

**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): June 5, 2024

**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 June 4, 2024 (the “**Execution Date**”), Ault Alliance, Inc., a Delaware corporation (the “**Company**”), entered into a Loan Agreement (the “**Credit Agreement**”) with OREE Lending Company, LLC and Helios Funds LLC, as lenders (collectively, the “**Lender**”). The Credit Agreement provides for an unsecured, non-revolving credit facility in an aggregate principal amount of up to \$20,000,000, provided, however, that at no point will the Company be allowed to have outstanding Advances in a principal amount received of more than \$2,000,000.

All loans under the Credit Agreement (collectively, the “**Advances**”) shall be evidenced by a promissory note. The Lender made an Advance to the Company of \$1,500,000 on the Execution Date. The Advances are due December 4, 2024 (the “**Maturity Date**”), provided, however, that if on such date, the Company has executed an equity line of credit agreement relating to the sale of shares of the Company’s 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, has an effective registration statement relating thereto and is not currently in default under such agreement, then the Maturity Date shall be automatically extended until June 4, 2025. The Lender is not obligated to make any further Advances under the Credit Agreement after the Maturity Date. Advances under the Credit Agreement will include the addition of an original issuance discount of 20% to the amount of each Advance and all Advances will bear interest at the rate of 15.0% per annum and may be repaid at any time without penalty or premium.

The obligations of the Company under the Credit Agreement are secured by a guaranty (the “**Guaranty**”) provided by Milton C. Ault, the Executive Chairman of the Company.

The foregoing descriptions of the Credit Agreement and Guaranty do not purport to be complete and are qualified in their entirety by reference to the form of Credit Agreement and Guaranty, which are annexed hereto as **Exhibits 10.1 and 10.2**, 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:**

<b>Exhibit No.</b>	<b>Description</b>
10.1	<a href="#">Form of Loan Agreement.</a>
10.2	<a href="#">Form of Guaranty.</a>
101	Pursuant to Rule 406 of Regulation S-T, the cover page is formatted in Inline XBRL (Inline eXtensible Business Reporting Language).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101).

**SIGNATURE**

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

**AULT ALLIANCE, INC.**

Dated: June 5, 2024

/s/ Henry Nisser  
Henry Nisser  
President and General Counsel

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**Ault Alliance, Inc., a Delaware Corporation**

**LOAN AGREEMENT**

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This LOAN AGREEMENT is entered into with an effective date as of June 4, 2024 (the “**Closing Date**”), by and among Ault Alliance, Inc., a Delaware corporation (“**Borrower**”), OREE Lending Company, LLC, a Delaware limited liability company (“**Oree**”) and Helios Funds LLC, a Delaware limited liability company (“**Helios**” and together with Oree, “**Lender**”).

#### RECITALS

WHEREAS, Borrower wishes to seek, and Lender wishes to grant, a non-revolving line of credit up to an aggregate principal loan amount (not reflecting any OID or interest) of Twenty Million Dollars (\$20,000,000); and

WHEREAS, Borrower and Lender have agreed to enter into this Agreement to memorialize their understanding regarding their respective rights and obligations with respect to this Agreement and the Loan as such term is defined herein.

#### **AGREEMENT**

NOW; THEREFORE, in consideration of the making of the Loan and the covenants, agreements, representations and warranties set forth in this Agreement and the other Loan Documents as defined herein, the receipt and legal sufficiency of which hereby are acknowledged, the parties hereby covenant, agree, represent and warrant as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, the following terms shall have the following definitions:

“**Advance**” or “**Advances**” means a cash advance or cash advances under the Non-Revolving Line.

“**Affiliate**” means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person’s senior executive officers, directors, and partners.

“**Business Day**” means any day that is not a Saturday, Sunday, or other day on which national and state banks located in the State of New York are authorized or required to close.

“**Cash**” means cash and cash equivalents.

“**Change in Control**” shall mean a transaction in which any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such “person” or “group” to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction.

“**Credit Extension**” means each Advance or any other extension of credit by Lender to or for the benefit of Borrower hereunder.

“**Default Interest Rate**” means 18.0%, per annum.

“**ELOC Agreement**” means an equity line of credit agreement relating to the sale of shares of Borrower’s 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, to be entered into by and between the Borrower and the Investor named therein.

“**Event of Default**” has the meaning assigned in Article 8.

“**GAAP**” means generally accepted accounting principles in the United States, consistently applied, as in effect from time to time.

“**Insolvency Proceeding**” means any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Interest Rate**” means 15.0%, per annum.

“**IRC**” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

“**Loan**” means, collectively, the Credit Extensions available to Borrower under the Loan Documents.

“**Loan Documents**” means, collectively, this Agreement, the Note, and any other document, instrument or agreement entered into in connection with this Agreement, all as amended or extended from time to time.

“**Material Adverse Effect**” means a material adverse effect on (i) the business operations, or financial condition of Borrower and its Subsidiaries taken as a whole or (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents and the ELOC Agreement.

“**Maturity Date**” shall mean December 4, 2024, provided, however, that if on such date, the Borrower (i) has entered into the ELOC Agreement, (ii) there is an effective registration statement registering the Commitment Fee Shares and additional shares which may be issued and sold to the Investor (as defined in the ELOC Agreement) under the ELOC Agreement and (ii) is not then in default under the ELOC Agreement, then the Maturity Date shall be automatically extended until June 4, 2025.

“**Maximum Principal Borrowing Limit**” shall mean Two Million Dollars (\$2,000,000).

“**Non-Revolving Line**” means Credit Extensions, in the aggregate principal amount of up to Twenty Million Dollars (\$20,000,000) granted by Lender to Borrower.

“**Note**” means the promissory note, in the customary form attached hereto as Exhibit A, which will be issued each time an Advance or any other extension of credit by Lender is made to the Borrower.

“**Obligations**” means all debt, principal, interest, OID and other amounts owed to Lender by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Lender may have obtained by assignment or otherwise.

“**OID**” means an original issuance discount of twenty percent (20%), which will be added to the Note, each time an Advance or any other extension of credit by Lender is made to the Borrower.

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

“**Responsible Officer**” means each of the Executive Chairman, Chief Executive Officer, and the President of Borrower.

“**Schedule**” means the schedule of exceptions attached hereto and approved by Lender, if any.

“**Subsidiary**” means any corporation, partnership or 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 or joint venture of which by the terms thereof has the ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by a Borrower, either directly or through an Affiliate.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of a Borrower connected with and symbolized by such trademarks.

1.2 Accounting Terms. Any accounting term not specifically defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term “financial statements” shall include the accompanying notes and schedules.

## 2. LOAN AND TERMS OF PAYMENT.

### 2.1 Credit Extensions.

(a) Promise to Pay. Borrower promises to pay to Lender, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Lender to Borrower, together with all interest on the unpaid principal amount of such Credit Extensions, at the Interest Rate in accordance with the terms hereof.

### (b) Advances Under Non-Revolver Line.

(i) Amount. Subject to and upon the terms and conditions of this Agreement, Borrower may request Advances in an aggregate outstanding amount not to exceed the Maximum Principal Borrowing Limit. For purposes of clarification, the Maximum Principal Borrowing Limit shall reflect cash actually received by the Borrower from the Lender (minus such amounts of principal repaid by Borrower) and shall not include any interest, OID or other amounts owed by Borrower to Lender. Amounts borrowed pursuant to this Section 2.1(b) which have been repaid may not be reborrowed at any time, provided, however, that Borrower may request Advances which, in the aggregate, do not exceed the Non-Revolver Line. All Advances (including all Interest thereon) under this Section 2.1(b) shall be immediately due and payable on the Maturity Date. Borrower may prepay any Advances without penalty or premium upon notice.

(ii) Form of Request. Whenever a Borrower desires an Advance, such Borrower will notify Lender by email or telephone no later than one (1) Business Day prior to the date the Advance is to be made. Each such notification shall be promptly confirmed by a Payment/Advance Form in substantially the form of Exhibit B hereto. Lender is authorized to make Advances under this Agreement, based upon instructions received from a Responsible Officer or a designee (made in writing to Lender) of a Responsible Officer. Lender shall be entitled to rely on any telephonic notice given by a person who Lender reasonably believes to be a Responsible Officer or a designee thereof, and Borrower shall indemnify and hold Lender harmless for any damages or loss suffered by Lender as a result of such reliance. Lender will evidence the amount of Advances made under this Section 2.1(b), together with the OID of such amount of the Advances, by a Note.

2.2 Overadvances. If (i) the aggregate amount of the outstanding Advances exceeds the Maximum Principal Borrowing Limit at any time or (ii) the aggregate amount of total Advances exceeds the Non-Revolver Line at any time, then within fifteen (15) days (or such longer period as Lender may grant in its sole discretion) of notice of such excess advanced, Borrower shall pay to Lender, in cash, the amount of such excess, together with the OID and all accrued but unpaid interest on such excess.

2.3 Interest Rates, Payments, and Calculations.

(a) Interest Rates. Except as set forth in Section 2.3(b), the Advances shall bear interest at the rate equal to the Interest Rate, calculated based upon a 365-day year.

(b) Default Rate. If any payment hereunder is not made within ten (10) calendar days after the date such payment is due, all outstanding Obligations shall bear interest at the rate equal to the Default Interest Rate, calculated based upon a 365-day year.

(c) Payments. All outstanding Obligations hereunder shall be due and payable on the Maturity Date.

(d) Computation. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty-five (365) day year for the actual number of days elapsed.

2.4 Crediting Payments. If no Event of Default exists, Lender shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies, provided, however, that if Borrower fails to specify, payments shall be credited in the following order: (i) outstanding principal (which reflects amounts actually received by the Borrower under Advances); (ii) accrued but unpaid interest; (iii) OID amounts owed; and (iv) any other Obligations owed by Borrower to Lender. During the existence of an Event of Default, Lender shall have the right, in its sole discretion, to immediately apply any wire transfer of funds, check, or other item of payment Lender may receive to conditionally reduce Obligations, but such applications of funds shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Lender or for its benefit at its financial institution after 5:00 pm Eastern time shall be deemed to have been received by Lender as of the opening of business on the immediately following Business Day. Whenever any payment to Lender under the Loan Documents would otherwise be due on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.5 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for so long as any Obligations remain outstanding or Lender has any obligation to make Credit Extensions under this Agreement. Notwithstanding the foregoing, Lender shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. After the Maturity Date, Lender will not be obligated to make any further Advances.



3. CONDITIONS OF LOANS.

3.1 Conditions Precedent to Initial Credit Extension. The obligation of Lender to make the initial Credit Extension, which shall be an Advance in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) on the Closing Date, is subject to the condition precedent that Lender shall have received, in form and substance satisfactory to Lender, the following:

- (a) this Agreement duly executed by the Borrower;
- (b) an officer's certificate of the Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement; and
- (c) a term sheet executed for an ELOC Agreement in a form reasonably acceptable to Lender (the "**ELOC Term Sheet**").

3.2 Conditions Precedent to Second Credit Extension. The obligation of Lender to make the second Credit Extension, which shall be an Advance in the amount of Five Hundred Thousand Dollars (\$500,000), is subject to the condition precedent that Lender shall have received, in form and substance satisfactory to Lender, evidence of execution of the ELOC Agreement by the Borrower and Investor named therein.

3.3 Conditions Precedent to Additional Credit Extensions. Borrower may not request Credit Extensions beyond those contemplated by Sections 3.1 and 3.2 hereof, until such time as the Borrower has (and continues to maintain) an effective registration statement registering the Commitment Fee Shares and Additional Commitment Fee Shares (as defined in the ELOC Agreement), and, immediately prior to any request for a Credit Extension, there are an adequate number of purchase shares registered for resale under the ELOC Agreement to cover \$2,000,000 in outstanding amounts payable hereunder.

3.4 Conditions Precedent to all Credit Extensions. The obligation of Lender to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

- (a) timely receipt by Lender of the Payment/Advance Form as provided in Section 2.1; and
- (b) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Payment/Advance Form and on the effective date of each Credit Extension as though made at and as of each such date, and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension (provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date). The making of each Credit Extension shall be deemed to be a representation and warranty by the Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.4.
- (c) Lender shall have received a personal guaranty duly executed by Milton C. Ault, III guaranteeing the Obligations.

4. [RESERVED]

5. REPRESENTATIONS AND WARRANTIES.

The Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Borrower and each Subsidiary is duly existing under the laws of the state in which it is organized and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to do so could not reasonably be expected to cause a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents and the ELOC Term Sheet are within Borrower's powers, have been duly authorized (including by approval of the Borrower's Executive Committee, which has the authorization to borrow up to \$20 million without further approval by its Board of Directors), and are not in conflict with nor constitute a breach of any provision contained in Borrower's Certificate/Articles of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement by which it is bound, except to the extent such default could not reasonably be expected to cause a Material Adverse Effect.

5.3 Intellectual Property. To the best of Borrower's knowledge, each of the copyrights, Trademarks and patents is valid and enforceable, and no part of such intellectual property has been judged invalid or unenforceable, in whole or in part, and no claim has been made to Borrower that any part of such intellectual property violates the rights of any third party except to the extent such claim could not reasonably be expected to cause a Material Adverse Effect.

5.4 Legal Name. Borrower's exact legal name is as set forth in the first paragraph of this Agreement.

5.5 No Material Adverse Change in Financial Statements. All consolidated and consolidating financial statements related to Borrower and any Subsidiary that are delivered by Borrower to Lender or which are publicly filed with the SEC fairly present in all material respects Borrower's consolidated and consolidating financial condition as of the date thereof and Borrower's consolidated and consolidating results of operations for each period then ended. There has not been a material adverse change in the consolidated or in the consolidating financial condition of Borrower since the date of the most recent of such financial statements publicly filed with the SEC.

5.6 Solvency, Payment of Debts. Borrower is able to pay its debts as they mature; the fair saleable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; and Borrower is not left with unreasonably small capital after the transactions contemplated by this Agreement.

5.7 Compliance with Laws and Regulations. Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could have a Material Adverse Effect. Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied in all material respects with all the provisions of the Federal Fair Labor Standards Act. Borrower is in compliance with all environmental laws, regulations and ordinances except where the failure to comply is not reasonably likely to have a Material Adverse Effect. Borrower has not violated any statutes, laws, ordinances or rules applicable to it, the violation of which could reasonably be expected to have a Material Adverse Effect. Borrower and each Subsidiary have filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein except those being contested in good faith with adequate reserves under GAAP or where the failure to file such returns or pay such taxes could not reasonably be expected to have a Material Adverse Effect.

5.8 Government Consents. Borrower and each Subsidiary have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted, except where the failure to do so could not reasonably be expected to cause a Material Adverse Effect.

5.9 Full Disclosure. No representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Lender taken together with all such certificates and written statements furnished to Lender contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading, it being recognized by Lender that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results.

6. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees that, until payment in full of all outstanding Obligations (other than inchoate indemnity obligations), and for so long as Lender may have any commitment to make a Credit Extension hereunder, such Borrower shall do all of the following:

6.1 Good Standing and Government Compliance. Borrower shall maintain its and each of its Subsidiaries' corporate existence and good standing in the jurisdiction of formation, shall maintain qualification and good standing in each other jurisdiction in which the failure to so qualify could have a Material Adverse Effect, and shall furnish to Lender the organizational identification number issued to Borrower by the authorities of the state in which Borrower is organized, if applicable. Borrower shall meet, and shall cause each Subsidiary to meet, the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA. Borrower shall comply in all material respects with all applicable Environmental Laws, and maintain all material permits, licenses and approvals required thereunder where the failure to do so could reasonably be expected to have a Material Adverse Effect. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject (including, without limitation, all rules and regulations of the SEC and NYSE American), and shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which or failure to comply with which could reasonably be expected to have a Material Adverse Effect.

6.2 Taxes. Borrower shall make, and cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, including, but not limited to, those laws concerning income taxes, F.I.C.A., F.U.T.A. and state disability, and will execute and deliver to Lender, on demand, proof satisfactory to Lender indicating that Borrower or a Subsidiary has made such payments or deposits and any appropriate certificates attesting to the payment or deposit thereof; provided that the Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

6.3 Insurance.

(a) Borrower, at its expense, shall maintain liability and other insurance in an amount not less than One Million Dollars (\$1,000,000) and of a type that are customary to businesses similar to Borrower's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Lender. All policies of property insurance shall contain a Lender's loss payable endorsement, in a form satisfactory to Lender, showing Lender as an additional loss payee, and all liability insurance policies shall show Lender as an additional insured and specify that the insurer must give at least 30 days' notice to Lender before canceling its policy for any reason. Upon Lender's request, the Borrower shall deliver to Lender certified copies of the policies of insurance and evidence of all premium payments. If an Event of Default has occurred and is continuing, proceeds payable under any casualty policy shall, at Lender's option, be payable to Lender to be applied on account of the Obligations.

(c) Further Assurances. On the reasonable request of Lender, Borrower shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, reasonably necessary to give full effect to this Loan Agreement.

7. NEGATIVE COVENANTS.

Borrower covenants and agrees that, until the outstanding Obligations (other than inchoate indemnity obligations) are paid in full, Borrower will not do any of the following without Lender's prior written consent, which shall not be unreasonably withheld:

7.1 Dispositions. Convey, sell, lease, license, transfer or otherwise dispose of (collectively, to "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than in the ordinary course of business. Borrower will not engage in any bulk sale of all or substantially all of its assets.

7.2 No Investment Company; Margin Regulation. Become or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

8.1 Payment Default. If Borrower fails to pay any of the Obligations within ten (10) calendar days of when due.

8.2 Covenant Default.

(a) If Borrower fails to perform any obligation under Article 6 or violates any of the covenants contained in Article 7 of this Agreement; or

(b) If Borrower fails or neglects to perform or observe any other material term, provision, condition, covenant contained in this Agreement, in any of the Loan Documents, in the ELOC Agreement, or in any other present or future agreement between Borrower and Lender and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within ten (10) calendar days after Borrower receives notice thereof (during such cure period no Credit Extensions will be made).

8.3 Material Adverse Effect. If there occurs any Material Adverse Effect.

8.4 Attachment. If any material portion of Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) days, or if a Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of a Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten (10) days after a Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by a Borrower (provided that no Credit Extensions will be made during such cure period).

8.5 Insolvency. If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against a Borrower and is not dismissed or stayed within thirty (30) days (provided that no Credit Extensions will be made prior to the dismissal of such Insolvency Proceeding).

8.6 Change in Control. If a Change in Control occurs.

8.7 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Lender by any Responsible Officer pursuant to this Agreement or to induce Lender to enter into this Agreement or any other Loan Document.

8.8 ELOC Agreement. Borrower fails to execute the ELOC Agreement within fifteen (15) calendar days from the Closing Date on terms which are consistent with the ELOC Term Sheet and on terms which are reasonably acceptable to Lender and customary of transactions of such a nature.

9. LENDER'S RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Lender may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

- (a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable;
- (b) Cease making Advances or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Lender; and
- (c) Set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Lender, and (ii) indebtedness at any time owing to or for the credit or the account of Borrower held by Lender.

9.2 No Obligation to Pursue Others. Lender has no obligation to attempt to satisfy the Obligations by collecting them from any other Person liable for them and Lender may release, modify or waive any collateral provided by any other Person to secure any of the Obligations, all without affecting Lender's rights against Borrower. Borrower waives any rights they may have to require Lender to pursue any other Person for any of the Obligations.

9.3 Remedies Cumulative. Lender's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided by law or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it. No waiver by Lender shall be effective unless made in a written document signed on behalf of Lender and then shall be effective only in the specific instance and for the specific purpose for which it was given. Borrower expressly agrees that this Section may not be waived or modified by Lender by course of performance, conduct, estoppel or otherwise.

9.4 Demand; Protest. Except as otherwise provided in this Agreement, Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment and any other notices relating to the Obligations.

10. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by email to Borrower or to Lender, as the case may be, at its addresses set forth below:

If to Borrower:

Ault Alliance, Inc.  
11411 Southern Highlands Parkway, Suite 240  
Las Vegas, NV 89141  
Attn: Milton C. Ault, III  
Email:

(with a copy to, which shall not constitute notice):

Ault Alliance, Inc.  
122 East 42<sup>nd</sup> Street  
50<sup>th</sup> Floor, Suite 5000  
New York, NY 10168  
Attn: Henry Nisser  
Email:

If to Lender:

OREE Lending Company, LLC

and

Helios Funds, LLC

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to principles of conflicts of law. Borrower and Lender hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of New York, State of New York. THE UNDERSIGNED ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT BETWEEN THE UNDERSIGNED PARTIES.

12. GENERAL PROVISIONS.

12.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties and shall bind all Persons who become bound as a debtor to this Agreement; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Lender's prior written consent, which consent may be granted or withheld in Lender's sole discretion. Lender shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Lender's obligations, rights and benefits hereunder.

12.2 Indemnification. Borrower shall defend, indemnify and hold harmless Lender and its Affiliates, officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses in any way suffered, incurred, or paid by Lender, its Affiliates, officers, employees and agents as a result of or in any way arising out of, following, or consequential to transactions between Lender and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), except for obligations, demands, claims, liabilities and losses caused by Lender's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing, Integration. All amendments to or terminations of this Agreement or the other Loan Documents must be in writing. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the other Loan Documents, if any, are merged into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

12.7 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations (other than inchoate indemnity obligations) remain outstanding or Lender has any obligation to make any Credit Extension to Borrower. The obligations of Borrower to indemnify Lender with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Lender have run.

12.8 Expenses. Borrower shall reimburse Lender for all legal expenses of Lender incurred in connection with the review and preparation of this Agreement, not to exceed \$10,000.

*[signature page follows]*



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

**AULT ALLIANCE, INC.**

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

**OREE LENDING COMPANY, LLC**

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

**HELIOS FUNDS LLC**

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

*[Signature Page to Loan Agreement]*

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**GUARANTY**

GUARANTY, dated as of June 4, 2024 (this "Guaranty"), made by each of the signatories hereto (the "Guarantors"), in favor of OREE Lending Company, LLC and Helios Funds LLC (collectively, the "Lender").

**WITNESSETH:**

WHEREAS, Ault Alliance, Inc. (the "Company") and the Lender have entered into a loan agreement of even date herewith, pursuant to which the Lender shall loan money from time to time to the Company of up to \$20 million of principal (the "Loan"), which loans will be evidenced by one or more notes, which will be issued with an original issuance discount (each, a "Note"), subject to the terms and conditions set forth therein; and

WHEREAS, each Guarantor will directly or indirectly benefit from the extension of credit to the Company represented by the issuance of each Note;

NOW, THEREFORE, in consideration of the premises and to induce the Lender to provide the Loan and to carry out the transactions contemplated thereby, each Guarantor hereby agrees with the Lender as follows:

1. Definitions. Unless otherwise defined herein, terms defined in each Note and used herein shall have the meanings given to them in each Note. The words "hereof," "herein," "hereto" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty, and Section and Schedule references are to this Guaranty unless otherwise specified. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The following terms shall have the following meanings:

"Guaranty" means this Guaranty, as the same may be amended, supplemented or otherwise modified from time to time.

"Obligations" means, in addition to all other costs and expenses of collection incurred by Lender in enforcing any of such Obligations and/or this Guaranty, all of the liabilities and obligations (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that are now or may be hereafter contracted or acquired, or owing to, of the Company or any Guarantor to the Lender, pursuant to each Note, in each case, whether now or hereafter existing, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from the Lender as a preference, fraudulent transfer or otherwise as such obligations may be amended, supplemented, converted, extended or modified from time to time. Without limiting the generality of the foregoing, the term "Obligations" shall include, without limitation: (i) principal of, and interest, if any, on each Note and the Loan extended pursuant thereto; (ii) any and all other fees, indemnities, costs, obligations and liabilities of the Company or any Guarantor from time to time under or in connection with this Guaranty and each Note; and (iii) all amounts (including but not limited to post-petition interest) in respect of the foregoing that would be payable but for the fact that the obligations to pay such amounts are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Company or any Guarantor.

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2. Guaranty.

(a) Guaranty.

(i) The Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantee to the Lender and its successors, endorsees, transferees and assigns, the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

(ii) Anything herein or in each Note to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under each Note shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws, including laws relating to the insolvency of debtors, fraudulent conveyance or transfer or laws affecting the rights of creditors generally (after giving effect to the right of contribution established in Section 2(b)).

(iii) Each Guarantor agrees that the Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guaranty contained in this Section 2 or affecting the rights and remedies of the Lender.

(iv) The guaranty contained in this Section 2 shall remain in full force and effect until all the Obligations and the obligations of each Guarantor under the guaranty contained in this Section 2 shall have been satisfied by indefeasible payment in full (other than inchoate indemnity obligations or indemnification obligations for which no claim or demand for payment, whether oral or written has been made at such time). Notwithstanding the foregoing and for the avoidance of doubt, upon payment in full (other than inchoate indemnity obligations or indemnification obligations for which no claim or demand for payment, whether oral or written has been made at such time), this Guaranty shall automatically terminate, and the Lender shall at the Guarantors' sole cost and expense, execute and deliver to the Guarantors such documents as the Guarantors shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

(v) No payment made by the Company, any of the Guarantors, any other guarantor or any other Person or received or collected by the Lender from the Company, any of the Guarantors, 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 (other than any payment made by such Guarantor in respect of the Obligations or any payment received or collected from such Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the Obligations are indefeasibly paid in full.

(b) Right of Contribution. Subject to Section 2(c), as among the Guarantor, each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2(c). The provisions of this Section 2(b) shall in no respect limit the joint and several obligations and liabilities of any Guarantor to the Lender, and each Guarantor shall remain liable to the Lender for the full amount of the Obligations guaranteed hereunder.

(c) No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Lender, no Guarantor shall be entitled to be subrogated to any of the rights of the Lender against the Company or any other Guarantor or any collateral security or guaranty or right of offset held by the Lender for the payment of the Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Company or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Lender by the Company on account of the Obligations are indefeasibly paid in full (other than inchoate indemnity obligations or indemnification obligations for which no claim or demand for payment, whether oral or written has been made at such time). If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Lender, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Lender, in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Lender, if required), to be applied against the Obligations, whether matured or unmatured, in such order as the Lender may determine. If (a) any Guarantor shall make payment to the Lender of all or any part of the Obligations, and (b) the Obligations shall have been paid in full (other than inchoate indemnity obligations or indemnification obligations for which no claim or demand for payment, whether oral or written has been made at such time), the Lender will, at such Guarantor's request and expense, promptly execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Obligations resulting from such payment by such Guarantor.

(d) 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 the Lender may be rescinded by the Lender 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 guaranty 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 the Lender, and each Note may be amended, modified, supplemented or terminated, in whole or in part, as the Lender may deem advisable from time to time, and any collateral security, guaranty or right of offset at any time held by the Lender for the payment of the Obligations may be sold, exchanged, waived, surrendered or released.

(e) Guaranty Absolute and Unconditional. 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 the Lender upon the guaranty contained in this Section 2 or acceptance of the guaranty contained in this Section 2; the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guaranty contained in this Section 2; and all dealings between the Company and any of the Guarantors, on the one hand, and the Lender, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guaranty contained in this Section 2. Each Guarantor waives, to the extent permitted by law, diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Company or any of the Guarantors with respect to the Obligations. Each Guarantor understands and agrees that the guaranty contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (i) the validity or enforceability of each Note, 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 the Lender, (ii) any defense, set-off or counterclaim (other than a defense of payment or performance or fraud by Lender) which may at any time be available to or be asserted by the Company or any other Person against the Lender, or (iii) any other circumstance whatsoever (with or without notice to or knowledge of the Company or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Company for the Obligations, or of such Guarantor under the guaranty contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as they may have against the Company, any other Guarantor or any other Person or against any collateral security or guaranty for the Obligations or any right of offset with respect thereto, and any failure by the Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from the Company, any other Guarantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of the Company, any other Guarantor or any other Person or any such collateral security, guaranty 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 the Lender against any Guarantor. For the purposes hereof, "demand" shall include the commencement and continuance of any legal proceedings.

(f) Reinstatement. The guaranty contained in this Section 2 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 the Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Company or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

(g) Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Lender without set-off or counterclaim in U.S. dollars at the address provided by the Lender.

3. Representations and Warranties. Each Guarantor hereby makes the following representations and warranties to Lender as of the date hereof, as applicable:

(a) Organization and Qualification. Each Guarantor is (A) an individual with full capacity, who has knowledge and a complete understanding of the terms set forth in this Guaranty; or (B)(1) a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization as set forth on the signature pages hereto, (2) has all requisite corporate, limited liability company or limited partnership power and authority to conduct its business as now conducted and as presently contemplated and to execute, deliver and perform its obligations under this Guaranty, and to consummate the transactions contemplated hereby and (3) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary except where the failure to be so qualified (individually or in the aggregate) would not result in a material adverse effect.

(b) Authorization; Enforcement. The Guarantor has the requisite power and authority to enter into and to consummate the transactions contemplated by this Guaranty, and otherwise to carry out its obligations hereunder. The execution and delivery of this Guaranty by any Guarantor that is an entity and the consummation by it of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Guarantor. This Guaranty has been duly executed and delivered by the Guarantor and constitutes the valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(c) No Conflicts. The execution, delivery and performance of this Guaranty by the Guarantor and the consummation by the Guarantor of the transactions contemplated thereby do not and will not (i) in the case of a Guarantor that is an entity, conflict with or violate any provision of its certificate or articles of incorporation, operating agreement, bylaws or other organizational documents, or (ii) conflict with, constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Guarantor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Guarantor is subject (including federal and state securities laws and regulations), or by which any material property or asset of the Guarantor is bound or affected, except in the case of each of clauses (ii) and (iii), such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as could not, individually or in the aggregate, have or result in a material adverse effect. The business of any Guarantor that is an entity is not being conducted in violation of any law, ordinance or regulation of any governmental authority, except for violations which, individually or in the aggregate, do not have a material adverse effect.

(d) Consents and Approvals. The Guarantor is not required to obtain any consent, waiver, authorization or order of, or make any filing or registration with, any court or other federal, state, local, foreign or other governmental authority or other Person in connection with the execution, delivery and performance by the Guarantor of this Guaranty.

(e) [Reserved]

(f) Foreign Law. Each Guarantor has consulted with appropriate foreign legal counsel with respect to any of the above representations for which non-U.S. law is applicable. As applicable, such foreign counsel has advised each applicable Guarantor that such counsel knows of no reason why any of the above representations would not be true and accurate. Such foreign counsel was provided with copies of this Guaranty and each Note prior to rendering its advice, as applicable.

#### 4. Covenants.

(a) Each Guarantor covenants and agrees with the Lender that, from and after the date of this Guaranty until the Obligations shall have been indefeasibly paid in full (other than inchoate indemnity obligations or indemnification obligations for which no claim or demand for payment, whether oral or written has been made at such time), such Guarantor shall take, and/or shall refrain from taking, as the case may be, each commercially reasonable action that is necessary to be taken or not taken, as the case may be, so that no Event of Default (as defined in each Note) is caused by the failure to take such action or to refrain from taking such action by such Guarantor.

(b) [Reserved]

5. Miscellaneous.

(a) Amendments in Writing. None of the terms or provisions of this Guaranty may be waived, amended, supplemented or otherwise modified except in writing by the Guarantors and the Lender.

(b) Notices. All notices, requests and demands to or upon the Lender or any Guarantor hereunder shall be addressed to such party at its notice address set forth on Schedule 5(b).

(c) No Waiver by Course of Conduct; Cumulative Remedies. The Lender shall not by any act (except by a written instrument pursuant to Section 5(a)), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default under each Note. No failure to exercise, nor any delay in exercising, on the part of the Lender, 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 the Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Lender 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.

(d) Enforcement Expenses; Indemnification.

(i) Each Guarantor agrees to pay, or reimburse the Lender for, all its documented, reasonable costs and expenses incurred in collecting against such Guarantor under the guaranty contained in Section 2 or otherwise enforcing or preserving any rights under this Guaranty, including, without limitation, the reasonable fees and disbursements of counsel to the Lender.

(ii) Each Guarantor agrees to pay, and to save the Lender harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with any of the transactions contemplated by this Guaranty.

(iii) Each Guarantor agrees to pay, and to save the Lender harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Guaranty to the extent the Company would be required to do so pursuant to each Note, except to the extent resulting from the Lender's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(iv) The agreements in this Section 5(d) shall survive repayment of the Obligations.

(e) Successor and Assigns. This Guaranty shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the Lender and its successors and assigns; provided that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Guaranty without the prior written consent of the Lender.

(f) Set-Off. Each Guarantor hereby irrevocably authorizes the Lender at any time and from time to time while an Event of Default (as defined in each Note) shall have occurred and be continuing, without notice to such Guarantor or any other Guarantor, any such notice being expressly waived by each Guarantor, to set off and appropriate and apply any and all deposits, credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Lender to or for the credit or the account of such Guarantor, or any part thereof in such amounts as the Lender may elect, against and on account of the obligations and liabilities of such Guarantor to the Lender hereunder and claims of every nature and description of the Lender against such Guarantor, in any currency, whether arising hereunder, under each Note, as the Lender may elect, whether or not the Lender have made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The Lender shall notify such Guarantor promptly of any such set-off and the application made by the Lender of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lender under this Section 5(f) are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Lender may have.

(g) Counterparts. This Guaranty may be executed by two or more of the parties to this Guaranty on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

(h) Severability. Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(i) Section Headings. The section headings used in this Guaranty are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

(j) Integration. This Guaranty represent the agreement of the Guarantors and the Lender with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Lender relative to the subject matter hereof and thereof not expressly set forth or referred to herein or in each Note.

(k) Governing Laws. All questions concerning the construction, validity, enforcement and interpretation of this Guaranty shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. The Lender and the Guarantors agree that all proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Guaranty (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. The Lender and each Guarantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Guaranty and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Guaranty or the transactions contemplated hereby.



(l) Acknowledgements. Each Guarantor hereby acknowledges that:

(i) it has been advised by counsel in the negotiation, execution and delivery of this Guaranty;

(ii) the Lender has no fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Guaranty or each Note, and the relationship between the Guarantors, on the one hand, and the Lender, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(iii) no joint venture is created hereby or by each Note or otherwise exists by virtue of the transactions contemplated hereby among the Guarantors and the Lender.

(m) [Reserved]

(n) Release of Guarantors. Each Guarantor will be released from all liability hereunder concurrently with the indefeasible repayment in full of the Obligations (other than inchoate indemnity obligations or indemnification obligations for which no claim or demand for payment, whether oral or written has been made at such time).

(o) [Reserved]

(p) **WAIVER OF JURY TRIAL. EACH GUARANTOR AND, BY ACCEPTANCE OF THE BENEFITS HEREOF, THE LENDER, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTY AND FOR ANY COUNTERCLAIM THEREIN.**

\*\*\*\*\*

*(Signature Pages Follow)*

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

**GUARANTOR**

\_\_\_\_\_  
Milton C. Ault, III

**LENDER**

OREE LENDING COMPANY, LLC

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

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

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

HELIOS FUNDS LLC

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

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

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