

Gregory Newman
Returned at Counter

2023-004243

Klamath County, Oregon



00315420202300042430080087

06/02/2023 02:29:29 PM

Fee: \$127.00

After recording return to:

The Richard L. Wendt Trust
Attention: Roderick C. Wendt, Co-Trustee
3250 Lakeport Boulevard
Klamath Falls, OR 97601-1099

**LINE OF CREDIT TRUST DEED, ASSIGNMENT OF RENTS,
AND UCC FIXTURE FILING ("TRUST DEED")
Maximum Principal Amount to be Advanced: \$500,000**

THE MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED PURSUANT TO THE APPLICABLE
LOAN DOCUMENTS IS \$500,000; HOWEVER, SUCH MAXIMUM AMOUNT MAY BE EXCEEDED
BY PRINCIPAL ADVANCES MADE TO PROTECT THE SECURITY OF THIS DEED OF TRUST.

ORS 86.155 STATEMENTS:

Maximum Principal Amount: \$500,000

Maturity Date: August 1, 2023 (with no extension), October 1, 2023 (with first optional extension),
December 1, 2023 (with second optional extension).

Notice to Recorder: This instrument serves as a fixture filing under the Oregon Uniform Commercial Code.

DATE: June 1, 2023

BETWEEN: KF ANTARCTICA, LLC, ("BORROWER")
an Oregon limited liability company
formerly known as HWN-KF'S-ANTARCTICA, LLC
and also as HWN-KFS-Antarctica, LLC
c/o Gregory S. Newman, Manager
PO Box 489
Klamath Falls, OR 97601
2859 Avalon Street
Klamath Falls, OR 97603

AND: THE RICHARD L. WENDT TRUST, ("LENDER")
by and through its trustees
Attention: Roderick C. Wendt, Co-Trustee
3250 Lakeport Boulevard
Klamath Falls, OR 97601-1099

AND: AMERITITLE ("TRUSTEE")
300 Klamath Avenue
Klamath Falls, OR 97601

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described real property located in the County of Lane, State of Oregon:

See Exhibit A attached hereto, which exhibit is by this reference incorporated herein

commonly known as 661 S. Spring Street and 801 S. Spring Street, Klamath Falls, Oregon;

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, and all proceeds thereof, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Trust Deed; and all of the foregoing, together with said property, are herein referred to as the "Property";

TO SECURE to Lender the repayment of the obligations evidenced by that certain Promissory Note dated June 1, 2023 executed by Borrower and delivered to Lender (the "Promissory Note"), in the maximum principal sum of Five Hundred Thousand Dollars (\$500,000), with interest thereon, with the balance of the indebtedness, if not sooner paid, due and payable (i) August 1, 2023, if the term of the loan evidenced by the Promissory Note (the "Term") expires at the end of the Initial Term referred to in the Promissory Note, (ii) October 1, 2023, if the Term expires at the end of the First Extension Period referred to in the Promissory Note, and (iii) December 1, 2023, if the Term expires at the end of the Second Extension Period referred to in the Promissory Note; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Trust Deed; and the performance of the covenants and agreements of Borrower herein contained and contained in the other agreements and instruments executed and delivered in connection with the loan evidenced by the Promissory Note. The Promissory Note reflects the agreement of Borrower and co-borrower Desert Lake Technologies, LLC, an Oregon limited liability company ("DLT", and with Borrower, the "Borrowers"), under that certain Loan Agreement dated June 1, 2023 among Lender and Borrowers (the "Loan Agreement").

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property. Borrower represents that the Property is encumbered with a first position trust deed (the "First Trust Deed") for the benefit of Northwest Farm Credit Services, PCA (the "Primary Lender"), and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to the First Trust Deed and any declarations, easements or restrictions and other encumbrances of record as of the date of this Trust Deed (collectively, the "Prior Encumbrances").

Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Promissory Note and other charges as provided in the Promissory Note and this Trust Deed.

2. Application of Payments. All payments received by Lender under the Promissory Note and Section 1 hereof shall be applied by Lender first to amounts due under the Promissory Note other than principal or interest; second to interest payable under the Promissory Note; third, at Lender's option, to the payment of any advances Lender may have made with respect to the Property; and fourth to the principal under the Promissory Note.

3. Charges; Liens. Except for liens associated with the Prior Encumbrances and property tax liens, Borrower shall promptly discharge any lien which has priority over this Trust Deed.

4. Hazard Insurance. Borrower shall keep any improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards as the Primary Lender may require, such insurance to be in such amounts and for such periods as Lender may reasonably require; provided, that Lender shall not require that the amount of such coverage exceed the amount of coverage required to pay the sums secured by this Trust Deed and the First Trust Deed.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld and that an insurance carrier approved by the Primary Lender shall automatically be deemed approved by Lender. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form reasonably acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. An insurance policy or renewal in form acceptable to the Primary Lender that includes the required mortgage clause in favor of Lender shall automatically be deemed in form acceptable to Lender. In the event of loss, Borrower shall, subject to any applicable requirements set forth in the First Trust Deed, give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower or the Primary Lender.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall, subject to any applicable requirements set forth in the First Trust Deed, be applied to restoration of the Property damaged if restoration from the insurance proceeds is economically feasible based upon fixed bids for restoration, but if restoration is not economically feasible, the insurance proceeds shall, subject to any applicable requirements set forth in the First Trust Deed, be applied to the sums secured by this Trust Deed. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender, subject to any applicable requirements set forth in the First Trust Deed, is authorized to collect and apply the insurance proceeds at Lender's option to restoration of the Property or to the sums secured by this Trust Deed.

If under Section 15 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof 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 Trust Deed immediately prior to such sale or acquisition.

5. Preservation and Maintenance of Property. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or material deterioration of the Property.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Trust Deed, or, notwithstanding Section 3 hereof, if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to tax lien foreclosure, construction lien foreclosure, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by Lender pursuant to this Section 6, with interest thereon, shall become additional indebtedness of Borrower secured by this Trust Deed. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment

thereof, and shall bear interest from the date of disbursement at the Default Rate under the Promissory Note. Nothing contained in this Section 6 shall require Lender to incur any expense or take any action hereunder.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property.

8. Condemnation. Subject to the rights of the Primary Lender under the First Trust Deed, the proceeds of any award or claim for damages, direct or consequential, in connection with condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, and subject to the rights of the Primary Lender under the First Trust Deed, the proceeds shall be applied to the sums secured by this Trust Deed, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, and subject to the rights of the Primary Lender under the First Trust Deed, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Trust Deed such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Trust Deed immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking with the balance of the proceeds paid to Borrower.

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

9. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Trust Deed.

10. Remedies Cumulative. All remedies provided in this Trust Deed are distinct and cumulative to any other right or remedy under this Trust Deed or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 14 hereof. The captions and headings of the Sections of this Trust Deed are for convenience only and are not to be used to interpret or define the provisions hereof.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Trust Deed shall be given by personal delivery or by certified mail, return receipt requested, to Borrower's address stated herein or to such other address that Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by personal delivery or by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Trust Deed shall be deemed to have been given to Borrower or Lender upon receipt.

13. Governing Law. The provisions of this Trust Deed shall be governed by and construed and enforced in accordance with the laws of the State of Oregon, without regard to conflicts-of-laws principles that might require the application of any other law.

14. Sale or other Transfer of the Property. If the Property or a material interest therein is transferred by Borrower in a manner not permitted by the Loan Agreement and without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Trust Deed to be immediately due and payable.

If Lender exercises its option to accelerate under this Section 14, Lender shall mail Borrower notice of acceleration in accordance with Section 12 hereof.

15. Acceleration; Remedies. Upon Borrower's default (as defined under Section 20 below), Lender at Lender's option may declare all of the sums secured by this Trust Deed to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law, subject to the rights of the Primary Lender under the First Trust Deed. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Section 15, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall give notice of sale in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Trust Deed; and (c) the excess, if any, to the person or persons legally entitled thereto.

16. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Trust Deed, Borrower shall have the right to "reinstate" this Trust Deed if all payments are made to Lender as required under Oregon law and Borrower takes such action as Lender may reasonably require to assure that the lien of this Trust Deed, Lender's interest in the Property, and Borrower's obligation to pay the sums secured by this Trust Deed shall continue unimpaired. Upon such payment and cure by Borrower, this Trust Deed and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

17. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, subject to the rights of the Primary Lender under the First Trust Deed, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Section 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under Section 15 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall, subject to the rights of the Primary Lender under the First Trust Deed, be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Trust Deed. Lender and the receiver shall be liable to account only for those rents actually received.

Nothing herein shall constitute Lender a "mortgagee in possession" prior to Lender's actual entry upon and taking possession of the Property, entry upon and taking possession by a receiver not constituting possession by Lender.

18. Reconveyance. Upon payment of all sums secured by this Trust Deed, Lender shall request Trustee to reconvey the Property and shall surrender this Trust Deed and all notes, if any, evidencing indebtedness secured by this Trust Deed to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

19. Substitute Trustee. In accordance with applicable law, Lender may from time to time remove Trustee and appoint a successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

20. Default. The occurrence of any one or more of the following shall constitute a default hereunder:

20.1 An event of default occurs under the Promissory Note or the Loan Agreement.

20.2 Failure to make any payment due under this Trust Deed if not cured within five business days after written notice thereof given to Borrower by Lender.

20.3 Failure by Borrower to perform any other covenant, agreement or obligation contained in this Trust Deed if not cured within 15 days after written notice thereof to Borrower; provided, however, that if such cure cannot be completed within the 15 day period, Borrower shall be permitted such additional time as is required to cure the default, not to exceed 60 days, if Borrower commences such cure within 15 days and diligently pursues it thereafter.

20.4 Any transfer of the Property or any interest therein in contravention of the provisions of Section 14.

20.5 Any representation or disclosure made to Lender by Borrower proves to be materially false or misleading when made, whether or not that representation or disclosure is contained herein.

21. Attorney's Fees. As used in this Trust Deed, "attorney's fees" shall include all reasonable attorney's fees incurred by Lender in exercising rights hereunder, including but not limited to reasonable attorney's fees incurred at trial or awarded by an appellate court.

[Signature page follows]

IN WITNESS WHEREOF, Borrower has executed this Trust Deed.

KF ANTARCTICA, LLC

By: _____

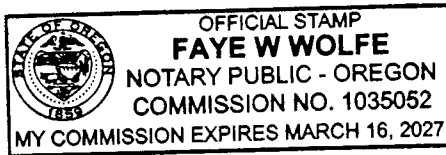
Gregory S. Newman, Manager

STATE OF OREGON)

) ss.

County of Klamath)

The foregoing instrument was acknowledged before me this 2nd day of June, 2023 by Gregory S. Newman, in his capacity as Manager of KF ANTARCTICA, LLC.



Notary Public for Oregon

My Commission Expires 3-16-2027.

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

Lots 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in Block 11 of RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Lots 6, 7, 8, and 9 in Block 19 and Lots 1, 2, 3, 4 and 5 in Block 20 of SECOND RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

All of Vacated Lake Street being bounded on the North by the South line of Lot 5 in Block 20 of Second Railroad Addition, on the West by the East line of Spring Street, on the South by the North line of Lot 6 in Block 19 of Second Railroad Addition, and on the East by West line of the Southern Pacific Railroad right of way, all in Second Railroad Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.