

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): July 20, 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 July 19, 2023 (the “**Closing Date**”), Ault Alliance, Inc., a Delaware corporation (the “**Company**”), along with its wholly owned subsidiaries BitNile, Inc. (“**BitNile**”), Third Avenue Apartments LLC (“**Third Avenue**”), Alliance Cloud Services, LLC (“**Alliance Cloud**”), Ault Aviation, LLC (“**Ault Aviation**”) and collectively with the Company, BitNile, Third Avenue and Alliance Cloud, the “**Existing Borrowers**”) and BNI Montana, LLC (“**BNI Montana**” and together with the Existing Borrowers, the “**Borrowers**”), entered into a First Amendment and Joinder to Loan and Guarantee Agreement (the “**Amendment**”) with JGB Capital, LP, JGB Partners, LP and JGB (Cayman) Buckeye Ltd. (collectively, the “**Investors**”) pursuant to which the (i) Loan and Guarantee Agreement, dated November 7, 2022, entered into between the Existing Borrowers and the Investors (the “**Loan Agreement**”) and (ii) Security Agreement, dated November 7, 2022, entered into between JGB Collateral LLC, as collateral agent for the Investors (the “**Agent**”) and BitNile (the “**Security Agreement**”) was amended.

Pursuant to the Loan Agreement, the Existing Borrowers initially borrowed \$18,888,889 and issued secured promissory notes to the Investors in the aggregate amount of \$18,888,889 (collectively, the “**Initial Notes**”). Pursuant to the Amendment, the Borrowers, including BNI Montana who was added as a Borrower, borrowed an additional \$8,833,333 (the “**Additional Loan Amount**”) and issued amended and restated secured promissory notes to the Investors in the aggregate amount of \$24,326,222 (collectively, the “**Amended Notes**”; and the transaction, the “**Additional Financing**”). The Amended Notes reflected the total amount outstanding under the Loan Agreement after the completion of the Additional Financing.

Ault Lending, LLC, a subsidiary of the Company (“**Ault Lending**”), Ault & Company, Inc. (“**A&C**”), an affiliate of the Company, as well as Milton C. Ault, III, the Company’s Executive Chairman and the Chief Executive Officer of A&C, who agreed to act as guarantors of the Initial Notes, continue to act as guarantors of the Amended Notes.

In addition, the Borrowers and Ault Lending entered into various amended agreements as collateral for the repayment of the Amended Notes, including (i) the amended Loan Agreement, pursuant to which the Borrowers agreed to, within 30 days from the Closing Date, enter into deposit account control agreements granting the Agent a security interest in their deposit accounts, (ii) the amended Security Agreement, pursuant to which BitNile granted to the Investors a security interest in 19,389 Pro Antminers, (iii) a security agreement (the “**Montana Security Agreement**”), pursuant to which BNI Montana granted to the Investors and the Agent a security interest in substantially all of the assets of BNI Montana, (iv) a pledge agreement (the “**Circle 8 Pledge**”) by the Company and Circle 8 Holdco LLC (“**Circle 8 Holdco**”), a majority owned subsidiary of the Company, pursuant to which the Company and Circle 8 Holdco pledged the membership interests of Circle 8 Holdco and Circle 8 Crane Services, LLC (“**Circle 8 Crane**”), a wholly owned subsidiary of Circle 8 Holdco, (v) an amendment to the mortgage and security agreement (the “**Florida Mortgage Amendment**”) by Third Avenue on the real estate property owned by Third Avenue in St. Petersburg, Florida, and (vi) an amendment to the future advance mortgage (the “**Michigan Mortgage Amendment**”) by Alliance Cloud on the real estate property owned by Alliance Cloud in Dowagiac, Michigan. In addition, the Borrowers agreed to enter into an amendment to the aircraft mortgage and security agreement by Ault Aviation on a private aircraft owned by Ault Aviation within 15 days after the Closing Date.

Description of the Amended and Restated Secured Promissory Notes

The Amended Notes have a principal face amount of \$24,326,222 and bear interest at 8.5% per annum, payable monthly in arrears, pursuant to the terms of the Amended Notes. The maturity date of the Amended Notes is May 7, 2024. The Amended Notes contain standard and customary events of default including, but not limited to, failure to make payments when due under the Amended Notes, failure to comply with certain covenants contained in the Amended Notes, or bankruptcy or insolvency of, or certain monetary judgments against, any the Borrowers, Ault Lending or A&C.

The Investors have the right to require the Borrowers to make an aggregate monthly payment of \$750,000, which will increase to \$1,132,000 on November 7, 2023 (a “**Monthly Payment**”) on the last business day of each month. The Borrowers may elect to pay a deferral fee of \$165,000 to the Investors (each, a “**Monthly Deferral**”) in lieu of a Monthly Payment, which Monthly Deferral would extend the maturity date of the Amended Notes by one month, provided that the Borrowers may not elect to make a Monthly Deferral in consecutive months and may not make more than six Monthly Deferrals in total.

From and after the Closing Date, the Borrowers are obligated to pay the Agent a monthly monitoring fee equal to 0.21% of the lesser of (i) the original principal balance of the Amended Notes issued in the Additional Financing, which was \$8,833,333 or (ii) the outstanding balance of the Amended Notes.

The Borrowers may prepay all or a portion of the outstanding principal and accrued but unpaid interest at any time, provided that if the Borrowers prepay all or any portion of the Amended Notes before November 7, 2023, the Borrowers are required to pay the Investors a prepayment premium equal to two percent (2.0%) of the amount being prepaid. The purchase price for the portion of the Amended and Restated Notes relating to the Additional Loan Amount was \$7.5 million.

The foregoing descriptions of the Amendment (which includes the Amended Notes), the Montana Security Agreement, the Circle 8 Pledge, the Florida Mortgage Amendment and the Michigan Mortgage Amendment, 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** and **10.5**, 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 9.01 Financial Statements and Exhibits

(d) Exhibits:

Exhibit No.	Description
10.1	Form of First Amendment and Joinder to Loan and Guarantee Agreement.
10.2	Form of Montana Security Agreement.
10.3	Form of the Circle 8 Pledge.
10.4	Form of the Florida Mortgage Amendment.
10.5	Form of the Michigan Mortgage Amendment.
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: July 20, 2023

/s/ Henry Nisser
Henry Nisser
President and General Counsel

FIRST AMENDMENT AND JOINDER TO LOAN AND GUARANTY AGREEMENT

This FIRST AMENDMENT AND JOINDER TO LOAN AND GUARANTY AGREEMENT (“**Amendment**”) is dated as of July 19, 2023 and is entered into by and among **AULT ALLIANCE, INC.**, a Delaware corporation (f/k/a BitNile Holdings, Inc.) (“**Borrower Representative**”), **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**”), **BITNILE, INC.**, a Nevada corporation (“**BitNile**”), **AULT AVIATION, LLC**, a Nevada limited liability company (“**Aviation**” and together with Borrower Representative, the Florida Property Owner, the Michigan Property Owner, BitNile and each other Person from time to time party hereto as a borrower, collectively, “**Existing Borrowers**”, and each, an “**Existing Borrower**”), **AULT LENDING, LLC**, a California limited liability company (“**Ault Lending**”), **BNI MONTANA, LLC**, a Delaware limited liability company (“**New Borrower**” and together with the Existing Borrowers, the “**Borrowers**”, and each, a “**Borrower**”) **AULT & COMPANY, INC.**, a Delaware corporation (“**ACI**”), **MILTON “TODD” AULT, III**, a natural person (“**Personal Guarantor**” and together with Ault Lending and ACI, 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 (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**”).

RECITALS:

WHEREAS, JGB Agent, the Lenders, Existing Borrowers, and Guarantors have entered into that certain Loan and Guaranty Agreement, dated as of November 7, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**” and the Credit Agreement, as in effect prior to giving effect hereto, the “**Existing Credit Agreement**”). Terms used herein and not otherwise defined herein are used as defined in the Credit Agreement;

WHEREAS, the JGB Agent and the Lenders have agreed to amend the Credit Agreement as set forth herein, subject to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in the Credit Agreement and this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Amendments to Credit Agreement and Security Agreement.** Effective as of the First Amendment Effective Date, subject to the satisfaction of the conditions precedent set forth in Section 3 of this Amendment and in reliance on the representations and warranties set forth in Section 5 of this Amendment:

- (a) the Existing Credit Agreement (excluding the Annexes, Exhibits and Schedules thereto except as specified below) is hereby amended by
 - (i) deleting the stricken text (indicated textually in the same manner as the following: ~~stricken-text~~) and by inserting the double-underlined text (indicated textually in the same manner as the following: double-underlined text) as set forth in the pages of the Credit Agreement attached hereto as Annex A, and
 - (ii) replacing Schedule 1 to the Existing Credit Agreement with Schedule 1 attached hereto; and
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(b) that certain Security Agreement dated as of November 7, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including by this Amendment, the “**Security Agreement**”) by BitNile and JGB Agent (excluding the Annexes, Exhibits and Schedules thereto except as specified below) is hereby amended by (i) deleting the stricken text (indicated textually in the same manner as the following: ~~stricken-text~~) and by inserting the double-underlined text (indicated textually in the same manner as the following: double-underlined text) as set forth in the pages of the Security Agreement attached hereto as Annex B and (ii) replacing Exhibit B to the Security Agreement with Exhibit B hereto.

2. **Joinder.**

(a) New Borrower hereby acknowledges, agrees and confirms that, by its execution of this Amendment, it will be deemed to be a party to the Credit Agreement (as amended by this Amendment) and the other Loan Documents to the extent applicable to it, and shall have all of the obligations of a “*Borrower*” thereunder as if it had executed the Credit Agreement and the other Loan Documents applicable to it. New Borrower hereby ratifies, as of the date hereof, and agrees to be bound by, all the terms, provisions and conditions applicable to a “*Borrower*” contained in the Credit Agreement and the other Loan Documents applicable to it in its capacity as a “*Borrower*”. Without limiting the generality of the foregoing terms of this Section 2, New Borrower represents and warrants that the representations and warranties in Section 4 of the Credit Agreement and in the other Loan Documents applicable to a “*Borrower*” are true and correct in all material respects as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(b) New Borrower acknowledges, agrees and confirms that it has received a copy of the Credit Agreement and the schedules and exhibits thereto.

(c) New Borrower agrees that at any time and from time to time, upon the reasonable written request of JGB Agent, it will execute and deliver such further documents, including, without limitation, updated schedules to the Credit Agreement, and do such further acts and things as JGB Agent may reasonably request to affect the purposes of this Amendment.

(d) The Existing Borrowers acknowledge, agree and confirm that, notwithstanding the joinder of New Borrower to the Credit Agreement, the obligations of Existing Borrowers under the Credit Agreement and the other Loan Documents to which they are a party are hereby ratified and shall continue to be in full force and effect for all purposes. Borrowers (including, without limitation, New Borrower) agree that they are jointly and severally liable for the repayment of the Obligations in accordance with the Credit Agreement and the other Loan Documents.

(e) Each Borrower and Guarantor acknowledges, agrees and confirms that, by its execution of this Amendment, Credit Agreement will be deemed amended to include New Borrower as a “*Borrower*” as such term is defined therein and each Borrower and Guarantor hereby, jointly and severally, unconditionally and irrevocably guarantees to JGB Agent and Lenders, as a guaranty of payment and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, by lapse of time, by acceleration of maturity, demand or otherwise, and at all times thereafter, of the Obligations of New Borrower.

3. **Conditions to Effectiveness.** The effectiveness of this Amendment is subject to the prior or concurrent consummation of each of the following conditions (and the date on which each of the following conditions have been satisfied is referred to herein as the “**First Amendment Effective Date**”):

(a) Loan Documents. JGB Agent shall have received the following documents in form and substance acceptable to JGB Agent, and duly executed by a Responsible Officer of each applicable Loan Party and each other relevant party:

- (b) (i) Amendment. This Amendment.
- (ii) Amended and Restated Secured Promissory Note. The Amended and Restated Secured Promissory Note made by Borrowers in favor of JGB Capital, JGB Partners, LP and JGB (Cayman) Buckeye Ltd. in the principal amount of \$24,326,222.
- (iii) Security Agreement – BNI Montana. The Security Agreement, dated as of the First Amendment Effective Date, by and among BNI Montana, LLC, a Delaware limited liability company and JGB Agent.
- (iv) Amendment to Florida Mortgage. An amendment to the Florida Mortgage in form and substance reasonably acceptable to JGB Agent.
- (v) Amendment to Michigan Mortgage. An amendment to the Michigan Mortgage in form and substance reasonably acceptable to JGB Agent.
- (vi) Pledge Agreement. A pledge agreement executed by Ault Alliance, Inc., Circle 8 Holdco, LLC and Circle 8 Crane Services, LLC.
- (c) Title Policy Endorsements. JGB Agent shall have received, at the Borrowers' expense, endorsements to the Title Policies from Chicago Title Insurance Company in form and substance reasonably satisfactory to JGB Agent.
- (d) Lien Searches. JGB Agent shall have received, at the Borrowers' expense, the results of a recent lien search in the jurisdiction of organization of each Loan Party and each jurisdiction where assets of the Loan Parties are located.
- (e) Restructuring Payment. JGB Agent shall have received from the Borrowers a restructuring payment in an amount equal to \$200,000, which payment shall be deducted, pro rata, by the Borrowers, from the additional amount to be loaned by the Borrowers under the Credit Agreement.
- (f) Legal Fees. JGB Agent shall have received payment by Borrowers of the legal fees and expenses of Haynes and Boone, LLP in an amount equal to \$50,000.
- (g) Fees and Expenses. The Borrowers shall have paid all other fees, costs and expenses due and payable under the Loan Documents.
- (h) Release of Lien and Security Interest. Esousa Group Holdings, LLC ("Esousa"), as collateral agent on behalf of Esousa and JADR Consulting Group Pty Ltd, shall have released its lien and security interest in 14,000 S19j Pro Antminers.
- (i) No Event of Default. Except as set forth on Schedule 3(i) attached hereto, after giving effect to this Amendment and the transactions contemplated hereby, no Default or Event of Default shall be continuing.
- (j) Representations and Warranties. Both immediately before and after giving effect to this Amendment and the transactions contemplated hereby, the representations and warranties in this Amendment and the other Loan Documents shall be true, accurate, and complete in all material respects on the First Amendment Effective 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.

(k) Confirmation of Payment. The JGB Agent shall have received confirmation, in a form acceptable to the JGB Agent, that the secured promissory note issued to Esousa has been repaid in full.

4. Conditions Subsequent.

(a) The Borrowers shall execute and deliver to the JGB Agent an amendment to the Aircraft Mortgage in form and substance reasonably acceptable to JGB Agent not later than 15 days after the First Amendment Effective Date.

(b) The Borrowers shall use their reasonable best efforts to obtain and deliver to JGB Agent collateral access agreements in form and substance reasonably acceptable to JGB Agent with respect to the facilities operated by Core Scientific, Inc. in Denton, Texas and Calvert City, Kentucky not later than 30 days after the First Amendment Effective Date.

5. Representations and Warranties. To induce JGB Agent and Lenders to enter into this Amendment, each Loan Party represents and warrants to JGB Agent and the Lenders that:

(a) the execution, delivery and performance by each Loan Party of the this Amendment and the other Loan Documents signed in connection herewith (collectively, the "**Amendment 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) except as expressly contemplated by the Amendment Documents, 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. Except as set forth on Schedule 4(a), 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;

(b) both immediately before and after giving effect to this Amendment and the transactions contemplated hereby, the representations and warranties of the Borrowers and each other Loan Party set forth in Section 4 of the Credit Agreement and in the other Loan Documents are true, accurate, and complete in all material respects on the First Amendment Effective 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; and

(c) after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing.

6. **Releases.** In further consideration of Lenders' and JGB Agent's execution of this Amendment, each Loan Party, on behalf of itself and its successors, assigns, parents, subsidiaries, affiliates, officers, directors, employees, agents and attorneys, hereby forever, fully, unconditionally and irrevocably waives and releases Lender and Agent and their respective successors, assigns, parents, subsidiaries, affiliates, officers, directors, employees, attorneys and agents (collectively, the "**Releasees**") from any and all claims, liabilities, obligations, debts, causes of action (whether at law or in equity or otherwise), defenses, counterclaims, setoffs, of any kind, whether known or unknown, whether liquidated or unliquidated, matured or unmatured, fixed or contingent, directly or indirectly arising out of, connected with, resulting from or related to any act or omission by any Releasee, on or prior to the date hereof, with respect to the Loan Documents, the transactions contemplated thereby or any enforcement or attempted enforcement of the Loan Documents by any Releasee (collectively, the "**Claims**"). Each Loan Party further agrees that it shall not commence, institute, or prosecute any lawsuit, action or other proceeding, whether judicial, administrative or otherwise, to prosecute, collect or enforce any Claim.

7. **Affirmations.** Each Loan Party acknowledges and agrees:

- (a) the other Loan Documents are legal, valid, binding and enforceable against each Loan Party accordance with their respective terms;
- (b) each Loan Party's respective obligations under the Loan Documents are not subject to any setoff, deduction, claim, counterclaim or defenses of any kind or character whatsoever;
- (c) JGB Agent (for the benefit of the Lenders) has valid, enforceable and perfected security interests in and liens on the collateral described in the Loan Documents, as to which there are no setoffs, deductions, claims, counterclaims, or defenses of any kind or character whatsoever; and
- (d) Lenders and JGB Agent have fully and timely performed all of their respective obligations and duties in compliance with the Loan Documents and applicable law, and have acted reasonably, in good faith and appropriately under the circumstances.

8. **Severability.** The illegality or unenforceability of any provision of this Amendment shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Amendment.

9. **References.** Any reference to the Credit Agreement contained in any notice, request, certificate, or other document executed concurrently with or after the execution and delivery of this Amendment shall be deemed to include this Amendment unless the context shall otherwise require. Reference in any of this Amendment, the Credit Agreement or any other Loan Document to the Credit Agreement shall be a reference to the Credit Agreement as amended hereby and as further amended, modified, restated, supplemented or extended from time to time.

10. **Counterparts.** This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same agreement. Receipt by telecopy of any executed signature page to this Amendment shall constitute effective delivery of such signature page. This Amendment to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including "pdf"), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

11. **Captions.** Section captions used in this Amendment are for convenience only and shall not affect the construction of this Amendment.

12. **Ratification.** The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions of the Credit Agreement and shall not be deemed to be a consent to the modification or waiver of any other term or condition of the Credit Agreement. Except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. This Amendment constitutes the entire agreement, and supersedes all prior understandings and agreements, among the parties relating to the subject matter hereof.

13. **Governing Law.** THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers on the date first written above.

BORROWERS:

BITNILE, INC.

By: _____
Name: _____
Title: _____

AULT ALLIANCE, INC.

By: _____
Name: _____
Title: _____

THIRD AVENUE APARTMENTS LLC

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

By: _____
Name: _____
Title: _____

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: **BITNILE, INC.**, its manager

By: _____

Name:

Title:

GUARANTORS:

AULT LENDING, LLC

By: _____

Name:

Title:

AULT & COMPANY, INC.

By: _____

Name:

Title:

MILTON C. AULT, III

By: _____

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: _____

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 ALLIANCE, 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 of November 7, 2022 (the “**Closing Date**”), is entered into among **AULT ALLIANCE, INC.**, a Delaware corporation (f/k/a BitNile Holdings, Inc.) (“**Borrower Representative**”), **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**”), **BITNILE, INC.**, a Nevada corporation (“**BitNile**”), **AULT AVIATION, LLC**, a Nevada limited liability company (“**Aviation**”) and together with Borrower Representative, the Florida Property Owner, the Michigan Property Owner, BitNile and each other Person from time to time party hereto as a borrower, collectively, “**Borrowers**”, and each, a “**Borrower**”), **AULT LENDING, LLC**, a California limited liability company (“**Ault Lending**”), **AULT & COMPANY, INC.**, a Delaware corporation (“**ACI**”), **MILTON “TODD” AULT, III**, a natural person (“**Personal Guarantor**”) and together with Ault Lending, ACI 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.

(i) Subject to the terms and conditions of this Agreement, immediately prior to giving effect to the First Amendment, Borrowers acknowledge that the outstanding principal balance of the Term Loans is \$15,492,889 (the “**Existing Outstanding Principal Balance**”). Subject to the terms and conditions of this Agreement, each Lender agrees, severally and not jointly, to make to Borrowers an advance on the First Amendment Effective Date in principal amount equal to its Term Loan Commitment (the “**Term Loans**”) less the Original Issue Discount less the Existing Outstanding Principal Balance. Borrowers acknowledge that after giving effect to the First Amendment, the aggregate principal balance of the Term Loan shall be \$24,326,222. Lenders’ commitments to make the Term Loans shall terminate upon the funding of the Term Loans on the First Amendment Effective Date.

(ii) For greater certainty, the Original Issue Discount shall be deemed to be part of the outstanding principal balance of the Term Loan.

Borrowers shall use the proceeds of the Term Loans to (i) repay obligations under outstanding senior secured loans, (ii) working capital purposes and (iii) to acquire the Aircraft. Once repaid, the Term Loans may not be reborrowed.

(b) Repayment.

(i) Payment of Interest. Commencing on the Closing Date, and continuing thereafter on each Payment Date through the Term Loan Maturity Date, Borrowers shall make consecutive monthly payments of interest.

(ii) Repayment of Principal. Commencing on the Amortization Date, the Lenders may, at their option upon the written election of the Required Lenders, require the Borrowers to repay the outstanding principal balance of the Term Loans in monthly installments in an amount per calendar month up to the Monthly Amortization Amount. The Lenders may exercise such right for a calendar month by sending a written notice (each a “**Monthly Amortization Notice**”), executed by the Required Lenders, to the Borrowers at least five (5) Business Days prior to the Payment Date for such calendar month, which Monthly Amortization Notice shall specify the principal amount to be repaid up to the Monthly Amortization Amount. The Borrowers shall promptly, but in any event no later than the Payment Date, pay the Monthly Amortization Amount (or applicable portion thereof specified in the Monthly Amortization Notice) to the Lenders. Notwithstanding the foregoing, commencing on the date that is six (6) months after the Closing Date, the Borrowers, may, provided that no Default or Event of Default has occurred and is continuing, defer any monthly payment required under this Section 2.2(b)(ii) until the Term Loan Maturity Date by delivering to the Lenders, not later than four (4) Business Days after the Borrowers’ receipt of a Monthly Amortization Notice, a written notice of the Borrowers’ election to effect such a deferral and a deferral fee of One Hundred Sixty-Five Thousand dollars (\$165,000) in cash by wire transfer of immediately available funds (a “**Monthly Deferral**”); provided, however, the Borrowers may not effect Monthly Deferrals in consecutive months and the Borrowers shall not be permitted more than a total of six (6) Monthly Deferrals. Any and all unpaid Obligations, including principal and accrued and unpaid interest in respect of the Term Loans any fees and other sums due hereunder, if any, shall be due and payable in full on the Term Loan Maturity Date. The Term Loans may only be prepaid in accordance with Sections 2.2(c) or (d).

(iii) Extension of Maturity Date. For each Monthly Deferral elected by the Borrowers, the Term Loan Maturity Date will be extended by one (1) month. For the avoidance of doubt, the Term Loan Maturity Date may be extended pursuant to the preceding sentence no more than six (6) times, and, in any event, the Term Loan Maturity Date shall be no later than the second (2nd) anniversary of the Closing Date.

(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 Loans, 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 Loans plus accrued and unpaid interest thereon, plus

(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 any past due amounts.

(e) Release of Collateral Upon Partial Prepayment. 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) one of the Aircraft or the Michigan Property (but not both) in the event that the Borrowers have made aggregate payments to the Lenders equal to the Release Price A, (ii) in the Florida Property, provided that the Borrowers have made aggregate payments to the Lenders equal to Release Price B and (iii) in the Circle 8 Pledged Interests, provided that the Borrowers have made aggregate payments to the Lenders equal to Release Price C. For clarity, the lien and security interest of the JGB Agent to be released in each of the Aircraft, Michigan Mortgage, Florida Mortgage and Circle 8 Pledged Interests shall each be independent and based upon the repayment of the amount specified in the preceding sentence and not cumulative.

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 the Closing Date.

(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 Six Hundred Sixty-Six Thousand Six Hundred Six-Seven dollars (\$2,666,667) (the “**Original Issue Discount**”), of which One Million Eight Hundred Eighty-Eight Thousand Eight Hundred Eighty-Nine dollars (\$1,888,889) was paid prior to the First Amendment Effective Date and of which One Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three dollars (\$1,333,333) shall be paid on the First Amendment Effective Date. 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 the First Amendment Effective Date, as applicable.

(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 Sixty Five Thousand dollars (\$65,000) previously paid (the “**Good Faith Deposit**”) shall be applied towards Lender Expenses incurred through the Closing Date.

(c) Monitoring Payment. From and after the First Amendment Effective Date, the Borrowers shall pay the JGB Agent a monthly monitoring payment equal to 0.21% of the lesser of (i) the original principal balance of the Term Loans advanced on the First Amendment Effective Date, which was \$8,833,333 or (ii) the outstanding balance of the Term Loan. Such monitoring payment shall be due and payable in arrears on the last day of each calendar month.

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 to this Agreement;

(d) duly executed signatures to the Security Agreement;

(e) duly executed signatures to the Warrant;

(f) duly executed signatures to the Florida Mortgage;

(g) duly executed signatures to the Michigan Mortgage;

(h) duly executed signatures to the Michigan Subordination Agreement;

(i) duly executed signatures to the Pledge Agreement (if required by the JGB Agent);

(j) duly executed signatures to the Account Pledge Agreement;

(k) duly executed signatures to the Intercreditor Agreement;

(l) duly executed signatures to the Aircraft Assignment Agreement;

(m) the duly executed signatures to the Aircraft Mortgage, which shall be held in escrow by the JGB Agent pending release on the Aircraft Acquisition Date pursuant to Section 3.3(a);

(n) duly executed signatures to the Agreement to Provide Insurance, which shall be held in escrow pending release on the Aircraft Acquisition Date pursuant to Section 3.3(a);

(o) 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;

(p) 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

(q) payment of Lender Expenses then due as specified in Section 2.4(a).

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 Conditions Subsequent to Initial Loan. Each Lender's obligations to make the Term Loan is subject to the following conditions subsequent:

(a) Within three (3) Business Days after the Closing Date Aviation shall close on the acquisition of the Aircraft (the "**Aircraft Acquisition Date**") and provide JGB Agent evidence of such acquisition at which time the Aircraft Mortgage and the Agreement to Provide Insurance shall automatically be released from escrow.

(b) Within four (4) Business Days after the Closing Date, both Aviation and the JGB Agent shall be registered with International Registry of Mobile Assets (the "**Registry**") and the JGB Agent shall receive confirmation from Insured Aircraft Title Services, LLC that the contract of sale for the Aircraft and the Aircraft Mortgage has been submitted to the Registry for recording. Notwithstanding anything contained herein to the contrary, failure to comply with this Section 3.3(b) shall be an immediate Event of Default.

(c) Within ten (10) days after the Closing Date, the Borrower Representative shall have obtained approval of the NYSE American for the issuance of the Warrants. The Lenders will not exercise the warrants until such approval is obtained.

(d) Within four (4) Business Days after the Closing Date, the Borrower Representative shall file a Current Report on Form 8-K fully disclosing all material aspects of this transaction and any related transactions and shall include this Agreement as an exhibit thereto. In addition, the Borrower Representative may issue a press release, which shall be subject to review and comment by the Lenders prior to the issuance thereof.

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 Loans 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) No order, ruling or decision granted by a securities commission, court of competent jurisdiction or regulatory or administrative body or other Governmental Authority having jurisdiction is in effect, pending or threatened in writing that restricts trading in any securities of Borrower Representative and, to the knowledge of Borrower Representative, no facts or circumstances exist which would reasonably be expected to give rise to any such order, ruling or decision or other similar claims or investigations. Borrower Representative has authorized share capital consisting of 500,000,000 shares of Common Stock, of which, as of October 24, 2022, there were approximately 1,168,002 shares of Common Stock issued and outstanding, which reflects the 1:300 reverse stock split that was effective May 17, 2023. The currently issued and outstanding shares of Common Stock are listed for trading on the NYSE American and, except as set forth on Schedule 4.1(c), Borrower Representative is in compliance in all material respects with all of the listing conditions on the NYSE American.

(d) Borrower Representative's Common Stock is registered under Section 12(b) of the Exchange Act. Borrower Representative is in compliance in all material respects with applicable securities laws and, in the prior two years, has timely filed all required reports under the Exchange Act. The information and statements in Borrower Representative's reports required to be filed with the SEC by the Borrower's Representative pursuant to the Exchange Act during the two years prior to the Closing Date were true and correct in all material respects as of the respective dates of such information and statements and at the time that any such documents were filed on EDGAR and, as of the respective dates filed (or, if amended or superseded by a subsequent filing prior to the date of this Agreement, on the date of such filing), did not contain an untrue statement of a material fact and did not omit to state any material fact that was required to be stated or necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made, and there has been no material change that has occurred which has not been publicly disclosed, provided, however, that the Lenders acknowledge and agree that any amended or superseded filing made after the Closing Date in response to any comment letter from the staff of the SEC shall not be deemed material for purposes of this representation; provided such SEC comment letter does not request or require the correction, clarification or remediation of omissions or statements that the SEC characterized or alleged to be reckless or intentional.

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, provided, however, that for purposes herein or any other Loan Document, any reference to the Aircraft shall be as of the Aircraft Acquisition Date and not the Closing Date.

(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 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 delivered to JGB Agent fairly present in all material respects the consolidated and consolidating financial condition and results of operations of the Borrower Representative 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 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 Pledge Agreement or Circle 8 Pledge Agreement, as applicable. 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 Loans.

(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. 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. 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:

(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 Borrower Representative 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 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 Audited Financial Statements. As soon as available, but no later than one hundred ten (110) days after the last day of Borrower Representative's fiscal year, in the event Borrower Representative has not otherwise filed its Annual Report on Form 10-K, audited consolidated financial statements of Borrower Representative 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, a duly completed Compliance Certificate signed by a Responsible Officer or 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 unless such statements, reports and notices are filed with the SEC and a link to such filing is posted on Borrower Representative'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 Borrower Representative with the SEC, provided that such filings shall be deemed to have been delivered on the date on which Borrower Representative 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 Cash on Hand. Borrower Representative deposit One Million Five Hundred Thousand dollars (\$1,500,000) in a segregated deposit account subject to the Account Control Agreement (the "**Segregated Account**"). The Borrower Representative shall cause JGB Agent to have online, view only access to the Segregated Account. The Borrower Representative may not withdraw funds from the Segregated Account except to make payments of principal under Section 2.2(b)(ii). If the Segregated Account has not been established by the Closing Date, the Collateral Agent will hold the amounts required to be on deposit in the Segregated Account until such Segregated Account has been established and may apply such amount to required payments under Section 2.2(b)(ii).

5.9 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 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.

5.10 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 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 First Amendment Effective 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.

5.11 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.

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.

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 on all or any part of the Collateral except for Permitted Liens.

6.4 Indebtedness. Permit or allow (i) BNL, 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) Borrower Representative to create, incur, assume or be liable for any Indebtedness that is secured by Borrower Representative's Collateral unless such Indebtedness is subordinated to the interests of JGB Agent pursuant to a written subordination acceptable to the JGB Agent or (iii) Borrower Representative to create, incur, assume or be liable for any unsecured Indebtedness other than Permitted Indebtedness.

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) Borrower Representative may pay dividends in shares of its Common Stock and distribute securities to its stockholders in Permitted Spin-Offs, (ii) pay dividends on Borrower Representative'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 and (iii) Loan Parties, directly or indirectly, shall be entitled to purchase up to \$2,000,000 of Equity Interests of Borrower Representative per fiscal quarter.

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, Circle 8 Holdco, LLC and/or Circle 8 Crane Services, LLC 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 Aviation. Operate the Aircraft until Aviation has obtained all insurance required by the Agreement to Provide Insurance and has complied with item 4 of Schedule 2.

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, 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.

7.10 Delisting. The Common Stock is not listed or available for quotation on the New York Stock Exchange, NYSE American, any tier of the Nasdaq Stock Market, the OTCQX or the OTCQB, or the suspension of trading thereon for more than thirty (30) consecutive Trading Days.

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 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. 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 ALLIANCE, INC.
11411 Southern Highlands Pkwy #240
Las Vegas, Nevada 89141
Attention:
Email:

With a copy to (which shall not constitute notice): AULT ALLIANCE, INC.
100 Park Avenue, Suite 1658A
New York, NY 10017
Attention:
Email:

If to JGB Agent or Lenders: **JGB MANAGEMENT INC.**
21 Charles Street
Westport, CT 06880
Attention:
Email:

With a copy to (which shall not constitute notice): **HAYNES AND BOONE, LLP**
30 Rockefeller Plaza, 26th 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 Termination Prior to Term Loan Maturity Date; 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. So long as Loan Parties have satisfied the 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), this Agreement and any remaining commitments to extend credit may be terminated prior to the Term Loan Maturity Date by Loan Parties, by written notice of termination to JGB Agent. Those obligations that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

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 Loans 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 Loans 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 and (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. 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.

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 30th 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 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

(g) 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 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.

12.9 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.

12.10 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.

12.11 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 12.11 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 ALLIANCE, INC. (F/K/A BITNILE HOLDINGS, INC.)

By: _____
Name: _____
Title: _____

BITNILE, INC.

By: _____
Name: _____
Title: _____

THIRD AVENUE APARTMENTS LLC

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

By: _____
Name: _____
Title: _____

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: _____

GUARANTORS:

AULT LENDING, LLC

By: _____
Name: _____
Title: _____

AULT & COMPANY, INC.

By: _____
Name: _____
Title: _____

MILTON C. AULT, III

By: _____

[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:

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.

“**Account Pledge Agreement**” means a pledge agreement between the Borrower Representative and the JGB Agent granting the JGB Agent a first ranking Lien in the Segregated Account.

“**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 Assignment Agreement**” means such instruments of transfer and assignment whereby Ault Alliance, Inc. transfers all and any of its right, title and interest in the Aircraft to Aviation.

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

“**Amortization Date**” means July 19, 2023.

“**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 eight and one-half percent (8.50%).

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

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

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

“**BNI Security Agreement**” means that certain Security Agreement, dated as of the First Amendment Effective Date, by and among BNI and JGB Agent, as amended, restated, supplemented or otherwise modified from time to time.

“**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.

“**Borrower**” and “**Borrowers**” has the meaning set forth in the preamble. For the avoidance of doubt, BNI shall be a “Borrower” hereunder as of the First Amendment Effective Date.

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

“**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 Pledge Agreement**” means the Pledge Agreement dated as of the First Amendment Effective Date by and among Ault Alliance, Inc., Circle 8 Holdco, LLC and the JGB Agent with respect to the Circle 8 Pledged Interests.

“**Circle 8 Pledged Interests**” means the Equity Interests of Ault Alliance, Inc. in Circle 8 Holdco, LLC and the Equity Interests of Circle 8 Holdco, LLC in Circle 8 Crane Services, LLC.

“**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, 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.

“**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 Loans.

“**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.

“**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 4,500 S19j Pro Antminers as detailed in the 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 \$25,000 individually and \$100,000 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.

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

“First Amendment” means that certain First Amendment and Joinder to Loan and Guaranty Agreement, dated as of the First Amendment Effective Date, by and among the Loan Parties, JGB Agent and the Lenders party thereto.

“First Amendment Effective Date” means July 19, 2023.

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

“Florida Mortgage Means” 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.

“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.

“**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.

“**Intercreditor Agreement**” means the intercreditor agreement between of even date herewith between the JGB Agent and Helios Funds LLC.

“**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 BNI Security Agreement, the Warrant, the Pledge Agreement, the Circle 8 Pledge Agreement, the Michigan Mortgage, the Florida Mortgage, the Aircraft Mortgage, the Agreement to Provide Insurance, 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 or 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 BitNile, 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 Lender, the Lenders and the JGB Agent.

“**Monthly Amortization Amount**” means, initially, \$750,000 per calendar month, and commencing on the first anniversary of the Closing Date, \$1,132,000 per calendar month.

“**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.

“**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).

“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 the Borrower Representative (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 Property Collateral” means the Equipment and all substitutions therefor.

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

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

“Prepayment Premium” means, if all or a part of a Term Loan is prepaid prior to the first anniversary of the Closing Date, an amount equal to two percent (2.00%) 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.

“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 eight million five hundred thousand Dollars (\$8,500,000) pursuant to (x) Section 2.2(b)(ii) to the extent of two million Dollars (\$2,000,000) and (y) Section 2.2(d) (exclusive of amounts paid by the Borrowers to the Lenders in respect of Release Price B and Release Price C).

“Release Price B” means aggregate payments to the Lenders of eleven million Dollars (\$11,000,000) pursuant to (x) Section 2.2(b)(ii) to the extent of two million Dollars (\$2,000,000) and (y) Section 2.2(d) (exclusive of amounts paid by the Borrowers to the Lenders in respect of Release Price A and Release Price C).

“Release Price C” means aggregate payments to the Lenders of seven million Dollars (\$7,000,000) pursuant to (x) Section 2.2(b)(ii) to the extent of two million Dollars (\$2,000,000) and (y) Section 2.2(d) (exclusive of amounts paid by the Borrowers to the Lenders in respect of Release Price A and Release Price B).

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

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

“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 Term Loans committed to be made by such Lender, as set forth on Schedule 1 hereto.

“**Term Loan Maturity Date**” means the date that is eighteen (18) months after the Closing Date, as may be extended pursuant to Section 2.2(b)(iii).

“**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.

EXHIBIT B**COMPLIANCE CERTIFICATE**

TO: JGB COLLATERAL LLC, as JGB Agent

Date: _____

FROM: BITNILE HOLDINGS, INC.

Reference is made to that certain Loan and Guaranty Agreement, dated November __, 2022 (as amended, restated, supplemented or otherwise modified, from time to time, the “**Agreement**”), among **BitNile Holdings, Inc.**, a Delaware corporation (“**Borrower Representative**”), **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**”), **BitNile, Inc.**, a Nevada corporation (“**BitNile**”), **Ault Aviation, LLC**, a Nevada limited liability company (“**Aviation**” and together with Borrower Representative, the Florida Property Owner, the Michigan Property Owner, BitNile and each other Person from time to time party hereto as a borrower, collectively, “**Borrowers**”, and each, a “**Borrower**”), **AULT Lending, LLC**, a California limited liability company (“**Ault Lending**”), **Ault & Company, Inc.**, a Delaware corporation (“**ACI**”), **Milton “Todd” Ault, III**, a natural person (“**Personal Guarantor**” and together with Ault Lending, ACI 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.

<u>Reporting Covenants</u>	<u>Required</u>	<u>Complies</u>
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 and 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

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 ALLIANCE, INC. (F/K/A BITNILE
HOLDINGS, INC.)

By: _____

Name: _____

Title: _____

EXHIBIT C

**FORM OF
SECURED PROMISSORY NOTE**

\$18,888,889

Issue Date: November __, 2022

FOR VALUE RECEIVED, the undersigned, **AULT ALLIANCE, INC.**, a Delaware corporation (f/k/a BitNile Holdings, Inc.) ("**Borrower Representative**"), **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**"), **BITNILE, INC.**, a Nevada corporation ("**BitNile**"), **AULT AVIATION, LLC**, a Nevada limited liability company ("**Aviation**") and together with Borrower Representative, the Florida Property Owner, the Michigan Property Owner, BitNile 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 November __, 2022 (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 **EIGHTEEN MILLION EIGHT HUNDRED EIGHTY-EIGHT THOUSAND EIGHT HUNDRED EIGHTY-NINE Dollars (\$18,888,889)**. 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]

[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.

BORROWERS:

BITNILE, INC.

By: _____
Name: _____
Title: _____

AULT ALLIANCE, INC. (F/K/A BITNILE HOLDINGS, INC.)

By: _____
Name: _____
Title: _____

THIRD AVENUE APARTMENTS LLC

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

By: _____
Name: _____
Title: _____

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: _____

SCHEDULE 1

COMMITMENTS

LENDER	TOTAL TERM LOAN COMMITMENTS
JGB CAPITAL LP	\$2,504,170.13
JGB PARTNERS, LP	\$8,943,464.04
JGB (CAYMAN) BUCKEYE LTD.	\$12,878,587.83
TOTAL:	\$24,326,222.00

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 20 days of the Closing Date, copies of all insurance policies with respect to the Aircraft required under the Agreement to Provide Insurance and endorsements with respect to such policies naming the JGB Agent as an additional insured or loss payee, as applicable, all in a form acceptable to the Agent.
 5. Within 30 days of the Closing Date, the deposit account control agreement with respect to 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.
 6. Within 30 days of the Closing Date, the deposit account control agreement with respect to the Segregated Account duly executed by the Borrower Representative 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.

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,

(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.

(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.

SECURITY AGREEMENT

SECURITY AGREEMENT dated as of November 7, 2022 (this “**Agreement**”), between BITNILE, 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 Alliance, Inc., a Delaware corporation (f/k/a BitNile Holdings, Inc.), Third Avenue Apartments LLC, a Delaware limited liability company, Alliance Cloud Services, LLC, Delaware limited liability company, Ault Aviation, LLC, a Nevada limited liability company, Ault & Company, Inc., a Delaware corporation, Ault Lending, LLC, a California limited liability company, Milton “Todd” Ault, III, a natural person, 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 Collateral (as defined below) is located at (i) the facility owned by Alliance Cloud Services, LLC in Michigan and (ii) 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 Mining 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 \$24,326,222 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 nineteen thousand three hundred eighty-nine (19,389) Pro Antminers, including: (a) all additions, replacements of and substitutions for all or any part of the foregoing property; (b) all records and data and embedded software relating to the foregoing property; and (c) all Proceeds thereof (collectively, the “**Mining Collateral**”). The serial numbers of the miners that shall constitute Mining Collateral 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.

The term “**Proceeds**” includes proceeds of insurance policies insuring the Mining 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. The Mining Collateral shall not include any Bitcoin mined from the Mining Collateral.

All tangible Mining Collateral are now, or will be upon delivery, be located at the Hosting Location.

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 Mining Collateral, hereby grants to the Collateral Agent a security interest in the Mining Collateral.

Until an Event of Default under the Credit Agreement or this Agreement, Grantor shall be entitled to the possession of all Mining Collateral and to use and enjoy the Mining Collateral, which from and continuing through an Event of Default, shall include the net profit (gross sale value less cost of power) of all digital currency mined or otherwise generated by, or in connection with, the Mining Collateral from time to time (the “*Mined Digital Currency*”).

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

- (a) **Title.** The Mining Collateral is owned by Grantor and is not subject to any Liens other than Permitted Liens, and Grantor will defend the Mining Collateral against the claims and demands for all Persons.
- (b) **Transfer.** Grantor will not sell, lease, encumber or pledge any Mining Collateral, create any Lien, or otherwise dispose of the Mining 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 Mining 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 Mining 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 Mining 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 Collateral 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 Collateral at any reasonable time upon reasonable advance notice.
- (f) **Liens.** Grantor will not permit any other security interest to attach to any of the Mining Collateral, permit the Mining Collateral to be levied upon under any legal process, or permit anything to be done that may impair the value of any of the Mining 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 Mining 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 or Host Location.
- (i) **Use.** Grantor will use the Mining Collateral 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 Mining 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 Mining Collateral by reason of the Mining Collateral being claimed or deemed to be real property or part thereof. Grantor shall not affix the Mining 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 Mining Collateral in a manner that will result in the clock rate of the Mining Collateral materially exceeding the clock rate pre-set in the Mining Collateral by the manufacturer, without the express prior written consent of Collateral Agent.
- (l) **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 Mining 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 Mining Collateral.

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 Mining Collateral is lost, stolen, substantially destroyed, condemned or seized and such lost, stolen, substantially destroyed, condemned or seized Mining Collateral is not replaced with additional S19j Pro 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. 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) Mining 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) Mining 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 Mining Collateral Agent shall have the right to (a) require Grantor to use commercially reasonable efforts to assemble the Mining Collateral and make it available to Mining Collateral Agent at a place designated by Mining Collateral Agent; (b) take possession of the Mining Collateral, with or without process of law or judicial hearing; (c) sell, lease or otherwise dispose of the Mining 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 Mining Collateral. Mining 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 Mining Collateral Agent in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Mining Collateral, or like expenses, including, without limitation, reasonable attorneys' fees incurred by Mining 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 Mining Collateral Agent from disposition of the Mining Collateral shall be applied toward the Obligations in such order or manner as determined by the Mining 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 Mining 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. Mining 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) 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, *provided, however*, that Grantor shall be entitled, without the prior consent of the Collateral Agent, to sell Mined Digital Currency on a weekly basis provided that the Grantor promptly deliver to the Collateral Agent the net profit (gross sale value less cost of power) of such sold Mined Digital Currency.

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. **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.
11. **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.

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

BITNILE, INC.

By: _____
Name:
Title:

AGREED AND ACCEPTED:

JGB COLLATERAL LLC

By: _____
Name:
Title:

Exhibit A.

SCHEDULE 1
COMMITMENTS

LENDER	TOTAL TERM LOAN COMMITMENTS
JGB CAPITAL LP	
JGB PARTNERS, LP	
JGB (CAYMAN) BUCKEYE LTD.	
Total:	\$24,326,222.00

EXHIBIT B

SECURITY AGREEMENT

This SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”) dated as of July 19, 2023 (the “**Closing Date**”), is entered into among **BNI MONTANA, LLC**, a Delaware limited liability company (“**Grantor**”), **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 November 7, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), by and among, Grantor, BitNile, Inc., a Nevada corporation, Ault Alliance, Inc., a Delaware corporation (f/k/a BitNile Holdings, Inc.), Third Avenue Apartments LLC, a Delaware limited liability company, Alliance Cloud Services, LLC, Delaware limited liability company, Ault Aviation, LLC, a Nevada limited liability company, Ault & Company, Inc., a Delaware corporation, Ault Lending, LLC, a California limited liability company, Milton “Todd” Ault, III, a natural person the Lenders, and the Collateral Agent. It is a condition to that certain First Amendment and Joinder to Loan and Guaranty 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 Collateral. Grantor hereby pledges, assigns and grants to Collateral Agent a security interest in all the Equity Interests 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 Equity Interests (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 Equity Interests in which Grantor has an interest, Grantor shall cause the books of each Person whose Equity Interests are part of the Collateral and any transfer agent to reflect the pledge of the Equity Interests. 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 Equity Interests) 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 Equity Interests. Unless an Event of Default shall have occurred and be continuing, Grantor shall be entitled to exercise any voting rights with respect to the Equity Interests 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 Equity Interests 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. COVENANTS

Grantor hereby 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.

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 Grantor:

BNI MONTANA, LLC
c/o Ault Alliance, Inc.
11411 Southern Highlands Pkwy #240
Las Vegas, Nevada 89141
Attention:
Email:

With a copy, not constituting notice, to:

AULT ALLIANCE, 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 excluding
Loan Requests and regular reporting):

HAYNES AND BOONE LLP
30 Rockefeller Plaza, 26th Floor
New York, NY 10112
Attention: Greg Kramer
Email: gregkramer@haynesboone.com

6. 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 6 shall survive the termination of this Agreement.

7. GENERAL PROVISIONS

7.1 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.

7.2 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.

7.3 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.

7.4 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 7.4 are solely for the benefit of Collateral Agent and Lenders.

7.5 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO PLEDGE AND SECURITY AGREEMENT]

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

GRANTOR:

BNI MONTANA, LLC, a Delaware limited liability company

By: BITNILE, INC., its manager

By _____
Name:
Title:

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: _____

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 Equity Interests 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.

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:

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

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), 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.

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.

PLEDGE AGREEMENT

This **PLEDGE AGREEMENT** (this “**Agreement**”) is entered into as of July 19, 2023, by **Ault Alliance, Inc.** (f/k/a BitNile Holdings, Inc.), a Delaware corporation with a primary address of 11411 Southern Highlands Parkway, Suite 240, Las Vegas NV 89141 (“**Ault Alliance**”) and Circle 8 Holdco LLC (“**Holdco**”) and together with Ault Alliance, the “**Pledgors**” and each a, “**Pledgor**”) in favor of **JGB Collateral LLC**, as administrative agent and collateral agent (“**Secured Party**”) for the Lenders (as defined in the Loan Agreement referred to below) and is acknowledged and agreed to by Holdco, in its capacity as an issuer of pledged Equity Interests, and Circle 8 Crane Services, LLC, in its capacity as an issuer of pledged Equity Interests (“**Circle 8**” and together with Holdco, in its capacity as an issuer of pledged Equity Interests, the “**Issuers**” and each an, “**Issuer**”).

WHEREAS, Ault Alliance, Third Avenue Apartments LLC, a Delaware limited liability company, BitNile, Inc., a Nevada corporation, Alliance Cloud Services, LLC, a Delaware limited liability company, Ault Aviation, LLC, a Nevada limited liability company, Ault Lending, LLC, a California limited liability company, Ault & Company, Inc., a Delaware corporation, and Milton “Todd” Ault, III, a natural person, Secured Party and Lenders are parties to that certain Loan and Guaranty Agreement, dated as November 7, 2022 (as amended by the First Amendment and Joinder to Loan and Guaranty Agreement dated as of the date hereof, the “**Loan Agreement**” and capitalized terms used herein but not otherwise defined here shall have the respective meanings given such terms in the Loan Agreement), pursuant to which the Lenders have made a loan to the borrowers named therein in the aggregate original principal amount, as amended, of **\$24,326,222**;

WHEREAS, as a condition precedent to each Lender’s advance of the loans under the Loan Agreement, the Lenders have required that each Pledgor execute and deliver this Agreement to secure the Obligations under the Loan Documents;

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

ARTICLE I
SECURITY INTEREST

Section 1.01 Grant of Security Interest. As security for the prompt payment and performance of the Obligations in full when due, whether at maturity, by acceleration or otherwise (including amounts that would become due but for the operation of the provisions of any Debtor Relief Laws (as defined below)), each Pledgor hereby pledges, grants, transfers and assigns to Secured Party on behalf of Lenders a security interest in all of such Pledgor’s right, title and interest in and to the Collateral (as defined below).

Section 1.02 Collateral. The collateral consists of the following properties, assets and rights of the Pledgors, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (collectively, the “**Collateral**”):

(a) the Equity Interests of each Issuer, as more particularly described on **Schedule I**, together with the certificates or instruments representing such Equity Interests;

(b) all documents, certificates and/or instruments representing such Equity Interests of the Issuers and, all dividends and distributions at any time and from time to time received or otherwise distributed in respect of or in exchange for any or all of such Equity Interests; and

(c) all proceeds, replacements, additions to and substitutions for, and books and records related to, the property set forth in (a)-(b) above, *provided, however*, that unless an Event of Default has occurred and is continuing, all cash dividends or distributions payable in respect of the Collateral shall be paid to the applicable Pledgor as its interests may appear.

Section 1.03 Continuing Security Interest. This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment in full of all Obligations, (ii) be binding upon each Pledgor and its successors and assigns, and (iii) inure to the benefit of Secured Party, its successors and permitted assigns, together with the rights and remedies of Secured Party hereunder. Upon the payment in full of all Obligations, the security interest granted herein shall immediately and automatically terminate and all rights to the Collateral shall immediately and automatically revert to the applicable Pledgor. Upon any such termination, Secured Party will promptly upon request from the Pledgors, at Pledgors' sole expense, execute and deliver to the Pledgors such termination statements or other documents, in each case, reasonably acceptable to Secured Party in form and substance, as Pledgor shall reasonably request to evidence such termination.

ARTICLE II **DEFINITIONS**

Section 2.01 Certain Definitions. Capitalized terms used but not defined herein shall have the meaning given to such terms in the Loan Agreement. Additionally, as used in this Agreement, the following terms shall have the following meanings:

“**Code**” means the Uniform Commercial Code as presently in effect in the State of New York.

“**Debtor Relief Laws**” means Title 11 of the United States Code, as amended from time to time, or any similar federal or state law for the relief of debtors, and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions in effect from time to time.

“**Obligor**” means any Person liable (whether directly or indirectly, primarily or secondarily) for the payment or performance of all or any portion of the Obligations, whether as a borrower, maker, co-maker, endorser, guarantor, accommodation party, general partner or otherwise.

“**Pledged Securities**” means, collectively, the Equity Interests of the Issuers described on **Schedule I**.

ARTICLE III **REPRESENTATIONS AND WARRANTIES**

In order to induce Secured Party to accept this Agreement, each Pledgor represents and warrants to Secured Party that:

Section 3.01 Ownership of Collateral; Encumbrances. Such Pledgor is the sole record and beneficial owner of all of the Pledged Securities set forth on **Schedule I** free and clear of all Liens (other than the Liens of Secured Party).

Section 3.02 Pledged Securities.

(a) All Pledged Securities are duly authorized, validly issued, fully paid, and non-assessable, and the transfer thereof is not subject to any restrictions, other than restrictions imposed by applicable securities laws and limited liability company operating agreement of the applicable Issuer (the “**Operating Agreement**”). The Equity Interests of Ault Alliance described on **Schedule I** consist of 76.0% (68,970 out of 90,750) of the Equity Interests of Circle 8. The Equity Interests of Holdco described on Schedule I consist of 100% of the Equity Interests of Circle 8. Other than as set forth on **Schedule I**, the Pledged Securities are not subject to any options, warrants or other rights presently outstanding to purchase or otherwise acquire all or any portion of the Pledged Securities. None of the Pledged Securities are subject to preemptive rights.

(b) Each Issuer is duly organized, currently existing, and in good standing under the laws of the state of its formation. Each Issuer has provided the Secured Party with true, correct and complete copies of its certificate of formation and Operating Agreement (together, the “**Issuer Organizational Documents**”) prior to the date hereof, and there have been no further amendments, modifications, or supplements to any Issuer Organizational Documents; and no approval or consent of the members or managers of either Issuer is required as a condition to the validity and enforceability of the security interest created hereby or the consummation of the transactions contemplated herein.

Section 3.03 Authority; No Required Consent. Such Pledgor has the full right and authority to execute and perform this Agreement and to create the security interest created by this Agreement. The making and performance by such Pledgor of this Agreement will not, in any material respect, (a) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Liens created hereunder in favor of Secured Party) under, or require any payment to be made under (i) any material contractual obligation to which such Pledgor is a party or affecting such Pledgor or the properties of such such Pledgor or (ii) any order, injunction, writ or decree of any governmental authority or any arbitral award to which such Pledgor or his property is subject; or (b) violate any law in any material respect. No authorization, consent, approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body (other than the filing of financing statements) is required for (c) the due execution, delivery and performance by such Pledgor of this Agreement, (d) the grant by such Pledgor of the security interest granted by this Agreement, (e) the perfection of such security interest or (f) the exercise by Secured Party of its rights and remedies under this Agreement.

Section 3.04 First Priority Security Interest. The security interest in the Collateral granted pursuant to this Agreement creates a valid and perfected security interest in the Collateral, enforceable against Such Pledgor and all third parties and secures payment of the Obligations, which security interest is first and prior to all other security interests in the Collateral.

Section 3.05 No Filings By Third Parties. No financing statement or other public notice or recording covering the Collateral is on file in any public office and such Pledgor will not execute or authorize the filing of any such financing statement or other public notice or recording so long as any of the Obligations are outstanding.

Section 3.06 Location of Pledgor. Such Pledgor’s principal residence is as set forth in the preamble to this Agreement.

Section 3.07 Non-Certificated Interests. Such Pledgor’s Equity Interests are not certificated.

ARTICLE IV
COVENANTS AND AGREEMENTS

Each Pledgor shall comply with the covenants and agreements contained in this **Article IV**, from the date hereof and for so long as any part of the Obligations are outstanding:

Section 4.01 Change in Location of Pledgor. Such Pledgor will give Secured Party ten (10) days' prior written notice of any change in such Pledgor's principal residence.

Section 4.02 Proceeds of Collateral. At the written request of Secured Party, such Pledgor shall deliver to Secured Party as Collateral or to be applied to the repayment of the Obligations, promptly upon receipt, all proceeds received by such Pledgor from the transfer, sale or disposition in any other manner of any equitable, beneficial or legal interest in any material portion of any Collateral. Nothing in this **Section 4.02** shall be construed to permit any transfer, sale or disposition of Collateral not otherwise permitted by the terms of this Agreement or any other Loan Document.

Section 4.03 No Transfer.

(a) Such Pledgor shall not, without the prior written consent of Secured Party, encumber, hypothecate or transfer, sell or dispose in any other manner of any equitable, beneficial or legal interest in the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing, and additionally, such Pledgor shall not grant any option, warrant, or other right with respect to, any of the Collateral other than to the Secured Party.

(b) No Issuer shall issue, and such Pledgor shall not permit or cause either Issuer to issue, any additional Equity Interests. Such Pledgor shall promptly perform, observe, and otherwise comply in all material respects with each and every covenant, agreement, requirement, and condition pertaining to such Pledgor set forth in the applicable Issuer Organizational Documents, and shall do or cause to be done all things necessary to cause such Issuer to be validly existing and in good standing as a limited liability company under the laws of the state of its formation and for the applicable Issuer Organizational Documents to be in full force and effect.

(c) Such Pledgor and the Issuers shall take any and all action necessary, required, or reasonably requested in writing by Secured Party to allow Secured Party to fully enforce its security interest in the Collateral upon the occurrence and during the continuance of any Event of Default, including, without limitation, the filing of any claims with any court, liquidator, trustee, custodian, receiver, or other like person or party.

(d) Such Pledgor and the Issuers hereby consent to the terms and conditions contained in this Agreement, and to the transactions contemplated hereby, notwithstanding any limitations or restrictions on such transactions set forth in the applicable Issuer Organizational Documents. Without limiting the foregoing, such Pledgor and the Issuers agree that any rights of first refusal, options to purchase or other conditions or restrictions affecting the transfer of any of the Collateral shall not be triggered by, or otherwise in any respect be applicable to, the execution and delivery of this Agreement or the exercise of Secured Party's rights and remedies under this Agreement, as amended from time to time, and upon Secured Party's exercise of its rights and remedies under this Agreement (as amended from time to time) following the occurrence and during the continuance of an Event of Default (as defined below), Secured Party, a purchaser at a foreclosure sale of the Collateral or any such party's designee, shall be immediately and automatically admitted as an owner of the applicable Issuer with all ownership rights accruing to it (including, without limitation, all rights to distributions and voting) without the need to obtain the consent of such Issuer or any other Person or to provide or comply with a right of first refusal or option to purchase with respect to any of the Collateral in favor of such Issuer or any other Person, notwithstanding anything in the applicable Issuer Organizational Documents, any agreement to which such Pledgor is now or hereafter a party with respect to any of the Collateral or otherwise to the contrary or in conflict thereof.

Section 4.04 Records and Information. Such Pledgor shall keep, in all material respects, accurate and complete records of the Collateral (including proceeds). Upon reasonable written notice, Secured Party may have access to, examine, audit, make extracts from and inspect without hindrance or delay such Pledgor's records and files related to the Collateral. Upon reasonable written request from Secured Party, such Pledgor will promptly provide notice to Secured Party of all written information which in any material respect relates to or affects the filing of any financing statement or other public notices or recordings, or the delivery and possession of items of Collateral for the purpose of perfecting Secured Party's security interest in the Collateral.

Section 4.05 Reimbursement of Expenses. Such Pledgor and the Issuers hereby agree to indemnify and hold Secured Party harmless from and against and covenants to defend Secured Party against any and all losses, damages, claims, costs, penalties, liabilities and reasonable and documented out-of-pocket expenses including, without limitation, court costs and attorneys' fees, incurred because of, incident to, or with respect to the Collateral (including, without limitation, any use, possession, maintenance or management thereof); *provided, however*, that such indemnity shall not, as to any indemnitee, be available to the extent that such losses, damages, claims costs, penalties, liabilities, expenses or fees resulted from the gross negligence or willful misconduct of such indemnitee. All amounts for which such Pledgor and the Issuers are liable pursuant to this **Section 4.05** shall be due and payable by the such Pledgor and the Issuers to Secured Party promptly (but not later than ten (10) Business Days) upon demand. If such Pledgor or the Issuers fail to make such payment within ten (10) Business Days of demand (or if demand is not made due to an injunction or stay arising from bankruptcy or other proceedings) and Secured Party pays such amount, the same shall be due and payable by such Pledgor and the Issuers to Secured Party together with interest thereon from date incurred until paid by such Pledgor or the Issuers at the Default Rate, which such Pledgor and the Issuers agree to pay promptly, but in no event more than thirty (30) days, from the date incurred.

Section 4.06 Notices and Reports. Such Pledgor shall promptly (but not later than ten (10) Business Days) notify Secured Party in writing of any change in the name of such Pledgor or the Issuers, any charge, Lien, security interest, claim or encumbrance asserted against the Collateral that could be materially adverse to Secured Party's interest in the Collateral, any litigation against the Collateral, and any other material matter adversely affecting the Secured Party's interest in the Collateral. Such Pledgor shall, furnish such other reports, information and data regarding the Collateral as Secured Party may reasonably request in writing from time to time.

Section 4.07 Modification, Amendment or Termination of Organization Documents. Such Pledgor and the Issuers shall not permit any modification, amendment or termination of their respective Issuer Organizational Documents that would be adverse to the interests of the Secured Party under this Agreement, or allow the Issuers to be dissolved or take any action which would cause a Material Adverse Effect.

Section 4.08 Further Assurances. Upon the reasonable written request of Secured Party, such Pledgor and the Issuers shall execute, deliver, and/or authorize the filing or recordation of, all such assignments, certificates, financing statements or other documents and give further assurances and do all other acts and things as Secured Party may reasonably request in writing to perfect Secured Party's interest in the Collateral or to protect, enforce or otherwise effect Secured Party's rights and remedies hereunder.

Section 4.09 Non-Certificated Interests. Neither such Pledgor nor any Issuer will require the registration of its Equity Interests under any federal or state securities laws.

ARTICLE V
RIGHTS, DUTIES AND POWERS OF SECURED PARTY

The following rights, duties and powers of Secured Party are applicable irrespective of whether an Event of Default occurs and is continuing:

Section 5.01 Discharge Encumbrances. If not timely discharged by the a Pledgor or an Issuer, Secured Party, at its option, after any Event of Default, but without any obligation whatsoever to do so, and with not less than ten (10) Business Days' notice to such Pledgor to the extent practical under the circumstances, may (a) discharge taxes, claims, charges, Liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral, (b) place and pay for insurance on the Collateral, including insurance that only protects Secured Party's interest, (c) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral, or (d) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem reasonably necessary or appropriate. Pledgor and the Issuers agree that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. The Pledgors agree to promptly reimburse Secured Party upon written demand for any payment made or any expense incurred by Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date such written demand is received by the Pledgors until paid by Borrower or Pledgors at the Default Rate, which Pledgors agree to pay promptly (but not later than ten (10) Business Days) upon receipt of such written demand, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

Section 5.02 Cumulative and Other Rights. The rights, powers and remedies of Secured Party hereunder are in addition to all rights, powers and remedies given by law or in equity. The exercise by Secured Party of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies, including, without limitation, any other rights of set-off. If any of the Obligations are given in renewal, extension for any period or rearrangement, or applied toward the payment of debt secured by any Lien, Secured Party shall be, and is hereby, subrogated to all the rights, titles, interests and Liens securing the debt so renewed, extended, rearranged or paid.

Section 5.03 Disclaimer of Certain Duties.

(a) The powers conferred upon Secured Party by this Agreement are to protect Secured Party's interest in the Collateral and shall not impose any duty upon Secured Party to exercise any such powers. Each Pledgor hereby agrees that Secured Party shall not be liable for, nor shall the Obligations be diminished by, Secured Party's delay or failure to collect upon, foreclose, sell, take possession of or otherwise obtain value for the Collateral.

(b) Other than as set forth in this Agreement, Secured Party shall not be under any duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance, notice of intent to accelerate, notice of acceleration, or other notice of demand in connection with any Collateral or the Obligations, or to take any steps necessary to preserve any rights against any Obligor or other Person and each Pledgor hereby waives all of the foregoing. Other than as set forth in this Agreement, each Pledgor waives any right of marshaling in respect of any and all Collateral, any right to require Secured Party to proceed against any Obligor or other Person, any right to exhaust any collateral or any right to enforce any other remedy which Secured Party now has or may hereafter have against any Obligor or other Person.

Section 5.04 Record Ownership of Securities. Secured Party at any time may have any Collateral that is in the possession of Secured Party, or its nominee or nominees, registered in its name, or in the name of its nominee or nominees, as Secured Party; and, as to any such Collateral so registered, each Pledgor shall execute and deliver (or cause to be executed and delivered) to Secured Party all such proxies, powers of attorney, dividend coupons or orders, and other documents as Secured Party may reasonably request in writing for the purpose of enabling Secured Party to exercise the voting rights and powers which it is entitled to exercise under this Agreement or to receive the dividends and other distributions and payments in respect of the Collateral or proceeds thereof which it is authorized to receive and retain under this Agreement.

Section 5.05 Voting of Securities. As long as no Event of Default has occurred and is continuing, each Pledgor is entitled to exercise all voting rights pertaining to any Pledged Securities; *provided, however*, that no vote shall be cast or consent, waiver, or ratification given or action taken without the prior written consent of Secured Party which would (x) be inconsistent with or violate in any respect any provision of this Agreement or (y) amend, modify, or waive any term, provision or condition of the Issuers' Organizational Documents, or other agreement relating to, evidencing, providing for the issuance of, or securing any Collateral in any manner adverse to the interests of Secured Party. If an Event of Default has occurred and is continuing, and if Secured Party elects to exercise such right, the right to vote any Pledged Securities shall be vested exclusively in Secured Party. To this end, each Pledgor hereby irrevocably constitutes and appoints Secured Party its proxy and attorney-in-fact, with full power of substitution, to vote, and to act with respect to, any and all Collateral that is Pledged Securities standing in the name of such Pledgor or with respect to which such Pledgor is entitled to vote and act. The proxy herein granted is coupled with an interest, is irrevocable, and shall continue until the Obligations have been paid and performed in full or the Event of Default has otherwise been cured, whichever comes first.

Section 5.06 Modification of Obligations; Other Security. Except as otherwise set forth in this Agreement, each Pledgor and the Issuers waive (a) any and all notice of acceptance, creation, modification, rearrangement, renewal or extension for any period of any instrument executed by any Obligor in connection with the Loan Agreement and (b) any defense of any Obligor by reason of disability, lack of authorization, cessation of the liability of any Obligor or for any other reason. Upon the occurrence of and continuation of an Event of Default, each Pledgor and Circle 8 authorize Secured Party, without any reservation of rights against such Pledgor or the Issuers and without affecting a Pledgor's liability hereunder, from time to time to (x) take and hold other property, other than the Collateral, as security for the Obligations, and exchange, enforce, waive and release any or all of the Collateral, (y) apply the Collateral in the manner permitted by this Agreement and (z) renew, extend for any period, accelerate, amend or modify, supplement, enforce, compromise, settle, waive or release the obligations of any Obligor or any instrument or agreement of such other Person with respect to any or all of the Obligations or Collateral.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01 Events of Default. An "*Event of Default*" shall exist under this Agreement if (i) an "*Event of Default*" as defined in the Loan Agreement exists, (ii) any representation or warranty of any Pledgor or any Issuer herein shall prove to be false or incorrect in any material respect, or (iii) any Pledgor or any Issuer shall fail to perform any of its obligations hereunder and such failure shall continue un-remedied for ten (10) days or if a longer grace period is provided, such longer grace period.

Section 6.02 Remedies. 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) Secured Party, 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 each Pledgor.

(b) Secured Party 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, each Pledgor agrees that Secured Party shall have the right to (a) require each Pledgor to use commercially reasonable efforts to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party; (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. Secured Party will use commercially reasonable efforts to send the Pledgors 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 Pledgor shall be met if such notice is mailed, postage prepaid, to the Pledgors at the address of each Pledgor 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) Each Pledgor and each Issuer shall be liable for and agree to pay the reasonable and documented out-of-pocket expenses incurred by Secured Party 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 Secured Party. These expenses shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

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

(e) The rights and remedies of Secured Party 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. Secured Party 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.

Section 6.03 Sale of Pledged Securities.

(a) Each Pledgor agrees that, because of the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder (collectively, the "**Securities Act**"), or any other laws or regulations, and for other reasons, there may be legal or practical restrictions or limitations affecting Secured Party in any attempts to dispose of certain portions of the Pledged Securities and for the enforcement of its rights. For these reasons, Secured Party is hereby authorized by each Pledgor, but not obligated, upon the occurrence and during the continuation of an Event of Default, following ten (10) Business Days' notice to the Pledgors to sell all or any part of the Pledged Securities at private sale, subject to investment letter or in any other manner which will not require the Pledged Securities, or any part thereof, to be registered in accordance with the Securities Act or any other laws or regulations, at a reasonable price at such private sale or other distribution in the manner mentioned above. Each Pledgor understands that Secured Party may in its discretion approach a limited number of potential purchasers and that a sale under such circumstances may yield a lower price for the Pledged Securities, or any part thereof, than would otherwise be obtainable if such Collateral were either afforded to a larger number or potential purchasers, registered under the Securities Act, or sold in the open market. Each Pledgor agrees that any such private sale made under this **Section 6.03(a)** shall be deemed to have been made in a commercially reasonable manner, and that Secured Party has no obligation to delay the sale of any Pledged Securities to permit the issuer thereof to register it for public sale under any applicable federal or state securities laws.

(b) Secured Party is authorized, in connection with any such sale described in **Section 6.03(a)**, (A) to restrict the prospective bidders on or purchasers of any of the Pledged Securities to a limited number of sophisticated investors who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or sale of any of such Pledged Securities, and (B) to impose such other limitations or conditions in connection with any such sale as Secured Party reasonably deems necessary in order to comply with applicable law. Each Pledgor and the Issuers agree to execute and deliver such documents and take such other action as Secured Party reasonably deems necessary in order that any such sale described in **Section 6.03(a)** may be made in compliance with applicable law. Upon any such sale described in **Section 6.03(a)**, Secured Party shall have the right to deliver, assign, and transfer to the purchaser thereof the Pledged Securities so sold. Each purchaser at any such sale shall hold the Pledged Securities so sold absolutely free from any claim or right of any Pledgor or the Issuers of whatsoever kind, including any equity or right of redemption of any Pledgor. Each Pledgor hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any law now existing or hereafter enacted.

(c) Each Pledgor agrees that ten (10) Business Days' written notice from Secured Party to such Pledgor of Secured Party's intention to make any such public or private sale shall constitute reasonable notice under the Code and such notice shall be delivered by Secured Party to Pledgors in advance of any such sale. Such notice shall (A) in case of a public sale, state the time and place fixed for such sale and (B) in the case of a private sale, state the day after which such sale may be consummated. At any such sale, the Pledged Securities may be sold in one lot as an entirety or in separate parcels, as Secured Party may reasonably determine. Secured Party may adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned.

(d) Without limiting the foregoing, or imposing upon Secured Party any obligations or duties not required by applicable law, each Pledgor and the Issuers acknowledge and agree that, in foreclosing upon any of the Pledged Securities, or exercising any other rights or remedies provided Secured Party hereunder or under applicable law, Secured Party may, but shall not be required to, (A) qualify or restrict prospective purchasers of the Pledged Securities by requiring evidence of sophistication or creditworthiness, and requiring the execution and delivery of confidentiality agreements or other documents and agreements as a condition to such prospective purchasers' receipt of information regarding the Pledged Securities or participation in any public or private foreclosure sale process, (B) provide to prospective purchasers business and financial information regarding Pledgors or the Issuers available in the files of Secured Party at the time of commencing the foreclosure process, without the requirement that Secured Party obtain, or seek to obtain, any updated business or financial information or verify, or certify to prospective purchasers, the accuracy of any such business or financial information, or (C) offer for sale and sell the Pledged Securities with, or without, first employing an appraiser, investment banker, or broker with respect to the evaluation of the Pledged Securities, the solicitation of purchasers for Pledged Securities, or the manner of sale of Pledged Securities.

Section 6.04 Attorney-in-Fact. Each Pledgor hereby irrevocably appoints Secured Party as its attorney-in-fact, with full authority in the place and stead of such Pledgor and in the name of such Pledgor or otherwise, from time to time in Secured Party'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 Issuers and the Pledgors to take any action and to execute any assignment, certificate, financing statement, notification, document or instrument which Secured Party 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 a Pledgor or an Issuer 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. Except where prior notice is expressly required by the terms of this Agreement, the Secured Party will use commercially reasonable efforts to provide notice to the Issuers and Pledgors prior to taking any action contemplated in the preceding sentence; provided, that the failure to deliver such notice shall not limit the Secured Party's right to take such action or the validity of such action.

Section 6.05 Reasonable Notice. If any applicable provision of any law requires Secured Party to give reasonable notice of any sale or disposition or other action for which notice is not otherwise required by this Agreement, each Pledgor hereby agrees that ten (10) Business Days prior written notice shall constitute reasonable notice thereof. Such notice, in the case of public sale, shall state the time and place fixed for such sale and, in the case of private sale, the time after which such sale is to be made.

Section 6.06 Non-judicial Enforcement. Secured Party may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law, each Pledgor and each Issuer expressly waives any and all legal rights which might otherwise require Secured Party to enforce its rights by judicial process.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01 Notices. Any notice required or permitted to be given under or in connection with this Agreement shall be given in accordance with the notice provisions of the Loan Agreement.

Section 7.02 Amendments and Waivers. Secured Party's acceptance of partial or delinquent payments or any forbearance, failure or delay by Secured Party in exercising any right, power or remedy hereunder shall not be deemed a waiver of any obligation of any Pledgor or the Issuers, or of any right, power or remedy of Secured Party, and no partial exercise of any right, power or remedy shall preclude any other or further exercise thereof. Pledgors and Issuers hereby agree that if Secured Party agrees to a waiver of any provision hereunder, or an exchange of or release of the Collateral, or the addition or release of any Obligor or other Person, any such action shall not, unless otherwise agreed by Secured Party in writing, constitute a waiver of any of Secured Party's other rights or of obligations of the Issuers or Pledgors hereunder. This Agreement may be amended only by an instrument in writing executed by the Pledgors, the Issuers and Secured Party and may be supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

Section 7.03 Possession of Collateral. Secured Party shall be deemed to have possession of any Collateral in transit to it or set apart for it (or, in either case, any of its agents, affiliates or correspondents).

Section 7.04 Redelivery of Collateral. If any sale or transfer of Collateral by Secured Party results in full satisfaction of the Obligations, and after such sale or transfer and discharge there remains a surplus of proceeds, Secured Party will promptly deliver to the applicable Pledgor such excess proceeds; provided, however, that Secured Party shall not be liable for any interest, cost or expense in connection with any delay in delivering such proceeds to such Pledgor.

Section 7.05 Governing Law; Jurisdiction. THIS AGREEMENT AND THE SECURITY INTEREST GRANTED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK COUNTY, NEW YORK FOR ANY ACTION, SUIT OR PROCEEDING ARISING OUT OR RELATED TO THIS AGREEMENT.

Section 7.06 Additional Rights of Secured Party. Without limiting any other provision of this Agreement, Secured Party is expressly granted the following rights upon the occurrence and continuance of an Event of Default: (a) to receive each Pledgor's share of all distributions and/or distributions in kind following dissolution of the Issuers and to hold the same in trust for the benefit of such Pledgor as part of the Collateral and (b) to exercise voting rights as to any of the Collateral. All of the foregoing may be exercised by Secured Party without liability, except to account for property actually received by it.

Section 7.07 Continuing Security Agreement.

(a) No action taken or omission to act by Secured Party hereunder, including, without limitation, any action taken or inaction pursuant to **Article VI**, shall be deemed to constitute a retention of the Collateral in satisfaction of the Obligations or otherwise to be in full satisfaction of the Obligations, and the Obligations shall remain in full force and effect until Secured Party shall have applied payments (including, without limitation, collections from Collateral) towards the Obligations in the full amount then outstanding or until such subsequent time as is hereinafter provided in **subsection (b)** below.

(b) To the extent that any performance of or payments on the Obligations or proceeds of the Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent the Obligations so satisfied shall be revived and continue as if such performance had not occurred or such payment or proceeds had not been received by Secured Party, and Secured Party's security interests, rights, powers and remedies hereunder shall continue in full force and effect. In such event, this Agreement shall be automatically reinstated if it shall theretofore have been terminated pursuant to **Section 7.08**.

Section 7.08 Termination. The granting of a security interest hereunder and all of Secured Party's rights, powers and remedies in connection therewith shall remain in full force and effect until the payment in full of the Obligations and the termination of any and all commitments of Lenders to lend or otherwise extend credit to the Issuers under the Loan Agreement, at which point this Agreement shall immediately and automatically terminate. Upon the payment in full of the Obligations and the termination of any and all commitments of Lenders to lend or otherwise extend credit to the Issuers under the Loan Agreement, Secured Party, at the written request and expense of the Pledgors, agrees to (i) deliver to the applicable Pledgor any original stock certificates, instruments and/or any other Collateral of such Pledgor in Holder's possession and (ii) to deliver other reasonably requested (in writing) and applicable release and termination documentation releasing Secured Party's Liens and security interests in the Collateral. Notwithstanding the foregoing, the reimbursement and indemnification provisions of **Section 4.05** and the provisions of **Section 7.07(b)** shall survive the termination of this Agreement.

Section 7.09 Effectiveness. This Agreement becomes effective as to a party upon the execution hereof by such party on the date set forth in the first introductory paragraph hereto. The representations and warranties of the Issuers and Pledgors shall survive the execution and delivery of this Agreement.

Section 7.10 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of Secured Party and its respective successors and permitted assigns, and shall not serve to confer any rights or benefits in favor of any Person not a party hereto; and no other Person shall have any right to rely on this Agreement, or to derive any benefit herefrom. None of Pledgors or the Issuers shall assign or transfer its rights, duties or obligations hereunder without the consent of Secured Party. There are no third-party beneficiaries to this Agreement and no other Person (other than the parties hereto, and their respective successors and assigns) shall be entitled to rely on or enforce this Agreement.

Section 7.11 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

PLEDGORS:

AULT ALLIANCE, INC.

By: _____
Name: _____
Title: _____

CIRCLE 8 HOLDCO, LLC

By: _____
Name: _____
Title: _____

ISSUERS:

CIRCLE 8 HOLDCO, LLC

By: _____
Name: _____
Title: _____

CIRCLE 8 CRANE SERVICES, LLC

By: _____
Name: _____
Title: _____

SECURED PARTY:

JGB COLLATERAL LLC

By: _____
Name: _____
Title: _____

SCHEDULE I
TO
PLEDGE AGREEMENT

ATTENTION PINELLAS COUNTY CLERK, STATE OF FLORIDA

WHEN RECORDED AND/OR FILED RETURN TO:

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

AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

DATED EFFECTIVE AS OF JULY 19, 2023

FROM

THIRD AVENUE APARTMENTS LLC,
a Delaware limited liability company,
AS MORTGAGOR

TO

JGB COLLATERAL LLC,
a Delaware limited liability company,
AS AGENT,
AS MORTGAGEE

Note to Recorder: All documentary stamp tax and intangible tax due on the primary indebtedness secured by this instrument has been paid on the Loan Agreement and in connection with the recordation of the Existing Mortgage. All documentary stamp and intangible taxes in connection with the \$8,833,333.00 additional indebtedness evidenced by the First Amendment and Note are being paid in connection with the recordation of this Amendment.

AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT AND NOTICE OF FUTURE ADVANCE

This **AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT AND NOTICE OF FUTURE ADVANCE** (this “*Amendment*”) is dated effective July 19, 2023 (the “*Effective Date*”), from Third Avenue Apartments LLC, a Delaware limited liability company, whose address for notice is 11411 Southern Highlands Parkway, suite 240, Las Vegas Nevada 89141 (“*Mortgagor*”), to JGB Collateral LLC, a Delaware limited liability company, as Agent (as hereinafter defined) on behalf of itself, the Lenders, whose address for notice is 246 Post Road East, 2nd Floor, Westport, CT 06880, Attn: Vincent Vacco (together with its successors and assigns in such capacity, “*Mortgagee*”).

RECITALS:

A. Mortgagor, as a borrower, the other borrowers and guarantors a party thereto, the financial institutions from time to time party thereto (the “*Lenders*”) and Mortgagee, as administrative agent and collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, “*Agent*”), executed that certain Loan and Guaranty Agreement dated as of November 7, 2022 (as amended on July 19, 2023 and as may be subsequently amended, amended and restated or otherwise modified from time to time, the “*Loan Agreement*”), pursuant to which, upon the terms and conditions stated therein, the Lenders agreed to make loans and other extensions of credit to Mortgagor;

B. The Loan Agreement is secured by, among other things, that certain Mortgage and Security Agreement from Mortgagor to Mortgagee for the benefit of the Lenders recorded in the country of Pinellas County, State of Florida, with document no. 2022326285 (as amended, supplemented, and otherwise modified prior to the date hereof, collectively, the “*Existing Mortgage*”; the Existing Mortgage as amended hereby, as the same may from time to time be further amended, supplemented or otherwise modified, the “*Mortgage*”);

C. The Mortgagor and the Mortgagee desire to amend the Existing Mortgage to reflect its modification and restatement as a result of the advancement of \$8,833,333.00 under the terms of the Existing Mortgage.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby agrees as follows:

ARTICLE I **DEFINED TERMS**

Any capitalized term used in this Amendment and not defined in this Amendment shall have the meaning assigned to such term in the Existing Mortgage, and if not in the Existing Mortgage, in the Loan Agreement.

All references in the Existing Mortgage to “this Mortgage,” as defined in the Existing Mortgage shall mean the Existing Mortgage as amended by this Amendment, as the same may from time to time be further amended, supplemented or otherwise modified.

ARTICLE II
AMENDMENTS TO MORTGAGE

The first WHEREAS clause of the Existing Mortgage is hereby amended and restated in its entirety as follows:

“**WHEREAS**, Third Avenue Apartments LLC is justly indebted to Mortgagee, having executed and delivered to Mortgagee the Loan and Guaranty Agreement dated November 7, 2022 (the “**Original Loan Agreement**”) as such Original Loan Agreement was amended pursuant to a First Amendment and Joinder to Loan Agreement dated July 19, 2023 (the “**First Amendment**” and together with the Original Loan Agreement as they be subsequently amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and an Amended and Restated Secured Promissory Note dated July 19, 2023 (the “**Note**”), wherein THIRD AVENUE APARTMENTS LLC, AULT ALLIANCE INC. (F/K/A BITNILE HOLDINGS, INC.), a Delaware corporation, ALLIANCE CLOUD SERVICES, LLC, a Delaware limited liability company, BITNILE, INC., a Nevada corporation, and AULT AVIATION, LLC, a Nevada limited liability company (collectively, the “**Borrowers**”), promise to pay the Mortgagee the principal sum of \$24,326,222.00, 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.”

ARTICLE III
REPRESENTATIONS, WARRANTIES AND COVENANTS

Without limiting the representations, warranties, covenants and agreements contained in the Loan Agreement, the Existing Mortgage or any of the Loan Documents, Mortgagor hereby represents, warrants and covenants as follows:

(a) Except for existing liens as disclosed in the First Amendment, Mortgagor affirms the representations, warranties, covenants and agreements in the Existing Mortgage.

(b) Mortgagor shall cure promptly any defects in the execution and delivery of this Amendment. Mortgagor at Mortgagor’s expense will promptly execute and deliver to Mortgagee upon reasonable request all such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of Mortgagor in the Existing Mortgage and this Amendment or to further evidence and more fully describe the Mortgaged Properties, or to correct any omissions in this instrument, or more fully to state the security obligations set out in the Existing Mortgage or this Amendment, or to perfect, protect and, or, preserve any Lien or security interest created in the Existing Mortgage or this Amendment, or to make any recordings, or to file any notices, or obtain any consents, all as may be necessary or appropriate in connection with any thereof. Mortgagor shall pay for all reasonable and documented costs of preparing, recording and releasing any of the above.

(c) Mortgagee’s execution and delivery of this Amendment is not intended to, and shall not be construed as, a waiver or estoppel of any of Mortgagee’s rights or remedies under the Existing Mortgage as amended hereby.

ARTICLE IV
MISCELLANEOUS

(a) **Instrument Construction.** The rights and authority granted to Mortgagee herein may be enforced and asserted by Mortgagee in accordance with the laws of the State of Florida.

(b) **Amendment and Ratification.** This Amendment shall be considered as an amendment and ratification of the Existing Mortgage, and the Existing Mortgage, as expressly amended, is hereby ratified, approved and confirmed by the Mortgagor in every respect. Each of the parties hereto adopt by reference and incorporate herein all of the terms and conditions of the Existing Mortgage. This Amendment shall not constitute or be deemed to be a novation or discharge of the Existing Mortgage or any Obligations secured thereby. All liens and security interests created, extended or renewed by the Existing Mortgage are hereby extended, renewed and carried forward by this Amendment and incorporated herein. All references to the Existing Mortgage in any documents heretofore and hereafter executed shall be deemed to refer to the Existing Mortgage as amended hereby. If at any time Mortgagee shall determine that the lien priority of the Existing Mortgage is invalid or in jeopardy, Mortgagee may, at its option, declare the entire indebtedness secured by the Existing Mortgage together with all accrued interest to be immediately due and payable in full.

(c) **Time.** Time shall be of the essence in this Amendment.

(d) **Counterparts.** This Amendment is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

(e) **GOVERNING LAW.** Section 31 of the Existing Mortgage is incorporated herein by reference and made a part of hereof.

[Signature page follows]

IN WITNESS WHEREOF, this Amendment is executed as of the date written in the acknowledgement block below, but effective for all purposes as of the Effective Date.

MORTGAGOR:

THIRD AVENUE APARMENTS LLC,
A DELAWARE LIMITED LIABILITY COMPANY

By: AULT Global Real Estate Equities, Inc. its manager

By: _____
Name: _____
Title: _____

STATE OF _____)
)SS:
COUNTY OF _____)

Acknowledged before me in _____ County, _____ this ____ day of July, 2023, by _____,
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 _____

Signature Page to Amendment to Mortgage

MORTGAGEE:

JGB COLLATERAL, LLC,
A Delaware Limited Liability Company

By: _____

Name:

Title:

STATE OF _____)

)SS:

COUNTY OF _____)

Acknowledged before me in _____ County, _____ this ____ day of July, 2023, by _____,
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 _____

Signature Page to Amendment to Mortgage

AMENDMENT TO FUTURE ADVANCE MORTGAGE

This **AMENDMENT TO FUTURE ADVANCE MORTGAGE** (this “*Amendment*”) is dated effective July 19, 2023 (the “*Effective Date*”), from Alliance Cloud Services, LLC a Delaware limited liability company, whose address for notice is 11411 Southern Highlands Pkwy #240, Las Vegas, Nevada 89141 (“*Mortgagor*”), to JGB Collateral LLC, as Agent (as hereinafter defined) on behalf of itself, the Lenders, whose address for notice is 246 Post Road East, 2nd Floor, Westport, CT 06880, Attn: Vincent Vacco (together with its successors and assigns in such capacity, “*Mortgagee*”).

RECITALS:

A. Mortgagor, as a borrower, the other borrowers and guarantors a party thereto, the financial institutions from time to time party thereto (the “*Lenders*”) and Mortgagee, as administrative agent and collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, “*Agent*”), executed that certain Loan and Guaranty Agreement dated as of November 7, 2022 (as amended on July 19, 2023 and as may be subsequently amended, amended and restated or otherwise modified from time to time, the “*Loan Agreement*”), pursuant to which, upon the terms and conditions stated therein, the Lenders agreed to make loans and other extensions of credit to Mortgagor;

B. The Loan Agreement is secured by, among other things, that certain Future Advance Mortgage from Mortgagor to Mortgagee with respect to the real property identified on Exhibit A for the benefit of the Lenders recorded in the with the Register of Deeds of Cass County, State of Michigan in Liber: 1225, Page: 2051 (as amended, supplemented, and otherwise modified prior to the date hereof, collectively, the “*Existing Mortgage*”; the Existing Mortgage as amended hereby, as the same may from time to time be further amended, supplemented or otherwise modified, the “*Mortgage*”);

C. The Mortgagor and the Mortgagee desire to amend the Existing Mortgage.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby agrees as follows:

ARTICLE I
DEFINED TERMS

1.1 Defined Terms.

(a) Any capitalized term used in this Amendment and not defined in this Amendment shall have the meaning assigned to such term in the Existing Mortgage, and if not in the Existing Mortgage, in the Loan Agreement.

(b) All references in the Existing Mortgage to “this Mortgage,” as defined in the Existing Mortgage shall mean the Existing Mortgage as amended by this Amendment, as the same may from time to time be further amended, supplemented or otherwise modified.

ARTICLE II
AMENDMENTS TO MORTGAGE

2.1 Amendments. Section 1(a) of the Existing Mortgage is amended and restated in its entirety as follows:

“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 \$24,326,222.00 according to a certain amended and restated promissory note dated on or about July 19, 2023, 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, dated as of November 7, 2022, by and among JGB Agent, Lender, Mortgagor, **AULT ALLIANCE, INC.** (F/K/A BITNILE HOLDINGS, INC.), a Delaware corporation (“**Borrower Representative**”). **THIRD AVENUE APARTMENTS, LLC**, a Delaware limited liability company (the “**Florida Property Owner**”), **BITNILE, INC.**, a Nevada corporation (“**BitNile**”) and **AULT AVIATION, LLC**, a Nevada limited liability company (“**Aviation**” and together with Borrower Representative, Florida Property Owner, Mortgagor, and each other person from time to time party hereto as a borrower, collectively, “**Borrowers**” and each, a “**Borrower**”), among others, as amended pursuant to that certain First Amendment and Joinder to Loan and Guaranty Agreement, dated July 19, 2023, and as it may be subsequently amended or amended and restated from time to time (the “**Loan Agreement**”); but specifically excluding the obligations of **AULT LENDING, LLC**, a California limited liability company, **AULT & COMPANY, INC.**, a Delaware corporation, and **MILTON “TODD” AULT III**, a natural person, under the Loan Agreement.”

ARTICLE III
REPRESENTATIONS, WARRANTIES AND COVENANTS

Without limiting the representations, warranties, covenants and agreements contained in the Loan Agreement, the Existing Mortgage or any of the Loan Documents, Mortgagor hereby represents, warrants and covenants as follows:

3.1 **General Representations, Warranties and Covenants.**

(a) Mortgagor affirms the representations, warranties, covenants and agreements in the Existing Mortgage.

(b) Mortgagor shall cure promptly any defects in the execution and delivery of this Amendment. Mortgagor at Mortgagor's expense will promptly execute and deliver to Mortgagee upon reasonable request all such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of Mortgagor in the Existing Mortgage and this Amendment or to further evidence and more fully describe the Mortgaged Properties, or to correct any omissions in this instrument, or more fully to state the security obligations set out in the Existing Mortgage or this Amendment, or to perfect, protect and, or, preserve any Lien or security interest created in the Existing Mortgage or this Amendment, or to make any recordings, or to file any notices, or obtain any consents, all as may be necessary or appropriate in connection with any thereof. Mortgagor shall pay for all reasonable and documented costs of preparing, recording and releasing any of the above.

(c) Mortgagee's execution and delivery of this Amendment is not intended to, and shall not be construed as, a waiver or estoppel of any of Mortgagee's rights or remedies under the Existing Mortgage as amended hereby.

**ARTICLE IV
MISCELLANEOUS**

4.1 **Instrument Construction.** The rights and authority granted to Mortgagee herein may be enforced and asserted by Mortgagee in accordance with the laws of the State of Michigan.

4.2 **Amendment and Ratification.** This Amendment shall be considered as an amendment and ratification of the Existing Mortgage, and the Existing Mortgage, as expressly amended, is hereby ratified, approved and confirmed by the Mortgagor in every respect. Each of the parties hereto adopt by reference and incorporate herein all of the terms and conditions of the Existing Mortgage. This Amendment shall not constitute or be deemed to be a novation or discharge of the Existing Mortgage or any Obligations secured thereby. All liens and security interests created, extended or renewed by the Existing Mortgage are hereby extended, renewed and carried forward by this Amendment and incorporated herein. All references to the Existing Mortgage in any documents heretofore and hereafter executed shall be deemed to refer to the Existing Mortgage as amended hereby.

4.3 **Time.** Time shall be of the essence in this Amendment.

4.4 **Counterparts.** This Amendment is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

4.5 **Governing Law.** Section 30 of the Existing Mortgage is incorporated herein by reference and made a part of hereof.

[Signature page follows]

IN WITNESS WHEREOF, this Amendment is executed as of the date written in the acknowledgement block below, but effective for all purposes as of the Effective Date.

MORTGAGOR:

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 July, 2023, by _____, the _____ of AC Management, Inc., 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 _____

Signature Page to Amendment to Mortgage

MORTGAGEE:

JGB COLLATERAL, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

By: _____
Name: _____
Title: _____

STATE OF _____)

)SS:

COUNTY OF _____)

Acknowledged before me in _____ County, _____ this ____ day of July, 2023, by _____, the _____ of JGB Management, Inc. 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 Center, 26th Floor
New York, NY 10112
Attn: Greg Kramer

Signature Page to Amendment to Mortgage

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.
