**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Term Loan or Loan Document).

(i) “**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

(j) “**Recipient**” means JGB Agent or any Lender, as applicable.

(k) “**U.S. Person**” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

(l) “**Withholding Agent**” means, individually, the Loan Parties.

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**2. Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Loan Parties under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Loan Parties shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2 or Section 4 of this Schedule 3) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

**3. Payment of Other Taxes by the Loan Parties.** The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of JGB Agent, timely reimburse it for the payment of, any Other Taxes.

**4. Indemnification by the Loan Parties.** The Loan Parties shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under Section 2 of this Schedule 3 or this Section 4 of this Schedule 3) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Loan Parties by a Lender (with a copy to JGB Agent), or by JGB Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

**5. Indemnification by Lenders.** Each Lender shall severally indemnify JGB Agent, within 10 days after demand therefor, for (a) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified JGB Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (b) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.2 of the Agreement relating to the maintenance of a Participant Register and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by JGB Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by JGB Agent, as applicable, shall be conclusive absent manifest error. Each Lender hereby authorizes JGB Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by JGB Agent, as applicable, to Lenders from any other source against any amount due to JGB Agent under this Section 5 of Schedule 3.

**6. Evidence of Payments.** As soon as practicable after any payment of Taxes by the Loan Parties to a Governmental Authority pursuant to the provisions of this Schedule 3, the Loan Parties shall deliver to JGB Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to JGB Agent.

**7. Status of Lenders and JGB Agent.**

(a) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Loan Parties, at the time or times reasonably requested by the Loan Parties, such properly completed and executed documentation reasonably requested by the Loan Parties as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Recipient, if reasonably requested by the Loan Parties, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Loan Parties as will enable the Loan Parties to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 7(b)(i), 7(b)(ii) and 7(b)(iv) of this Schedule 3) shall not be required if in the applicable Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(b) Without limiting the generality of the foregoing, in the event that any Loan Party is a U.S. Person,

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(ii) any Lender that is a U.S. Person and JGB Agent shall deliver to such Loan Party on or prior to the date on which JGB Agent becomes a party to, or such Lender becomes a Lender under, this Agreement (and from time to time thereafter upon the reasonable request of such Loan Party), executed copies of IRS Form W-9 certifying that JGB Agent and any such Lender is exempt from U.S. federal backup withholding tax;

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Loan Party on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Loan Party or JGB Agent), whichever of the following is applicable:

A. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

B. executed copies of IRS Form W-8ECI;

C. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate, in form and substance reasonably acceptable to such Loan Party and JGB Agent, to the effect that such Foreign Lender (or other applicable Person) is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of such Loan Party within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” related to such Loan Party as described in Section 881(c)(3)(C) of the Internal Revenue Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

D. to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

E. any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Loan Party on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Loan Party), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit such Loan Party to determine the withholding or deduction required to be made; and

F. if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to such Loan Party at the time or times prescribed by law and at such time or times reasonably requested by such Loan Party such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by such Loan Party as may be necessary for such Loan Party to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iv), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

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(b) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Loan Parties and JGB Agent in writing of its legal inability to do so.

**2. Increased Costs.** If any change in applicable law shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result shall be to increase the cost to such Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Recipient (whether of principal, interest or any other amount), then, upon the request of such Recipient, the Loan Parties will pay to such Recipient such additional amount or amounts as will compensate such Recipient for such additional costs incurred or reduction suffered.

**3. Survival.** Each party's obligations under the provisions of this Schedule 3 shall survive the resignation or replacement of JGB Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

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## SECURITY AGREEMENT

SECURITY AGREEMENT dated as of December 14, 2023 (this “*Agreement*”), between SENTINUM, INC., a Nevada corporation (“*Grantor*”), and JGB COLLATERAL LLC, as administrative agent and collateral agent for the lenders referred to below (“*Collateral Agent*”). Unless otherwise defined herein, terms defined in the Credit Agreement (as defined below) and used herein shall have the meanings assigned to such terms in the Credit Agreement.

### WITNESSETH:

**WHEREAS**, the Grantor is entering into that certain Loan and Guaranty Agreement, dated as of the date hereof, by and among the Grantor, AULT & COMPANY, INC., a Delaware corporation, BNI MONTANA, LLC, a Delaware limited liability company, AULT ALLIANCE, INC., a Delaware corporation, Milton “Todd” Ault, III, a natural person, AULT AVIATION, LLC, a Nevada limited liability company, THIRD AVENUE APARTMENTS LLC, a Delaware limited liability company, AULT LENDING, LLC, a California limited liability company, ALLIANCE CLOUD SERVICES, LLC, a Delaware limited liability company, AULT GLOBAL REAL ESTATE EQUITIES, INC., a Nevada corporation, the lenders from time-to-time parties thereto (the “*Lenders*”) and the Collateral Agent (as amended, restated, supplemented, replaced, increased, refinanced or otherwise modified from time to time, the “*Credit Agreement*”);

**WHEREAS**, the Mining Equipment (as defined below) is located at (i) the facility owned by Alliance Cloud Services, LLC in Michigan, (ii) the facility operated by BNI Montana, LLC in Montana, or (iii) the facilities operated by Core Scientific, Inc. in Denton, Texas and Calvert City, Kentucky (collectively, the “*Hosting Location*”); and

**WHEREAS**, it is a condition precedent to the obligations of the Lenders and the Collateral Agent under the Loan Documents that the Grantor is required to enter into this Agreement, pursuant to which the Grantor shall grant Liens on all the Collateral (as defined below) to the Collateral Agent, on behalf of the Secured Parties, to secure their respective Obligations;

**NOW, THEREFORE**, in consideration of the premises and to induce the Collateral Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Grantor thereunder, the Grantor hereby agrees with the Collateral Agent, for the ratable benefit of the Secured Parties, as follows:

1. **Obligation to Pay.** Grantor, concurrently with the execution and delivery of this Agreement, is borrowing \$38,918,919 from Secured Parties under the terms and conditions of the Credit Agreement.
2. **Collateral.** Grantor desires to enter into this Agreement for the purpose of creating a security interest in favor of Secured Party, its successors, and assigns, in: (i) (x) nineteen thousand two hundred twenty-six (19,226) Antminers and (y) four hundred and seventy-two (472) Transformers and related assets, including all additions, replacements of and substitutions for all or any part of the foregoing property in each of (x) and (y) (the “*Mining Equipment*”); (ii) all digital currency mined or otherwise generated by, or in connection with, the Mining Equipment from time to time (the “*Mined Digital Currency*”), (iii) all ownership and other equity interests in Alliance Cloud Services, LLC (the “*Pledged Interest*”), (iv) all records and data and embedded software relating to the Mining Equipment, Mined Digital Currency and Pledged Interest; and (v) all Proceeds of the foregoing (collectively, the “*Collateral*”).



The term “**Proceeds**” includes proceeds of insurance policies insuring the Collateral against loss by theft, casualty or otherwise, and all cash or non-cash proceeds and receivables arising from the sale or transfer of such property.

All tangible Collateral are now, or will be upon delivery, be located at the Hosting Location. The serial numbers of the Mining Equipment shall be set forth on Exhibit A hereto, which may be amended from time to time by the Grantor upon written notice to the Collateral Agent.

3. **Creation of Security Interest.** Grantor, in order to secure (a) payment of the debt evidenced by the Credit Agreement, including renewals and extensions thereof; (b) all costs and expenses incurred in collection of the Obligations; and (c) all future advances made by Secured Parties for taxes, levies, insurance, and repairs to or maintenance of the Collateral, hereby grants to the Collateral Agent a security interest in the Collateral.

Until an Event of Default under the Credit Agreement or this Agreement, Grantor shall be entitled to the possession of all Collateral and to use and enjoy the Collateral.

4. **Grantor’s Warranties and Agreements.** Grantor warrants and agrees that:

- (a) **Title.** The Collateral is owned by Grantor and is not subject to any Liens other than Permitted Liens, and Grantor will defend the Collateral against the claims and demands for all Persons.
- (b) **Transfer.** Except as set forth in the Credit Agreement or pursuant to Section 6(f) of this Agreement, Grantor will not sell, lease, encumber or pledge any Collateral, create any Lien, or otherwise dispose of the Collateral or any of Grantor’s rights therein or under this Agreement without Collateral Agent’s prior written consent.
- (c) **Maintenance, Taxes.** Grantor will maintain the Collateral in good condition and repair, reasonable wear and tear excepted, and will pay and discharge all taxes, levies, and other impositions levied on the Collateral as well as the cost of repairs to or maintenance of the same; if Grantor fails to pay such sums, the Collateral Agent may do so for Grantor’s account adding the amount to the Obligations.
- (d) **Insurance.** The Grantor will insure the Collateral against such risks and casualties and in such amounts as reasonably required by the Collateral Agent. All insurance policies shall be written for the benefit of Grantor and the Collateral Agent on behalf of the Secured Parties as their interests may appear, and such policies or certificates evidencing the same shall be furnished to Collateral Agent. If Grantor fails to pay the premium on any such insurance, Collateral Agent may do so for Grantor’s account adding the amount thereof to the Obligations. Grantor assigns to Collateral Agent any return or unearned premiums which may be due upon cancellation of any such policies for any reason whatsoever and all proceeds of such policies and directs the insurers to pay Collateral Agent any amounts so due. Collateral Agent is hereby appointed Grantor’s attorney-in-fact to endorse any draft or check which may be payable to Grantor in order to collect any return or unearned premiums or the proceeds of such insurance. Any balance of insurance proceeds remaining after payment in full of all amounts secured hereunder shall be paid to Grantor.
- (e) **Location.** Grantor will not permit any of the Mining Equipment to be removed from the Host Location without Collateral Agent’s prior written consent, which will not be unreasonably withheld, and will permit Collateral Agent to inspect the Mining Equipment at any reasonable time upon reasonable advance notice.

- (f) **Liens.** Grantor will not permit any other security interest to attach to any of the Collateral, permit the Collateral to be levied upon under any legal process, or permit anything to be done that may impair the value of any of the Collateral or the security intended to be afforded by this Agreement.
- (g) **Filings.** Grantor will pay all costs of filing any financing, continuation, or termination statements with respect to the security interest created by this Agreement. Collateral Agent is hereby appointed Grantor's attorney-in-fact to do all acts and things which Collateral Agent deems necessary to perfect and continue perfected the security interest created by this Agreement and to protect the Collateral. A photographic or other reproduction of this Agreement, or any financing statement signed by Grantor, is sufficient as a financing statement. Upon the date on which all of the Obligations have been indefeasibly paid in full, the Collateral Agent will promptly (within one (1) Business Day) execute and file termination statements under the UCC and provide Grantor evidence of such termination.
- (h) **Place of Business.** Grantor will promptly notify Collateral Agent of any change in the location of any place of business and residence and of the establishment of any new place of business and residence. Grantor will promptly notify Collateral Agent of any change in the Host Location.
- (i) **Use.** Grantor will use the Mining Equipment exclusively as equipment to mine (a) Bitcoin (BTC) or other digital currency or cryptocurrency arising therefrom due to a permanent divergence in the blockchain (a "**Hard Fork**"), a distribution of a new token as a result of the ownership of a pre-existing token (an "**Airdrop**") or otherwise, (b) Stablecoin or (c) if the parties agree, Bitcoin Cash (BCH), Ethereum (ETH), Ethereum Classic (ETC), Litecoin (LTC), and other digital currency or cryptocurrency arising therefrom due to Hard Fork, Airdrop or otherwise unless Collateral Agent gives its written consent to another use.
- (j) **Personal Property.** Grantor acknowledges that the tangible Collateral is and shall remain personal and movable property and shall take such steps as may be requested by Collateral Agent to prevent any person from acquiring any rights in any Collateral by reason of the Collateral being claimed or deemed to be real property or part thereof. Except as done in the ordinary course of business, Grantor shall not affix the Collateral to real or immovable property nor to any goods, chattels or movable property not otherwise financed hereunder without the prior written consent of Collateral Agent.
- (k) **Overclocking.** Grantor shall not, nor shall it permit any Subsidiary to, directly or indirectly, intentionally or knowingly use the Collateral in a manner that will result in the clock rate of the Collateral materially exceeding the clock rate pre-set in the Collateral by the manufacturer, without the express prior written consent of Collateral Agent.

- (l) **Pledge of Pledged Interests.** Grantor hereby pledges, assigns and grants to Collateral Agent a security interest in all the Pledged Interest in which Grantor has any interest together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Closing Date, the certificate or certificates for such Pledged Interest (if any), to the extent certificated, will be delivered to Collateral Agent, accompanied by a stock power or other appropriate instrument of assignment duly executed in blank. To the extent required by the terms and conditions governing the Pledged Interest in which Grantor has an interest, Grantor shall cause the books of each Person whose Pledged Interest are part of the Collateral and any transfer agent to reflect the pledge of the Pledged Interest. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Pledged Interest) into the name of Collateral Agent and cause new certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Grantor will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Pledged Interest. Unless an Event of Default shall have occurred and be continuing, Grantor shall be entitled to exercise any voting rights with respect to the Pledged Interest in which it has an interest and to give consents, waivers and ratifications in respect thereof, provided that after notice from Collateral Agent following an Event of Default or if Grantor has commenced an Insolvency Proceeding, Grantor's rights to exercise voting rights with respect to such Pledged Interest shall be automatically terminated, and in any event, no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of the Loan Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and during the continuance of an Event of Default.
- (m) **Wallets.** Grantor shall use its commercially reasonable efforts, subject to audit and other regulatory compliance, to (i) maintain all Mined Digital Currency in a Wallet (as defined herein) in the custody and control of a Person that is not a Loan Party or a Subsidiary or an Affiliate of a Loan Party and (ii) to cause such Person, not later than 45 days after the date of this Agreement, to authenticate a writing whereby it acknowledges that it has custody and control of such Mined Digital Currency and Wallet for the benefit of the Collateral Agent, and agrees that it shall comply with all instructions of the Collateral without further consent of Grantor and shall subordinate any lien it may have in the Mined Digital Currency to the Collateral Agent's security interest therein. Such Wallet shall at all times be subject to a Wallet Security Agreement (as defined herein) in favor of Collateral Agent. For purposes hereof, "**Wallet**" means the location, wallet, address, securities account or storage device designated by Grantor in a written notice given to Collateral Agent as the location at which Mined Digital Currency is located and "**Wallet Security Agreement**" means any access, control or other acknowledgment agreement that may from time to time be entered into among Collateral Agent, the Grantor and the custodian having custody and control of a Wallet, which shall be in form and substance reasonably acceptable to the Collateral Agent.
- (n) **Further Assurances.** Grantor shall, at Collateral Agent's reasonable request, at any time and from time to time, authenticate, execute and deliver to Collateral Agent such financing statements, documents and other agreements and instruments (and pay the cost of filing or recording the same in all public offices deemed necessary or desirable by Collateral Agent) and do such other acts and things or cause third parties to do such other acts and things as Collateral Agent may reasonably deem necessary or desirable in its sole discretion in order to establish and maintain a valid, attached and perfected security interest in the Collateral in favor of Collateral Agent (free and clear of all other liens, claims, encumbrances and rights of third parties whatsoever, whether voluntarily or involuntarily created) to secure payment of the Obligations, and in order to facilitate the collection of the Collateral.
- (o) **Pledged Interest.** The Pledged Interest by their express terms do not provide that they are securities governed by Article 8 of the UCC and are not held in a securities account or by any financial intermediary. No Pledged Interest is evidenced or represented by a certificate or otherwise certificated.

**5. Default and Remedies.** Any of the following shall constitute an event of default by Grantor:

(a) any Event of Default under the Credit Agreement;

(b) any of Grantor's material warranties under this Agreement shall prove to be false or misleading in any material respect;

(c) More than 5% of the Collateral is lost, stolen, substantially destroyed, condemned or seized and such lost, stolen, substantially destroyed, condemned or seized Collateral is not replaced with additional Antminers (or other machines of equivalent quality and value reasonably acceptable to the Collateral Agent) within sixty (60) days; or

(d) Grantor shall fail to comply with any covenant set forth in this Agreement and such failure shall continue un-remedied for ten (10) days or if a longer grace period is provided, such longer grace period.

**6. Event of Default.** Upon the occurrence and during the continuance of any Event of Default, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

(a) Collateral Agent, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Grantor.

(b) Collateral Agent shall have all of the rights and remedies provided for in this Agreement or the Loan Agreement, the rights and remedies under the Code, and any and all of the rights and remedies at law and equity, all of which shall be deemed cumulative. Without limiting the foregoing, and subject to any notice requirements set forth in this Agreement, Grantor agrees that Collateral Agent shall have the right to (a) require Grantor to use commercially reasonable efforts to assemble the Collateral and make it available to Collateral Agent at a place designated by Collateral Agent; (b) take possession of the Collateral, with or without process of law or judicial hearing; (c) sell, lease or otherwise dispose of the Collateral, by public or private proceedings, for cash or credit, without assumption of credit risk; and/or (d) whether before or after default, collect and receipt for, compound, compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Collateral Agent will use commercially reasonable efforts to send Grantor reasonable written notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Grantor shall be met if such notice is mailed, postage prepaid, to the Grantor at the address of Grantor designated at the beginning of this Agreement, at least ten (10) Business Days before the day of any public sale or at least ten (10) Business Days before the time after which any private sale or other disposition will be made.

(c) Grantor shall be liable for and agree to pay the reasonable and documented out-of-pocket expenses incurred by Collateral Agent in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, reasonable attorneys' fees incurred by Collateral Agent. These expenses shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

(d) Proceeds received by Collateral Agent from disposition of the Collateral shall be applied toward the Obligations in such order or manner as determined by the Collateral Agent and after the full and complete payment of the Obligations, any remaining proceeds shall be paid to the Grantor.

(e) The rights and remedies of Collateral Agent are cumulative and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Collateral Agent may remedy any Event of Default and may waive any Event of Default without waiving the Event of Default so remedied or without waiving any other prior or subsequent Event of Default.

(f) Unless an Event of Default has occurred and is continuing, Grantor, in its sole and unfettered discretion, shall be entitled to sell, trade, distribute to its members, or otherwise dispose of any Mined Digital Currency. Following such permitted sale, trade, distribution or other disposition, such Mined Digital Currency shall be free and clear of any liens and security interest granted to the Collateral Agent hereunder. The Grantor shall use its commercially reasonable efforts to deliver duly executed Wallet Security Agreements with all third party custodians of the Mined Digital Currency not later than forty-five (45) days after the date of this Agreement.

(g) If an Event of Default has occurred and is continuing, all rights and licenses of Grantor granted hereunder will cease and Grantor shall only be entitled to sell, trade, distribute or otherwise dispose of Mined Digital Currency with the written consent of Collateral Agent.

7. **Severability.** If any provision hereof is held to be invalid or unenforceable, such determination shall not affect the validity of the remaining provisions hereof.
8. **Binding Effect.** The rights and privileges of Collateral Agent under this Agreement shall inure to the benefit of its successors and assigns. All covenants, warranties, and agreements of Grantor in this Agreement are joint and several and shall bind personal representatives, heirs, successors, and assigns.
9. **Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole repository of their agreement and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this complete, exclusive, and fully integrated statement of their agreement may not be supplemented or explained (interpreted) by any evidence of trade usage or course of dealing.
10. **Securities Law Provision.** Each Grantor recognizes that Collateral Agent may be limited in its ability to effect a sale to the public of all or part of the Pledged Interest by reason of certain prohibitions in the Securities Act of 1933, as amended, or other federal or state securities laws (collectively, the “**Securities Laws**”), and may be compelled to resort to one or more sales to a restricted group of purchasers who may be required to agree to acquire the Pledged Interest for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor agrees that sales so made may be at prices and on terms less favorable than if the Pledged Interest were sold to the public, and that Collateral Agent has no obligation to delay the sale of any Pledged Interest for the period of time necessary to register the Pledged Interest for sale to the public under the Securities Laws. Each Grantor shall cooperate with Collateral Agent in its attempt to satisfy any requirements under the Securities Laws (including, without limitation, registration thereunder if requested by Collateral Agent) applicable to the sale of the Pledged Interest by Collateral Agent.

- 11. Choice of Law.** Any and all matters of dispute between the parties to this Agreement, whether arising from the Agreement itself or arising from alleged extracontractual matters occurring prior to, during, or subsequent to the formation of the agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of State of New York, regardless of the legal theory upon which such matter is asserted. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this contract.
- 12. Security Interests Absolute.** The provisions of Section 12.7 of the Credit Agreement are incorporated herein with respect to the Grantor, mutatis mutandis, as if a part hereof.
- 13. Anti-Assignment.** The rights and duties under this contract may neither be assigned nor delegated. The parties hereby agree (a) not to assign their rights or delegate their duties, and (b) the parties further agree to surrender any power to assign their rights or delegate their duties as of the moment of formation of this contract. Any attempt by either party to assign any right or delegate any duty under this contract shall be null and void.
- 14. Attorney-in-Fact.** Grantor irrevocably appoints Collateral as its attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in Collateral Agent's discretion upon the occurrence and during the continuance of an Event of Default, such appointment will be deemed to be coupled with an interest, but at the cost and expense of the Grantor to take any action and to execute any assignment, certificate, financing statement, notification, document or instrument which the Collateral Agent may deem necessary or advisable to (i) evidence the security interest granted herein, (ii) put parties on notice of this Agreement, (iii) receive, endorse and collect all instruments made payable to Grantor representing any payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same and (iv) dispose of the Collateral as provided herein.

Witness the execution hereof the day and year first above written.

SENTINUM, INC.

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

AGREED AND ACCEPTED:

JGB COLLATERAL LLC

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

ACKNOWLEDGMENT AND CONSENT:

Alliance Cloud Services, LLC agrees for the benefit of the Collateral Agent that the undersigned acknowledges and agrees to the pledge of its equity interests in accordance with the Agreement and will comply with such terms insofar as such terms are applicable to the undersigned as the issuer of Pledged Interest.

ALLIANCE CLOUD SERVICES, LLC

By: ALLIANCE CLOUD MANAGEMENT, LLC, its manager

By: AC MANAGEMENT, INC., its managing member

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

**Exhibit A.**

**[See Attached]**



**SCHEDULE I**  
**PLEDGED INTEREST**

**SECURITY AGREEMENT**

This SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”) dated as of December 14, 2023 (the “**Closing Date**”), is entered into among **AULT & COMPANY, INC.**, a Delaware corporation (“**Ault**”), **AULT ALLIANCE, INC.**, a Delaware corporation (“**AAI**”), **AULT GLOBAL REAL ESTATE EQUITIES, INC.**, a Nevada corporation (“**AG**”), **AULT LENDING, LLC**, a California limited liability company (“**AL**”), **BNI MONTANA, LLC**, a Delaware limited liability company (“**BNI**” and together with Ault, AAI, AG and AL, each a “**Grantor**” and collectively, the “**Grantors**”), **JGB CAPITAL, LP, JGB PARTNERS, LP, JGB (CAYMAN) BUCKEYE LTD.** and any other lender from time-to-time party hereto (collectively, “**Lenders**”, and each a “**Lender**”), and **JGB COLLATERAL, LLC** as collateral agent for Lenders (in such capacity, together with its successors, “**Collateral Agent**”). Reference is made to that certain Loan and Guaranty Agreement, dated as of December 14, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among, Ault, as borrower, the parties executing the Loan Agreement as guarantors, the Lenders, and the Collateral Agent. It is a condition to the Loan Agreement dated as of the date hereof that the parties hereto enter into this Agreement to grant a security interest in the Collateral (as defined herein).

The parties hereto hereby agree as follows:

**1. DEFINED TERMS.** Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth on Exhibit A or ascribed thereto in the Loan Agreement. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. As used in this Agreement, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. Unless otherwise specified, all references in this Agreement or any Annex or Schedule hereto to a “Section,” “subsection,” “Exhibit,” “Annex,” or “Schedule” shall refer to the corresponding Section, subsection, Exhibit, Annex, or Schedule in or to this Agreement. For purposes of this Agreement, whenever a representation or warranty is made to a Person’s knowledge or awareness, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer of such Person.

**2. CREATION OF SECURITY INTEREST**

**2.1 Grant of Security Interest.** Grantor hereby grants to Collateral Agent, for the ratable benefit of Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. If the Loan Agreement is terminated, Collateral Agent’s Lien in the Collateral shall continue until the Obligations (other than contingent indemnification obligations as to which no claim has been asserted or is known to exist) are repaid in full in cash.

**2.2 Priority of Security Interest.** Grantor represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of the Loan Agreement to have superior priority to Collateral Agent’s Lien under the Loan Agreement). If Grantor shall acquire a commercial tort claim with a potential recovery in excess of One Hundred Thousand Dollars (\$100,000), Grantor shall promptly notify Collateral Agent in writing and deliver such other information and documents as Collateral Agent may require to take any further action necessary or advisable to perfect Collateral Agent’s Lien in such commercial tort claim. If Grantor shall acquire an instrument outside of the ordinary course of its business, whose value exceeds One Hundred Thousand Dollars (\$100,000), then Grantor shall promptly notify Collateral Agent and deliver the same together with an instrument of transfer and any necessary endorsement, all in form satisfactory to Collateral Agent.

**2.3 Authorization to File Financing Statements.** Grantor hereby authorizes Collateral Agent to file at any time financing statements, continuation statements and amendments thereto with all appropriate jurisdictions to perfect or protect Collateral Agent’s interest or rights hereunder. Such financing statements may describe the Collateral as all assets of Grantor.

**2.4 Pledge of Pledged Securities.** Grantor hereby pledges, assigns and grants to Collateral Agent a security interest in all the Pledged Securities (as defined below) in which Grantor has any interest together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Closing Date, the certificate or certificates for such Pledged Securities (if any), to the extent certificated, will be delivered to Collateral Agent, accompanied by a stock power or other appropriate instrument of assignment duly executed in blank. To the extent required by the terms and conditions governing the Pledged Securities in which Grantor has an interest, Grantor shall cause the books of each Person whose Pledged Securities are part of the Collateral and any transfer agent to reflect the pledge of the Pledged Securities. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Pledged Securities) into the name of Collateral Agent and cause new certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Grantor will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Pledged Securities. Unless an Event of Default shall have occurred and be continuing, Grantor shall be entitled to exercise any voting rights with respect to the Pledged Securities in which it has an interest and to give consents, waivers and ratifications in respect thereof, provided that after notice from Collateral Agent following an Event of Default or if Grantor has commenced an Insolvency Proceeding, Grantor's rights to exercise voting rights with respect to such Pledged Securities shall be automatically terminated, and in any event, no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of the Loan Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and during the continuance of an Event of Default.

**2.5 Intellectual Property.** At the request of Collateral Agent, Grantor shall promptly execute and deliver a separate security agreement with respect to Grantor's Intellectual Property ("Intellectual Property Security Agreement"), substantially in a form reasonably acceptable to Collateral Agent. Grantor hereby further authorizes the Agent to file with the United States Patent and Trademark Office and the United States Copyright Office (and any successor office and any similar office in any United States state or other country) any such Intellectual Property Security Agreement, and other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by Grantor hereunder, without the signature of Grantor where permitted by law, and naming Grantor as debtor, and Collateral Agent as secured party.

### **3. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Grantor hereby represents, warrants and agrees to do all of the following:

#### **3.1 Insurance**

(a) Ensure that proceeds payable under any property insurance policy with respect to Collateral are, at Collateral Agent's option, payable to Collateral Agent, for the ratable benefit of Lenders, on account of the Obligations. To that end, all property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payable, all liability policies shall show, or have endorsements showing, Collateral Agent as an additional insured, in each case, in form satisfactory to Collateral Agent and as set forth on Exhibit B. Notwithstanding the foregoing, Grantor shall not be required to obtain any insurance policies unless and until it has material equipment on its properties.

(b) Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Grantor shall have the option of applying the proceeds of any casualty policy up to Two Hundred Thousand Dollars (\$200,000) in the aggregate per fiscal year toward the prompt replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be Collateral in which Collateral Agent has been granted a first priority security interest and (b) after the occurrence and during the continuance of an Event of Default, all such proceeds shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of Lenders, on account of the Obligations.

(c) At Collateral Agent's request, Grantor shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 3.1 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Collateral Agent, that it will give Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be canceled.

(d) If Grantor fails to obtain insurance as required under this Section 3.1 or to pay any amount or furnish any required proof of payment upon Collateral Agent's request, Collateral Agent may make all or part of such payment or obtain such insurance policies required in this Section 3.1 and take any action under the policies as Collateral Agent deems prudent or may direct.

### **3.2 Collateral Accounts.**

Provide Collateral Agent written notice within three (3) Business Days after establishing any Collateral Account at or with any bank, broker or other financial institution identifying the name, address of each bank or other institution, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor, provided that no balance or assets shall be transferred to such new Collateral Account prior to obtaining an Account Control Agreement as required in accordance with this Section. For each Collateral Account that Grantor at any time maintains except Excluded Accounts, Grantor shall cause the applicable bank, broker or financial institution at or with which any Collateral Account is maintained to execute and deliver an Account Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder.

### **3.3 Property Locations.**

(a) Provide to Collateral Agent at least ten (10) days' prior written notice before adding any new offices or business or Collateral locations, including warehouses (unless such new offices or business or Collateral locations qualify as Excluded Locations).

(b) With respect to any property or assets of Grantor located with a third party, including a bailee, datacenter or warehouse (other than Excluded Locations), Grantor shall, if requested in writing by Collateral Agent, use its commercially reasonable efforts to cause such third party to execute and deliver a Collateral Access Agreement for such location, including an acknowledgment from each of the third parties that it is holding or will hold such property, subject to Collateral Agent's security interest.

(c) With respect to any property or assets of Grantor located on leased premises (other than Excluded Locations), Grantor shall, if requested in writing by Collateral Agent, use its commercially reasonable efforts to cause such third party to execute and deliver a Collateral Access Agreement for such location.

### **3.4 Pledged Securities.**

(a) The capital stock and other equity interests (including Pledged Interests (as defined below) listed on Schedule I hereto (the "**Pledged Securities**") are owned beneficially and of record by the applicable Grantor. All of the Pledged Securities are validly issued, fully paid and nonassessable, and the applicable Grantor is the legal and beneficial owner of the Pledged Securities, free and clear of any lien, security interest or other encumbrance except for the security interests created by this Agreement and other Permitted Liens.

(b) The ownership and other equity interests in partnerships and limited liability companies (if any) included in the Collateral (the "**Pledged Interests**") by their express terms do not provide that they are securities governed by Article 8 of the UCC and are not held in a securities account or by any financial intermediary. No Pledged Interest is evidenced or represented by a certificate or otherwise certificated.

## **4. COLLATERAL AGENT'S RIGHTS AND REMEDIES**

**4.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Collateral Agent is entitled, at the direction of Lenders, without notice or demand, to do any or all of the following:

- (a) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent may determine is advisable, and notify any Person owing Grantor money of Collateral Agent's security interest in such funds;
- (b) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral;
- (c) ratably apply to the Obligations any amount held by Collateral Agent owing to or for the credit or the account of Grantor;
- (d) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral;
- (e) deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Account Control Agreement or similar agreements providing control of any Collateral;
- (f) demand and receive possession of Grantor's books and records; and
- (g) exercise all rights and remedies available to Collateral Agent and Lenders under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Upon the occurrence and during the continuance of an Event of Default, Grantor shall assemble the Collateral if Collateral Agent requests and make it available as Collateral Agent designates. Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Upon the occurrence and during the continuance of an Event of Default, Grantor grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies. Upon the occurrence and during the continuance of an Event of Default, Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Grantor's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section, Grantor's rights under all licenses and all franchise agreements inure to Collateral Agent's benefit. If, after the acceleration of the Indebtedness, Grantor receives proceeds of Collateral, Grantor shall deliver such proceeds to Collateral Agent, for the ratable benefit of Lenders, to be applied to the Obligations.

**4.2 Power of Attorney.** Grantor hereby irrevocably appoints Collateral Agent (and any of Collateral Agent's partners, managers, officers, agents or employees) as its lawful attorney-in-fact, with full power of substitution, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) send requests for verification of Accounts or notify Account Debtors of Collateral Agent's security interest and Liens in the Collateral; (b) endorse Grantor's name on any checks or other forms of payment or security; (c) sign Grantor's name on any invoice or bill of lading for any Account or drafts against Account Debtors schedules and assignments of Accounts, verifications of Accounts, and notices to Account Debtors; (d) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (e) make, settle, and adjust all claims under Grantor's insurance policies; (f) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (g) transfer the Collateral into the name of Collateral Agent or a third party as the Code permits; (h) dispose of the Collateral and (i) take such other actions as Collateral Agent determines to be necessary or advisable for the purpose of maintaining, preserving or protecting the Collateral or any of the rights, remedies, powers or privileges of Collateral Agent under this Agreement or the other Loan Documents. Grantor further hereby appoints Collateral Agent (and any of Collateral Agent's partners, managers, officers, agents or employees) as its lawful attorney-in-fact, with full power of substitution, regardless of whether or not an Event of Default has occurred or is continuing to sign Grantor's name on any documents and other Security Instruments necessary to perfect or continue the perfection of, or maintain the priority of, Collateral Agent's security interest in the Collateral. Collateral Agent's foregoing appointment as Grantor's attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than contingent indemnification obligations as to which no claim has been asserted or is known to exist) have been fully repaid, in cash, and otherwise fully performed and all commitments to make Loans hereunder have been terminated.

**4.3 Protective Payments.** If Grantor fails to obtain the insurance called for by Section 3.1 or fails to pay any premium thereon or fails to pay any other amount which Grantor is obligated to pay under this Agreement or any other Loan Document which are required to preserve the Collateral, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lender Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Grantor with notice of Collateral Agent obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**4.4 Application of Payments and Proceeds Upon Default.** If an Event of Default has occurred and is continuing, Collateral Agent shall have the right to apply in any order any funds in its possession, whether payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations, for the ratable benefit of Lenders. Collateral Agent shall pay any surplus to Borrower Representative by credit to the Deposit Account designated by Borrower Representative or as directed by a court of competent jurisdiction. Grantors shall remain liable to Collateral Agent and Lenders for any deficiency. If Collateral Agent, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Collateral Agent may either reduce the Obligations by the principal amount of the purchase price or defer the reduction of the Obligations until the actual receipt by Collateral Agent of cash or immediately available funds therefor.

**4.5 Collateral Agent's Liability for Collateral.** So long as Collateral Agent complies with reasonable secured lender practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and applicable law, Collateral Agent shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Grantor bears all risk of loss, damage or destruction of the Collateral.

**4.6 No Waiver; Remedies Cumulative.** Any failure by Collateral Agent, at any time or times, to require strict performance by Grantor of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent thereafter to demand strict performance and compliance herewith or therewith. Collateral Agent's rights and remedies under this Agreement and any other Loan Document are cumulative. Collateral Agent has all rights and remedies provided under the Code, by law, or in equity. Collateral Agent's exercise of one right or remedy is not an election and shall not preclude Collateral Agent from exercising any other remedy under this Agreement or other remedy available at law or in equity, and any waiver of any Event of Default is not a continuing waiver. Any delay in exercising any remedy is not a waiver, election, or acquiescence.

**4.7 Demand Waiver.** Grantor waives presentment, demand, notice of default (except to the extent notice of default is required by the Loan Agreement) or dishonor, notice of payment and nonpayment, or notice of any release, compromise, settlement, extension, or renewal of any accounts, documents, instruments or chattel paper that are part of the Collateral.

## **5. NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon confirmation of receipt, when sent by electronic mail transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, or email address indicated below. Collateral Agent, Lenders and Grantor may change their respective mailing or electronic mail addresses by giving the other party written notice thereof in accordance with the terms of this Section 5.

If to Grantors: **AULT & COMPANY, INC.**  
11411 Southern Highlands Pkwy #240  
Las Vegas, Nevada 89141  
Attention:  
Email:

With a copy, not constituting notice, to: **AULT & COMPANY, INC.**  
100 Park Avenue, Suite 1658A  
New York, NY 10017  
Attention:  
Email:

If to Collateral Agent: **JGB COLLATERAL, LLC**  
21 Charles Street  
Westport, CT 06880  
Attention:  
Email:

With a copy to (but not constituting notice, and **HAYNES AND BOONE LLP**  
excluding Loan Requests and regular  
reporting): 30 Rockefeller Plaza, 26<sup>th</sup> Floor  
New York, NY 10112  
Attention: Greg Kramer  
Email: gregkramer@haynesboone.com

## 6. **SECURITIES LAW PROVISION**

Each Grantor recognizes that the Collateral Agent may be limited in its ability to effect a sale to the public of all or part of the Pledged Securities by reason of certain prohibitions in the Securities Act of 1933, as amended, or other federal or state securities laws (collectively, the “**Securities Laws**”), and may be compelled to resort to one or more sales to a restricted group of purchasers who may be required to agree to acquire the Pledged Securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor agrees that sales so made may be at prices and on terms less favorable than if the Pledged Securities were sold to the public, and that Collateral Agent has no obligation to delay the sale of any Pledged Securities for the period of time necessary to register the Pledged Securities for sale to the public under the Securities Laws. Each Grantor shall cooperate with Collateral Agent in its attempt to satisfy any requirements under the Securities Laws (including, without limitation, registration thereunder if requested by Collateral Agent) applicable to the sale of the Pledged Securities by Collateral Agent.

## 7. **CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflicts of law. Grantor hereby submits to the exclusive jurisdiction of the State and Federal courts in New York County, City of New York, New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of or Collateral Agent. Grantor expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Grantor hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Grantor hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Grantor at the address set forth in, or subsequently provided by Grantor in accordance with, Section 5 hereof and that service so made shall be deemed completed upon the earlier to occur of Grantor’s actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper postage prepaid. Grantor hereby expressly waives any claim to assert that the laws of any other jurisdiction govern this Agreement.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OF THE PARTIES HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANYWHERE ELSE, GRANTOR AGREES THAT IT SHALL NOT SEEK FROM COLLATERAL AGENT UNDER ANY THEORY OF LIABILITY (INCLUDING ANY THEORY IN TORTS), ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

This Section 7 shall survive the termination of this Agreement.

## **8. GENERAL PROVISIONS**

**8.1 Termination Prior to Term Loan Maturity Date; Survival; Release of Collateral.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than contingent indemnification obligations as to which no claim has been asserted or is known to exist and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied in full, in cash and all commitments to extend credit pursuant to the Loan Agreement have terminated (such date, the “**Discharge Date**”). Those obligations that are expressly specified in this Agreement as surviving this Agreement’s termination shall continue to survive notwithstanding this Agreement’s termination. Promptly after the Discharge Date, Lenders shall direct Collateral Agent to deliver evidence of the release of Collateral.

**8.2 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Grantor may not assign this Agreement or any rights or obligations except in connection with a permitted assignment of Grantor’s rights or obligations under the Loan Agreement.

**8.3 Amendments in Writing; Waiver; Integration.** No purported amendment or modification of this Agreement, or waiver, discharge or termination of any obligation under this Agreement, shall be effective except, pursuant to an agreement in writing by the parties thereto, and in case of this Agreement, pursuant to an agreement in writing entered into by Lenders, Grantor and Collateral Agent, provided that Collateral Agent’s approval shall not be required for any amendment or supplement that has the effect solely of (i) adding or maintaining Collateral, securing additional Obligations that are otherwise permitted by the terms of this Agreement to be secured by the Collateral or preserving, perfecting or establishing the priority of the Liens thereon or the rights of Collateral Agent therein; (ii) curing any ambiguity, defect or inconsistency; (iii) providing for the assumption of Grantor’s Obligations under this Agreement in the case of a merger or consolidation or sale of all or substantially all of the assets of Grantor, as applicable; or (iv) making any change that would provide any additional rights or benefits to the Collateral Agent or that does not adversely affect the legal rights under this Agreement or any other Loan Document of Collateral Agent. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver of any provision of any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver.

**8.4 Appointment of Collateral Agent.** Each Lender hereby appoints Collateral Agent to act on behalf of Lenders as collateral agent under this Agreement and the other Loan Documents, and to hold and enforce any and all Liens on Collateral granted by any of the Grantors to secure any of the Obligations. The provisions of this Section 8.4 are solely for the benefit of Collateral Agent and Lenders.



**8.5 Security Interests Absolute.** The provisions of Section 12.7 of the Loan Agreement, other than with respect to Ault, are incorporated herein with respect to each Grantor, mutatis mutandis, as if a part hereof.

**8.6 Other Provisions.** The terms of Sections 11.3, 11.5, 11.6, 11.9, 11.10, 11.12, 11.13, 11.14 and 11.15 of the Loan Agreement are incorporated herein by reference, it being understood that references to the “parties” shall include Collateral Agent.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Closing Date.

**GRANTORS:**

**AULT & COMPANY, INC.**

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

**BNI MONTANA, LLC**

By: **SENTINUM, INC.**, its manager

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

**AULT ALLIANCE, INC.**

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

**AULT GLOBAL REAL ESTATE EQUITIES, INC.**

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

**AULT LENDING, LLC**

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

[SIGNATURE PAGE TO SECURITY AGREEMENT]

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**COLLATERAL AGENT:**  
**JGB COLLATERAL LLC**

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

**LENDERS:**  
**JGB PARTNERS, LP**

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

**JGB CAPITAL, LP**

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

**JGB (CAYMAN) BUCKEYE LTD**

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

[SIGNATURE PAGE TO SECURITY AGREEMENT]

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## EXHIBIT A

### DEFINED TERMS

“**Code**” means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “**Code**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” means any and all properties, rights and assets of the Loan Parties party hereto described on Exhibit C, and any Pledged Securities pledged pursuant to Section 2.4 hereof.

“**Collateral Agent**” has the meaning set forth in the preamble of this Agreement.

“**General Intangibles**” means all “general intangibles” as defined in the Code in effect on the Closing Date with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Security Instrument**” means any security agreement, assignment, pledge agreement, financing or other similar statement or notice, continuation statement, other agreement or instrument, or any amendment or supplement to any thereof, creating, governing or providing for, evidencing or perfecting any security interest or Lien.

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**EXHIBIT B**

**REQUIREMENTS FOR INSURANCE DOCUMENTATION**

**Contact Information for Insurance Documentation:**

JGB Collateral, LLC, as collateral agent  
21 Charles Street  
Westport, CT 06880

**Document Requirements:**

<b><u>DOCUMENT</u></b>	<b><u>REQUIREMENT</u></b>
<b>1. Certificate of Liability Insurance (ACORD FORM 25)</b>	<ul style="list-style-type: none"><li>• JGB Collateral, LLC and its successors and assigns, as collateral agent, to be designated as <b>“Additional Insured”</b>.</li><li>• JGB Collateral, LLC name and address to be listed as Certificate Holder.</li></ul>
<b>General Liability Endorsement (Additional Insured Endorsement)</b>	<ul style="list-style-type: none"><li>• JGB Collateral, LLC and its successors and assigns, as collateral agent, to be named in additional insured endorsement.</li></ul>
<b>2. Evidence of Commercial Property Insurance (ACORD FORM 28)</b>	<ul style="list-style-type: none"><li>• All-risk commercial property insurance incurring all of Grantor’s property</li><li>• JGB Collateral, LLC and its successors and assigns, as collateral agent, to be designated as <b>“Lender’s Loss Payable,”</b> with <b>Lender’s Loss Payable</b> provision designated.</li><li>• JGB Collateral, LLC name and address to be designated in Name and Address of Additional Interest.</li><li>• Insured locations to include all locations of Grantor listed in the Perfection Certificate</li></ul>
<b>Commercial Property Endorsement (Lender’s Loss Payable Endorsement)</b>	<ul style="list-style-type: none"><li>• JGB Collateral, LLC, and its successors and assigns, as collateral agent, to be scheduled and designated as “Lender Loss Payable” by endorsement</li><li>• Lender loss payable clause with stipulation that coverage will not be cancelled without a minimum 30 days’ notice of cancellation.</li></ul>

## EXHIBIT C

### COLLATERAL DESCRIPTION

The Collateral consists of all of Grantor's right, title and interest in and to the following personal property wherever located, whether now owned or existing or hereafter acquired, created or arising:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, Intellectual Property, commercial tort claims, Documents, Instruments (including any promissory notes), agreements related to Pledged Securities, Chattel Paper (whether tangible or electronic), cash, Deposit Accounts, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other Investment Property, Supporting Obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and all of Grantor's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds (both cash and non-cash) and insurance proceeds of any or all of the foregoing.

Without limiting the generality of the foregoing, the "Collateral" shall include the shares of capital stock and the other equity interests listed on Schedule I hereto (as the same may be modified from time to time pursuant to the terms hereof) and, all certificates (if any) representing such shares and/or equity interests and, in each case, all rights, options, warrants, stock, other securities and/or equity interests that may hereafter be received, receivable or distributed in respect of, or exchanged for, any of the foregoing and all rights arising under or in connection with the Pledged Securities, including, but not limited to, all dividends, interest and cash (the "**Equity Interests**").

Notwithstanding the foregoing, the Collateral does not include the following "**Excluded Property**": (i) any permit or governmental authorization to which Grantor is a party or any of its rights or interests thereunder if and only to the extent that the grant of a security interest hereunder is prohibited by or a violation of any law, rule or regulation applicable to Grantor, (ii) property owned by Grantor that is subject to a purchase money Lien or capitalized lease obligation if the agreement pursuant to which such Lien is granted (or the document providing for such capitalized lease obligation) prohibits, or requires the consent of any Person other than the Grantors which has not been obtained as a condition to, the creation of any other Lien on such property, (iii) any "intent-to-use" trademark application, or (iv) such portion of the voting Equity Interests of any Foreign Subsidiary in excess of 65% of the issued and outstanding voting Equity Interests of such Foreign Subsidiary at any time the pledging of more than 65% of the total outstanding voting Equity Interests of such Foreign Subsidiary would result in a material adverse tax consequence to Grantor; provided further, however, that at all times the Collateral shall include all Accounts and all proceeds of the foregoing Excluded Property.

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**SCHEDULE I**  
**PLEDGED SECURITIES**

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Prepared by and return to:  
HAYNES AND BOONE, LLP.  
30 ROCKEFELLER PLAZA, 26TH FLOOR  
NEW YORK, NY 10112  
ATTENTION: GREG KRAMER, ESQ.

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**THIRD AVENUE APARTMENTS LLC**, as Mortgagor

TO

**JGB COLLATERAL LLC**, as administrative agent and collateral agent,  
as Mortgagee

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**MORTGAGE AND SECURITY AGREEMENT**

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Dated: December 14, 2023  
Location: 430 3rd Avenue North  
St. Petersburg, FL 33701  
County: Pinellas

**NOTE TO RECORDING CLERK:** This Mortgage is part of a multi-state transaction which secures the payment of the Note (as defined herein) in the principal amount of \$38,918,919.00 (the "Indebtedness"). The Note was executed and delivered by Mortgagor to Mortgagee outside of the State of Florida. In addition to this Mortgage, the Note is also secured by others mortgage located outside of the State of Florida.

**A. Documentary Stamp Tax.** The value of all of the collateral for the Note, wherever located (the "Total Collateral"), is \$38,918,919.00, and the value of all collateral located inside the State of Florida (the "Florida Collateral") is \$17,000,000.00. Accordingly, the ratio of the value of the Florida Collateral to the value of the Total Collateral stated as a percentage is 43.68% (the "Ratio"). Pursuant to Rule 12B-4.053(31)(c), Florida Administrative Code, Florida documentary stamp tax is due on this Mortgage based upon the Ratio times the Indebtedness (which is the fair market value of the Florida Collateral) (the "Formula Amount"). Florida documentary stamp tax in the amount of \$59,500.00 is due upon this Mortgage, based on \$17,000,000.00, which is the value based on the Formula Amount.

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**B. Intangible Tax.** Pursuant to Florida Administrative Code Rule 12C-2.004(3)(a), Florida non-recurring intangible tax is payable on the lesser of (i) the Formula Amount, and (ii) the value of the Florida Real Estate. Because the Florida Real Estate in this case is equal to the Formula Amount, non-recurring intangible tax in the amount of \$34,000.00 is due upon this Mortgage, calculated on the Florida Real Estate of \$17,000,000.00.

**C. Tax Paid.** Documentary Stamp Tax in the amount of \$59,500.00 and Intangible Tax in the amount of \$34,000.00 are being paid concurrently with the recording of this Mortgage in connection with the Indebtedness.

## MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT** (as the same may be amended, restated, replaced, supplemented or otherwise modified, being hereinafter referred to as this “**Mortgage**”) is made this 14<sup>th</sup> day of December, 2023 by **THIRD AVENUE APARTMENTS LLC, a Delaware limited liability company**, whose address is **11411 SOUTHERN HIGHLANDS PARKWAY, SUITE 240, LAS VEGAS, NEVADA 89141** (hereinafter called the “**Mortgagor**”, which term shall include the respective heirs, legal representatives, successors and assigns of Mortgagor wherever the context so requires or admits) in favor of **JGB COLLATERAL LLC, a Delaware limited liability company** whose address is **246 POST ROAD EAST, 2ND FLOOR, WESTPORT CT 06880**, as administrative agent and collateral agent (in such capacity, hereinafter called the “**Mortgagee**”, which term shall include the successors and assigns of the Mortgagee wherever the context so requires or admits).

**WHEREAS, AULT & COMPANY, INC.**, a Delaware limited liability company (together with each other person from time to time party to the Loan Agreement (as defined below) as a borrower, collectively, “**Borrowers**”), is justly indebted to Mortgagee, having executed and delivered to Mortgagee the Loan and Guaranty Agreement (the “**Loan Agreement**”) bearing even date herewith and a Secured Promissory Note (the “**Note**”) bearing even date herewith, wherein Borrowers promise to pay the Mortgagee the principal sum of **\$38,918,919.00**, with interest thereon at the rate and times, in the manner and according to the terms and conditions specified in the Loan Agreement and the Note, (collectively, the “**Borrowers**”).

**WHEREAS, Mortgagor, ALLIANCE CLOUD SERVICES, LLC**, a Delaware limited liability company (“**Michigan Property Owner**”), **SENTINUM, INC.**, a Nevada corporation (“**Sentinum**”), **AULT ALLIANCE, INC.**, a Delaware corporation (“**Ault Alliance**”), **AULT AVIATION, LLC**, a Nevada limited liability company (“**Aviation**”), **BNI MONTANTA, LLC**, a Delaware limited liability company (“**BNI**”), **AULT LENDING, LLC**, a California limited liability company (“**Ault Lending**”), **AULT GLOBAL REAL ESTATE EQUITIES, INC.**, a Nevada corporation (“**Ault Global**”) and **MILTON “TODD” AULT III**, a natural person (“**Ault**”) (Mortgagor, Michigan Property Owner, Sentinum, Ault Alliance, Aviation, BNI, Ault Global, Ault and each other person from time to time party to the Loan Agreement as a guarantor or otherwise acting as a guarantor with respect to the Obligations (as defined in the Loan Agreement), are hereinafter referred to individually and collectively as the “**Guarantor**”, which term shall include the respective heirs, legal representatives, successors and assigns of Guarantor wherever the context so requires or admits) have executed and delivered to Mortgagee the Loan Agreement, in favor of Mortgagee to guarantee the Note and other indebtedness as specified in the Loan Agreement.

**NOW THIS INDENTURE WITNESSETH**, that Mortgagor, in consideration of the indebtedness and other good and valuable consideration otherwise received, and to secure the payment to Mortgagee of the principal with interest, and all other sums provided for in the Note, in the Loan Agreement and in this Mortgage, according to their respective terms and conditions, and all future or additional advances as may be made by Mortgagee to Mortgagor, any interest rate swap or similar agreement now or hereafter executed by Mortgagor and Mortgagee or any of the Mortgagee’s affiliates, and for performance of the agreements, conditions, covenants, provisions and stipulations contained herein and therein, and in certain other agreements and instruments made and stipulations contained herein and therein, and in certain other agreements and instruments made and given by Mortgagor to Mortgagee in connection therewith, has mortgaged, and by these presents does mortgage unto Mortgagee all those certain tracts or parcels of land lying and being in the County of **PINELLAS**, State of Florida, more particularly described as follows:

Parcel I:

Lot C, DEVOE'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 3, Page 12, of the Public Records of Pinellas County, Florida, and beginning at the Northwest corner of Lot C, DEVOE'S SUBDIVISION, thence South 16°42' West along the Westerly line of Lot C, a distance of 52.2 feet to the Southwesterly corner thereof, thence West along the Southerly line of Lot C, extended Westerly a distance of 0.5 feet to a point on the East line of Lake Street (now known as 5th Street North); thence Northeasterly along the Easterly line of said Lake Street on a curve to the left, radius 747.5 feet to a point on the South line of Third Avenue North extended Westerly 1.44 feet West of the POINT OF BEGINNING; thence East along the South line of 3rd Avenue North to the Beginning.

Parcel II:

Lots A and B, and the North 1/2 of 10 feet of vacated alley between the South Line of Lots A and B and the North Line of Lots G and H, DEVOE'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 3, Page 12, of the Public Records of Pinellas County, Florida.

Parcel III:

Lots F and G and the South 1/2 of Lot E, DEVOE'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 3, Page 12, of the Public Records of Pinellas County, Florida; TOGETHER WITH a strip of land lying Westerly of and adjacent to the Westerly boundary of said Lot F and the South 1/2 of Lot E, and lying between the Northerly boundary of said South 1/2 of Lot E and the Southerly boundary of said Lot F, extended Westerly to the Easterly boundary of Lake Street (now known as 5th Street North), as established by the Plat of LAKE STREET, as recorded in Plat Book 6, Page 34, of the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part; ALSO TOGETHER WITH the South 1/2 of vacated alley lying North of and adjacent to the North boundary of Lot G of said DEVOE'S SUBDIVISION, between the Northerly extension of the East and West lines of said Lot G extended to the center of said vacated alley.

Parcel IV:

Lot H and the South 1/2 of the vacated alley abutting the North boundary of said land and lying between the East and West boundary lines of said Lot extended North to the center of said alley, DEVOE'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 3, Page 12, of the Public Records of Pinellas County, Florida.

Parcel V:

Lot D and the North 1/2 of Lot E, DEVOE'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 3, Page 12, of the Public Records of Pinellas County, Florida; TOGETHER WITH a strip of land lying Westerly of and adjacent to the Westerly boundary of said Lot D and said North 1/2 of Lot E, and lying between the Northerly boundary of said Lot D and the Southerly boundary of said North 1/2 of Lot E, extended Westerly to the Easterly boundary of Lake Street (now known as 5th Street North) as established by the Plat of LAKE STREET, as recorded in Plat Book 6, Page 34, of the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part.

(the foregoing tract(s) or parcel(s) of land identified above are hereinafter individually and collectively referred to as the "Premises") **TOGETHER WITH** the following property and rights:

(a) All easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, riparian rights, and all estates, rights, titles, interests, privileges, tenements, hereditaments, appurtenances, all rights, liabilities and privileges thereof whatsoever in any way belonging, relating or appertaining to any of the Premises or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversions, remainder and remainders, rents, issues, profits thereof, and all of the estates, right, title, interest, property, possession claim and demand whatsoever at law, as well as in equity, of Mortgagor, of, in and to the same.

(b) All buildings and improvements of every kind and description now or hereafter erected or placed on the Premises and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures, appliances, machinery, furniture, equipment of any nature whatsoever and all other articles of personal property now or hereafter owned by Mortgagor and now or hereafter attached to, installed in or contained in or used in connection with the Premises, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to such land or building or buildings in any manner; it being mutually agreed that all the aforesaid property owned by Mortgagor be deemed to be included within the Premises immediately upon the delivery thereof to such Premises.

(c) All right, title and interest of Mortgagor in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, and in and to the appurtenances thereto.

(d) All rents, profits, issues and revenue of the Premises from time to time accruing, whether under leases, tenancies, or sales agreements now existing or hereafter created.

(e) The Mortgagor's interest in all leases of the Premises, or portions thereof, heretofore or hereafter entered into by Mortgagor, and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, regardless of how said cash or securities are to be held by Mortgagor pursuant to the terms of such leases.

(f) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards.

The Premises, appurtenances, buildings, improvements, fixtures, appliances, machinery, furniture, equipment, tenements, personal property, proceeds and property interest described above shall hereinafter be collectively called the "Mortgaged Property".

**TO HAVE AND TO HOLD** the above-granted and described Mortgaged Property unto Mortgagee, its successors and assigns, in fee simple, forever.

**AND** Mortgagor hereby represents, warrants and covenants with Mortgagee that Mortgagor is indefeasibly seized of the Mortgaged Property in fee simple; that Mortgagor has full power and lawful right to convey the same in fee simple as aforesaid; that it shall be lawful for Mortgagee at all times peaceably and quietly to enter upon, hold, accompany and enjoy the Mortgaged Property and every part thereof in accordance with the terms of this Mortgage, that the Mortgaged Property is free from all liens and encumbrances; that all property, fixtures, appliances, machinery, furniture, equipment and other personal property described herein will be fully paid for and free from all liens, encumbrances, title retaining contracts and security interests when delivered and/or installed upon the Mortgaged Property other than the lien of this Mortgage; that Mortgagor will perform and promptly fulfill all of the covenants contained in superior mortgages encumbering the Mortgaged Property, if any; that Mortgagor will make such further assurances to prove the fee simple title to all and singular the Mortgaged Property in Mortgagee and to prove the lien and priority of this Mortgage, as may be reasonably required, and that Mortgagor does hereby and will forever fully warrant and defend the lien and priority of this Mortgage and the title to the Mortgaged Property and every part thereof against the lawful claims and demands of all persons whomsoever, subject only to the matters set forth in the title insurance policy insuring this Mortgage.

**PROVIDED ALWAYS**, and these presents are upon the express condition that if Mortgagor or the successors or assigns of Mortgagor shall pay unto Mortgagee, its successors or assigns, the sums of money mentioned in the Note and Loan Agreement secured hereby in accordance with the terms thereof, which Note has a maturity date of thirty-six (36) months after the date of this Mortgage, unless extended pursuant to the terms of the Loan Agreement or by modification hereto;

**AND** any renewals or extensions thereof in whatever form, and the interest thereon as it shall become due, according to the true intent and meaning thereof, together with all advances hereunder, cost, charges and expenses, including a reasonable attorney's fee, which Mortgagee may incur or be put to in collecting the same by foreclosure or otherwise;

**AND** shall duly, promptly and fully perform, discharge, execute, effect, complete, comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Note, the Loan Agreement and of this Mortgage;

**THEN** this Mortgage and the estate hereby created shall cease and be NULL AND VOID and this instrument shall be released by Mortgagee, at the cost and expense of Mortgagor.

**MORTGAGOR COVENANTS AND AGREES** to and with Mortgagee that until the indebtedness and obligations secured hereby is fully repaid and performed:

1. **Payment and Performance.** Mortgagor shall pay to Mortgagee, in accordance with the terms of the Loan Agreement, the Note and this Mortgage, the principal and interest, and other sums therein set forth; shall perform and comply with all the agreements, conditions, covenants, provisions and stipulations of the Loan Agreement, the Note and this Mortgage; and shall timely perform all of its obligations and duties as landlord under any lease of all or any portion of the Mortgaged Property now or hereafter in effect.

2. **Taxes and Other Charges.** Mortgagor shall pay all and singular the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature and kind now on said Mortgaged Property, and/or that hereafter may be imposed, suffered, placed, levied or assessed thereupon, and/or that may be levied or assessed upon this Mortgage and/or the indebtedness secured hereby, each and every, when due and payable according to law, before they become delinquent, and before any interest attaches or any penalty is incurred; and insofar as any thereof is of record the same shall be promptly satisfied and discharged of record and the original official document (such as, for instance, the tax receipt or the satisfaction of paper officially endorsed or certified) shall be delivered to the Mortgagee within ten (10) days after payment. Mortgagor's obligation is to pay such items directly, and if Mortgagor fails to pay the amount due for any and all such items before they become delinquent, Mortgagee may exercise its rights and pay such amount and Mortgagor shall then be obligated to repay the Mortgagee any such amount.
3. **Warranty of Title.** Mortgagor warrants that it possesses a good and marketable unencumbered fee simple title to the Mortgaged Property, except for those title exceptions listed in the mortgagee title insurance policy approved by and issued to Mortgagee, insuring the priority of the lien of this Mortgage.
4. **Maintenance of Mortgaged Property.** Mortgagor agrees that it shall keep the Mortgaged Property in good order and condition and in a rentable and tenantable state of repair; to make or cause to be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen; not to remove, demolish or substantially structurally alter (except for tenant improvements and such alterations as may be required by laws, ordinances or regulations) any of the buildings and improvements now or hereafter erected on the Mortgaged Property without Mortgagee's prior, written consent, which shall not be unreasonably withheld; to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Mortgaged Property and promptly restore in like manner any such building or improvement which may be damaged or destroyed thereon (subject to the right of Mortgagee to retain insurance proceeds, as set forth below), and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof, not to permit any waste, impairment, or deterioration of the Mortgaged Property; to keep and maintain grounds, sidewalks, roads, parking and landscaped areas in or on the Mortgaged Property in good and neat order and repair; to comply with the provisions of any lease of all or any part of the Mortgaged Property; not to commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation; not to permit the Mortgaged Property to become vacant or deserted.
5. **Insurance.** The Mortgagor shall carry insurance against such risks, with such companies, and in such amounts as shall be satisfactory to Mortgagee (including but not limited to, hazard insurance and flood insurance, if the Mortgaged Property is located within a flood hazard area, and wind storm insurance); each policy shall be in a form satisfactory to Mortgagee with standard mortgagee clauses making all loss payable to Mortgagee. The Mortgagor shall promptly pay all premiums therefor and deliver to Mortgagee all such policies of insurance. All insurance policies shall provide that notice of non-renewal or cancellation must be given to Mortgagee at least thirty (30) days before such non-renewal or cancellation. Except as otherwise provided below, any insurance money received by Mortgagee may, at its sole election, be paid, either in whole or in part, to the Mortgagor for the purpose of defraying the costs and expenses of repair, restoration or replacement of the Mortgaged Property damaged or destroyed, or be retained and applied toward the payment of any of the principal or other amounts secured by this Mortgage, in whatever order Mortgagee shall elect, with the excess, if any, over the amounts secured by this Mortgage to be repaid to the Mortgagor, without impairing the Mortgagor's duties under this Mortgage. In the event of loss with respect to the Mortgaged Property, the Mortgagor shall promptly notify Mortgagee thereof and Mortgagee may make any proof of loss not promptly made by the Mortgagor. In the event of foreclosure or other disposition of the Mortgaged Property in partial or full payment of the amounts secured by this Mortgage, Mortgagee shall be entitled to all of the Mortgagor's right, title and interest in and to all policies of insurance with respect to the Mortgaged Property, including, without limitation, the right to collect any unearned premium refund relating to such policies.

6. **Installments for Insurance, Taxes and Other Charges.** Upon the demand of the Mortgagee, if required by Mortgagee, and without limiting the effect of Paragraphs 2 and 5 hereof, Mortgagor shall pay to Mortgagee, monthly with the monthly installments of principal and interest, an amount equal to one-twelfth (1/12) of the annual premiums for the insurance policies referred to hereinabove and the annual real estate taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Mortgaged Property prior to the lien of this Mortgage; and on demand from time to time Mortgagor shall pay to Mortgagee any additional sums necessary to pay the premiums and other items all as estimated by Mortgagee; the amounts so paid shall be security for the premiums and other items and shall be used in payment thereof if Mortgagor is not otherwise in default hereunder. No amount so paid shall be deemed to be trust funds but may be commingled with general funds of Mortgagee, and no interest shall be payable thereon. If, pursuant to any provision of this Mortgage, the whole amount of the unpaid principal debt becomes due and payable, Mortgagee shall have the right, at its election, to apply any amount so held against the entire indebtedness secured hereby. At Mortgagee's option, Mortgagee from time to time may waive, in writing, and after any such waiver may reinstate, the provisions of this paragraph requiring the monthly payments.

7. **Corporate Existence and Taxes.** If Mortgagor or any successor or grantee of Mortgagor is a corporation, it shall keep in effect its existence and rights as a corporation under the laws of the state of its incorporation and its right to own property and transact business in the state in which the Mortgaged Property is situated during the entire time that it has any ownership interest in the Mortgaged Property. For all periods during which title to the Mortgaged Property or any part thereof shall be held by a corporation or association subject to corporate taxes or taxes similar to corporate taxes, Mortgagor shall file returns for such taxes with the proper authorities, bureaus or departments and it shall pay, when due and payable and before interest or penalties are due thereon, all taxes owing by Mortgagor to the United States, to such state of incorporation and to the state in which the Mortgaged Property is situated and any political subdivision thereof, and shall produce to Mortgagee receipts showing payment of any and all such taxes, charges or assessments prior to the last dates upon which such taxes, charges or assessments are payable without interest or penalty charges, and within ten (10) days of receipt thereof all settlements, notices of deficiency or overassessment and any other notices pertaining to Mortgagor's tax liability, which may be issued by the United States, such state of incorporation, the state in which the Mortgaged Property is situated and any political subdivision thereof.

8. **Documentary and Other Stamps.** If at any time the United States, the state in which the Mortgaged Property is located or any political subdivision thereof, or any department or bureau of any of the foregoing shall require documentary, revenue or other stamps on the Note secured hereby or this Mortgage, Mortgagor within three (3) business days of demand shall pay for them with any interest or penalties payable thereon.

9. **Other Taxes.** If any law or ordinance now or hereafter imposes a tax directly or indirectly on Mortgagee with respect to the Mortgaged Property, the value of Mortgagor's equity therein, or the indebtedness evidenced by the Note and secured by this Mortgage, Mortgagor shall promptly pay such tax. If Mortgagor fails to pay such tax or if Mortgagor is not lawfully permitted to pay such tax, Mortgagee, at its election, shall have the right at any time to give Mortgagor written notice declaring that the principal debt, with interest and other appropriate charges, shall be due on a specified date not less than thirty (30) days thereafter; provided, however, that such election shall be ineffective if, prior to the specified date, Mortgagor lawfully pays the tax (in addition to all other payments required hereunder) and agrees to pay the tax whenever it becomes due and payable thereafter, which agreement shall then constitute a part of this Mortgage.

10. **Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute and shall be construed as a Security Agreement under the terms of the Uniform Commercial Code (hereinafter in this Paragraph referred to as the "Code") as adopted by the State of Florida, from time to time, with respect to any property included in the definition of the word "Mortgaged Property", which property may not be deemed to form a part of the real property described as the Premises or may not constitute a "fixture" (within the meaning provided in the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (all of said property described above, and the replacements, substitutions and additions thereto together with the proceeds thereof being hereinafter collectively referred to as the "Collateral"), and that a first priority, perfected and continuing security interest in and to the Collateral located on the Mortgaged Property, is hereby granted to the Mortgagee, and the Collateral and all right, title and interest of Mortgagor therein, are hereby assigned to the Mortgagee, all to secure payment of the Note and the Loan Agreement, and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have the right, in addition to all other rights, to proceed with respect to the Collateral in accordance with its rights and remedies as a Secured Party under the Code. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days written notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but shall not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee an inventory of the Collateral in reasonable detail. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be, free and clear of any other liens, encumbrances or security interests.

11. **Compliance with Law and Regulations.** Mortgagor shall comply with all laws, ordinances, regulations and orders of all Federal, State, municipal and other governmental authorities relating to the Mortgaged Property.

12. **Inspection.** Mortgagee and any persons authorized by Mortgagee shall have the right at any time, upon reasonable notice to Mortgagor and subject to the rights of any lessees, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair.

13. **Declaration of No Setoff.** Within one (1) week after requested to do so by Mortgagee in writing, Mortgagor shall certify to Mortgagee or to any proposed assignee of this Mortgage, in a writing duly acknowledged, the amount of principal, interest and other charges then owing on the obligations secured by this Mortgage and by prior or other liens, if any, and whether there are any setoffs or defenses against them. Within one (1) week after requested to do so by Mortgagor in writing, Mortgagee shall certify to Mortgagor in a writing duly acknowledged, the amount of principal, interest and other charges then owing on the obligations secured by this Mortgage.



14. **Required Notices.** Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following:

- (a) a fire or other casualty causing material damage to the Mortgaged Property,
- (b) receipt of notice of eminent domain proceedings or condemnation of the Mortgaged Property,
- (c) receipt of any notice of violation from any governmental authority relating to the structure, use or occupancy of the Mortgaged Property,
- (d) receipt of any notice from any tenant of all or any portion of the Mortgaged Property, pertaining to any alleged default by such tenant or by Mortgagor as landlord,
- (e) substantial change in the occupancy of the Mortgaged Property,
- (f) receipt of any notice from the holder of any lien or security interest in the Mortgaged Property indicating it intends to exercise remedies against the Mortgaged Property, or
- (g) commencement of any litigation affecting the Mortgaged Property.

15. **Condemnation.**

(a) In the event of any condemnation or taking of any part of the Mortgaged Property by eminent domain, alteration of the grade of any street, or other injury to or decrease in the value of the Mortgaged Property by any public or quasi-public authority or corporation, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor, after deducting therefrom all reasonable costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit) including reasonable attorney's fees incurred by Mortgagee in connection with the collection of such proceeds, shall be used for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of the taking, alteration of grade or other injury to the Mortgaged Property. Provided, however, that in the event of a condemnation or taking of so much of the Mortgaged Property that the remainder thereof cannot, in Mortgagee's reasonable discretion, continue to generate revenue sufficient to cover the payments due under the Note and/or the Loan Agreement, then all proceeds shall be applicable first to payment of the indebtedness secured hereby. No settlement for the damages sustained shall be made by Mortgagor without Mortgagee's prior written approval. Receipt by Mortgagee of any proceeds less than the full amount of the then outstanding debt shall not alter or modify Mortgagor's obligation to continue to pay the installments of principal, interest and other charges specified in the Note, the Loan Agreement and herein. If the condemnation proceeds are applied to the indebtedness, then such proceeds shall be applied in the order and in the amounts that Mortgagee, in Mortgagee's sole discretion, may elect, to the payment of principal (whether or not then due and payable), interest or any sums secured by this Mortgage, or toward payment, after the aforesaid deductions, to Mortgagor, on such reasonable terms as Mortgagee may specify.

(b) If prior to the receipt of the proceeds by Mortgagee the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive the proceeds to the extent of:

(i) the full amount of all such proceeds if Mortgagee is the successful purchaser at the foreclosure sale, or

(ii) if anyone other than Mortgagee is the successful purchaser at the foreclosure sale, any deficiency (as hereinafter defined) due to Mortgagee in connection with the foreclosure sale, with interest thereon at the rate set forth in the Note, and reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with collection of such proceeds of condemnation and the establishment of such deficiency. For purposes of this subparagraph (b)(ii), the word "deficiency" shall be deemed to mean the difference between (A) the net sale proceeds actually received by Mortgagee as a result of such foreclosure sale less any out-of-pocket costs and expenses incurred by Mortgagee in connection with enforcement of its rights under the Note, this Mortgage, the Loan Agreement and the other security instruments and (B) the aggregate amount of all sums which Mortgagee is entitled to collect under the Note, this Mortgage, the Loan Agreement and the other security instruments.

(c) Upon failure of Mortgagor to diligently prosecute condemnation proceedings, Mortgagee shall have the right to prosecute to final determination or settlement on appeal condemnation proceedings or other appropriate proceedings in the name of Mortgagee or Mortgagor, for which Mortgagee is hereby appointed irrevocably as attorney-in-fact for Mortgagor, which appointment, being for security, is irrevocable. In that event, the expenses of the proceedings, including reasonable counsel fees, shall be paid first out of the proceeds, and only the excess, if any, paid to Mortgagee shall be credited against the amounts due under this Mortgage.

(d) Nothing herein shall limit the rights otherwise available to Mortgagee, at law or in equity, including the right to intervene as a party to any condemnation proceeding.

16. **Leases.** Upon receipt by Mortgagor, from time to time, of any security deposit, prepaid rent permitted to be collected by Mortgagor, if any (other than prepaid rent for the next succeeding calendar month), down payment or similar payments by a tenant, licensee or other user or a purchaser of all or a portion of the Mortgaged Property, Mortgagor shall deposit such sum in a separate escrow account with a national bank having banking offices in the state in which the Mortgaged Property is located. Mortgagor shall give Mortgagee written notice of the name and address of the bank and the account number of the escrow account. Mortgagor shall also give written authorization to such bank to permit Mortgagee to receive any information requested by Mortgagee from the bank as to the status and balance of such account. Said sums shall be held in trust by Mortgagor and disbursed only upon the prior written approval of Mortgagee. The prior written consent of Mortgagee shall not be required when by law or agreement Mortgagor is required to return any of such sums to the party who deposited it with Mortgagor. Mortgagor hereby assigns all of such bank accounts to Mortgagee as collateral security for the indebtedness secured by this Mortgage and Mortgagor agrees that after the occurrence of an Event of Default, the sums in said bank account (excluding any and all security deposits which are required by law and/or the terms of any specific lease to remain in escrow) shall be payable, at the election of Mortgagee, to Mortgagee as assignee of such bank accounts; provided, however that Mortgagee shall have no liability for any misapplication of said sums by Mortgagor.

17. **Assignment of Rents and Profits.** Mortgagor unconditionally assigns and transfers to Mortgagee all of the rents and revenues of the Premises. Mortgagor authorizes Mortgagee or Mortgagee's agent to collect the rents and revenues and hereby directs each tenant of the Premises to pay the rents to Mortgagee or Mortgagee's agent. However, prior to Mortgagee's notice to Mortgagor of the occurrence of an Event of Default, Mortgagor shall be entitled to collect the rents, issues and profits from the Premises as trustee for the benefit of the Mortgagor and Mortgagee. This assignment of rents constitutes an absolute assignment as contemplated in Florida Statutes Section 697.07 and not an assignment for additional security only. In the event the Mortgagor should assign the rents of the mortgaged premises or any part thereof without the express written consent of the Mortgagee, then the entire principal sum secured hereby shall, at the sole option of the Mortgagee, become immediately due and payable and Mortgagee shall be entitled to the remedies provided in said Section 697.07, and any other applicable statutes, whether procedural or substantive, in effect at the time of execution or enforcement of this Mortgage. This assignment terminates automatically upon satisfaction of this Mortgage.

18. **No Other Financing or Liens.**

(a) Without the prior written consent of Mortgagee, Mortgagor shall not enter into any lease of personal property, as lessee, which is now or hereafter intended to be a part of the Mortgaged Property or is necessary for the operation of Mortgagor's business at the Mortgaged Property, create or cause or permit to exist any lien on, or security interest in the Mortgaged Property, including any furniture, fixtures, appliances, machinery, equipment, or other items of personal property which are intended to be or become part of the Mortgaged Property. Mortgagor shall not incur any indebtedness for money borrowed to purchase the Mortgaged Property or any part thereof or any personal property or fixtures in substitution renewal or replacement of any portion of the Mortgaged Property, other than the indebtedness secured hereby and the liens heretofore approved in writing by Mortgagee, if any.

(b) Mortgagor shall have no right to permit the holder of any subordinate mortgage or other subordinate lien, whether or not consented to by Mortgagee, to terminate any lease of all or a portion of the Mortgaged Property whether or not such lease is subordinate (whether by law or the terms of such lease or a separate agreement) to the lien of this Mortgage without first obtaining the prior written consent of Mortgagee. The holder of any subordinate mortgage or other subordinate lien shall have no such right, whether by foreclosure of its mortgage or lien or otherwise, to terminate any such lease, whether or not permitted to do so by Mortgagor or as a matter of law, and any such attempt to terminate any such lease shall be ineffective and void without first obtaining the prior written consent of Mortgagee.

(c) No mortgage, lien or other encumbrance of any type, whether voluntary or involuntary shall be permitted to be filed or entered against the Mortgaged Property without the prior written consent of Mortgagee. If any such mortgage, lien or other encumbrance is filed or entered, Mortgagor shall have it removed of record within thirty (30) days after it is filed or entered by either paying it, having it bonded in a manner which removes it of record or otherwise having it removed of record. By placing a mortgage, lien or other encumbrance of any type, whether voluntary or involuntary, against the Mortgaged Property the holder thereof shall be deemed to have agreed, without any further act or documentation being required, that its mortgage, lien, or encumbrance shall be subordinated in lien to any future amendments, consolidations or extensions to this Mortgage (including, without limitation, amendments which increase the interest rate on the Note, provide for future advances secured by this Mortgage or provide for the release of portions of the Mortgaged Property with or without consideration).

(d) The holder of any subordinate mortgage, lien or other encumbrance, whether or not consented to by Mortgagee, expressly agrees by acceptance of such subordinate mortgage, lien or other encumbrance that it waives and relinquishes any rights which it may have, whether under a legal theory of marshaling of assets or any other theory at law or in equity, to restrain Mortgagee from, or recover damages from Mortgagee as a result of, Mortgagee's exercising its various remedies hereunder and under any other documents or instruments evidencing or securing the indebtedness secured hereby, in such order and with such timing as Mortgagee shall deem appropriate in its sole and absolute discretion.

(e) The holder of any subordinate mortgage, lien or other encumbrance, whether or not consented to by Mortgagee, expressly agrees by acceptance of such subordinate mortgage, lien or encumbrance that Mortgagee, at any time or from time to time, may renew, extend or increase the amount of this Mortgage, or alter or modify the terms of this Mortgage or the Note in any way, or waive any of the terms, covenants or conditions hereof or of the Note in whole or in part and may release any portion of the Mortgaged Property or any other security, and grant such extensions and indulgences in relation to the indebtedness secured hereby as the Mortgagee may determine, without the consent of any junior lien or encumbrancer and without any obligation to give notice of any kind thereto and without in any manner affecting the priority or the lien hereof on all or any part of the Mortgaged Property.

19. **No Transfer.**

(a) Without the prior written consent of Mortgagee, Mortgagor will abstain from and will not cause or permit, to the extent it may do so, any transfer of title to, beneficial interest in, or any estate or interest in, the Mortgaged Property or any part thereof, voluntarily or by operation of law (other than by death or by execution on the Note or foreclosure under this Mortgage); or any issuance or transfer of a majority of stock in Mortgagor if Mortgagor is a corporation, or of a majority of interests in Mortgagor if Mortgagor is a partnership or joint venture, whether by sale, exchange, conveyance, merger, consolidation or otherwise; or any agreement to do any of the foregoing (including, but not limited to, an installment sale contract), whereby the purchaser or transferee or assignee would be entitled to possession of the Mortgaged Property prior to the proposed transfer, sale or assignment, provided, however, that Mortgagor shall be permitted to transfer title to a subsidiary or entity under common control with Mortgagor (a "**Permitted Transferee**") upon at least twenty (20) days prior written notice to Mortgagee and the assignment and assumption of this Mortgage by the Permitted Transferee and the execution by the Permitted Transferee and/or the Mortgagor of such other documents and agreements requested by the Agent (a "**Permitted Transfer**"). Any such assignment and assumption shall not relieve the Mortgagor of any of its obligations under the Mortgage, Note and Loan Agreement, any Borrower from its obligations under the Note or the Loan Agreement or any other Guarantor from its obligations under the Loan Agreement.

(b) Without the prior written consent of Mortgagee and except for a Permitted Transfer, Mortgagor will not make any change in the organization or composition of Mortgagor or any entities constituting Mortgagor.

(c) Upon violation of the provisions of this Paragraph, the entire unpaid principal balance of the Note, together with all interest thereon and all other sums secured hereby shall become immediately due and payable, without notice to Mortgagor. If Mortgagee agrees to consent in writing to any transfer, such consent shall apply only to that specific transfer set forth in Mortgagee's written consent. Mortgagee may impose, as a condition to its consent to a transfer, such requirements as it desires, in its sole discretion, including, without limitation, that the proposed transferee satisfies Mortgagee's then existing credit and other standards; that the proposed transferee enter into a written assumption agreement with respect to the Note and this Mortgage, that an assumption fee, in an amount to be determined by Mortgagee, be paid to Mortgagee at the time of the transfer. Nothing contained in this Paragraph is intended to require Mortgagee to consent to any transfer; nor is anything contained in this Paragraph intended to impose a standard on the discretion of Mortgagee to grant or withhold such consent.

20. **Right to Remedy Defaults.** If Mortgagor should fail to pay corporate taxes, real estate or other taxes, assessments, water and sewer rents, charges and claims, sums due under any prior lien or approved prior lien, or insurance premiums, or fail to make necessary repairs, or permit waste, or fail to cure any default under any prior lien or approved prior lien which failure is not cured within ten (10) days after Mortgagor's receipt of written notice from Mortgagee specifying such failure, Mortgagee, at its election and without further notice to Mortgagor, shall have the right to make any payment or expenditure and to take any action which Mortgagor should have made or taken, or which Mortgagee deems advisable to protect the security of this Mortgage or the Mortgaged Property, without prejudice to any of Mortgagee's rights or remedies available hereunder or otherwise, at law or in equity. All such sums, as well as costs, advanced by Mortgagee pursuant to this Mortgage shall be due immediately from Mortgagor to Mortgagee, shall be secured hereby and the lien therefor shall relate back to the date of this Mortgage, and shall bear interest at the Default Rate set forth in the Note.

21. **Events of Default.** The following shall constitute events of default (herein individually or collectively, an "Event of Default") hereunder:

(a) Failure of Mortgagor, or any other Guarantor, or any endorser of the Note or this Mortgage (Individually and collectively "OBLIGOR") to pay any installment of principal or interest, or any other sum, when due.

(b) Except for the failure described in paragraph 21(a) above, Mortgagor's nonperformance of or noncompliance with any of the agreements, conditions, covenants, provisions or stipulations contained in the Note or in this Mortgage, or in any other document guarantying and or securing such Note which nonperformance or noncompliance is not cured within the time permitted in the Note or if no such time is specified, within thirty (30) days after Mortgagor's receipt of written notice from Mortgagee specifying same; provided, however, that if such nonperformance or noncompliance is not capable of being cured within such thirty (30) day period, and Mortgagor has commenced to cure within such thirty (30) days period and thereafter diligently pursues its efforts to cure, then Mortgagee shall extend such cure period in Mortgagee's reasonable discretion.

(c) Any assignment for the benefit of creditors made by OBLIGOR.

(d) Appointment of a receiver, liquidator or trustee of OBLIGOR or of any of the property of OBLIGOR, insolvency of OBLIGOR or the filing by or against OBLIGOR of any petition for the bankruptcy, reorganization or arrangement of Mortgagor pursuant to the Federal Bankruptcy Code or any similar federal or state statute, or the institution of any proceeding for the dissolution or liquidation of OBLIGOR, if the OBLIGOR admits in writing the inability to pay its debts as they mature, provided however, that the filing of an involuntary bankruptcy petition as against OBLIGOR shall not constitute an event of default if such petition (and the resulting proceeding) is dismissed within thirty (30) days after the date same was filed.

(e) A default by OBLIGOR under any note, mortgage, guaranty or any other instrument of indebtedness or any agreement previously, now or hereafter executed by OBLIGOR in favor of Mortgagee or any affiliate of Mortgagee. The immediately preceding sentence specifically includes, but is not limited to, any note, mortgage, or any other instrument of indebtedness or any agreement executed by OBLIGOR or any affiliated and/or related business entity of OBLIGOR in favor of Mortgagee or any affiliate of Mortgagee before, during or subsequent to the execution of the Note bearing even date herewith and this Mortgage.

(f) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of an interest in the Mortgaged Property, or any judgment shall be entered against OBLIGOR which shall become a lien on the Mortgaged Property or any portion thereof or any interest therein, which is not bonded within thirty (30) days of OBLIGOR'S receipt of notice of its filing.

(g) If any material representation, warranty, statement, certificate, schedule or report delivered or communicated to Mortgagee by or on behalf of OBLIGOR in connection with the loan evidenced by the Note or with respect to the Mortgaged Property, is false or misleading in any material respect as of the date made.

(h) Upon the death or mental incapacity of any OBLIGOR who is a natural person, or the dissolution or merger or consolidation or termination of the existence of any OBLIGOR that is a business entity (or if any person controlling such Mortgagor shall take any action authorizing or leading to same) and a replacement OBLIGOR reasonably acceptable to Mortgagee is not provided within thirty (30) days thereof.

(i) There shall be any material adverse change to the Mortgaged Property.

(j) Failure to pay when due any ad valorem taxes or property insurance premiums.

(k) The occurrence and continuance of any "Event of Default" as defined in the Loan Agreement.

## 22. **Remedies.**

(a) Upon the happening of any Event of Default, the entire unpaid balance of the principal, the accrued interest and all other sums secured by this Mortgage shall become immediately due and payable, at the option of Mortgagee, without notice or demand. In order to accelerate the maturity of the indebtedness secured by this Mortgage because of the failure of Mortgagor to pay any tax, assessment, insurance premium, or any other obligation upon the Mortgaged Property, as herein provided, it shall not be necessary that the Mortgagee shall first pay same.

(b) When the entire indebtedness shall become due and payable, either because of maturity or because of the occurrence of any Event of Default, or otherwise, then forthwith:

(i) **Foreclosure.** Mortgagee may institute an action to foreclose this Mortgage, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate stipulated in the Note to the date of default, and thereafter at the Default Rate specified in the Note, together with all other sums due by Mortgagor in accordance with the provisions of the Note, the Loan Agreement and this Mortgage, and all sums which may have been advanced by Mortgagee for taxes, water or sewer rents, charges or claims, payments on prior liens, insurance or repairs to the Mortgaged Property, all out-of-pocket costs of suit at trial and appellate levels, together with interest at such rate on any judgment obtained by Mortgagee from and after the date of any foreclosure sale until actual payment is made to Mortgagee of the full amount due Mortgagee, and reasonable attorney's fees at trial and appellate levels.

(ii) Possession. To the extent permitted by applicable law, Mortgagee may enter into possession of the Mortgaged Property, with or without legal action, and by force if necessary; collect therefrom all rentals (which term shall also include sums payable for use and occupation) and, after deducting all out-of-pocket costs of collection and administration expenses, apply the net rentals to any or all of the following in such order and amounts as Mortgagee, in Mortgagee's sole discretion, may elect:

the payment of taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, and to the maintenance, repair or restoration of the Mortgaged Property, and on account and in reduction of the principal or interest, or both, hereby secured; in and for that purpose Mortgagor hereby assigns to Mortgagee all rentals due and to become due under any lease or leases or rights to use and occupation of the Mortgaged Property hereafter created, as well as all rights and remedies provided in such lease or leases or at law or in equity for the collection of the rentals. Mortgagee shall be entitled to the appointment of a receiver of all the rents, issues and profits, as a matter of strict right, regardless of the value of the Mortgaged Property and the solvency or insolvency of Mortgagor and other persons liable to pay such indebtedness. Mortgagor hereby specifically waives the right to object to the appointment of a receiver as aforesaid and hereby expressly consents that such appointment shall be made as an admitted equity and that the same may be done without notice to Mortgagor.

(c) Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by the Note and this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of Mortgage foreclosure, or any other action, for any Event of Default by Mortgagor existing at the time the earlier action was commenced.

(d) Any real estate sold pursuant to this Mortgage or pursuant to any judicial proceedings under this Mortgage or the Note may be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect.

(e) Mortgagee shall have the right to set off all or any part of any amount due by Mortgagor to Mortgagee under the Note, this Mortgage or otherwise, against any indebtedness, liabilities or obligations owing by Mortgagee for any reason and in any capacity to Mortgagor or any general partner or joint venturer of Mortgagor if Mortgagor is a partnership or joint venturer, including any obligation to disburse to Mortgagor or its designee any funds or other property on deposit with or otherwise in the possession, control or custody of Mortgagee.

(f) Upon, or at any time after the filing of an action to foreclose this Mortgage, the court in which such action is filed may, at the request of Mortgagee, appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to either the then value of the Mortgaged Property, the adequacy or inadequacy of any remedy available at law, the solvency or insolvency of Mortgagor or any other person liable for payment of such indebtedness or whether the Mortgaged Property shall be then occupied as a homestead or not, and Mortgagee hereunder or any agent of Mortgagee may be appointed as such receiver. Such receiver shall have the power to perform all of the acts permitted Mortgagee pursuant to subparagraph (b)(ii) above and such other powers which may be necessary or are customary in such cases for the protection, possession, control, management and operation of the Mortgaged Property during such period.

(g) Mortgagee may pursue any and all remedies available under the Uniform Commercial Code, Chapter 679, Florida Statutes; it being hereby agreed that fifteen (15) days notice as to time and place of any sale shall be reasonable.

23. **Rights and Remedies Cumulative.**

(a) The rights and remedies of Mortgagee as provided in this Mortgage and in the Note shall be cumulative and concurrent; may be pursued separately, successively or together against Mortgagor or against the Mortgaged Property, or both, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefore shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(b) Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or of the Note shall not be deemed to be a waiver of any of the terms or provisions of the Mortgage and Note, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them.

(c) Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved or discharged of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Mortgage or Note without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

(d) Mortgagee may release, regardless of consideration, any part of the security held for the indebtedness secured by this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien.

(e) For payment of the indebtedness secured hereby Mortgagee may resort to any other security therefore held by Mortgagee in such order and manner as Mortgagee may elect.



(f) The receipt by Mortgagee of any sums from Mortgagor after the date on which Mortgagee elects to accelerate the indebtedness secured hereby by reason of an Event of Default hereunder or under the Note shall not constitute a cure or waiver of such Event of Default or a reinstatement of the Note or Mortgage unless Mortgagee expressly agrees, by written notice to Mortgagor, that such payment shall be accepted as a cure or waiver of the default.

24. **Mortgagor's Waiver.** Mortgagor hereby waives and releases:

(a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment; and

(b) unless specifically required herein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise of any option under the Note or this Mortgage.

25. **Counsel Fees.** If Mortgagee becomes a party to any suit or proceeding (including, without limitation, appellate and bankruptcy proceedings) affecting the Mortgaged Property or title thereto, the lien created by this Mortgage or Mortgagee's interest therein, or if Mortgagee has engaged counsel to prepare or review the Note, or if after the closing of the loan secured by this Mortgage Mortgagee engages counsel for any reason concerning the Note, this Mortgage, or any other documents securing the Note, or if Mortgagee engages counsel to collect any of the indebtedness or to enforce performance of the agreements, conditions, covenants, provisions or stipulations of this Mortgage or the Note, Mortgagee's out-of-pocket costs, expenses and reasonable counsel fees, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at the then effective rate set forth in the Note, and until paid they shall be deemed to be part of the indebtedness evidenced by the Note and secured by this Mortgage.

26. **Further Assurances.** Mortgagor will execute and deliver such further instruments and perform such further acts as may be requested by Mortgagee from time to time to confirm the provisions of this Mortgage or the Note, to carry out more effectively the purposes of this Mortgage or the other documents securing the Note, or to confirm the priority of the lien created by this Mortgage on any property, rights or interest encumbered or intended to be encumbered by the lien of this Mortgage or the other documents securing the Note.

27. **Severability and Savings Clauses.** If any provision of this Mortgage is held to be invalid or unenforceable by a Court of competent jurisdiction, the other provisions of this Mortgage shall remain in full force and effect and shall be liberally construed in favor of Mortgagee in order to effect the provisions of this Mortgage. In addition, in no event shall the rate of interest under the Note or this Mortgage exceed the maximum rate of interest permitted to be charged by the applicable law (including the choice of law rules) and any interest paid in excess of the permitted rate shall be refunded to Mortgagor. Such refund shall be made by application of the excessive amount of interest paid against any sums outstanding under the Note and shall be applied in such order as Mortgagee may determine. If the excessive amount of interest paid exceeds the sums outstanding under the Note the portion exceeding the said sums outstanding under the Note shall be refunded in cash by Mortgagee. Any such crediting or refund shall not cure or waive any default by Mortgagor hereunder or under the Note. Mortgagor agrees, however, that in determining whether or not any interest payable under the Note or this Mortgage exceeds the highest rate permitted by law, any non-principal payment (except payments specifically stated in the Note to be "interest") including, without limitation, prepayment fees and late charges shall be deemed to the extent permitted by law, to be an expense, fee, premium or penalty rather than as interest.

28. **Notice.** Any notice, demand, or communication required under this Mortgage shall be in writing, and shall be sent by registered mail, postage prepaid, return receipt requested, or recognized overnight delivery service, addressed, if to Mortgagor and Mortgagee, at the addresses set forth in the heading of this Mortgage with a copy of any such notice to Mortgagor to its attorneys, Moritt Hock & Hamroff LLP, 400 Garden City Plaza, Garden City, NY 11530, Attn: Anthony Ficara, Esq., or at such other address as the addressee may designate using the method required above. Any notice, demand, or communication required under this Mortgage shall be deemed given on the earlier to occur of:

- (A) the date when the notice, demand, or communication is received by the addressee; or
- (B) if the recipient refuses or rejects delivery, the date on which the notice, demand, or communication is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

29. **Covenant Running with the Land.** Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the land and shall be binding upon Mortgagor and its successors and assigns as if they had personally made such agreement.

30. **Amendment.** This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

31. **Applicable Law.** This Mortgage shall be governed by and construed according to the laws of the State of Florida.

32. **Definitions.** Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:

(a) The word "Mortgagor" shall mean the person(s) who executes this Mortgage and any subsequent owner of the Mortgaged Property and his respective heirs, executors, administrators, successors and assigns;

(b) The word "Mortgagee" shall mean the person specifically named herein as "Mortgagee" or any subsequent holder of this Mortgage;

(c) The word "person" shall mean individual, corporation, limited liability company, trust, joint venture, association, company, partnership, unincorporated association, or other entity;

(d) The use of any gender shall include all genders;

(e) The singular number shall include the plural and the plural the singular as the context may require;

(f) If Mortgagor is more than one person, all agreements, conditions, covenants, provisions, stipulations, authorizations, waivers, releases, options, undertakings, rights and benefits made or given by Mortgagor shall be joint and several, and shall bind and affect all persons who are defined as "Mortgagor" as fully as though all of them were specifically named herein wherever the word "Mortgagor" is used; and

(g) The word “Mortgage” shall mean this document, the Assignment of Rents and Profits of even date herewith, and the other loan documents evidencing or securing the loan evidenced by the Note, between the parties hereto.

33. **Captions.** The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

34. **Time of the Essence.** Time is of the essence as to each provision of this Mortgage which requires Mortgagor to take any action within a specified time period.

35. **Homestead Disclaimer and Waiver.** The Mortgagor covenants and stipulates to the Mortgagee that the Mortgaged Property is not and will not become, during the term of this Mortgage the homestead property of the Mortgagor and that any attempts to make said property the homestead of the Mortgagor during the term of this Mortgage is being done for the sole purpose of hindering and delaying the process of foreclosure, and as such, shall not be binding on any legal process hereunder. Mortgagor hereby waives all right of homestead exemption, if any, in the Mortgaged Property.

36. **First Mortgage.** The Mortgagor covenants and stipulates that this mortgage is in first position and there is no other financing hereto.

37. **Required Repairs.** All repairs and improvements necessary to put the mortgaged Premises in a saleable condition must be completed within 120 days or this Mortgage will deemed to be in default.

38. **Subrogation.** Mortgagee shall be subrogated to the lien of any and all prior encumbrances, liens, or charges paid and discharged from the proceeds of the Note hereby secured, and even though such prior liens have been released of record, the repayment of the Note shall be secured by such liens on the portions of the Mortgaged Property affected thereby to the extent of such payments, respectively.

39. **Single Purpose Entity.** Third Avenue Apartments LLC, or its successors and assigns, shall not engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Property, and activities incident thereto (including the guaranty of the Obligations (as defined in the Loan Agreement), it being the understood that Third Avenue Apartments LLC is a single purpose entity and Mortgagee is relying on the foregoing in the making of the loan to Mortgagor. Any violation by Mortgagor of the foregoing provision shall be deemed a material default under the Mortgage and the Note.

40. **Future Advances.** Mortgagee may elect to make one or more “Future Advances” secured by this Mortgage, and all such Future Advances shall have the same priority as the original loan secured hereby. Mortgagee, however, has no obligation to make any Future Advance. “Future Advance” shall mean any loan of money from Mortgagee to Mortgagor made within twenty (20) years from the date hereof. The total amount of such loan or loans may decrease or increase from time to time, but the total unpaid aggregate balance secured by this Mortgage at any one time shall not exceed twice the face amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes or other charges (e.g., taxes, levies, insurance or other liens or charges) on the Mortgaged Property, with interest on such disbursements.

41. **Notice Limiting Future Advances.** Any filing for record of a notice pursuant to Section 697.04, Florida Statutes, limiting the maximum principal amount that may be secured by this Mortgage shall constitute an Event of Default hereunder and under the Loan Agreement, and shall be void *ab initio*.

42. **Security of Future Advance Note.** The parties hereto covenant, stipulate, agree and acknowledge that nothing herein contained shall diminish or in any way or manner limit the right of Mortgagee to make additional advances to Mortgagor pursuant to the provisions of this Mortgage as set forth above.

43. **WAIVER OF JURY TRIAL.** MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE ENTERING INTO THIS MORTGAGE WITH MORTGAGOR.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, this Mortgagor has duly executed this Mortgage and Security Agreement the day and year first above written.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Print Witness Name:

\_\_\_\_\_  
Print Witness Name:

**MORTGAGOR:**

**THIRD AVENUE APARMENTS LLC,**  
a Delaware limited liability company

By: **Ault Global Real Estate Equities, Inc.**, a Nevada corporation, its manager

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) )SS:

BEFORE ME, personally came \_\_\_\_\_ by means of  physical presence or  online notarization. \_\_\_\_\_ is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and did take an oath and is the person described in, and who acknowledged to and before me that he executed said document for the purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

[Notarial Seal]

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

*Signature Page to Mortgage and Security Agreement*



**FUTURE ADVANCE MORTGAGE  
(Commercial Property)**

THIS IS A FUTURE ADVANCE MORTGAGE (as the same may be amended, restated, replaced, supplemented or otherwise modified, being hereinafter referred to as this "Mortgage") made December 14, 2023, between **ALLIANCE CLOUD SERVICES, LLC**, a Delaware limited liability company ("Mortgagor"), and **JGB COLLATERAL LLC**, a Delaware limited liability company, as administrative agent and collateral agent (in such capacity, together with its successors, "JGB Agent").

**THIS IS A FUTURE ADVANCE MORTGAGE.** THE PROCEEDS OF THE DEBT MAY BE ADVANCED IN FUTURE ADVANCES. THIS MORTGAGE SECURES FUTURE ADVANCES AND IS A FUTURE ADVANCE MORTGAGE UNDER ACT NO. 348 OF THE MICHIGAN PUBLIC ACTS OF 1990 (MICHIGAN COMPILED LAWS 565.901 ET SEQ.), AS AMENDED. ALL FUTURE ADVANCES UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS (AS HEREINAFTER DEFINED) SHALL HAVE THE SAME PRIORITY AS IF THE FUTURE ADVANCE WAS MADE ON THE DATE THAT THIS MORTGAGE WAS RECORDED.

THE NOTE (HEREINAFTER DEFINED) EVIDENCES A DEBT CREATED BY ONE OR MORE DISBURSEMENTS MADE BY LENDERS TO MORTGAGOR IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN AGREEMENT.

The Mortgagor represents, warrants, covenants and agrees to and with JGB Agent that at all times this Mortgage is in effect:

1. Obligations. This Mortgage secures the following obligations to the Lender (hereinafter collectively referred to as the "Obligations"):

(a) Payment of loans, advances (including future advances) and/or other credit facilities made or to be made by **JGB CAPITAL, LP**, a Delaware limited partnership, **JGB PARTNERS, LP**, a Delaware limited partnership, and **JGB (CAYMAN) BUCKEYE LTD.**, a Cayman Islands exempted company, and any other lender from time to time party to the Loan Agreement (defined below) (collectively, "Lenders," and each a "Lender") in the aggregate principal amount of \$38,918,919.00 according to a certain secured promissory note dated on or about the date hereof, as amended, restated and/or replaced from time to time (the "Note"), together with interest thereon and other sums owing or to become owing in connection therewith, including but not limited to, the Loan and Guaranty Agreement (as it may be amended or amended and restated from time to time (the "Loan Agreement"), dated as of the date hereof, by and among JGB Agent, Lender, **AULT & COMPANY, INC.**, a Delaware corporation (together with each other person from time to time party thereto as a borrower, collectively, "Borrowers" and each, a "Borrower"), Mortgagor, **THIRD AVENUE APARTMENTS LLC**, a Delaware limited liability company (the "Florida Property Owner"), **SENTINUM, INC.**, a Nevada corporation ("Sentinum"), **AULT ALLIANCE, INC.**, a Delaware corporation ("Ault Alliance"), **AULT AVIATION, LLC**, a Nevada limited liability company ("Aviation"), **BNI MONTANA, LLC**, a Delaware limited liability company ("BNI"), **AULT LENDING, LLC**, a California limited liability company ("Ault Lending"), **AULT GLOBAL REAL ESTATE EQUITIES, INC.**, a Nevada corporation ("Ault Global"), and **MILTON "TODD" AULT III**, a natural person ("Personal Guarantor") and together with Mortgagor, Florida Property Owner, Sentinum, Ault Alliance, Aviation, BNI, Ault Global and each other person from time to time party thereto as a guarantor or otherwise acting as a guarantor with respect to the Obligations (as defined in the Loan Agreement), collectively, "Guarantors" and each, a "Guarantor") and *specifically including* the obligations of the Guarantors under the Loan Agreement.

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(b) ALL OTHER EXISTING AND FUTURE OBLIGATIONS OF MORTGAGOR UNDER THE LOAN AGREEMENT WHETHER OR NOT SUCH OBLIGATIONS ARE INCLUDED ABOVE, including, but not limited to, payment and performance of the provisions of this Mortgage; payment of all advances (including future advances), made or to be made by the Lender; payment and performance of all notes, undertakings, obligations, debts, liabilities, agreements, applications or agreements for issuance of letters of credit, assignments, guarantees, or promises of or by the Mortgagor to or with the Lender, whether due, existing or arising, now or in the future, absolute or contingent, direct or indirect, however arising or acquired by JGB Agent or Lenders, and including obligations originally owing by the Mortgagor to a third party and assigned by such third party to JGB Agent or Lenders; payment and performance of all existing and future obligations (including the kinds of obligations described above) to JGB Agent or Lenders of any persons or entities for which the Mortgagor is or becomes an accommodation party, surety or guarantor or whose obligations this Mortgage is given to secure; and all extensions, renewals and modifications of the foregoing. Mortgagor agrees that if the proceeds of any of the Obligations created in the future are utilized to pay and/or renew any of the Obligations existing at this time, such future Obligations shall be presumed to be renewals or extensions of such existing Obligations.

2. Grant of Mortgage and Lien. In consideration of the indebtedness and other good and valuable consideration otherwise received, and to secure the Obligations, the Mortgagor hereby mortgages and warrants to JGB Agent, its successors and assigns, the land, premises and property situated in City of Dowagiac, County of Cass, Michigan (the "Premises"), described as:

See Attached Exhibit A

Also commonly known as (for reference purposes only) 415 E. Prairie Ronde St., & 404 Louise Ave., Dowagiac, MI 49047.

Tax Parcel Nos. 14-160-200-664-00 and 14-160-200-126-40.

3. The Mortgagor also mortgages and warrants to JGB Agent: (a) all privileges, appurtenances, improvements, buildings, tenements, hereditaments, easements, rights of way, licenses, permits, riparian and littoral rights, mineral/oil/gas/water rights, rights to adjoining land, and all other rights belonging to the Premises and which may hereafter attach thereto; (b) all rights to make divisions of the Premises that are exempt from the platting requirements of the Michigan Land Division Act, as it shall be amended; (c) all rents, issues, profits, revenues, proceeds, accounts and general intangibles arising from or relating to the Premises or any business conducted thereon by the Mortgagor including, without limitation, all property constituting rents under the Michigan Uniform Assignment of Rents Act, MCL 554.1051 et seq., as amended (collectively the "Rents and Accounts"); (d) all equipment, other goods, and fixtures of every kind and nature whatsoever, now or hereafter located in or upon the Premises or any part thereof and used or useable in connection with any present or future operation of such premises (hereinafter called "Equipment and Fixtures"), whether now owned or hereafter acquired by the Mortgagor, including, without limitation, all heating, air conditioning, ventilation, lighting, incinerating and power equipment, engines, signs, security systems, fences, hoists, cranes, compressors, pipes, pumps, tanks, motors, plumbing, cleaning, fire prevention, fire extinguishing, apparatus, elevators, escalators, shades, awnings, screens, storm doors and windows, appliances, attached cabinets, partitions, carpeting, ground maintenance equipment, and similar types of equipment, all of which shall be deemed to be real estate and mortgaged hereby; (e) all "as-extracted collateral" related to the Premises; and (f) all awards or payments, and interest on them, made with respect to the Premises as a result of (i) any eminent domain proceeding, (ii) any street grade alteration, (iii) any loss of or damage to any building or other improvement, (iv) any other injury to or decrease in the value of the Premises, (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against the Premises or (vi) any refund of utility deposits or right to any tenant deposit. This Mortgage shall also constitute; a security agreement with reference to the Equipment and Fixtures, as-extracted collateral and Rents and Accounts and all proceeds thereof; a fixture filing; and a Financing Statement covering as-extracted collateral.

(a) All of the above described Premises, Equipment and Fixtures, Rents and Accounts, and other property and rights related thereto are collectively referred to herein as the “Property”.

4. Payment and Performance of Obligations. The Mortgagor shall pay the Obligations in accordance with the terms thereof and shall keep and perform all the terms, conditions and covenants of the Obligations.

5. Title to Property/Priority of Lien. The Mortgagor does and shall own good and marketable title to the Property, free of all easements, liens, mortgages, security interests, encroachments, encumbrances, leasehold interests, rights, claims, and other interests of any nature (herein “Interests”), other than Interests identified on Exhibit B attached hereto or which are otherwise consented to in writing by JGB Agent. The Mortgagor shall forever warrant and defend the Property against any and all Interests not consented to in writing by JGB Agent and the lien created hereby is and shall be kept as a first lien upon the Property, unless otherwise agreed in writing by JGB Agent. The Mortgagor shall pay when due all obligations which, if unpaid, would become a lien on the Property. Upon request, the Mortgagor shall, at its cost, provide JGB Agent with a title insurance policy and other evidence of title as JGB Agent may reasonably request from time to time which shall be in form and substance satisfactory to JGB Agent.

6. Condition, Maintenance and Use of the Property. Mortgagor agrees that it shall keep the Property in good order and condition and in a rentable and tenantable state of repair; to make or cause to be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen; not to remove, demolish or substantially structurally alter (except for tenant improvements and such alterations as may be required by laws, ordinances or regulations) any of the buildings and improvements now or hereafter erected on the Property without Mortgagee’s prior, written consent, which shall not be unreasonably withheld; to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any such building or improvement which may be damaged or destroyed thereon (subject to the right of Mortgagee to retain insurance proceeds, as set forth below), and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Property or any part thereof, not to permit any waste, impairment, or deterioration of the Property; to keep and maintain grounds, sidewalks, roads, parking and landscaped areas in or on the Property in good and neat order and repair; to comply with the provisions of any lease of all or any part of the Property; not to commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance or regulation; not to permit the Property to become vacant or deserted.

7. Payment of Taxes. The Mortgagor shall pay and discharge all taxes, assessments, fees, licenses, liens, and charges at any time levied upon or assessed against the Mortgagor or the Property. The Mortgagor shall not do anything or permit anything to be done which would impair the lien of this Mortgage. Notwithstanding the foregoing, the Mortgagor shall not be required to pay any tax, assessment, fee, license, lien, or charge so long as it is in good faith contesting the validity thereof. If such contest is made, the Mortgagor shall provide security for the payment of such tax, assessment, fee, license, lien, or charge in a manner reasonably satisfactory to JGB Agent.

8. Insurance. The Mortgagor shall carry insurance against such risks, with such companies, and in such amounts as shall be reasonably satisfactory to JGB Agent (including but not limited to, hazard insurance and flood insurance, if the Property is located within a flood hazard area); each policy shall be in a form reasonably satisfactory to JGB Agent with standard mortgagee clauses making all loss payable to JGB Agent. The Mortgagor shall promptly pay all premiums therefor, and deliver to JGB Agent all such policies of insurance. All insurance policies shall provide that notice of non-renewal or cancellation must be given to JGB Agent at least thirty (30) days before such non-renewal or cancellation. Except as otherwise provided below, any insurance money received by JGB Agent may, at its sole election, be paid, either in whole or in part, to the Mortgagor for the purpose of defraying the costs and expenses of repair, restoration or replacement of the Property damaged or destroyed, or be retained and applied toward the payment of any of the Obligations, in whatever order JGB Agent shall elect, with the excess, if any, over the Obligations to be repaid to the Mortgagor, without impairing the Mortgagor’s duties under this Mortgage or the Obligations. In the event of loss with respect to the Property, the Mortgagor shall promptly notify JGB Agent thereof and JGB Agent may make any proof of loss not promptly made by the Mortgagor. In the event of foreclosure or other disposition of the Property in partial or full payment of the Obligations, JGB Agent shall be entitled to all of the Mortgagor’s right, title and interest in and to all policies of insurance with respect to the Property, including, without limitation, the right to collect any unearned premium refund relating to such policies.



9. Escrow of Tax and Insurance. Upon demand by JGB Agent and the occurrence of an Event of Default, the Mortgagor shall pay monthly to JGB Agent a sum (determined by JGB Agent from time to time) to be held by JGB Agent for application to payment of the annual taxes and assessments on the Property next coming due, and the annual premiums on required insurance policies on the Property next coming due, all as estimated by JGB Agent so as to enable JGB Agent to pay such taxes, assessments and insurance premiums in full thirty (30) days before the due date thereof. Upon occurrence of an Event of Default, moneys so held by JGB Agent may be applied against the Obligations. If the funds so paid to JGB Agent are insufficient to pay such taxes, assessments and insurance premiums in full thirty (30) days before the due dates thereof, the Mortgagor shall immediately upon written demand therefor, pay to JGB Agent such additional sums as are required to pay such taxes, assessments and insurance premiums in full thirty (30) days before the due date thereof. If the funds so paid to JGB Agent shall exceed the amount of taxes, assessments and insurance premiums paid by JGB Agent, such excess shall be credited by JGB Agent to subsequent payments required to be made by the Mortgagor pursuant to this paragraph.

10. Assignment of Awards and Tax Refunds. The Mortgagor hereby assigns to JGB Agent, in their entirety, all judgments, decrees and awards for injury or damage to the Property, all awards pursuant to proceedings for condemnation thereof, and all refunds of local, state or federal income or other taxes relating to the Property or the disposition thereof by the Mortgagor (the "Claims"). Except as otherwise provided below, the Mortgagor authorizes JGB Agent, at its sole election (and as to refunds of taxes, after default), to apply the Claims, or the proceeds thereof, to the Obligations in such manner as JGB Agent may elect; and the Mortgagor hereby authorizes JGB Agent, at its option (and as to refunds of taxes, after default), in the name of the Mortgagor, to appear and participate in any proceeding related to the Claims and to execute and deliver valid receipts, discharges, and settlements for, and to appeal from, any award, judgment or decree with respect to the Claims.

11. JGB Agent's Right to Perform. If the Mortgagor defaults in the payment of any taxes, assessments or charges (or in providing security as provided in Section 6), in procuring or maintaining insurance in maintaining the Property, or in performing any of the other obligations of this Mortgage, then JGB Agent may, at its option (notwithstanding anything to the contrary contained in any of the Obligations), take any action or pay any amount required to be taken or paid by the Mortgagor hereunder. The cost of such action or payment by JGB Agent shall be immediately paid by the Mortgagor, shall be added to the Obligations, shall be secured hereby, and shall bear interest at the highest rate specified in the Obligations from the date incurred by JGB Agent until fully paid. No such action taken or amount paid by JGB Agent shall constitute a waiver of any default of the Mortgagor hereunder.

12. Removal of the Property. Except for maintenance in the ordinary course of business, the Mortgagor shall not, without the prior written consent of JGB Agent, materially alter, remove or demolish any timber, topsoil, minerals, fixture, building, or improvement forming part of the Property.

13. Transfer of the Property. JGB Agent and Lenders are relying upon the integrity of the Mortgagor and its promises to perform the covenants of this Mortgage. The Mortgagor shall not sell, transfer, convey, assign, rent for a period exceeding one year, dispose of, or further encumber, voluntarily or involuntarily, its interest in any of the Property by deed, land contract, mortgage or otherwise, without the prior written consent of JGB Agent. Subject to the foregoing, if the ownership of the Property, or any part thereof, becomes vested in a person other than the Mortgagor, JGB Agent may deal with such successor or successors in interest in the same manner as with the Mortgagor, without in any manner vitiating or discharging the Mortgagor's liability hereunder or upon the Obligations. The Mortgagor shall at all times continue to be primarily liable on the Obligations until fully discharged or until the Mortgagor is formally released in writing by JGB Agent. Notwithstanding anything to the contrary contained herein, the Obligations shall become due and payable immediately, without notice, at the option of JGB Agent, if Mortgagor shall convey, assign or transfer the Premises by deed, land contract or other instrument, or if title to the Premises shall become vested in any other person or party in any manner whatsoever or if there is any disposition (through one or more transactions) of legal or beneficial title to a controlling interest of Mortgagor. Notwithstanding anything in this Mortgage, Mortgagor shall be permitted to transfer title to the Property to a subsidiary or entity under common control with Mortgagor (a "**Permitted Transferee**") upon at least twenty (20) days prior written notice to Mortgagee and the assignment and assumption of this Mortgage by the Permitted Transferee and the execution by the Permitted Transferee and/or the Mortgagor of such other documents and agreements requested by the Agent (a "**Permitted Transfer**"). Any such assignment and assumption shall not relieve the Mortgagor of any of its obligations under the Mortgage, Note and Loan Agreement, any Borrower from its obligations under the Note or the Loan Agreement or any other Guarantor from its obligations under the Loan Agreement.

14. Additional Documents. At any time, upon request of JGB Agent, the Mortgagor shall execute and deliver or cause to be executed and delivered to JGB Agent and, where appropriate, shall cause to be recorded and/or filed at such time and in such offices and places designated by JGB Agent, any and all such other and further mortgages, financing statements, instruments of further assurance, certificates and other documents as may, in the opinion of JGB Agent or its counsel, be necessary or desirable to effectuate, complete, perfect, continue or preserve the obligation of the Mortgagor under this Mortgage and the lien of this Mortgage as a first lien upon all the Property (excepting prior liens consented to in writing by JGB Agent). If the Mortgagor fails to comply with the foregoing sentence, JGB Agent may execute, record, file, re-record and refile any and all such mortgages, financing statements, instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints JGB Agent as its agent and attorney in fact to do so.

15. Assignment of Leases, Rents and Other Property. As additional security for the payment and performance of the Indebtedness, Mortgagor grants a security interest to JGB Agent in all deposit or other accounts with JGB Agent and Mortgagor assigns to JGB Agent all its right, title and interest in all written and oral leases and occupancy agreements, now or later existing, covering the Premises (but without an assumption by JGB Agent of liabilities of Mortgagor under any of these leases or occupancy agreements by virtue of this assignment), and Mortgagor assigns to JGB Agent the rents, issues and profits of the Premises. If an Event of Default occurs under this Mortgage, JGB Agent may receive and collect the rents, issues and profits personally or through a receiver so long as the Event of Default exists and during the pendency of any foreclosure proceedings and during any redemption period. Mortgagor hereby expressly consents to the appointment of a receiver upon the occurrence of an Event of Default if JGB Agent believes appointment necessary or desirable to enforce its rights under this Mortgage. JGB Agent shall at no time have any obligation to attempt to collect rent or other amounts from any tenant or occupier of the Premises. JGB Agent shall at no time have any obligation to enforce any other obligations owed by tenants or occupiers of the Premises to Mortgagor. No action taken by JGB Agent under this Mortgage shall make JGB Agent a "mortgagee in possession." Mortgagor shall at no time collect advance rent under any lease or occupancy agreement pertaining to the Premises in excess of one month (other than as a security deposit) and JGB Agent shall not be bound in any respect by any rent prepayment in violation of this prohibition. The assignment of licenses and permits under this Mortgage shall not be construed as a consent by JGB Agent to any license or permit so assigned, or to impose upon JGB Agent any obligations with respect to them. Mortgagor shall not cancel or amend any of the leases, licenses, and permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the Premises) without first obtaining the written approval of JGB Agent, and no cancellation or amendment following an Event of Default is binding on JGB Agent unless JGB Agent approves in writing. This paragraph shall not be applicable to any license or permit that terminates if it is assigned without the consent of another party (other than Mortgagor), unless this consent has been obtained nor shall this paragraph be construed as a present assignment of any license or permit that Mortgagor is required by law to hold. Mortgagor shall comply with and perform as required all obligations and restrictions imposed upon Mortgagor or the Premises under applicable deed restrictions, restrictive covenants, easements, leases, land contracts, condominium or planned unit development documents, or other agreements affecting the Premises, but this is not a consent by JGB Agent to take subject to any of these agreements unless specifically set forth on attached Exhibit B, if any, and JGB Agent does not assume any obligations under these agreements. Mortgagor shall promptly provide JGB Agent with certificates of occupancy, licenses, rent rolls, income and expense statements and other documents and information pertaining to the Premises and its operations as JGB Agent, from time to time, may request.

In addition to the foregoing, JGB Agent shall have all rights conferred by the Michigan Uniform Assignment of Rents Act, MCL 554.1051 et seq as may be amended or replaced by successor statute.

16. Waste and Receiver. The failure, refusal or neglect of the Mortgagor to pay any of the taxes assessed against the Property before any interest or penalty attaches thereto and to provide adequate security therefor shall constitute waste hereunder and in accordance with the provisions of Act No. 236 of the Public Acts of Michigan for 1961. The failure, refusal or neglect of the Mortgagor to keep the Property adequately insured as herein provided, or to pay the premiums therefor, shall likewise constitute waste hereunder and in accordance with the provisions of Act No. 236. Upon the happening of any material act of waste and on proper application made therefor by JGB Agent to a court of competent jurisdiction, JGB Agent shall forthwith be entitled to the appointment of a receiver of the Property and of the earnings, income, issue and profits thereof, with such powers as the court making such appointment shall confer. The Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor.

17. Reimbursement of Expenses. The Mortgagor shall pay or reimburse JGB Agent for expenses reasonably necessary or incidental to the protection of the lien and priority of this Mortgage and for expenses incurred by JGB Agent and Lenders in seeking to enforce the provisions hereof and of the Obligations (whether before or after default, through formal or informal collection actions, workout or otherwise), including but not limited to costs of evidence of title to and survey of the Property, costs of recording this and other instruments, actual, reasonable attorney fees (including, but not limited to, fees incurred in participating or taking action in any bankruptcy or other insolvency proceeding of Mortgagor), trustees' fees, court costs, and expenses of advertising, selling and conveying the Property. All such payments or reimbursements shall be paid immediately to JGB Agent, shall be added to the Obligations, shall be secured by this Mortgage, and shall bear interest at the highest rate specified in the Obligations from the date incurred by JGB Agent until fully paid.

18. Inspection and Reports. At all reasonable times, JGB Agent and its agents may inspect the Property, with not less than 24 hours' prior notice, to ascertain whether the covenants and agreements contained herein or in any supplementary agreement are being performed. Upon demand by JGB Agent, but not more than quarterly, the Mortgagor shall promptly deliver to JGB Agent all financial reports, statements, rent rolls and other documents relating to the Property and the Mortgagor, as shall be reasonably requested by JGB Agent. Mortgagor hereby authorizes JGB Agent to undertake or to have third parties undertake on its behalf (not more often than twice in any 12 month period) environmental investigations regarding the Property and its operation including research into the previous and current ownership, use, and condition (by taking samples or borings or otherwise) of the Property for the purpose of attempting to determine whether: (i) Mortgagor or any current or past occupant of the Property has violated any federal, state or local laws involving the protection of the environment and/or the disposition of, or exposure to, hazardous or toxic substances, as now existing or as hereinafter amended or enacted, or any rules, regulations, guidelines or standards promulgated pursuant thereto; and (ii) whether any hazardous or toxic substances have been used or disposed of on the Property. Such investigations may be performed at any time before or after occurrence of an Event of Default and Mortgagor will permit JGB Agent and persons acting on its behalf to have access to the Property and records concerning the Property for the purpose of conducting such investigations. The cost of all such investigations shall be immediately paid by Mortgagor to JGB Agent, and if not paid, shall be added to the Obligations secured hereby and shall bear interest at the highest rate specified in any of the Obligations secured hereby from the date incurred by JGB Agent until paid.

19. Events of Default. Occurrence of any one of the following events shall constitute an "Event of Default" under this Mortgage: (a) breach, failure of payment or performance, or default by the Mortgagor of or under any of the terms, conditions, or covenants of this Mortgage, any of the Obligations, or any other instrument or agreement executed by the Mortgagor with or in favor of any one or more of JGB Agent or any Lender; provided, however, Mortgagor shall have the lesser of (x) 5 days after receipt of written notice to cure monetary failures and 10 days after receipt of written notice to commence to cure all other failures as long as Mortgagor diligently pursues completion of such cure in the event of a non-monetary failure and (y) such shorter grace period set forth in any such other agreement or instrument executed by the Mortgagor; (b) breach, failure of payment or performance, or default by any obligor other than the Mortgagor of or under any of the terms, conditions or covenants of any of the Obligations for which this Mortgage is given as security, or of any other instrument or agreement executed by such obligor with or in favor of any one or more of JGB Agent or any Lender; provided, however, any such obligor shall have the shorter of (x) 5 days after receipt of written notice to cure monetary failures and 10 days after receipt of written notice to commence to cure all other failures as long as such obligor diligently pursues completion of such cure in the event of a non-monetary failure and (y) such shorter grace period set forth in any such other agreement or instrument executed by the Mortgagor; (c) the Mortgagor makes an assignment for the benefit of creditors, or a receiver, liquidator, or trustee is appointed for the Mortgagor or any of its property (except for any such events that are involuntary, the undersigned will not be in default if such matter is dismissed within 30 days); (d) any proceeding under any insolvency or bankruptcy law is instituted by or against the Mortgagor or any action is taken to realize upon or any proceeding is instituted to foreclose any mortgage, security interest, or lien of any kind against the Property (except for any such events that are involuntary, the undersigned will not be in default if such matter is dismissed within 30 days); (e) any default beyond any applicable cure period in the terms, conditions or covenants of any mortgage, lease, land contract, easement or other instrument which evidences an interest in the Property by any third party; (f) any representation, warranty, financial statement, report or other information made or furnished by or on behalf of the Mortgagor to any one or more of JGB Agent or any Lender at any time proves to be, or to have been, false or materially misleading when made or furnished; (g) the issuance or filing of any attachment, levy, garnishment or other judicial process or proceeding upon or in respect of the Mortgagor or the Property (except for any such events that are involuntary, the undersigned will not be in default if such matter is dismissed within 30 days) and/or (h) without limiting any of the foregoing, the occurrence of "Event of Default" as defined in the Loan Agreement.

20. JGB Agent's Rights Upon Default. Upon occurrence of an Event of Default all of the Obligations (regardless of any contrary terms thereof) shall, at the option of JGB Agent, be immediately due and payable without demand or notice, and JGB Agent may take any one or more of the following actions not contrary to law: (a) foreclose this Mortgage by legal proceedings and collect its actual attorney fees as awarded by the Court; (b) sell, grant, and convey the Property, or cause the Property to be sold, granted and conveyed at public sale and to execute and deliver to the purchaser at such sale a good and sufficient deed or deeds of conveyance at law, pursuant to the statute in such case made and provided and out of the proceeds of such sale to retain the sums due under this Mortgage and all costs and charges of the sale (including, without limitation, the attorney fees provided by statute), rendering the surplus moneys, if any, to the Mortgagor or as otherwise provided by law, and in the event of a public sale and unless otherwise prohibited by law, the Property may be sold as one or more parcels, JGB Agent may sell the Property for cash and/or secured credit, and JGB Agent may give a warranty deed to the purchaser binding upon the Mortgagor and all claiming under the Mortgage; (c) as to the Equipment and Fixtures and Rents and Accounts, exercise any of the rights and remedies of a creditor under the Uniform Commercial Code, any other law, and any Court Rule; (d) enter upon the Property and take other actions as JGB Agent deems appropriate to perform the Mortgagor's obligations under this Mortgage, to inspect, repair, protect or preserve the Property, to investigate or test for the presence of any hazardous materials, and/or to appraise the Property, each of the rights under this subparagraph being specifically enforceable since there is not adequate monetary remedy available to JGB Agent; (e) seek and obtain the appointment of a receiver, in which case Mortgagor hereby expressly consents to the appointment of such receiver, including to the specific receiver nominated by JGB Agent, the powers, duties, and authorities proposed by JGB Agent, and the compensation terms approved by JGB Agent; (f) exercise any and all rights granted to the JGB Agent herein or in any of the Obligations; and/or (g) take any other action allowed by law.

Acceleration of the Obligations as provided in this Mortgage shall trigger any applicable prepayment premium or formula. Without limiting when a prepayment premium may be due, it is agreed that, at any time after acceleration, a tender of payment of the amount necessary to satisfy the entire Obligations by or on behalf of the Mortgagor or otherwise, must include any applicable prepayment premium or formula. Upon sale of the Property at any judicial or non-judicial foreclosure, JGB Agent may credit bid (as determined by JGB Agent in its sole discretion) all or any portion of the Obligations, including but not limited to any applicable prepayment premium.

21. Application of Payments After Default. Notwithstanding anything to the contrary contained in this Mortgage or in any of the Obligations, upon occurrence of an Event of Default under this Mortgage, any proceeds of any foreclosure, voluntary sale, or other disposition of the Property shall be applied by the Lender to reduction of the Obligations in such order as the Lender shall determine in its sole judgment and the Mortgagor shall have no right to require the Lender to apply such proceeds to any specific Obligations.

22. Subrogation. Any transferee of, or endorser, guarantor or surety or other party providing security who pays the Obligations secured hereby in full may take over all or any part of the Property and shall succeed to all rights of JGB Agent in respect thereto and JGB Agent shall be under no further responsibility therefor. No party shall succeed to any of the rights of JGB Agent so long as any of the Obligations remain unpaid to the Lender.

23. Release of Security. The Mortgagor agrees that JGB Agent may, without impairing the obligation of the Mortgagor hereunder: release any other obligors or guarantors from their obligations to pay or perform the Obligations; release any security of any obligor or guarantor of the Obligations before or after maturity of any of the Obligations; take, release or enforce its rights with respect to any of the Property without being obliged first to do so to any other security, whether owned by the Mortgagor or any other person; and agree with any obligor of the Obligations to extend, modify, forbear or make any accommodations with regard to the terms of the Obligations owed by such obligor.

24. **WAIVER OF RIGHTS REGARDING SALE BY ADVERTISEMENT. WARNING: THIS MORTGAGE CONTAINS A POWER OF SALE AND UPON DEFAULT MAY BE FORECLOSED BY ADVERTISEMENT. IN FORECLOSURE BY ADVERTISEMENT AND THE RELATED SALE OF THE PREMISES, NO HEARING IS REQUIRED AND THE ONLY NOTICE REQUIRED IS TO PUBLISH NOTICE IN A LOCAL NEWSPAPER AND TO POST A COPY OF THE NOTICE ON THE PREMISES. MORTGAGOR WAIVES ALL RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES AND THE STATE OF MICHIGAN TO A HEARING PRIOR TO SALE IN CONNECTION WITH FORECLOSURE BY ADVERTISEMENT AND ALL NOTICE REQUIREMENTS EXCEPT AS SET FORTH IN THE MICHIGAN STATUTE PROVIDING FOR FORECLOSURE BY ADVERTISEMENT.**

25. No Consent. Nothing in this Mortgage shall be deemed or construed in any way as constituting the consent or request by JGB Agent or any Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Property. The Mortgagor further agrees that neither JGB Agent nor any Lender stands in any fiduciary relationship to the Mortgagor.

26. Environmental Laws (a) The Mortgagor represents and covenants that the Mortgagor has not used Hazardous Materials (as later defined) on or affecting the Premises in any manner which violates Environmental Laws (as later defined), that there is no condition concerning the Premises which could require remediation pursuant to Environmental Laws, and that, to the best of the Mortgagor's knowledge, no prior owner of the Premises or any current or prior occupant has used Hazardous Materials on or affecting the Premises in any manner which violates Environmental Laws. The Mortgagor covenants and agrees that neither it nor any occupant shall use, introduce or maintain Hazardous Materials on the Premises unless done in strict compliance with all Environmental Laws; (b) the Mortgagor shall conduct and complete, or cause the applicable responsible party to conduct and complete, all investigations, environmental audits, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on or affecting the Premises, whether caused by the Mortgagor or a third party, in accordance with all Environmental Laws to the satisfaction of JGB Agent, and in accordance with the orders and directives of all federal, state and local governmental authorities, and the Mortgagor shall notify JGB Agent in writing prior to taking, and continually after that of the status of, all such actions. The Mortgagor shall, promptly upon JGB Agent's request, provide JGB Agent with copies of the results of all such actions and all related documents and information. Any remedial, removal or other action by the Mortgagor shall not be deemed a cure or waiver of any breach of this paragraph 26 due to the presence or use of Hazardous Materials on or affecting the Premises. Additionally, the Mortgagor shall defend, indemnify and hold harmless JGB Agent and Lenders, and their employees, agents, shareholders, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, attorney fees) of whatever kind arising out of or related to (i) the presence, disposal, release or threatened release of any Hazardous Materials on, from or affecting the Premises or the soil, water, air, vegetation, buildings, personal property, persons or animals on the Premises, (ii) any personal injury (including, without limit, wrongful death) or property damage (real or personal) arising out of or related to these Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached or government order related to these Hazardous Materials, (iv) the cost of removal of Hazardous Materials from any portion of the Premises, (v) taking necessary precautions to protect against the release of Hazardous Materials on or affecting the Premises, (vi) complying with all Environmental Laws and/or (vii) any violation of Environmental Laws or requirements of JGB Agent, which are in any way related to Hazardous Materials including, without limit, attorneys and consultants' fees (the attorneys and consultants to be selected by JGB Agent), investigation and laboratory fees and environmental studies required by JGB Agent (whether prior to foreclosure, or otherwise). Upon the request of JGB Agent, the Mortgagor and any other guarantor shall execute a separate indemnity consistent with this paragraph; (c) the Mortgagor has never received any notice ("Environmental Complaint") of any potential violation of Environmental Laws with respect to the Mortgagor or the Premises (and, within five (5) days of receipt of any Environmental Complaint, the Mortgagor shall give JGB Agent a copy of it), and to the best of the Mortgagor's knowledge, there have been no actions commenced or threatened by any party with respect to the Mortgagor or the Premises for noncompliance with any Environmental Laws; (d) In the event this Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to JGB Agent, purchaser or grantee, as the case may be, free of Hazardous Materials in violation of Environmental Laws so that the condition of the Premises shall not be a violation of any Environmental Laws; (e) Upon ten (10) days' notice to the Mortgagor (except in an emergency or where not practical under applicable law, in which case notice is waived), and without limitation of JGB Agent's other rights under this Mortgage or elsewhere, JGB Agent has the right, but not the obligation, to enter on the Premises and to take those actions as it deems appropriate to investigate or test for, clean up, remove, resolve, minimize the impact of or advise governmental agencies of the possible existence of any Hazardous Materials upon JGB Agent's receipt of any notice from any source asserting the existence of any Hazardous Materials or an Environmental Complaint pertaining to the Premises which, if true, could result in an order, suit or other action against the Mortgagor or any part of the Premises which, in the sole opinion of JGB Agent, could jeopardize its security under this Mortgage. Any such actions conducted by JGB Agent shall be solely for the benefit of and to protect the interests of JGB Agent and shall not be relied upon Mortgagor or any third party for any purpose. By conducting any such actions, JGB Agent does not assume control over the environmental affairs or operations of the Mortgagor nor assume any liability of the Mortgagor or any third party; (f) The provisions of this paragraph 26 shall be in addition to all other obligations and liabilities the Mortgagor may have to JGB Agent at common law or pursuant to any other agreement, and shall survive (i) the repayment of the Indebtedness, (ii) the satisfaction of all other obligations of the Mortgagor under this Mortgage and under the other loan documents, (iii) the discharge of this Mortgage, and (iv) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure; and (g) For purposes of this Mortgage, (i) "Hazardous Materials" means each and all of the following: hazardous materials and/or substances as defined in any Environmental Law, asbestos, petroleum, petroleum by-products, natural gas, flammable explosives, radioactive materials, and toxic materials, and (ii) "Environmental Laws" mean any and all federal, state, local or other laws (whether under common law, by legislative action or otherwise), rules, policies, ordinances, directives, orders, statutes, or regulations an object of which is to regulate or improve health, safety, or the environment.

27. Waiver of Marshalling. In the event of foreclosure of this Mortgage or the enforcement by JGB Agent of any other rights and remedies under this Mortgage, the Mortgagor waives any right otherwise available in respect to marshalling of assets which secure the Obligations or to require JGB Agent or any Lender to pursue its remedies against any other assets or any other party which may be liable for any of the Obligations.

28. Reinstatement of Mortgage. If any payment to JGB Agent on any of the Obligations is wholly or partially invalidated, set aside, declared fraudulent, or required to be repaid to the Mortgagor or anyone representing the Mortgagor or the Mortgagor's creditors under any bankruptcy or insolvency act or code, under any state or federal law, or any common law or equitable principles, then this Mortgage shall remain in full force and effect or be reinstated, as the case may be, until payment in full to the Lender of the repaid amounts, and of the Obligations. If this Mortgage must be reinstated, the Mortgagor agrees to execute and deliver to JGB Agent new mortgages, if necessary, in form and substance acceptable to JGB Agent, covering the Property.

29. Miscellaneous. The paragraph headings used in this Mortgage are for convenience only and shall not be used in the interpretation hereof. All persons signing this Mortgage on behalf of a corporation, partnership, trust or other entity warrant to JGB Agent and Lenders that they are duly and properly authorized to execute this Mortgage. Nothing in this Mortgage shall waive or restrict any right of JGB Agent granted in any other document or by law. No delay on the part of JGB Agent in the exercise of any right or remedy shall operate as a waiver. No single or partial exercise by JGB Agent of any right or remedy shall preclude any other future exercise of that right or remedy or the exercise of any other right or remedy. No waiver or indulgence by JGB Agent of any default shall be effective unless in writing and signed by JGB Agent, nor shall a waiver on one occasion be construed as a bar to or waiver of that right on any future occasion. Acceptance of partial or late payments owing on any of the Obligations at any time shall not be deemed a waiver of any default. All rights, remedies and security granted to JGB Agent herein are cumulative and in addition to other rights, remedies or security which may be granted elsewhere or by law. Any inspection, audit, appraisal or examination of the Property by or on behalf of JGB Agent shall be solely for its benefit and shall not create any duty or obligation to the Mortgagor or any other person. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provision hereof shall be declared invalid or illegal it shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Mortgage. Notice from JGB Agent to the Mortgagor, if mailed, shall be deemed given when mailed to the Mortgagor, postage prepaid, at the Mortgagor's address set forth at the beginning of this Mortgage or at any other address of the Mortgagor in the records of JGB Agent. JGB Agent may assign (or sell participations) in the Obligations and any reference to JGB Agent shall include any holder of the Obligations and any holder shall succeed to JGB Agent's rights under this Mortgage. This Mortgage shall bind the respective heirs, personal representatives, successors and assigns of the Mortgagor. If any payment applied by the Lenders to the Obligations is subsequently set aside, recovered, rescinded or otherwise required to be returned or disgorged by the Lenders for any reason (pursuant to bankruptcy proceedings, fraudulent conveyance statutes, or otherwise), the Obligations to which the payment was applied shall for the purposes of this Mortgage be deemed to have continued in existence, notwithstanding the application, and shall be secured by this Mortgage as fully as if the Lenders had not received and applied the payment.

30. Governing Law. This Mortgage was negotiated in the State of New York, which State the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including matters of construction, validity and performance, this Mortgage and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such State and any applicable law of the United States of America, except that at all times the provisions for the creation, perfection, and foreclosure/enforcement of the liens and security interests created pursuant hereto shall be governed by and construed according to the law of the State of Michigan, it being understood that, to the fullest extent permitted by law, Mortgagor hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Mortgage.

31. Joint and Several Obligations. If two or more persons execute this Mortgage as the Mortgagor, the obligations and grants of liens of such persons herein shall be joint, several, and individual.

32. WAIVER OF JURY TRIAL. MORTGAGOR AND JGB AGENT EACH HEREBY KNOWINGLY AND VOLUNTARILY, WITHOUT COERCION, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES BETWEEN THEM ARISING OUT OF THIS MORTGAGE, ANY OF THE OBLIGATIONS, OR ANY ALLEGED ACT OR NEGLIGENCE OF ANY ONE OR MORE OF JGB AGENT OR ANY LENDER.

33. Interest Rate. The Obligations shall bear interest at a rate or rates set forth in the Loan Agreement, which rate or rates are fixed as provided in the Loan Agreement. Reference is made to the Note and the Loan Agreement, the terms of which are incorporated herein in the same manner as if originally set forth herein.

(signature page follows)

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage on the day and year first above written.

ALLIANCE CLOUD SERVICES, LLC, a Delaware limited liability company

By: Alliance Cloud Management, LLC, its manager

By: AC Management, Inc., its managing member

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

STATE OF \_\_\_\_\_ )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

Acknowledged before me in \_\_\_\_\_ County, \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2023, by Jay Looney, who is personally known to me or who provided her/his driver's license as identification.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, \_\_\_\_\_ of \_\_\_\_\_,  
County of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

This instrument drafted by and after recording return to:

Haynes and Boone, LLP.  
30 Rockefeller Plaza, 26th Floor  
New York, NY 10112  
Attention: Greg Kramer, Esq.



## EXHIBIT A

### LEGAL DESCRIPTION:

Land Situated in the State of Michigan, County of Cass, City of Dowagiac.

#### **Parcel 1**

That part of the Northwest fractional 1/4 and that part of the Northeast 1/4 of fractional Section 31, Township 5 South, Range 15 West, described as: Beginning at the Southeast corner of Lot 9, Dr. McMaster's Addition to the City of Dowagiac, according to the recorded plat thereof, as recorded in Liber 1 of Plats, Page 26, Cass County Records; said beginning point being 414.80 feet West of and 66.00 feet North of the center of said Section 31; thence South 35 degrees 52 minutes 38 seconds West, 40.73 feet to the North line of Prairie Ronde Boulevard (formerly Boulevard Street); thence West on said North line, 186.57 feet to the East line of Louise Avenue; thence North 00 degrees 39 minutes 27 seconds West (deeded North 00 degrees 53 minutes 00 seconds West) on said East line, 918.86 feet to the South line of an alley; thence East on the South line of said alley, 132.00 feet; thence North 00 degrees 39 minutes 27 seconds West, (deeded North 00 degrees 53 minutes 00 seconds West) 208.00 feet to the South line of Lot 104 of said Addition; thence West on the South line of Lots 104 and 103 of said Addition, 132.00 feet; thence North 00 degrees 39 minutes 27 seconds West (deeded North 00 degrees 53 minutes 00 seconds West) on the East line of Louise Avenue, 194.00 feet to the North line of Columbus Street of said Addition; thence West 8.04 feet to a point being 24.75 feet East of the West line of the East 1/2 of the East 1/2 of the Northwest fractional 1/4 of said Section; thence North 00 degrees 33 minutes 12 seconds West, (deeded North 00 degrees 53 minutes 00 seconds West) 75.00 feet; thence East 140.26 feet; thence North 00 degrees 33 minutes 12 seconds West, (deeded North 00 degrees 53 minutes 00 seconds West) 90.00 feet; thence West 140.26 feet; thence North 00 degrees 33 minutes 12 seconds West, (deeded North 00 degrees 53 minutes 00 seconds West) 783.79 feet to the North line of the South 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of said Section 31; thence South 89 degrees 55 minutes 28 seconds East, on said North line, 627.11 feet (deeded South 89 degrees 57 minutes 00 seconds East, 633.59 feet) to the North and South 1/4 line of said Section 31; thence South 00 degrees 45 minutes 32 seconds East on said North and South 1/4 line, 675.18 feet (deeded South 00 degrees 53 minutes 00 seconds East, 676.26 feet); thence South 54 degrees 26 minutes 25 seconds East, 595.92 feet (deeded South 54 degrees 37 minutes 00 seconds East, 596.45 feet) to the Westerly line of West Railroad Street; thence South 35 degrees 52 minutes 38 seconds West on said Westerly line, 1,498.23 feet (deeded South 35 degrees 44 minutes 00 seconds West, 1,496.47 feet) to the Point of Beginning.

The above-described land includes Lots 9, 10, 19 to 23, inclusive, 36 to 39, inclusive, Dr. McMaster's Addition to the City of Dowagiac, according to the recorded plat thereof, as recorded in Liber 1 of Plats, Page 26, Cass County Records. ALSO Lots 52 to 63, inclusive, Lots 72 to 78, inclusive, Lots 89 to 94, inclusive, Lots 103 to 112, inclusive, Dr. McMaster's Second Addition to the City of Dowagiac, according to the recorded plat thereof, as recorded in Liber 1 of Plats, Page 32, Cass County Records. ALSO INCLUDING, the vacated streets in said Additions lying East of Louise Avenue, and the vacated alley lying between Lots 73 and 78 of said Second Addition.

APN/Parcel ID: 14-160-200-664-00

Address: 415 East Prairie Ronde Street (Provided for Reference Only)

#### **Parcel 2**

Beginning at a point 108.00 feet North of the intersection of the centerline of Columbus Street and the centerline of Louise Avenue in the City of Dowagiac, in the Northwest 1/4 of Section 31, Township 5 South, Range 15 West; thence North on the centerline of Louise Avenue extended, 90.00 feet; thence South 89 degrees 14 minutes 00 seconds East parallel to Columbus Street, 165.00 feet; thence South 90.00 feet; thence North 89 degrees 14 minutes 00 seconds West, 165.00 feet to the Place of Beginning, EXCEPT the West 24.75 feet thereof.

APN/Parcel ID: 14-160-200-126-40

Address: 404 Louise Avenue (Provided for Reference Only)

**Combined Surveyed Legal**

That part of the North 1/2 of Section 31, Township 5 South, Range 15 West, City of Dowagiac, described land includes Lots 9, 10, 19 to 23, inclusive, Lots 36 to 39, inclusive, of Dr. McMaster's Addition, according to the plat thereof, as recorded in Liber 1 of Plats, Page 26, Cass County Records, AND ALSO Lots 52 to 63, inclusive, Lots 72 to 78, inclusive, Lots 89 to 94, inclusive, Lots 103 to 112, inclusive, of Dr. McMaster's Second Addition, according to the plat thereof, as recorded in Liber 1 of Plats, Page 32, Cass County Records, ALSO INCLUDING the vacated streets in said Additions lying East of Louise Avenue, and the vacated alley lying between Lots 73 and 78 of said Second Addition, more particularly described as: Beginning at the Southeast corner of Lot 9, Dr. McMaster's Addition to the City of Dowagiac, according to the plat thereof, as recorded in Liber 1 of Plats, Page 26, Cass County Records; said beginning point being 414.82 feet West of and 66.00 feet North of the center of said Section 31; thence along the Northwesterly boundary of West Railroad Street, South 35 degrees 54 minutes 52 seconds West 40.80 feet to a chiseled X found on the North line of Prairie Ronde Street; thence West on said North line 186.48 feet to a bar and cap (54431) set on the East line of Louise Avenue; thence North 00 degrees 39 minutes 27 seconds West on said East line 918.86 feet to a found MAG nail on the South line of a vacated alley; thence South 89 degrees 46 minutes 37 seconds East on the South line of said vacated alley 132.26 feet to a found MAG nail; thence North 00 degrees 41 minutes 13 seconds West 208.00 feet to a concrete monument found on the South line of Lot 104 of said Second Addition; thence North 89 degrees 33 minutes 08 seconds West on the South line of Lots 104 and 103 of said Second Addition 132.10 feet to a found concrete monument; thence North 00 degrees 40 minutes 37 seconds West on the East line of Louise Avenue 193.53 feet to a bar and cap (38117) on the North line of Columbus Street of said Second Addition; thence West 8.04 feet to a bar and cap (38117) found on the East line of Louise Avenue; thence North 00 degrees 31 minutes 32 seconds West 948.71 feet on the East line of Louise Avenue to the North line of the South 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of said Section 31; thence South 89 degrees 55 minutes 32 seconds East on said North line 627.01 feet to the North and South 1/4 line of said Section 31; thence South 00 degrees 45 minutes 00 seconds East on said North and South 1/4 line 675.86 feet; thence South 54 degrees 23 minutes 41 seconds East 596.23 feet to a concrete monument found on the Westerly line of West Railroad Street; thence South 35 degrees 54 minutes 52 seconds West on said Westerly line 1,497.35 feet to the Point of Beginning.

**EXHIBIT B**  
Permitted Interests

**AIRCRAFT MORTGAGE  
AND SECURITY AGREEMENT**

**between**

**JGB COLLATERAL, LLC, as collateral agent**

**and**

**AULT AVIATION, LLC**

**Aircraft:**

**One (1) Gulfstream Aerospace model GV-SP (G550)  
(described on the International Registry Manufacturer's List as  
GULFSTREAM model Gulfstream GV-SP (G550)) aircraft  
bearing manufacturer's serial number 5094  
and United States Registration Number N623MS**

**Engines:**

**Two (2) Rolls Royce model BR700-710C4-11  
(described on the International Registry Manufacturer's List as  
ROLLS ROYCE model BR710 engines) aircraft engines  
bearing manufacturer's serial numbers 15287 and 15286**

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## AIRCRAFT MORTGAGE AND SECURITY AGREEMENT

**THIS AIRCRAFT MORTGAGE AND SECURITY AGREEMENT** ("Mortgage") dated as of the 14<sup>th</sup> day of December, 2023, by and between **AULT AVIATION, LLC**, a limited liability company formed under the laws of the State of Nevada having its headquarters at 11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141 ("Mortgagor"), and **JGB COLLATERAL, LLC** ("Collateral Agent"), a limited liability company formed under the laws of the State of Delaware, having its headquarters at 21 Charles Street, Westport CT 06880, as collateral agent for the Lenders (as defined below).

### WITNESSETH :

**WHEREAS**, Mortgagor is entering into that certain Loan and Guaranty Agreement, dated as December 14, 2023, by and among (i) Mortgagor, (ii) Ault & Company, Inc., a Delaware corporation (the "Borrower"), (iii) BNI Montana, LLC, a Delaware limited liability company, (iv) Ault Alliance, Inc., a Delaware corporation, (v) Third Avenue Apartments LLC, a Delaware limited liability company, (vi) Ault Lending, LLC, a California limited liability company, (vii) Alliance Cloud Services, LLC, a Delaware limited liability company, (viii) Sentinum, Inc., a Nevada corporation, (ix) Ault Global Real Estate Equities, Inc., a Nevada corporation, (x) Milton "Todd" Ault, III, a natural person (the parties identified in (i) and (iii) – (x), the "Guarantors" and together with the Borrower, the "Loan Parties"), the lenders from time-to-time parties thereto (the "Lenders") and the Collateral Agent (as amended, restated, supplemented, replaced, increased, refinanced or otherwise modified from time to time, the "Loan Agreement").

**WHEREAS**, Collateral Agent and Mortgagor wish that the payment of all amounts due under said Loan Agreement and the Note (as defined below) be secured by a security interest and an international interest as herein provided;

**NOW, THEREFORE**, the parties hereto agree and declare as follows:

For and in consideration of the premises hereof and to secure (i) the performance of all Secured Obligations (as defined below), and (ii) payment of all amounts due under the Loan Agreement, including the Note taken in conjunction therewith, Mortgagor does hereby consent to the creation of an international interest under the Cape Town Treaty (as defined below) and does hereby mortgage, hypothecate, pledge, confirm and grant a security interest in, lien upon and right of set-off against, the property described in Granting Clauses I through IV, inclusive, whether now owned or hereafter acquired (which property, including all property hereafter specifically subjected to this Mortgage and any other agreement supplemental hereto, is referred to herein as the "Mortgaged Property"), with the power granted to Collateral Agent, its successors and assigns to dispose of the Mortgaged Property:

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**GRANTING CLAUSE I**

All right, title and interest of Mortgagor in and to the Aircraft, the Parts, the Engines (all as defined below) and their components and attachments, and all manuals and log books and other documentation relating thereto, it being the intent that separate rights shall attach to the Airframe separate and apart from the Engines for purposes of the Cape Town Treaty.

**GRANTING CLAUSE II**

All proceeds of insurance from any loss of, or damage to, any properties mentioned or referred to in Granting Clause I and any other proceeds of any kind resulting from any Event of Loss (as defined below) with respect thereto up to the amount of the Secured Obligations.

**GRANTING CLAUSE III**

All estate, right, title, interest and claims whatsoever, at law, as well as in equity, which Mortgagor has or possesses on the date of this Mortgage or to which Mortgagor may hereafter become legally or equitably entitled, from, in or to the properties described in Granting Clauses I and II, inclusive, including, without limitation, the Associated Rights (as defined below), the right to receive any rent from the lease of the Aircraft or any charter or management fees derived from the use of the Aircraft, together with all accounts receivable, general intangibles, proceeds and chattel paper evidencing any of the foregoing.

**GRANTING CLAUSE IV**

All right, title and interest of Mortgagor in any engine, maintenance program contracts with respect to the Engines required to be maintained under the Loan Agreement, including any reserve account (or other trust account) included thereunder, if any.

**TO HAVE AND TO HOLD**, the Mortgaged Property under and subject to the terms and conditions set forth herein, for the benefit and security of all Secured Obligations and of all and singular the present and future holders thereof and to secure the payment and performance of the Secured Obligations, ratably and without any preference, distinction or priority as to lien or otherwise of any such Secured Obligations over any other Secured Obligation by reason of the difference in time of the actual making, issue, delivery, incurrence or sale of the respective Secured Obligations or for any other reason whatsoever, except as herein otherwise expressly provided or referred to, and so that each and every Secured Obligation, whether outstanding on the date of this Mortgage or hereafter issued and delivered or incurred shall have the same lien and security, and so that each and every such Secured Obligation shall be equally and proportionately secured hereby as if it had been made, issued, delivered and incurred simultaneously with the execution and delivery of this Mortgage.

**PROVIDED, HOWEVER,** and these presents are upon the condition that, unless and until an Event of Default has occurred and is continuing, neither Collateral Agent nor its successors or assigns shall disturb Mortgagor's possession and use of the Aircraft, Engines, Parts or other property constituting all or part of the Mortgaged Property, subject to the further covenants, conditions, uses and trusts, and except as specifically set forth herein; and

**IT IS HEREBY COVENANTED AND AGREED** by and between the parties hereto that the Mortgaged Property is to be held and applied on the further covenants, conditions, uses and trusts set forth herein:

#### **ARTICLE I - DEFINITIONS**

1.1 Defined Terms. As used in this Mortgage, except as otherwise indicated herein, the following terms shall have the meanings set forth below or in the location indicated:

(a) "Aircraft" shall mean that certain Gulfstream Aerospace model GV-SP (G550) (described on the International Registry Manufacturer's List as GULFSTREAM model Gulfstream GV-SP (G550)) aircraft bearing manufacturer's serial number 5094 and United States Registration Number N623MS, together with all Engines and all Parts.

(b) "Airframe" shall mean (i) the Aircraft, not including the Engines or any APU, it being the intent that separate rights shall attach to the Airframe separate and apart from the Engines for purposes of the Cape Town Treaty, and (ii) any and all Parts from time to time incorporated in, installed on or attached to the Aircraft and any and all Parts removed therefrom so long as Collateral Agent shall retain an interest therein in accordance with the applicable terms of this Mortgage after removal from the Aircraft.

(c) "Associated Rights" means all rights to payment or other performance by Mortgagor under an agreement which is secured by or associated with the Aircraft.

(d) "Cape Town Treaty" shall have the meaning provided in 49 U.S.C. §44113(1).

(e) "Engine(s)" shall mean those certain Rolls Royce model BR700-710C4-11 (described on the International Registry Manufacturer's List as ROLLS ROYCE model BR710) aircraft engines bearing manufacturer's serial numbers 15287 and 15286, and any replacement Engine purchased in accordance with Paragraph 3.3(b) of this Mortgage.

(f) "Event of Default" shall have the meaning given to it pursuant to Paragraph 4.1 of this Mortgage.

(g) "Event of Loss" with respect to the Aircraft or any Engine shall mean any of the following events:

(i) loss of the Aircraft or any Engine or the use thereof due to destruction, damage beyond repair or rendition of such Aircraft or Engine permanently unfit for normal use from any reason whatsoever;

(ii) any damage to the Aircraft or Engine (including those requiring the completion of an FAA Form 337, "Major Repair And Alteration Statement") which results in an insurance settlement with respect to such Aircraft or Engine on the basis of total loss;

(iii) the theft, disappearance, condemnation, confiscation, attachment, sequestration, distraint or seizure of, or requisition of title to or use or possession of, such Aircraft or Engine for a period of ninety (90) consecutive days; or

(iv) the operation or location of the Aircraft, while under condemnation, confiscation, seizure, requisition or otherwise in any area excluded from coverage by any insurance policy in effect with respect to the Aircraft required by the provisions of this Mortgage or of the Loan Agreement.

(h) "FAA" shall mean the United States Federal Aviation Administration, or the agency or official of the United States of America at the time administering the functions of the Federal Aviation Administration with respect to the regulation of aircraft.

(i) "Federal Aviation Act" shall mean Subtitle VII of Title 49 of the United States Code, as amended from time to time, or any similar legislation of the United States enacted to supersede, amend or supplement such Act.

(j) "IDERA" shall mean an Irrevocable De-Registration and Export Request Authorization substantially in the form of Annex I hereto.

(k) "Insurance Certificate" shall mean a certificate of a Qualified Insurance Broker.

(l) "International Registry" shall mean the international registry established under the Cape Town Treaty.

(m) "International Registry Procedures" shall mean the official English language text of the Procedures for the International Registry issued by the supervisory authority thereof pursuant to the Cape Town Treaty.

(n) "International Registry Regulations" shall mean the official English language text of the Regulations of the International Registry issued by the supervisory authority thereof pursuant to the Cape Town Treaty.

(o) "Liens" shall mean all liens, charges, security interests, national interests, prospective international interests, international interests, leaseholds and encumbrances of every nature and description whatever, whether consensual or nonconsensual, including, without limitation, any rights of third parties under third party agreements and irrevocable de-registration and export request authorizations.



(p) "Loan Agreement" has the meaning set forth in the recitals.

(q) "Mortgage" shall mean this Aircraft Mortgage and Security Agreement, as it from time to time may be supplemented or amended by any other supplements or amendments executed by and between Mortgagor and Collateral Agent.

(r) "Mortgaged Property" shall have the meaning specified in the paragraph of introduction immediately preceding the Granting Clauses of this Mortgage.

(s) "Note" shall mean the promissory notes evidencing the loans and other obligations of the Borrower under the under the Loan Agreement delivered by the Borrower pursuant to Paragraph 2.6 thereof.

(t) "Parts" shall mean all appliances, parts, instruments, avionics (including, without limitation, radio, radar, navigation systems or other electronic equipment), appurtenances, accessories, furnishings, auxiliary power units, if any, and other equipment of whatever nature (but excluding any complete Engine), so long as the same shall be (i) incorporated or installed in or attached to the Aircraft or any Engine, at any time, or (ii) otherwise subject to this Mortgage.

(u) "Person" shall mean an individual, a corporation, a limited liability company, a partnership, an unincorporated organization, an association, a joint-stock company, a joint venture, a trust, an estate or a government or any agency or political subdivision thereof.

(v) "Qualified Insurance Broker" shall mean an aircraft insurance broker, designated by Mortgagor and reasonably satisfactory to Collateral Agent.

(w) "Re-registration POA" shall have the meaning specified in Paragraph 3.1(a).

(x) "Secured Obligations" shall mean (i) all obligations of the Loan Parties under the Loan Agreement and the Note and (ii) all obligations of Mortgagor under this Mortgage.

Capitalized terms not otherwise defined in this Mortgage shall have the meanings set forth in the Loan Agreement.

## **ARTICLE II - REPRESENTATIONS AND WARRANTIES**

2.1 Ownership; Priority Lien; No Violation. Mortgagor represents and warrants that on the date of execution of the Note and this Mortgage and for as long as the Note and this Mortgage shall remain in full force and effect:

(a) The Aircraft and Engines then being subjected to this Mortgage are free and clear of all Liens, except the lien of this Mortgage and the IDERA, and except for mechanics, materialmen's or similar statutory liens that arise in the normal course of business and that do not exceed \$250,000 in the aggregate at any time. For the purposes of this Mortgage, Mortgagor shall be deemed to be the legal title holder of the Aircraft and Engines;

(b) This Mortgage has been duly executed and delivered by Mortgagor. This Mortgage is enforceable in accordance with its terms against Mortgagor and third parties subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally and to general equity principles; and

(c) Neither the execution and delivery by Mortgagor of this Mortgage nor compliance by Mortgagor with any of the terms and provisions of this Mortgage will, in any way, conflict with, result in any breach of, or constitute a default under, or result in the creation of any Lien (other than the Lien permitted under this Mortgage) upon any property of Mortgagor under:

(i) any statute, rule or regulation of the United States of America;

(ii) any treaties, conventions or international regulations, including, without limitation, the Cape Town Treaty, the International Registry Regulations and the International Registry Procedures;

(iii) any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan, credit agreement or other agreement or instrument to which Mortgagor is a party or by which it or any of its properties may be bound or affected; or

(iv) any order, writ, injunction, decree, judgment, award, determination, direction or demand of any federal, state, municipal or other governmental department, court, commission, board, bureau, agency or instrumentality, domestic or foreign, which is binding on Mortgagor.

### ARTICLE III - COVENANTS OF MORTGAGOR

#### 3.1 Registration, Maintenance and Operation of Aircraft and Engines.

(a) Registration and IDERA.

(i) At or prior to the Closing Date (as defined in the Loan Agreement), at its own cost and expense, and at all times during the term of this Mortgage, Mortgagor shall (A) cause the Aircraft to be duly registered in the name of Mortgagor in accordance with the Federal Aviation Act, and the Aircraft shall not be registered under the laws of any other country without the prior written consent of Collateral Agent; and (B) cause this Mortgage to be registered as an international interest on the International Registry. In furtherance thereof, Mortgagor shall consent, through its professional user entity, to international registration upon issuance of the request for consent by the International Registry. At least sixty (60) days prior to the date that any registration of the Aircraft shall expire, Mortgagor shall, at its expense, furnish (or cause to be furnished) to Collateral Agent a new or renewed (as the case may be) certificate of registration for the Aircraft, verifying that the Aircraft is properly registered with the FAA in accordance with the requirements of this Paragraph 3.1. Accordingly, the parties acknowledge and agree that, as a condition precedent to the funding of the loan described in the Loan Agreement, Mortgagor shall execute and deliver in favor of Collateral Agent an irrevocable power of attorney in form(s) reasonably acceptable to Collateral Agent, providing Collateral Agent with the power, in Collateral Agent's sole discretion, to re-register or renew the registration of the Aircraft ("Re-registration POA") should Mortgagor fail to timely complete such process. Collateral Agent shall not exercise the Re-registration POA unless Mortgagor has failed to provide evidence of the re-registration (or renewal of the registration) of the Aircraft at least sixty (60) days prior to the date that any registration shall expire as described above. It is understood that Collateral Agent shall have the right to exercise its powers under the Re-registration POA, but shall not be obligated to do the same. In the event this Mortgage is properly assigned by Collateral Agent, Mortgagor agrees to execute a new Re-registration POA in favor of such assignee in a form substantially similar to the original Re-registration POA at Collateral Agent's (or such assignee's) sole expense. When the Secured Obligations shall have been indefeasibly and fully paid, then the Re-registration POA shall automatically terminate and be deemed to cease to exist.

(ii) Mortgagor shall not allow the name of any Person other than Collateral Agent to be placed on the Airframe and Engines as a designation that might be interpreted as a lien thereon, provided, that Mortgagor may cause the Aircraft to be lettered and otherwise marked in an appropriate manner for convenience of identification of the interest therein of Mortgagor.

(iii) Mortgagor shall not (A) consent to any Person other than Collateral Agent making any registrations in the International Registry in relation to the Airframe and Engines, or (B) execute and deliver any irrevocable de-registration and export request authorization to any Person other than the IDERA in favor of Collateral Agent.

(iv) Mortgagor shall execute and deliver the IDERA, and cause the same to be filed in accordance with the Federal Aviation Act.

(b) Maintenance. After the Closing Date, and except as may otherwise be agreed in writing by Mortgagor and Collateral Agent, Mortgagor, at its own cost and expense during the term of the Loan Agreement and until full and complete payment of the Note and of all amounts due or to become due under the Loan Agreement, shall, or shall cause, the following to occur:

(i) maintain and keep the Aircraft in as good condition and repair as it is on the date of this Mortgage, ordinary wear and tear excepted and service, repair, maintain, overhaul, test, or cause the same to be done to the Aircraft so as to keep the Aircraft in such operating condition as is required by the maintenance service program required to be maintained under the Loan Agreement, and as may be necessary to enable the Certificate of Airworthiness of the Aircraft to be maintained in good standing and at all times be in compliance with the regulations of the FAA and Applicable Law.

(ii) maintain and keep the Aircraft in good order and repair and in airworthy condition in accordance with the requirements of each of the manufacturers' manuals and mandatory service bulletins. In furtherance thereof, Mortgagor, at Mortgagor's expense, shall maintain the Engines under a maintenance service program reasonably acceptable to Collateral Agent, and will make the monthly payments based upon hourly usage of the Engines thereunder. Mortgagor shall also use its reasonable efforts to cause the provider of the maintenance service program to provide Collateral Agent with an aircraft interest holder's agreement acknowledging (a) such provider's agreement to notify Collateral Agent of Mortgagor's failure to make any payment, and failure to cure within the applicable notice and cure period, with respect to the maintenance service program, (b) in the event Mortgagor fails to make such payments within such notice and cure period, Collateral Agent's right (but not the obligation) to make such payments in order to keep the maintenance service program in continuous good standing and fully funded, and (c) such provider's acknowledgement of and consent to Collateral Agent's interest in the maintenance service program. Mortgagor shall also utilize a third-party computerized maintenance tracking program such as CMP, at Mortgagor's expense, and shall authorize the maintenance tracking provider to provide read-only access to all maintenance reports to Collateral Agent.

(iii) replace in or on the Airframe, any and all Engines, parts, appliances, instruments or accessories which may be worn out, lost, destroyed or otherwise rendered unfit for use unless such parts or systems are reasonably deemed by Mortgagor to be outdated or unnecessary and not worthy of replacement.

(iv) cause to be performed, on all parts of the Aircraft, all applicable mandatory Airworthiness Directives, and mandatory manufacturers' service bulletins the compliance date of which shall occur while this Mortgage is in effect.

(v) be responsible for all required inspections of the Aircraft and licensing or re-licensing of the Aircraft in accordance with all applicable FAA and other governmental requirements. Mortgagor shall at all times cause the Aircraft to have on board and in a conspicuous location a current Certificate of Airworthiness issued by the FAA.

(vi) ensure that all inspections, maintenance modifications, repairs, and overhauls of the Aircraft (including those performed on the Airframe, the Engines or any components, appliances, accessories, instruments or equipment) shall be performed by personnel authorized by the FAA to perform such services.

(vii) if any Engine, component, appliance, accessory, instrument, equipment or part of the Aircraft shall reach such a condition as to require overhaul, repair or replacement, for any cause whatever, and such part or system is not to be disabled or removed in accordance with Paragraph 3.1(b)(iii), in order to comply with the standards for maintenance and other provisions set forth in this Mortgage, Mortgagor may:

(1) Install on or in the Aircraft such items of substantially the same type in temporary replacement of those then installed on the Aircraft, pending overhaul or repair of the unsatisfactory item; provided, however, that such replacement items must be in such a condition as to be permissible for use upon the Aircraft in accordance with the standards for maintenance and other provisions set forth in this Mortgage; provided further, however, that Mortgagor at all times must retain unencumbered title to any and all items temporarily removed; or

(2) Install on or in the Aircraft such items of substantially the same type and value in permanent replacement of those then installed on the Aircraft; provided, however, that such replacement items must be in such condition as to be permissible for use upon the Aircraft in accordance with the standards for maintenance and other provisions set forth in this Mortgage; provided further, however, that Mortgagor must first comply with each of the requirements below.

(viii) in the event Mortgagor shall be required or permitted to install upon the Airframe or any Engine, components, appliances, accessories, instruments, engines, equipment or parts in permanent replacement of those then installed on the Airframe or such Engine, Mortgagor may do so provided that, in addition to any other requirements of this Mortgage:

(a) Collateral Agent is not divested of its security interest in and lien upon any item removed from the Aircraft and that no such removed item shall be or become subject to the lien or claim of any person, unless and until such item is replaced by an item of the type and condition required by this Mortgage, title to which, upon its being installed or attached to the Airframe, is validly vested in Mortgagor, free and clear of all liens and claims, of every kind or nature, of all persons other than Collateral Agent;

(b) Mortgagor's title to every substituted item shall immediately be and become subject to the security interests and liens of Collateral Agent and each of the provisions of this Mortgage, and each such item shall remain so encumbered and so subject unless it is, in turn, replaced by a substitute item in the manner permitted in this Mortgage; and

(c) If an item is removed from the Aircraft and replaced in accordance with the requirements of this Mortgage, and if the substituted item satisfies the requirements of this Mortgage, including the terms and conditions above, then the item which is removed shall thereupon be free and clear of the security interests and liens of Collateral Agent.

(ix) in the event that any Engine, component, appliance, accessory, instrument, equipment or part is permanently installed upon the Airframe, and is not in substitution for or in replacement of an existing item, such additional item shall be considered as an accession to the Airframe.

(x) Mortgagor shall not interchange any part or parts of the Aircraft with other aircraft as may be leased, owned, operated and maintained by Mortgagor.

(c) Operations. Mortgagor shall not permit the Aircraft and any Engine to be maintained, serviced, repaired, overhauled, tested, used or operated in violation of any law or any rule, regulation or order of any governmental authority having jurisdiction thereover, or in violation of any airworthiness certificate, license or registration relating to the Aircraft or any Engine issued by any such authority, or in violation or breach of any representation or warranty made with respect to obtaining insurance on the Aircraft or any term or condition of such insurance policy. Except as specified in the Loan Agreement, Mortgagor shall not sell, assign, mortgage, relinquish possession, or lease the Mortgaged Property to any other Party, without Collateral Agent's prior written consent. The forgoing shall not preclude a temporary transfer of possession of the Aircraft to a maintenance provider for purposes of complying with the requirements hereof in the normal course of business. Mortgagor shall not operate the Aircraft (or cause the Aircraft to be operated) under a Part 135 Certificate or in a manner that would require a Part 135 Certificate without the prior written consent of Collateral Agent, not to be unreasonably withheld or delayed. Collateral Agent consents to the management and charter operations for the Aircraft by GREAT WESTERN AIR, LLC aka Cirrus Aviation.

### 3.2 Alterations, Modifications and Additions.

(a) Alterations, Modifications and Additions. Mortgagor, at its own cost and expense, shall make such alterations and modifications in and additions to the Aircraft and Engines as may be required from time to time to meet all applicable standards of the Federal Aviation Administration or other governmental authority having jurisdiction over the Aircraft and Engines.

So long as no Event of Default shall have occurred and be continuing, Mortgagor, at its own cost and expense, and from time to time, may make such alterations and modifications in, and additions to, the Aircraft and any Engine as Mortgagor may deem desirable in the proper conduct of its business; provided, that no such alteration, modification or addition shall diminish the value or utility of the Aircraft or such Engine, or impair the condition or airworthiness thereof, below the value, utility, condition or airworthiness thereof immediately prior to such alteration, modification or addition assuming the Aircraft or such Engine were measured by the value, utility and airworthiness, and in the condition and state of repair required to be maintained by the terms hereof. All Parts incorporated or installed in or attached to or added to the mortgaged Aircraft or any mortgaged Engine as the result of any alteration, modification or addition shall conform to the requirements of Paragraph 3.2(a) hereof and, without further act or deed, shall become subject to the lien of this Mortgage and the international interest in favor of Collateral Agent.

So long as no Event of Default shall have occurred and be continuing, Mortgagor, at any time, may remove any Part from the Aircraft or Engines if:

(i) such Part is in addition to, and not in replacement of, or substitution for, any Part incorporated or installed in or attached to the Aircraft or any Engine;

(ii) such Part is not required to be incorporated or installed in, or attached or added to, the Aircraft or such Engine pursuant to the terms of Paragraph 3.1(b), 3.1(c) or Paragraph 3.2 hereof; and

(iii) such Part can be readily removed from the Aircraft or any Engine without diminishing or impairing the value, utility, condition and airworthiness of the Aircraft or such Engine.

Upon any such removal, such Part shall cease to be a "Part" within the meaning hereof.

(b) Liability of Collateral Agent. Collateral Agent shall not bear any liability or cost for any alteration, modification or addition, or for any grounding or suspension of certification of the Aircraft or any Engine, or for loss to Mortgagor of any revenue in respect of the Aircraft or any Engine, however arising pursuant to this Paragraph 3.2.

### 3.3 Event of Loss.

(a) Event of Loss with Respect to the Aircraft. Upon the occurrence of an Event of Loss with respect to the Aircraft, Mortgagor shall give Collateral Agent prompt written notice thereof, stating the circumstances of such Event of Loss. No later than one hundred twenty (120) days after the date of such Event of Loss (or ten (10) days after receipt of insurance proceeds, whichever is sooner), Mortgagor shall repay the outstanding principal balance under the Loan Agreement and the Note and all other Secured Obligations in full with no Prepayment Premium. In the event that the insurance proceeds have not been received within one hundred twenty (120) days, the time allowable for payment to the Collateral Agent will be extended for up to ninety (90) additional days if and such Event of Loss is a covered event under the applicable insurance and Mortgagor is diligently pursuing coverage.

(b) Event of Loss with Respect to a Mortgaged Engine. Upon the occurrence of an Event of Loss with respect to any Engine, which Event of Loss does not constitute an Event of Loss with respect to the Aircraft, Mortgagor shall give Collateral Agent prompt written notice thereof, stating the circumstances of such Event of Loss. As soon as possible, but no later than ninety (90) days after the date of such Event of Loss, Mortgagor shall:

(i) repay the outstanding principal balance under the Note and all other Secured Obligations in full with no Prepayment Premium, or

(ii) enter into, at the expense of Mortgagor, an agreement in all respects satisfactory to Collateral Agent for the purchase of a new Engine, through the Maintenance Contract Program or otherwise, compatible with the Aircraft to replace the Engine which is the subject of such Event of Loss.

Upon delivery of such new Engine pursuant to such agreement, Mortgagor shall cause such new Engine to be installed on the Aircraft and specifically subject such new Engine to the lien hereof and the international interest in favor of Collateral Agent, delivering to Collateral Agent all documents required in connection therewith and consenting to the registration of an international interest with the International Registry with respect to such new Engine. Collateral Agent shall execute and deliver all documents required or useful in connection with releasing the replaced Engine from the lien of this Mortgage and shall discharge all registrations with the International Registry with respect to the replaced Engine.

3.4 Insurance. At or prior to the Closing Date, Mortgagor will carry, at the cost and expense of Mortgagor, public liability insurance (including, without limitation, passenger legal liability), property damage insurance (including, without limitation, airport property damage liability and contractual liability), and all-risk ground and flight aircraft hull insurance (including, without limitation, war risk, hijacking and similar perils insurance), all as described more fully in an Agreement to Provide Insurance delivered by Mortgagor to Collateral Agent of even date herewith. Mortgagor shall deliver to Collateral Agent an Insurer's Certificate as to the due compliance with the insurance provisions of this Paragraph 3.4.

3.5 Location of Aircraft. Mortgagor shall at all times keep the Aircraft registered under the laws of the United States of America. Mortgagor shall base the Aircraft in Las Vegas, Nevada, and Mortgagor shall not operate or locate the Aircraft or any Engine or permit the Aircraft or any Engine to be operated or located in:

(a) any area or on any route excluded from coverage under the provisions of any insurance policy required by the terms of Paragraph 3.4 above;

(b) any recognized, or, in Collateral Agent's reasonable judgment, threatened area of hostilities unless fully covered to Collateral Agent's reasonable satisfaction by war risk insurance; or

(c) anywhere (i) not permitted under the applicable insurance policies covering the Aircraft and (ii) outside of the United States of America (excluding any U.S. territory, possession or offshore insular area), Canada, member states of the European Union, the United Kingdom, Switzerland, Israel, Japan, Australia, New Zealand, Hong Kong, United Arab Emirates, Kuwait, South Korea, Costa Rica, the Cayman Islands or such other country with the written consent of the Collateral Agent, which consent may be withheld in Collateral Agent's discretion.

3.6 Application of Insurance Proceeds.

(a) Proceeds of insurance received as a result of an Event of Loss with respect to the Aircraft shall be applied by Collateral Agent to payment of the Secured Obligations in the manner provided in Paragraph 4.5 hereof.

(b) Proceeds of property damage insurance payable as a result of an Event of Loss of the Engine (but not the whole Aircraft) shall, if received, be held by Collateral Agent until Mortgagor shall have decided whether or not to purchase a new engine as required by Paragraph 3.3(b). If Mortgagor elects to replace the Engine, then, upon placing such an order, such proceeds, upon the request of Mortgagor, shall be applied directly to payment (including any progress payment) for such repair or the purchase of a replacement Engine. Unless a Default or Event of Default shall have occurred and be continuing, such proceeds (or balance thereof remaining after payment in full for such repair or such replacement Engine) shall be paid to Mortgagor upon completion of such repair or installation of the replacement Engine on the Aircraft and its subjection to the lien hereof and international interest in favor of Collateral Agent as required by Paragraph 3.3(b) above.



(c) Unless a Default or Event of Default shall have occurred and be continuing and except as provided in Paragraph 3.6(d), any proceeds of insurance received as a result of any damage or loss not constituting an Event of Loss and in an amount of \$1,000,000 or less (per occurrence) shall be held adjusted by and paid to Mortgagor, not to Collateral Agent and Mortgagor jointly. Any proceeds of insurance in excess of \$1,000,000 received by Collateral Agent as a result of any damage or loss not constituting an Event of Loss, shall be held by Collateral Agent or upon the request of Mortgagor, applied by Collateral Agent directly to payment (including any progress payment) for any repair or replacement required by the terms hereof. Unless a Default or Event of Default shall have occurred and be continuing, after completion of, and payment for, such repair or replacement, such proceeds, or any excess over the cost of such repair or replacement if such proceeds shall have been applied by Collateral Agent to payment for such repair or replacement, shall be forthwith paid over to Mortgagor by Collateral Agent.

(d) Unless a Default or Event of Default shall have occurred and be continuing, any proceeds of insurance received as a result of any damage or loss to Parts which Mortgagor is entitled to remove pursuant to Paragraph 3.2(a) above without replacement shall be paid to Mortgagor directly, not to Mortgagor and Collateral Agent jointly.

3.7 Liens on Mortgaged Property; Taxes.

(a) Mortgagor shall always maintain this Mortgage as a first priority security interest, international interest, and lien upon the Mortgaged Property and Mortgagor shall not consent to any security interest, international interest or lien upon the Mortgaged Property other than the one in favor of Collateral Agent with respect to the Airframe and Engines. Mortgagor shall not directly or indirectly create, assume or permit, or suffer to be created and to exist, any Lien on or with respect to any Mortgaged Property, title thereto or any interest therein except as permitted under Paragraph 2.1. Mortgagor shall promptly, at its own cost and expense, take such action as may be necessary to duly discharge any Lien on or with respect to any Mortgaged Property, title thereto or any interest therein in violation hereof.

(b) Mortgagor shall pay and indemnify Collateral Agent for, and hold Collateral Agent harmless from and against, all income (other than Collateral Agent's income), franchise, gross receipts, rental, sales, use, excise, personal property, *ad valorem*, value added, leasing, leasing use, stamp, landing, airport use or other taxes, levies, imposts, duties, charges, fees or withholdings of any nature, together with any penalties, fines or interest thereon (the "Tax(es)") arising out of transactions contemplated by this Mortgage and imposed against Collateral Agent, Mortgagor or the Aircraft, or any part thereof, by the United States of America, any foreign government, any state, municipal or local subdivision, any agency or instrumentality thereof or any taxing authority upon or with respect to the Aircraft, or any part thereof, or upon the ownership, delivery, leasing, possession, use, operation, return, transfer or release thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Mortgage. If a claim is made against Collateral Agent for any Tax that is subject to indemnification hereunder, Collateral Agent shall notify Mortgagor promptly within thirty (30) days after Collateral Agent's receipt of such written notice, and Mortgagor will pay such Tax promptly and in no event later than thirty (30) days after such notice; provided, however, that if Mortgagor elects to contest or assume the defense as therein described and provided that Mortgagor can testify such Tax would not subject the Aircraft to risk of seizure, and Mortgagor so contests or defends in a timely manner and within the legal delays allowed to do so, Mortgagor's obligation to pay or reimburse shall, if applicable laws allow, be postponed until a settlement of the matter or a decision is rendered on the defense or contestation. Mortgagor's contestation or defense shall be at Mortgagor's sole cost and expense. If the governmental authority or agency seeking to collect requires any payment to be made or any security assurance or guarantee to be furnished as a condition of contestation or defense, Mortgagor shall pay or furnish same or cause the payment or furnishing thereof. In case any report or return is required to be made with respect to any Taxes, Mortgagor will either (after notice to Collateral Agent) make such report or return in such manner as will show the ownership of the Aircraft in Mortgagor and send a copy of such report or return to Collateral Agent or will notify Collateral Agent of such requirement and make such report or return in such manner as shall be satisfactory to Collateral Agent. Collateral Agent agrees to cooperate fully with Mortgagor in the preparation of any such report or return. Notwithstanding the foregoing, Mortgagor shall not indemnify or be responsible for any Taxes related to the income of Collateral Agent or Collateral Agent's franchise or other doing business taxes. Further, Mortgagor shall not be responsible for any Taxes associated with any assignment of the Mortgage or any other Loan Document by Collateral Agent.

(c) Transfers. The Mortgagor may not sell, transfer, assign or otherwise dispose of all or any portion of the Mortgaged Property unless the Borrower has made the repayments required under the Loan Agreement.

3.8 Further Assurances. Mortgagor, from time to time, shall perform or execute and deliver, or cause to be performed or executed and delivered, all such further and other acts, conveyances, transfers, instruments and assurances as may be reasonably appropriate, or as may be requested by Collateral Agent, for the better mortgaging, hypothecating, confirming, pledging, granting and perfecting of a lien and security interest unto Collateral Agent or a registered international interest in favor of Collateral Agent, in all or in part, of the Mortgaged Property or for facilitating the execution of the lien or international interest created by this Mortgage or for securing to Collateral Agent the benefit hereof and of the rights and remedies created hereby. Mortgagor, at all times, shall defend and protect the lien of this Mortgage on the Mortgaged Property against the enforcement of all Liens, claims, penalties and rights asserted by any and all Persons whatsoever except for those permitted under Paragraph 2.1.

3.9 Recording and Filing. Without limiting Paragraph 3.8 above, Collateral Agent, at the cost and expense of Mortgagor, shall cause this Mortgage and any and all additional instruments which shall be executed pursuant to the terms hereof, so far as permitted by applicable laws and regulations, on and at all times after the date of execution to be kept, and this Mortgage filed and recorded in such places as may be required under applicable law, or as Collateral Agent, in its reasonable discretion, may reasonably request to perfect and preserve the lien of this Mortgage on all of the Mortgaged Property and to protect the security and the rights and remedies of Collateral Agent hereunder. Without limiting the foregoing, Mortgagor shall do, or cause to be done, any and all acts and things as may be reasonably requested by Collateral Agent to (i) perfect the lien of this Mortgage pursuant to the Uniform Commercial Code as in effect in any jurisdiction with respect to any portion of the Mortgaged Property subject to the provisions of such Code and (ii) consent to and maintain the registered international interest in favor of Collateral Agent under the Cape Town Treaty. Mortgagor shall bear the entire cost and expense of all actions required to be taken pursuant to Paragraph 3.8 and 3.9 hereof for the initial filings. In the event the Collateral Agent elects to do additional filings for any reason, such filings shall be at Collateral Agent's sole expense.

3.10 Suits to Protect the Mortgaged Property. Collateral Agent shall have power to institute and to maintain, at Mortgagor's cost and expense, such suits and proceedings as Collateral Agent may deem expedient, in Collateral Agent's commercially reasonable discretion, to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage or to preserve or protect the interests of Collateral Agent in the Mortgaged Property, including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of Collateral Agent. Notwithstanding the foregoing, Mortgagor shall not be responsible for the costs of any suit instituted by Collateral Agent without Mortgagor's knowledge and without granting Mortgagor a reasonable opportunity to resolve the relevant issue in another manner.

3.11 Inspection. Mortgagor shall permit the Collateral Agent to inspect the Mortgaged Property no more than once per year (unless an Event of Default has occurred and is continuing) upon advanced notice by Lender of at least forty-eight (48) hours, and during normal business hours; provided that Lender shall make best efforts not to interfere with the operations of the Aircraft. Collateral Agent shall have no duty to make any such inspection and shall not incur any liability or obligations by reason of not making any such inspection.

#### **ARTICLE IV - DEFAULT AND REMEDIES**

4.1 Events of Default. If one (1) or more of the following events (each an "Event of Default") shall occur:

- (a) The occurrence of an "Event of Default" under the Loan Agreement;
- (b) There occurs an Event of Loss and (i) the Mortgagor fails to comply with applicable provisions of Section 3.3 or (ii) in the reasonable opinion of the Collateral Agent the Aircraft cannot be returned to service within 120 days after such Event of Loss;
- (c) This Mortgage, as a result of any act or omission of Mortgagor, shall cease to be in full force and effect or shall cease to give Collateral Agent the rights and interests purported to be created hereunder, including, without limitation, the failure of the interests granted hereunder to constitute a registered international interest in the Aircraft subject to the Cape Town Treaty;

(d) The failure by Mortgagor to maintain the insurance coverage on the Aircraft in accordance with Paragraph 3.4; or

(e) Default shall be made in the due observance or performance of any other term, covenant or agreement contained in any other agreement or mortgage between Mortgagor and Collateral Agent, including, without limitation, the occurrence of an Event of Default in any other Loan Documents (as defined in the Loan Agreement);

then, upon the happening of any of the foregoing Events of Default, the Note and all amounts under the Loan Agreement shall become and be immediately due and payable upon Collateral Agent having given Borrower notice of such acceleration, provided, however, that upon the occurrence of an Event of Default specified in Section 7.5 of the Loan Agreement, all Secured Obligations shall automatically become due and payable without notice or demand of any kind, with Mortgagor hereby expressly waiving any presentment, demand, protest or other notice of any kind.

#### 4.2 Rights Against Mortgaged Property.

(a) If an Event of Default shall have occurred and be continuing, then and in every such case, Collateral Agent, in addition to all other rights and remedies available hereunder, shall have, at law or in equity or by statute, each of the following rights and remedies, none of which is intended to be exclusive of any other right or remedy, and each of which may be exercised either singly or, to the extent permitted by applicable law, concurrently with any one or more of the other rights or remedies:

(i) To the extent applicable, Collateral Agent shall have the rights and remedies of a secured party under the Cape Town Treaty and/or the Uniform Commercial Code as enacted in any jurisdiction in which any of the Mortgaged Property may be located, including, without limitation, all of the rights and remedies set forth in Articles 12, 13, 15 and 20 of the Cape Town Treaty, and Mortgagor hereby consents to the same. In any case, Collateral Agent may immediately, directly or by such agent as it may appoint, without demand of performance and (to the extent permitted by applicable law) without notice of its intention to sell or of time or place of sale or of redemption or other notice or demand whatsoever to Mortgagor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, the whole or, from time to time, any part of the Mortgaged Property. If notice of any sale or other disposition is required by law to be given, Mortgagor hereby agrees that a notice sent at least ten (10) days before the time of any intended de-registration and export of the Mortgaged Property or intended public sale or after which any private sale or other disposition of the Mortgaged Property is to be made shall be reasonable notice of such sale or other disposition. Whenever Collateral Agent shall demand possession of any of the Mortgaged Property pursuant to this Article IV, Mortgagor, at its own cost and expense, shall deliver, or cause to be delivered, such Mortgaged Property without risk or expense to Collateral Agent, to such airport or airports in the United States of America, as shall be designated by Collateral Agent or such other place as may be mutually agreed upon by Mortgagor and Collateral Agent. In addition, Mortgagor shall provide, without expense to Collateral Agent, storage facilities for such Mortgaged Property. At the request of Collateral Agent, Mortgagor shall promptly execute and deliver to Collateral Agent such instruments or other documents as Collateral Agent may deem necessary or advisable to enable Collateral Agent or an agent or representative designated by Collateral Agent, at such time or times and place or places as Collateral Agent may specify, to obtain possession of all or any part of the Mortgaged Property;

- (ii) Collateral Agent, either after entry or without entry, may proceed by suit or suits, at law or in equity, to foreclose this Mortgage and to sell all or, from time to time, any part of the Mortgaged Property under the judgment or decree of a court of competent jurisdiction;
- (iii) Collateral Agent may procure the de-registration of the Mortgaged Property whether by utilizing the IDERA or otherwise;
- (iv) Collateral Agent may procure the export and shipment transfer of the Mortgaged Property from the territory in which it is situated;
- (v) Collateral Agent may take legal proceedings for the appointment of a receiver or receivers (to which Collateral Agent shall be entitled as a matter of right) to take possession of the Mortgaged Property pending the sale thereof pursuant either to the power of sale given in this Paragraph 4.2 or to a judgment, order or decree made in any judicial proceeding or the foreclosure or involving the enforcement of this Mortgage;
- (vi) Collateral Agent, either directly or by such agent as it may appoint or by means of a receiver appointed by a court therefor, may peacefully and lawfully enter upon the premises of Mortgagor and any other premises where any of the Mortgaged Property may be located, take immediate possession of the Mortgaged Property and exclude Mortgagor and all other Persons therefrom, using all necessary proper and legal force so to do;
- (vii) Collateral Agent may appoint a trustee to take title to all or part of the Mortgaged Property on behalf of Collateral Agent and to exercise on behalf of Collateral Agent any or all of its remedies hereunder, and Mortgagor shall execute and deliver all such instruments and documents as Collateral Agent may reasonably request in connection therewith; and
- (viii) Upon every taking of possession pursuant to this Paragraph 4.2, Collateral Agent from time to time may make all such reasonable expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Mortgaged Property as Collateral Agent may deem proper. In each such case, Collateral Agent shall have the right to hold, use operate, store, lease, control or manage the Mortgaged Property, and to exercise all rights and powers of Mortgagor relating to the Mortgaged Property, as Collateral Agent shall deem appropriate, including the right to enter into any and all such agreements with respect to the use, operation, storage, leasing, control or management of any of the Mortgaged Property as Collateral Agent may determine.

(b) No delay or omission of Collateral Agent in the exercise of any right, power, remedy or privilege conferred hereunder shall impair any such right, power, remedy or privilege or be construed to be a waiver of any Default or Event of Default or acquiescence therein; and every right, power and privilege given by this Mortgage to Collateral Agent may be exercised from time to time and as often as may be deemed expedient by Collateral Agent. No remedy for the enforcement of the rights of Collateral Agent shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies from time to time may be exercised independently or in combination.

4.3 Relief Pending Final Determination. Without limiting the generality of Collateral Agent's other remedies set forth in this Paragraph 4, in the event Collateral Agent adduces evidence of an Event of Default by Mortgagor, Collateral Agent may, pending final determination of its claim, obtain from a court speedy (as defined in Article 20 of the Cape Town Treaty) relief in the form of such one or more of the following orders as Collateral Agent requests:

- (a) preservation of the Mortgaged Property and its value;
- (b) possession, control or custody of the Mortgaged Property;
- (c) immobilization of the Mortgaged Property;
- (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the Mortgaged Property and the income therefrom; and
- (e) if at any time Mortgagor and Collateral Agent specifically agree, sale and application of proceeds therefrom.

Nothing in this Paragraph 4.3 shall limit the availability to Collateral Agent of other forms of interim relief.

4.4 Provisions Regarding Sale. Upon any sale of any of the Mortgaged Property, in connection with the exercise of remedies upon and during the continuation of an Event of Default, whether made under the power of sale hereby given or under judgment, order or decree in any judicial proceedings, for the foreclosure or involving the enforcement of this Mortgage, to the extent permitted by applicable law:

(a) Collateral Agent or its representative may bid for and purchase the property being sold and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its absolute right without further accountability, and, in paying the purchase money therefor, may assign to Mortgagor in lieu of cash all or any part of the Note or other Secured Obligations then outstanding or claims for interest thereon, at par, and the Note, in case the portion thereof as assigned shall be less than the amount due thereon, shall be returned to Collateral Agent after being appropriately stamped to show partial payment;

(b) Collateral Agent or its representative may make and deliver to the purchaser or purchasers a good and sufficient deed, bill of sale and instrument of assignment and transfer of the property sold;

(c) Collateral Agent or its representative is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary deeds, bills of sale and instruments of assignment and transfer of the property thus sold and to deregister and export the property, and for that purpose it may execute and deliver all necessary deeds, bills of sale and instruments of assignment and transfer, and may substitute one (1) or more Person with like power, Mortgagor hereby ratifying and confirming all that its said attorney, or such substitute or substitutes, shall lawfully do by virtue hereof; but if so requested by Collateral Agent or by any purchaser, Mortgagor shall ratify and confirm any such sale or transfer, deregistration or export, by execution and delivering to Collateral Agent or to such purchaser all property deeds, bills of sale, instruments of assignment and transfer and releases as may be designated in any such request;

(d) All right, title, interest, claim and demand whatsoever, either at law or in equity or otherwise, of Mortgagor of, in and to the property so sold shall be divested. Such sale shall be a perpetual bar both at law and in equity against Mortgagor, its successors and assigns, and against any and all Persons claiming or who may claim the property sold or any part thereof from, through or under Mortgagor, its successor or assigns; and

(e) The receipt of the proceeds of the sale of the Mortgaged Property by Collateral Agent shall be a sufficient discharge to the purchaser or purchasers at such sale for its or their purchase money, and such purchaser or purchasers and its or their assigns or personal representatives after paying such purchase money and receiving such receipt of Collateral Agent shall not be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or non-application thereof; and

(f) To the extent it may lawfully do so, Mortgagor agrees that it will not, at any time, insist upon or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption laws, or any law permitting it to direct the order in which the Mortgaged Property or any part thereof shall be sold, now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance or enforcement of this Mortgage or the Secured Obligations, and Mortgagor hereby expressly waives all benefit or advantage of any such laws and covenants, and agrees that it will not hinder, delay or impede the execution of any power granted and delegated to Collateral Agent in this Mortgage, but will suffer and permit the execution of every such power as though no such laws were in force, except that Mortgagor, in any event, shall have the right, prior to the disposition of any Mortgaged Property or the entering into of a binding commitment therefor, to obtain the release of such Mortgaged Property from the lien hereof and the return to Mortgagor thereof upon payment of the Secured Obligations in full.

4.5 Application of Monies Received by Collateral Agent. If an Event of Default shall have occurred and be continuing, any monies collected pursuant to Article IV or otherwise constituting a part of the Mortgaged Property shall be applied to the payment of the Secured Obligations in accordance with the terms and provisions of the Loan Agreement.

4.6 Waiver of Defaults. By written notice to Mortgagor, Collateral Agent may waive any default hereunder and its consequences. Upon any such waiver, such default shall cease to exist, and any Default or Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Mortgage; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

4.7 Right of Setoff. In addition to the other remedies set forth in this Article IV, to the extent permitted by applicable law, Collateral Agent reserves a right of setoff in all Mortgagor's accounts with Collateral Agent (whether checking, savings, or some other account). This includes all accounts Mortgagor holds jointly with someone else and all accounts Mortgagor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Mortgagor authorizes Collateral Agent, to the extent permitted by applicable law, to charge or setoff all sums owing with respect to the Secured Obligations against any and all such accounts.

#### **ARTICLE V - SATISFACTION AND DISCHARGE**

5.1 Discharge. When all Secured Obligations shall have been finally and fully paid or otherwise in accordance with the Loan Agreement, then this Mortgage shall terminate and cease to exist. Thereupon Collateral Agent shall discharge this Mortgage, release its lien on the Mortgaged Property and discharge its registered international interest from the International Registry and Collateral Agent shall execute and deliver to Mortgagor, at Mortgagor's cost and expense, such instruments in writing as may be requested by Mortgagor to evidence such cancellation, discharge and release.

#### **ARTICLE VI - MISCELLANEOUS**

6.1 Severability. If any part of this Mortgage is contrary to, prohibited by, or deemed invalid under any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, without invalidating the remainder hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

6.2 Counterparts. This Mortgage may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument, and all signatures need not appear on any one counterpart. Facsimile signatures and electronic (including PDF format) signatures of the parties hereto shall be binding. Notwithstanding the foregoing, in the event Collateral Agent requests that Mortgagor provide an originally executed copy of a document, Mortgagor shall promptly provide the same.

6.3 Amendments. Any amendment hereto shall be in writing and shall be signed by Mortgagor and Collateral Agent.



6.4 Indemnification by Mortgagor; Expenses.

(a) Mortgagor shall indemnify, reimburse and hold Collateral Agent and its officers, directors, employees and agents harmless from and against any and all claims, demands, causes of action, suits or judgments and any and all costs and expenses of any nature (including, without limitation, reasonable fees and expenses of external legal counsel), for or on account of injury to or death of persons (including employees and agents of Mortgagor or Collateral Agent), property damage and any other liability which may result from or arise in any manner out of:

(i) the ownership, possession, control, management, maintenance, condition, storage, use or operation of all or part of the Mortgaged Property by Mortgagor or any bailee, transferee or lessee of Mortgagor, or

(ii) any failure on the part of Mortgagor to perform or comply with any of the terms hereof (including, without limitation, any failure by Mortgagor to effect or maintain any insurance required to be effected or maintained pursuant to the provisions of Paragraph 3.4 hereof).

If Collateral Agent shall receive knowledge of any claim or liability hereby indemnified against, Collateral Agent shall give prompt notice thereof to Mortgagor; provided, however, Collateral Agent's failure to promptly provide any such notice shall not act as a waiver of any of Collateral Agent's rights hereunder, unless such failure to provide prompt notice materially interferes in Mortgagor's ability to defend such claim. The obligation contained in this Paragraph 6.4 shall continue in full force and effect notwithstanding the full payment of the Note and all amounts due under the Loan Agreement or hereunder and notwithstanding the discharge hereof pursuant to Paragraph 5.1 hereof or otherwise. Provided, however, such indemnification obligations shall not apply to any act or omission involving a breach of this Mortgage by Collateral Agent and shall not apply to any act or omission involving gross negligence or willful misconduct by Collateral Agent or its representatives.

(b) Mortgagor shall be responsible for, and shall pay, all fees and expenses incurred by Collateral Agent (including the reasonable fees and expenses of its external legal counsel) in connection with the enforcement of, or the exercise of any right or remedy of Collateral Agent under, this Mortgage or any amendment or supplement hereto after and during the continuation of an Event of Default.

6.5 Acknowledgment of Receipt of Copy of Mortgage. Mortgagor hereby acknowledges and certifies that a full, complete, correct and exact copy of this Mortgage has been delivered to and received by Mortgagor on the date of its execution.

6.6 Assignment. This Mortgage may be freely assigned by Collateral Agent without the consent of Mortgagor, and Mortgagor shall duly execute an IDERA upon the written request of any assignee. This Mortgage shall inure to the benefit of Collateral Agent, its successors in interest and assigns. This Mortgage may not be assigned by Mortgagor without the written consent of Collateral Agent.

6.7 Notice. Any notice or other communication required or permitted under this Mortgage or necessary or convenient in connection with this Mortgage shall be sent in the manner set forth in the Loan Agreement.

6.8 APPLICABLE LAW. THIS MORTGAGE AND THE NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICTS OF LAW PROVISIONS; PROVIDED, THAT THE PARTIES HERETO SHALL BE ENTITLED TO ALL RIGHTS CONFERRED BY THE FEDERAL AVIATION ACT. ALL OF THE PROVISIONS OF SECTION 10 OF THE LOAN AGREEMENT ARE INCORPORATED HEREIN AND MADE A PART HEREOF MUTATIS MUTANDIS.

6.9 JURY TRIAL. MORTGAGOR HEREBY WAIVES THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER LENDER OR MORTGAGOR AGAINST THE OTHER.

*[Signatures follow on next pages]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Aircraft Mortgage and Security Agreement to be duly executed and delivered as of the date and year first above written.

**JGB COLLATERAL LLC, as collateral agent**

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

[Signature Page to Aircraft Mortgage and

Security Agreement]

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**IN WITNESS WHEREOF**, the parties hereto have caused this Aircraft Mortgage and Security Agreement to be duly executed and delivered in as of the date and year first above written.

**AULT AVIATION, LLC**

By: **AULT ALLIANCE, INC.**, its managing member

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

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**ANNEX I**

**IRREVOCABLE DE-REGISTRATION  
AND EXPORT REQUEST AUTHORIZATION**

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**IRREVOCABLE DE-REGISTRATION  
AND EXPORT REQUEST AUTHORIZATION\***

December \_\_, 2023

To: United States Federal Aviation Administration

Re: Irrevocable De-Registration and Export Request Authorization

The undersigned is the registered owner of one (1) Gulfstream Aerospace model GV-SP (G550) (described on the International Registry Manufacturer's List as GULFSTREAM model Gulfstream GV-SP (G550)) aircraft bearing manufacturer's serial number 5094 and United States Registration Number N623MS; together with two (2) Rolls Royce model BR700-710C4-11 (described on the International Registry Manufacturer's List as ROLLS ROYCE model BR710) aircraft engines bearing manufacturer's serial numbers 15287 and 15286 (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorization issued by the undersigned in favor of JGB Collateral, LLC (the "authorized party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorized party or the person it certifies as its designee is the sole person entitled to:

(a) procure the de-registration of the aircraft from the United States Aircraft Registry maintained by the United States Federal Aviation Administration for the purposes of Chapter III of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944; and

(b) procure the export and physical transfer of the aircraft from the United States of America; and

(ii) confirmation that the authorized party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in the United States of America shall cooperate with the authorized party with a view to the speedy completion of such action.

The rights in favor of the authorized party established by this instrument may not be revoked by the undersigned without the written consent of the authorized party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in the United States Aircraft Registry.

AULT AVIATION, LLC

By: AULT ALLIANCE, INC., its managing member

By: \_\_\_\_\_

Name:

Title:

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\* This IDERA is linked to and part of that certain Aircraft Mortgage and Security Agreement dated December \_\_ 2023, by and between JGB Collateral, LLC and Ault Aviation, LLC, which is being filed with the Federal Aviation Administration contemporaneously herewith.

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## Ault Alliance Receives an Investment of \$41.5 Million from Ault & Company

LAS VEGAS--(BUSINESS WIRE) – December 15, 2023 – Ault Alliance, Inc. (NYSE American: AULT), a diversified holding company (“**Ault Alliance**,” or the “**Company**”), today announced the closing of a \$41.5 million financing (the “**Financing**”) with Ault & Company, Inc. (“**A&C**”), an affiliate of the Company, pursuant to the Securities Purchase Agreement (the “**Agreement**”) entered into between the Company and A&C on November 6, 2023.

The Financing had three separate closings, all of which occurred on December 14, 2023. The Company utilized proceeds from the closings to pay off the \$20.4 million owed to the Company’s senior lenders (the “**Lenders**”) as well as repay the \$17.5 million owed to A&C under the senior secured convertible promissory note issued on October 13, 2023. The Company issued 41,500 shares of Series C convertible preferred stock (the “**Preferred Stock**”) to A&C which, while subject to adjustment in the future, are as of the date of the Agreement convertible into approximately 198 million shares of the Company’s common stock (“**Common Stock**”) at a conversion price (the “**Conversion Price**”) of \$0.2098 per share and warrants (the “**Warrants**”) to purchase approximately 307 million shares of Common Stock at \$0.1353 per share (the “**Exercise Price**”).

On December 14, 2023, the Common Stock closed at \$0.088 per share (the “**Closing Price**”). Consequently, the Conversion Price constitutes approximately 238% of the Closing Price, while the Exercise Price represents approximately 154% of the Closing Price.

The issuance of Common Stock, upon either the conversion of the Preferred Stock or the exercise of the Warrants, is subject to approval of the NYSE American and the Company’s stockholders.

The Company, along with its wholly owned subsidiaries Sentinum, Inc. (“**Sentinum**”), Third Avenue Apartments LLC (“**Third Avenue**”), Alliance Cloud Services, LLC (“**Alliance Cloud**”), BNI Montana, LLC (“**BNI Montana**”), Ault Lending, LLC (“**Ault Lending**”), Ault Global Real Estate Equities, Inc. (“**AGREE**”) and Ault Aviation, LLC (“**Ault Aviation**”) and collectively with the Company, Sentinum, Third Avenue, Alliance Cloud, BNI Montana, Ault Lending and AGREE, the “**Guarantors**”) entered into a Loan and Guaranty Agreement with the Lenders, pursuant to which the Guarantors guaranteed the repayment of secured promissory notes issued by the Lenders in the aggregate amount of \$38,918,919 to A&C.

The Company believes that it is important for investors to understand that the net effect of this transaction is, in essence, to replace a third party lender with A&C, a lender that is affiliated with the Company. For one, a related party must meet certain criteria governing the terms of the transaction that AAI’s principal regulator, the NYSE American, would not require of an arm’s length third party. Further, and of equal if not greater value to the Company’s stockholders, by virtue of the principals of A&C being very similar to those of the Company, these individuals have an inherent vested interest in seeing the Company succeed, which cannot, as a general rule, be said for unaffiliated parties. A&C has assumed what was previously a debt owed by the Company to a third party lender and used the funds lent to it to not only bolster the Company’s financial position but free it from arduous obligations contained in the loan documents with the third party lender. While the Company and certain of its subsidiaries and affiliates have guaranteed the debt owed by A&C to the third party, it is no longer the actual debtor, having issued equity to eliminate its own debt to the lender.

Milton “Todd” Ault, III, the Company’s Executive Chairman and the Chief Executive Officer of Ault & Company, stated, “The Company and its management entered into the foregoing transactions based on their collective belief in the Company’s future and the path laid out over the previous few years. As stewards of both Ault & Company and Ault Alliance, which are led by essentially the same individuals, our leadership team has a unique, dual perspective that reinforces our commitment to this course of action. By securing a majority beneficial ownership of Ault Alliance through this process, subject to approval of the Company’s stockholders at the Company’s forthcoming annual meeting, we are not only demonstrating our confidence in the Company’s future but also actively shaping it. I strongly believe that this financing will fortify the Company’s capital structure and its balance sheet. As a result of closing of this financing, the Company is poised to improve its profitability and cash flow as well as position itself for strong future growth.”

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Mr. Ault added that “As an activist investor focused on identifying value, particularly the equity of undervalued companies, I have consistently communicated to the market the value I perceive in Ault Alliance. I remain convinced that Ault Alliance's assets are significantly undervalued, and my macro-outlook for the Company is more robust than ever. Through this financing, the Company has secured \$41.5 million in new equity, enabling us to further strengthen our existing assets and keep growing its operations, as we have since current management assumed control of the Company.”

The material terms of the Agreement, the Preferred Stock and Warrants were described in the Form 8-K filed by the Company with the Securities and Exchange Commission on November 7, 2023.

For more information on Ault Alliance and its subsidiaries, Ault Alliance recommends that stockholders, investors, and any other interested parties read Ault Alliance’s public filings and press releases available under the Investor Relations section at [www.Ault.com](http://www.Ault.com) or at [www.sec.gov](http://www.sec.gov).

#### **About Ault Alliance, Inc.**

Ault Alliance, Inc. is a diversified holding company pursuing growth by acquiring undervalued businesses and disruptive technologies with a global impact. Through its wholly and majority-owned subsidiaries and strategic investments, Ault Alliance owns and operates a data center at which it mines Bitcoin and offers colocation and hosting services for the emerging artificial intelligence ecosystems and other industries, and provides mission-critical products that support a diverse range of industries, including metaverse platform, oil exploration, crane services, defense/aerospace, industrial, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. In addition, Ault Alliance extends credit to select entrepreneurial businesses through a licensed lending subsidiary. Ault Alliance’s headquarters are located at 11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141; [www.Ault.com](http://www.Ault.com).

#### **Forward-Looking Statements**

This press release contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as “believes,” “plans,” “anticipates,” “projects,” “estimates,” “expects,” “intends,” “strategy,” “future,” “opportunity,” “may,” “will,” “should,” “could,” “potential,” or similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties.

Forward-looking statements speak only as of the date they are made, and the Company undertakes no obligation to update any of them publicly in light of new information or future events. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors. More information, including potential risk factors, that could affect the Company’s business and financial results are included in the Company’s filings with the U.S. Securities and Exchange Commission, including, but not limited to, the Company’s Forms 10-K, 10-Q and 8- K. All filings are available at [www.sec.gov](http://www.sec.gov) and on the Company’s website at [www.Ault.com](http://www.Ault.com).

**Ault Alliance Investor Contact:**  
IR@Ault.com or 1-888-753-2235

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