

201806180104  
08/18/2018 10:00 AM Pages: 1 of 18 Fees: \$215.00  
Skagit County Auditor

This space provided for Recorder's Use

WHEN RECORDED RETURN TO:

Paul K. Friedrich  
Attorney at Law  
601 Union Street, Suite 4100  
Seattle WA, 98101

---

DEED OF TRUST AND ASSIGNMENT OF RENTS

Grantor(s): Dakota Creek Industries, Inc.  
Beneficiary: Argonaut Insurance Company  
Trustee: Chicago Title Insurance Company

Legal Description:

(0.1400 ac) ANACORTES LTS 16 & 17 BLK 4

SITUATE IN THE CITY OF ANACORTES, COUNTY OF SKAGIT, STATE OF WASHINGTON.

Assessor's Property Tax Parcel or Account No.: P54932

Commonly known as: 808 4<sup>th</sup> Street, Anacortes, Washington 98221

**THIS DEED OF TRUST IS DATED** June \_\_\_\_\_, 2018, between **Dakota Creek Industries, Inc.**, whose address is 820 4<sup>th</sup> Street, Anacortes, WA 98221 (referred to below as "Grantor"); **Argonaut Insurance Company** and/or its assigns, whose address is 13100 Wortham Center Drive, Suite 290, Houston, Texas 77065 (referred to below as "Beneficiary"); and **Chicago Title Insurance Company**, whose address is 701 5th Avenue, Suite 2700, Seattle, Washington 98104 (referred to below as "Trustee").

1. **INDEBTEDNESS.** This Deed of Trust secures the Grantor's obligation to reimburse the Beneficiary for amounts, if any, actually paid by Beneficiary to claimants under Performance Bond No. SUR0035516, Payment Bond No. SUR0035516 and Warranty Bond No. SUR0035517 (collectively, the "Bonds"), with the maximum total amount to be secured hereby not to exceed the principal amount of \$10,865,575, plus reasonable attorney fees, costs, and expenses associated with an actual obligation to indemnify hereby arising under Paragraph 2 of the General Indemnity Agreement (as defined below). As of the date hereof, no demands for payment have been made under the Bonds and the amount of the indemnity obligation presently outstanding is zero (\$0.00).

**THIS DEED OF TRUST IS INTENDED ALSO AS A FIXTURE FILING AND IS TO BE INDEXED NOT ONLY AS A DEED OF TRUST BUT ALSO AS A FIXTURE FILING.**

2. **CONVEYANCE AND GRANT.** For valuable consideration, Grantor conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of Beneficiary all of Grantor's right, title, and interest in and to the real property described above, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all appliances, furniture and furnishings affixed to the real property; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, and all requisite approvals, licenses, permits, variances, cooperative agreements, tax credits (if applicable), tax abatement benefits (if applicable), and land-use entitlements, located in Skagit County, State of Washington (the "Real Property").

Grantor hereby assigns as security to Beneficiary, all of Grantor's right, title, and interest in and to all leases, Rents, and profits of the Property. Beneficiary grants to Grantor a license to collect the Rents and profits, which license may be revoked at Beneficiary's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness. Grantor further grants to Beneficiary a security interest in all Personal Property.

3. **DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Beneficiary.** The word "Beneficiary" means Argonaut Insurance Company, its successors and assigns, and Atlantic Specialty Insurance Company, its successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Beneficiary, and Trustee, and include without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Grantor.** The word "Grantor" means Dakota Creek Industries, Inc.

**Guarantor.** The word "Guarantor" means and includes without limitation, any and all guarantors, sureties, and accommodation parties in connection with the Indebtedness.

**Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means Grantor's obligation to reimburse the Beneficiary for amounts, if any, actually paid by Beneficiary to claimants under Performance Bond No. SUR0035516, Payment Bond No. SUR0035516 and Warranty Bond No. SUR0035517 (collectively, the "Bonds"), with the maximum total amount to be secured hereby not to exceed the principal amount of \$10,865,575, plus reasonable attorney fees, costs, and expenses of any kind or nature associated with an actual obligation to indemnify hereby arising under Paragraph 2 of the General Indemnity Agreement (as defined below). As of the date hereof, no demands for payment have been made under the Bonds and the amount of the indemnity obligation presently outstanding is zero (\$0.00). **Indemnitor.** The word "Indemnitor" means Dakota Creek Industries, Inc., and is also referred to as "Grantor" herein.

**General Indemnity Agreement.** The words "General Indemnity Agreement" mean the General Indemnity Agreement dated September 14, 2016, (Exhibit A), from Indemnitor in favor of Beneficiary, together with all substitutions for the General Indemnity Agreement. The maturity date of this Deed of Trust, if not sooner paid, is twenty-five (25) years from the date hereof.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" section.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, with the exception of the General Indemnity Agreement, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means Chicago Title Insurance Company, and any substitute or successor trustees.

THE GENERAL INDEMNITY AGREEMENT AND THIS DEED OF TRUST ARE GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

4. **GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Beneficiary from

bringing any action against Grantor, including a claim for deficiency to the extent Beneficiary is otherwise entitled to a claim for deficiency, before or after Beneficiary's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**5. GRANTOR'S REPRESENTATION AND WARRANTY.** Grantor warrants that Grantor has the full power and right to enter into this Deed of Trust and to hypothecate the Property.

**6. PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Indemnitor shall pay to Beneficiary all Indebtedness secured by this Deed of Trust as it becomes due, and Grantor shall strictly perform all of Grantor's obligations under this Deed of Trust and the Related Documents.

**7. POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. Except as disclosed to and acknowledged by Beneficiary in writing, Grantor represents and warrants to Beneficiary that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Beneficiary in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Beneficiary in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Beneficiary and its agents to enter upon the Property, upon two (2) business days' advance notice to Grantor, to make such inspections and tests as Beneficiary may deem appropriate to determine compliance of the Property with this

section of the Deed of Trust. Any inspections or tests made by Beneficiary shall be for Beneficiary's purposes only and shall not be construed to create any responsibility or liability on the part of Beneficiary to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste. Grantor hereby (a) releases and waives any future claims against Beneficiary for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Beneficiary against any and all claims, losses, liabilities, damages, penalties, and expenses which Beneficiary may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Beneficiary's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Specifically without limitation, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Beneficiary.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Beneficiary. As a condition to the removal of any Improvements, Beneficiary may require Grantor to make arrangements satisfactory to Beneficiary to replace such Improvements with Improvements of at least equal value.

**Beneficiary's Right to Enter.** Beneficiary and its agents and representatives may, upon two (2) business days' advance notice to Grantor, enter upon the Real Property at all reasonable times to attend to Beneficiary's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Beneficiary in writing prior to doing so and so long as, in Beneficiary's sole opinion, Beneficiary's interests in the Property are not jeopardized. Beneficiary may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Beneficiary, to protect Beneficiary's interest.

**Duty to Protect.** Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**8. ADA/FHAA Compliance.** So long as this Deed of Trust remains outstanding, Grantor will, at its own cost and expense, in respect of the Property and in respect of Grantor's business

activities at or within the Property: (a) comply with all requirements of the federal Americans with Disabilities Act (the "ADA") and the federal Fair Housing Amendments Act of 1988 (the "FHAA") and the rules and regulations promulgated thereunder (the "Rules"), to the extent applicable to Grantor's ownership, management, operation, leasing, use, construction, reconstruction, repair, remodeling, rehabilitation, or alteration of the Property or any part thereof; (b) immediately provide to Beneficiary written notice (and copies of) any and all notices of actual, potential, or alleged violations of the ADA, the FHAA, or the Rules and any and all governmental investigations or regulatory actions instituted or threatened against Grantor or the Property or Grantor's business activities at or within the Property regarding the ADA, the FHAA, or the Rules; and (c) furnish to Beneficiary, from time to time whenever reasonably requested by Beneficiary, a Compliance Assessment, in form and substance reasonably satisfactory to Beneficiary, prepared by an architect or engineer with skill, experience, and reputation acceptable to Beneficiary, in the field of compliance with the ADA or the FHAA, as applicable.

**9. CONSENT BY BENEFICIARY.** The Grantor shall not, without first obtaining the Beneficiary's written consent, which shall not be unreasonably withheld, sell, transfer, or assign the Real Property, or any interest in the real property.

**10. TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are a part of this Deed of Trust.

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Beneficiary under this Deed of Trust, except for the lien of taxes and assessments not due, and except as otherwise provided in this Deed of Trust

**Right To Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Beneficiary, deposit with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Beneficiary and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Beneficiary as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Beneficiary satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Beneficiary at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Beneficiary at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any

mechanic's lien, material men's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$5,000.00. Grantor will upon request of Beneficiary furnish to Beneficiary advance assurances satisfactory to Beneficiary that Grantor can and will pay the cost of such improvements.

**11. PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall be obligated to maintain insurance on the Real Property that is the subject of this Deed of Trust in the form and in the amounts in place as of the date of this Deed of Trust. To the extent Grantor does not currently have in place insurance equal to the replacement value of any improvement on the Real Property, Beneficiary may, in the exercise of its reasonable discretion, request Grantor in writing to obtain such insurance, and if Grantor does not do so within 30 days of receipt of such a request, Beneficiary may do so, with the cost of such insurance added to the General Indemnity Agreement balance. The execution of this Deed of Trust shall be considered an assignment to Beneficiary of the right to receive the proceeds of such insurance to the extent there is an outstanding and unpaid Indebtedness balance at the time proceeds are paid by the insurer. Upon foreclosure of this Deed of Trust or other transfer of title to the subject real property in extinguishment of some or all of the indebtedness secured hereby, all interest of the Grantor in any insurance policies in force shall pass to the purchaser, grantee, or transferee.

**Grantor's Report on Insurance.** Upon request of Beneficiary, however not more than once a year, Grantor shall furnish to Beneficiary a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Beneficiary, have an independent appraiser satisfactory to Beneficiary determine the cash value replacement cost of the Property.

#### WARNING

**Unless Grantor provides Beneficiary with evidence of the insurance coverage as required herein, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the Property becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.**

**Grantor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to the Indemnity Agreement balance. If the cost is added to the Indemnity Agreement balance, the interest rate on the Indemnity Agreement will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.**

**12. TAX AND INSURANCE RESERVES.** Subject to any limitations set by applicable law and if Grantor fails to pay any taxes, assessments or insurance when due, Beneficiary may require Grantor to maintain with Beneficiary reserves for payment of annual taxes, assessments, and

insurance premiums, which reserves shall be created by advance payment or monthly payments of a sum estimated by Beneficiary to be sufficient to produce, at least fifteen (15) days before due, amounts at least equal to the taxes, assessments, and insurance premiums to be paid. If fifteen (15) days before payment is due the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Beneficiary. The reserve funds shall be held by Beneficiary as a general deposit from Grantor, which Beneficiary may satisfy by payment of the taxes, assessments, and insurance premiums required to be paid by Grantor as they become due. Beneficiary shall have the right to draw upon the reserve funds to pay such items, and Beneficiary shall not be required to determine the validity or accuracy of any item before paying it. Nothing in the Deed of Trust shall be construed as requiring Beneficiary to advance other monies for such purposes, and Beneficiary shall not incur any liability for anything it may do or omit to do with respect to the reserve account. Subject to any limitations set by applicable law, if the reserve funds disclose a shortage or deficiency, Grantor shall pay such shortage or deficiency as required by Beneficiary. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Beneficiary is hereby authorized to withdraw and apply such amounts on the Indebtedness upon the occurrence of an Event of Default. Beneficiary shall not be required to pay any interest or earnings on the reserve funds unless required by law or agreed to by Beneficiary in writing. Beneficiary does not hold the reserve funds in trust for Grantor, and Beneficiary is not the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

**13. BENEFICIARY'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Beneficiary's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Beneficiary on Grantor's behalf may (but shall not be obligated to) take any action that Beneficiary deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Beneficiary for such purposes will then bear interest at the rate charged under the General Indemnity Agreement from the date incurred or paid by Beneficiary to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and will be payable on demand. The Property also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Beneficiary may be entitled upon Default.

**14. WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust.

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Beneficiary in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Beneficiary.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or

Beneficiary under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Beneficiary shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Beneficiary's own choice, and Grantor will deliver, or cause to be delivered, to Beneficiary such instruments as Beneficiary may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**15. CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Beneficiary may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. However, Indemnitor shall be entitled to use the proceeds of any condemnation award to repair or restore the Property in a manner satisfactory to Beneficiary if (a) Indemnitor is not otherwise in default under this Deed of Trust and (b) upon completion of such repair or restoration, the value of the Property (as determined by Beneficiary in its reasonable discretion) is no less than the value of the Property on the date of this Deed of Trust. If the proceeds are applied to repair or restoration, Beneficiary shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees, of both the Trustee and Beneficiary in connection with the condemnation.

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Beneficiary in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Beneficiary shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Beneficiary such instruments as may be requested by it from time to time to permit such participation.

**16. IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Beneficiary, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Beneficiary to perfect and continue Beneficiary's lien on the Real Property. Grantor shall reimburse Beneficiary for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (b) a specific tax on Indemnitor which Indemnitor is authorized or required to deduct Gone payments on the Indebtedness secured by this type of Deed of Trust; (c) a tax on this type of Deed of Trust chargeable against the Beneficiary or the holder of the Indemnity Agreement and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Indemnitor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default (as defined below), and Beneficiary may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary.

**17. SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust.

**Security Agreement.** This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Beneficiary shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Grantor authorizes Beneficiary to file any number of financing statements and take whatever other action is required by Beneficiary to perfect and continue Beneficiary's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Beneficiary may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Beneficiary for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Beneficiary and make it available to Beneficiary within three (3) days after receipt of written demand from Beneficiary.

**Addresses.** The mailing addresses of Grantor (debtor) and Beneficiary (secured party), from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Deed of Trust.

**18. RELEASE OF SECURITY INTERESTS.** Beneficiary agrees to release its interests in the Real Property and Property under this Deed of Trust and any other security agreements by executing and delivering to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement if either: (1) the United States Coast Guard issues a certificate of documentation with coastwise and fishery endorsements for the vessel America's Finest or (2) America's Finest obtains other documentation, certificates, authority, or approval, legislative or otherwise, to fish in US waters, **and** each of the following four (4) conditions are satisfied in full:

1. Grantor provides written confirmation to Secured Parties that it has received payment in full of the funds due by Fishermen's Finest for the vessel America's Finest;

2. Grantor provides written confirmation to Secured Parties that it has delivered the vessel America's Finest to Fisherman's Finest;
3. Grantor provides written confirmation to Secured Parties that all liquidated damages and other damages imposed or assessed by Fisherman's Finest are released and satisfied; and
4. Grantor provides written confirmation to Secured Parties that the Water Emergency Transportation Authority Project is on schedule and profitable.

In the alternative, Beneficiary agrees to release its interests in the Real Property and Property under this Deed of Trust and any other security agreements upon receipt of a written release and conclusive evidence of its discharge without loss in the form and substance satisfactory to Beneficiary with respect to the Bonds.

Grantor shall pay Beneficiary a reasonable reconveyance fee for said reconveyance. The grantee in any such reconveyance may be described as the "person or persons legally entitled thereto."

**19. DEFAULT.** Each of the following, at the option of Beneficiary, shall constitute an event of default ("Event of Default") under this Deed of Trust:

**Default on Indebtedness.** Failure of Indemnitor to make any payment when due on the Indebtedness or to fail to perform any material obligation under this Deed of Trust.

**Insolvency.** If Grantor or Indemnitor become a party in any insolvency, receivership, liquidation, or bankruptcy proceeding it shall constitute an Event of Default under this Deed of Trust.

**Foreclosure, etc.** Commencement of foreclosure, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor against any of the Property undertaken at a time when there is an outstanding and unpaid Indebtedness. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim, which is the basis of the foreclosure, provided that Grantor gives Beneficiary written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Beneficiary.

**20. RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Beneficiary, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Beneficiary shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty, which Indemnitor would be required to pay.

**Foreclosure.** With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. If this Deed of Trust is foreclosed by judicial foreclosure, Beneficiary will be entitled to a judgment, which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.

**UCC Remedies.** With respect to all or any part of the Personal Property, Beneficiary shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Beneficiary shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Beneficiary's costs, against the Indebtedness. In furtherance of this right, Beneficiary may require any tenant or other user of the Property to make payments of rent or use fees directly to Beneficiary. If the Rents are collected by Beneficiary, then Grantor irrevocably designates Beneficiary as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Beneficiary in response to Beneficiary's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Beneficiary may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Beneficiary shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Beneficiary shall not disqualify a person from serving as a receiver. Nothing about the foregoing shall constitute a waiver of Grantor's rights under Washington law, including without limitation the right to contest the appointment of a receiver or seek dismissal of any receivership proceeding.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Beneficiary otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Beneficiary or the purchaser of the Property and shall, at Beneficiary's option, either (a) pay a reasonable rental for the use of the Property, or (b) vacate the Property immediately upon the demand of Beneficiary.

**Other Remedies.** Trustee or Beneficiary shall have any other right or remedy provided in this Deed of Trust or the General Indemnity Agreement or by law.

**Notice of Sale.** Beneficiary shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshaled. In exercising its rights and remedies, the Trustee or Beneficiary shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Beneficiary shall be entitled to bid at any public sale on all or any portion of the Property.

**Waiver; Election of Remedies.** All Beneficiary's rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available and no requirement whatsoever may be waived at any time except by a writing signed by the

Beneficiary. A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Beneficiary to pursue any remedy provided in this Deed of Trust, the General Indemnity Agreement, in any Related Document, including but not limited to any security agreement, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Beneficiary's right to declare a default and to exercise any of its remedies.

**Attorneys' Fees; Expenses.** If Beneficiary institutes any suit or action to enforce any of the terms of this Deed of Trust, Beneficiary shall be entitled to recover such sum, as the court may adjudge reasonable as attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Beneficiary which in Beneficiary's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Indemnity Agreement rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Beneficiary's attorneys' fees whether or not there is a lawsuit, including reasonable attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** Trustee shall have all of the rights and duties of Beneficiary as set forth in this section.

**21. POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust.

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Beneficiary and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Beneficiary under this Deed of Trust.

**Obligations to Notify.** Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

**Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**Successor Trustee.** Beneficiary, at Beneficiary's option, may from time to time appoint a successor Trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by

Beneficiary and recorded in the office of the recorder of the county in which the Real Property is situated. The instrument shall contain, in addition to all other matters required by state law, the names of the original Beneficiary, Trustee, and Grantor, the book and page or the Auditor's file number where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Beneficiary or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

**22. NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice under this Deed of Trust shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class, registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Beneficiary's address, as shown near the beginning of this Deed of Trust. For notice purposes, Grantor agrees to keep Beneficiary and Trustee informed at all times of Grantor's current address.

**23. MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Accounts and Records.** Grantor will maintain a standard modern system of accounting administered in accordance with generally accepted accounting principles. Beneficiary shall have the right to examine, upon two (2) business days' advance notice to Grantor, the books of account of Grantor to the extent that they pertain to this Deed of Trust and the Property, and to discuss the affairs, finances, and accounts of Grantor to such extent, all at such reasonable times and intervals as Beneficiary may desire. Grantor will furnish to Beneficiary, (i) within sixty (60) days after and as of the close of each fiscal year, the year-end financial statements of Grantor, including a balance sheet and a statement of earnings (income and loss) from Grantor's business and from the Property, as requested by Beneficiary, in detail satisfactory to Beneficiary; (ii) from time to time and within twenty (20) days following Beneficiary's request therefor, all such financial information as may be necessary or appropriate for Beneficiary's determination of Grantor's net operating income and debt service with all such financial information being prepared and certified as accurate by Grantor; and (iii) from time to time, upon Beneficiary's request, tenant rent rolls, leasing summary reports and cash flow projections (or updates thereof), setting forth the status of all existing and anticipated leases or subleases affecting the Property and Grantor's best estimate of the revenues to be obtained and the expenses to be incurred in connection with the operation of the Property for the following one-year period. In addition to the above, Grantor shall furnish Beneficiary with, as soon as available, but in no event later than ninety (90) days after the end of each fiscal year, copies of Grantor's tax returns.

**Applicable Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Washington. The transaction and this Deed of Trust (which secures the Indebtedness) has been applied for, considered, approved, and made in the State of Washington.

**IF THERE IS A LAWSUIT, GRANTOR AND INDEMNITOR, AT BENEFICIARY'S OPTION, AGREE TO SUBMIT TO THE JURISDICTION OF KING COUNTY, WASHINGTON, OR FEDERAL DISTRICT COURT IN THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE. GRANTOR HEREBY WAIVES THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER BENEFICIARY OR GRANTOR OR INDEMNITOR AGAINST THE OTHER.**

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Beneficiary in any capacity, without the written consent of Beneficiary.

**Multiple Parties.** If Grantor or Indemnitor consist of more than one person or entity, all obligations of Grantor and Indemnitor under this Deed of Trust shall be joint and several, and all references to Indemnitor shall mean each and every Indemnitor, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Deed of Trust. Where any one or more of the parties are corporations or partnerships or limited liability companies, it is not necessary for Beneficiary to inquire into the powers of any of the parties or of the officers, directors, partners, agents, managers or members acting or purporting to act on their behalf.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

**Successors and Assigns.** Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Beneficiary, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

**Time Is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waivers and Consents.** Beneficiary shall not be deemed to have waived any rights under this Deed of Trust or the General Indemnity Agreement (or under the Related Documents) unless such waiver is in writing and signed by Beneficiary. No delay or omission on the part of Beneficiary in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's

right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Beneficiary, nor any course of dealing between Beneficiary and Grantor or Indemnitor, shall constitute a waiver of any of Beneficiary's rights or any of Grantor or Indemnitor's obligations as to any future transactions. Whenever consent by Beneficiary is required in this Deed of Trust, the granting of such consent by Beneficiary in any instance shall not constitute continuing consent to subsequent instances where such consent is required. Grant and Beneficiary specifically acknowledge that nothing in this Deed of Trust shall change, waive, modify, amend, or alter in any way the obligations of Grantor under the General Indemnity Agreement.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Washington as to all Indebtedness secured hereby.

**24. COMMERCIAL DEED OF TRUST.** Grantor agrees with Beneficiary that this Deed of Trust is a commercial deed of trust and that Grantor will not change the use of the Property without Beneficiary's prior written consent.

**25. FURTHER ASSURANCES.** Grantor, from time to time, within fifteen (15) days after request by Beneficiary, shall execute, acknowledge and deliver to Beneficiary, such chattel mortgages, security agreements, or other similar security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Grantor(s) or in which Grantor(s) has any interest which, in the sole opinion of Beneficiary, is essential to the operation of the said property covered by this Deed of Trust. Grantor(s) shall further from time to time, within fifteen (15) days after request by Beneficiary, execute, acknowledge, and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Deed of Trust and the priority of such chattel mortgage or other security instrument as a first lien. However, neither a request so made by Beneficiary nor the failure of Beneficiary to make such request shall be construed as a release of such property, or any part thereof, from the conveyance of title by this Deed of Trust, it being understood and agreed that this covenant and any such chattel mortgage, security agreement, or other similar security instrument, delivered to beneficiary, are cumulative and given as additional security.

[SIGNATURE PAGE FOLLOWS]

**Signature Page to Deed of Trust**

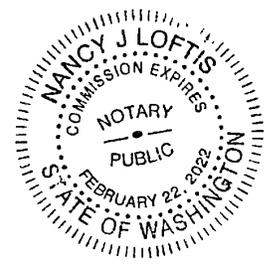
GRANTOR: DAKOTA CREEK INDUSTRIES, INC., a Washington corporation

By: *Richard N. Nelson*  
(Print) Richard N. Nelson  
Its: President  
Date signed: 6/7/18

STATE OF WASHINGTON )  
ss.  
COUNTY OF Skagit )

I certify that I know or have satisfactory evidence that Richard N. Nelson is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the President of Dakota Creek Industries, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: *Nancy J. Loftis*  
By: *Nancy J. Loftis*  
Printed Name: Nancy J. Loftis  
Notary Public in and for the State of Washington  
Residing at Anacortes  
My appointment expires 2/22/22



REQUEST FOR FULL RECONVEYANCE  
*(To be used only when obligations have been paid in full).*

TO: \_\_\_\_\_, TRUSTEE

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. You are hereby requested, upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you under the Deed of Trust

Dated: \_\_\_\_\_

Beneficiary: \_\_\_\_\_

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

Its: \_\_\_\_\_