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(TD72-8-10) (Mandatory 1-11)

**IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL.**

**THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.**

## DEED OF TRUST (Due on Transfer – Strict)

THIS DEED OF TRUST is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_  
\_\_\_\_\_  
(Borrower), whose address is \_\_\_\_\_;  
and the Public Trustee of the County in which the Property (see § 1) is situated (Trustee); for the benefit of \_\_\_\_\_  
\_\_\_\_\_  
(Lender), whose address is \_\_\_\_\_.

Borrower and Lender covenant and agree as follows:

**1. Property in Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following legally described property located in the \_\_\_\_\_ County of \_\_\_\_\_, State of Colorado:

known as No. \_\_\_\_\_ (Property Address),  
Street Address City State Zip  
together with all its appurtenances (Property).

**2. Note: Other Obligations Secured.** This Deed of Trust is given to secure to Lender:

**2.1.** the repayment of the indebtedness evidenced by Borrower's note (Note) dated \_\_\_\_\_ in the principal sum of \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_), with interest on the unpaid principal balance from \_\_\_\_\_ until paid, at the rate of \_\_\_\_\_ percent per annum, with principal and interest payable at \_\_\_\_\_ or such other place as Lender may designate, in \_\_\_\_\_ payments of \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_), due on the \_\_\_\_\_ day of each \_\_\_\_\_ beginning \_\_\_\_\_; such payments to continue until the entire indebtedness evidenced by said Note is fully paid; however, if not sooner paid, the entire principal amount outstanding and accrued interest thereon shall be due and payable on \_\_\_\_\_; and Borrower is to pay to Lender a late charge of \_\_\_\_\_% of any payment not received by Lender within \_\_\_\_\_ days after payment is due; and Borrower has the right to prepay the principal amount outstanding under said Note, in whole or in part, at any time without penalty except \_\_\_\_\_;

**2.2.** the payment of all other sums, with interest thereon at \_\_\_\_\_% per annum, disbursed by Lender in accordance with this Deed of Trust to protect the security of this Deed of Trust; and

**2.3.** the performance of the covenants and agreements of Borrower herein contained.

**3. Title.** Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date; and subject to \_\_\_\_\_.

**4. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

**5. Application of Payments.** All payments received by Lender under the terms hereof shall be applied by Lender first in payment of amounts due pursuant to § 23 (Escrow Funds for Taxes and Insurance), then to amounts disbursed by Lender pursuant to § 9 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note.

**6. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner set out in § 23 (Escrow Funds for Taxes and Insurance) or, if not required to be paid in such manner, by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this section if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or

58 forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as  
59 ordered by the court to the registry of the court in which such proceedings are filed.

60 **7. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured  
61 against loss by fire or hazards included within the term “extended coverage” in an amount at least equal to the lesser of (a) the  
62 insurable value of the Property or (b) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior  
63 encumbrances on the Property. All of the foregoing shall be known as “Property Insurance.”

64 The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen  
65 by Borrower subject to Lender’s right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof  
66 shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least  
67 ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to Lender  
68 at or before closing. Lender shall have the right to hold the policies and renewals thereof.

69 In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if  
70 not made promptly by Borrower.

71 Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided said restoration or repair is  
72 economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not  
73 economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the  
74 sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if  
75 Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with § 16 (Notice) by Lender to  
76 Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the  
77 insurance proceeds, at Lender’s option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

78 Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in §§ 4  
79 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) or change the amount of such installments.  
80 Notwithstanding anything herein to the contrary, if under § 18 (Acceleration; Foreclosure; Other Remedies) the Property is  
81 acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof  
82 resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this  
83 Deed of Trust immediately prior to such sale or acquisition.

84 All of the rights of Borrower and Lender hereunder with respect to insurance carriers, insurance policies and insurance proceeds  
85 are subject to the rights of any holder of a prior deed of trust with respect to said insurance carriers, policies and proceeds.

86 **8. Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit  
87 waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust  
88 is on a leasehold. Borrower shall perform all of Borrower’s obligations under any declarations, covenants, by-laws, rules, or other  
89 documents governing the use, ownership or occupancy of the Property.

90 **9. Protection of Lender’s Security.** Except when Borrower has exercised Borrower’s rights under § 6 above, if  
91 Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if  
92 any action or proceeding is commenced which materially affects Lender’s interest in the Property, then Lender, at Lender’s option,  
93 with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary  
94 to protect Lender’s interest, including, but not limited to:

- 95 **9.1.** any general or special taxes or ditch or water assessments levied or accruing against the Property;
- 96 **9.2.** the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
- 97 **9.3.** sums due on any prior lien or encumbrance on the Property;
- 98 **9.4.** if the Property is a leasehold or is subject to a lease, all sums due under such lease;
- 99 **9.5.** the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender’s interest in  
100 the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property,  
101 receiver’s fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney  
102 in the employment of Lender or holder of the certificate of purchase;
- 103 **9.6.** all other costs and expenses allowable by the evidence of debt or this Deed of Trust; and
- 104 **9.7.** such other costs and expenses which may be authorized by a court of competent jurisdiction.

105 Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by  
106 law or otherwise to cure any default under said prior encumbrance.

107 Any amounts disbursed by Lender pursuant to this § 9, with interest thereon, shall become additional indebtedness of Borrower  
108 secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and  
109 Lender may bring suit to collect any amounts so disbursed plus interest specified in § 2.2 (Note: Other Obligations Secured). Nothing  
110 contained in this § 9 shall require Lender to incur any expense or take any action hereunder.

111 **10. Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided  
112 that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender’s  
113 interest in the Property.

114 **11. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any  
115 condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and

116 shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such  
117 proceeds are subject to the rights of any holder of a prior deed of trust.

118 In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the  
119 excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of  
120 the award due any prior lien holder (net award) shall be divided between Lender and Borrower, in the same ratio as the amount of  
121 the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property  
122 immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the  
123 amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the  
124 value immediately prior to the date of taking.

125 If the Property is abandoned by Borrower or if, after notice by Lender to Borrower that the condemnor offers to make an  
126 award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender  
127 is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums  
128 secured by this Deed of Trust.

129 Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in §§ 4  
130 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) nor change the amount of such installments.

131 **12. Borrower not Released.** Extension of the time for payment or modification of amortization of the sums secured by this  
132 Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of  
133 the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be  
134 required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of  
135 the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

136 **13. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or  
137 otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

138 **14. Remedies Cumulative.** Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all  
139 other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently,  
140 independently or successively.

141 **15. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein  
142 contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject  
143 to the provisions of § 24 (Transfer of the Property; Assumption). All covenants and agreements of Borrower shall be joint and  
144 several. The captions and headings of the sections in this Deed of Trust are for convenience only and are not to be used to interpret  
145 or define the provisions hereof.

146 **16. Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for  
147 in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such  
148 notice by first class U.S. mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may  
149 designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be  
150 effective upon (1) delivery to Lender or (2) mailing such notice by first class U.S. mail, to Lender's address stated herein or to  
151 such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of  
152 Trust shall be deemed to have been given to Borrower or Lender when given in any manner designated herein.

153 **17. Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Colorado. In the  
154 event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other  
155 provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the  
156 provisions of the Deed of Trust and Note are declared to be severable.

157 **18. Acceleration; Foreclosure; Other Remedies.** Except as provided in § 24 (Transfer of the Property; Assumption),  
158 upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon  
159 the Property, (unless Borrower has exercised Borrower's rights under § 6 above), at Lender's option, all of the sums secured by  
160 this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of  
161 sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in  
162 pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

163 If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice  
164 to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice and shall cause publication of  
165 the legal notice as required by law in a legal newspaper of general circulation in each county in which the Property is situated, and  
166 shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be  
167 required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the  
168 time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think  
169 best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not  
170 be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

171 Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale,  
172 including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this  
173 Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

174 **19. Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder,  
175 the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and  
176 interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided  
177 by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though  
178 no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

179 **20. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower  
180 hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under § 18 (Acceleration;  
181 Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due  
182 and payable.

183 Lender or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration  
184 under § 18 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure  
185 proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or  
186 insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed  
187 by any Court of competent jurisdiction upon ex parte application and without notice; notice being hereby expressly waived.

188 Upon Acceleration under § 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Lender, in  
189 person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property  
190 and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first  
191 to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the  
192 sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

193 **21. Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of  
194 Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees.  
195 If Lender shall not produce the Note as aforesaid, then Lender, upon notice in accordance with § 16 (Notice) from Borrower to  
196 Lender, shall obtain, at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the  
197 release of this Deed of Trust.

198 **22. Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemption in the Property under  
199 state or federal law presently existing or hereafter enacted.

200 **23. Escrow Funds for Taxes and Insurance.** This § 23 is not applicable if Funds, as defined below, are being paid pursuant  
201 to a prior encumbrance. Subject to applicable law, Borrower shall pay to Lender, on each day installments of principal and interest are  
202 payable under the Note, until the Note is paid in full, a sum (herein referred to as "Funds") equal to \_\_\_\_\_ of the  
203 yearly taxes and assessments which may attain priority over this Deed of Trust, plus \_\_\_\_\_ of yearly premium installments for  
204 Property Insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and  
205 reasonable estimates thereof, taking into account any excess Funds not used or shortages.

206 The principal of the Funds shall be held in a separate account by Lender in trust for the benefit of Borrower and deposited in  
207 an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency. Lender shall apply the  
208 Funds to pay said taxes, assessments and insurance premiums. Lender may not charge for so holding and applying the Funds,  
209 analyzing said account or verifying and compiling said assessments and bills. Lender shall not be required to pay Borrower any  
210 interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing  
211 credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional  
212 security for the sums secured by this Deed of Trust.

213 If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they  
214 fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is  
215 given in accordance with § 16 (Notice) by Lender to Borrower requesting payment thereof. Provided however, if the loan secured  
216 by this Deed of Trust is subject to RESPA or other laws regulating Escrow Accounts, such deficiency, surplus or any other  
217 required adjustment shall be paid, credited or adjusted in compliance with such applicable laws.

218 Upon payment in full of all sums secured by this Deed of Trust, Lender shall simultaneously refund to Borrower any Funds held  
219 by Lender. If under § 18 (Acceleration; Foreclosure; Other Remedies) the Property is sold or the Property is otherwise acquired by  
220 Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, whichever occurs  
221 first, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

222 **24. Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer": (i) a transfer  
223 or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein); (ii) the  
224 execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part  
225 thereof or interest therein); (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of 3  
226 years; (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty  
227 percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in Borrower and (v) the  
228 reorganization, liquidation or dissolution of Borrower. Not to be included as a Transfer are (x) the creation of a lien or  
229 encumbrance subordinate to this Deed of Trust; (y) the creation of a purchase money security interest for household appliances; or  
230 (z) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event  
231 of each and every Transfer:

232 **24.1.** All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

233           **24.2.** If a Transfer occurs and should Lender not exercise Lender's option pursuant to this § 24 to Accelerate,  
234 Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured  
235 hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run  
236 with the Property and remain in full force and effect until said sums are paid in full. Lender may without notice to Borrower deal  
237 with Transferee in the same manner as with Borrower with reference to said sums including the payment or credit to Transferee of  
238 undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging Borrower's liability  
239 hereunder for the obligations hereby secured.

240           **24.3.** Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to § 24.2 above, the  
241 mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or  
242 constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be  
243 estopped therefrom by virtue thereof. The issuance on behalf of Lender of a routine statement showing the status of the loan,  
244 whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

245           **25. Borrower's Copy.** Borrower acknowledges receipt of a copy of the Note and this Deed of Trust.  
246  
247

EXECUTED BY BORROWER.

IF BORROWER IS NATURAL PERSON(s):

\_\_\_\_\_ doing business as \_\_\_\_\_

IF BORROWER IS CORPORATION:  
ATTEST:

\_\_\_\_\_ Name of Corporation  
Secretary By \_\_\_\_\_  
President

(SEAL)

IF BORROWER IS PARTNERSHIP:

\_\_\_\_\_ Name of Partnership  
By \_\_\_\_\_  
A General Partner

IF BORROWER IS LIMITED LIABILITY COMPANY:

\_\_\_\_\_ Name of Limited Liability Company  
By \_\_\_\_\_  
Its Authorized Representative  
\_\_\_\_\_  
Title of Authorized Representative

STATE OF COLORADO  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_

\* The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

248 \*If a natural person or persons, insert the name(s) of such person(s). If a corporation, insert, for example, "John Doe as President and Jane Doe as  
249 Secretary of Doe & Co., a Colorado corporation." If a partnership, insert, for example, "Sam Smith as general partner in and for Smith & Smith,  
250 a general partnership." A Statement of Authority may be required if borrower is a limited liability company or other entity (§ 38-30-172, C.R.S.)