

Prepared By and Return To:

Holland & Knight LLP
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Attn: Eugene Segrest, Esq.

Cross Reference To:

Book 97, Page 189-190, Official Records, Box Butte
County, Nebraska.

AMENDED AND RESTATED EASEMENT AGREEMENT

from

BAR MH FARMS LLC,
a Delaware limited liability company
(Grantor)

to

KAYAK INVESTMENTS, LLC,
a Massachusetts limited liability company
(Grantee)

Dated as of April __, 2023

Property Location: Box Butte County, Nebraska

Asset Numbers 990019424 and
990019432



AMENDED AND RESTATED EASEMENT

TERMS AND DEFINITIONS

Effective Date:	[____], 2023
Grantor:	Bar MH Farms LLC , a Delaware limited liability company
Grantor Agent One:	Bank of America, N.A. , as agent for Grantor
Grantor Agent Two:	Cushman & Wakefield U.S., Inc. , as agent for Bank of America, N.A.
Grantor Agent:	Collectively, Grantor Agent One and Grantor Agent Two
Grantee:	Kayak Investments LLC , a Massachusetts limited liability company
Grantee Agent One:	Bank of America, N.A. , as agent for Grantee
Grantee Agent Two:	Cushman & Wakefield U.S., Inc. , as agent for Bank of America, N.A.
Grantee Agent:	Collectively, Grantee Agent One and Grantee Agent Two
Grantor's Address:	Bar MH Farms LLC, a Delaware limited liability company c/o Cushman & Wakefield 575 Maryville Centre Drive, Suite 511 St. Louis, MO 63141 Attn: Asset No. 990019432
Grantee's Address:	Kayak Investments, LLC c/o Cushman & Wakefield 575 Maryville Centre Drive, Suite 511 St. Louis, MO 63141 Attn: Asset No. 990019424
Minimum Insurance Amounts:	Grantee is required to carry the following types of insurance with the Minimum Insurance Amounts as of the Effective Date in accordance with <u>Section 10</u> of this Amended and Restated Easement Agreement: A. General Liability (\$1,000,000 limit per occurrence with an annual general aggregate limit of \$2,000,000)

	<p>B. Commercial/Business Auto Liability (\$1,000,000 combined single limit per occurrence)</p> <p>C. Personal Auto Liability (\$250,000 per person / \$500,000 per accident / \$100,000 property damage)</p>
<u>Grantor Property:</u>	Certain real property located in the County of Box Butte, State of Nebraska (the " State ") currently owned by Grantor, as more particularly described in <u>Exhibit A-1</u> attached hereto and made a part hereof for all purposes.
<u>Grantee Property:</u>	Certain real property located in the County of Box Butte of the State currently owned by Grantee, as more particularly described in <u>Exhibit A-2</u> attached hereto and made a part hereof for all purposes.
<u>Original Easement Agreement:</u>	Easement filed February 18, 2009, in Book 97, Page 189-190, Official Records, Box Butte County, Nebraska.
<u>Easement:</u>	Subject to the terms set forth in this Amended and Restated Easement Agreement, the easement to the Easement Area granted under this Amended and Restated Easement Agreement.
<u>Easement Area:</u>	As described and or depicted in <u>Exhibit B-1</u> and <u>B-2</u> attached hereto and made a part hereof for all purposes.
<u>Consideration:</u>	The parties acknowledge and agree that this Amended and Restated Easement Agreement is in exchange for good and valuable consideration, the sufficiency of which is hereby acknowledged.
<u>Exhibits:</u>	<p>Exhibit A-1 – Grantor Property Description</p> <p>Exhibit A-2 – Grantee Property Description</p> <p>Exhibit B-1 – Easement Area: Metes and Bounds Legal Description</p> <p>Exhibit B-2 – Easement Area: Survey</p>
ALL OTHER DEFINITIONS ARE WITHIN THE BODY OF THIS EASEMENT AGREEMENT.	

AMENDED AND RESTATED EASEMENT AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AGREEMENT (hereinafter this “**Agreement**”) is made as of the Effective Date, by and between Grantor and Grantee. The terms “Grantor” and “Grantee” shall be construed in the singular or plural number accordingly, as they respectively represent one or more than one person. As used in this Agreement, the term “**parties**” refers collectively to both Grantor and Grantee. The foregoing Terms and Definitions, including all terms defined thereon, are incorporated as part of this Agreement.

RECITALS:

- A. Grantor is the present owner of the Grantor Property and Grantee is the present owner of the Grantee Property;
- B. The parties acknowledge that the Grantor Property is currently burdened by, and the Grantee Property is currently benefitted by, the Original Easement Agreement; and
- C. The parties desire to amend and restate the Original Easement Agreement to amend and restate the location of the road access easement described in such Original Easement Agreement and to make certain other amendments to such Original Easement Agreement, all as more particularly as set forth herein and subject to the terms and conditions hereof.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the forgoing recitals, Ten and No/100 Dollars (\$10.00) in hand paid and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement.** Subject to the terms set forth herein and effective as of the Effective Date, Grantor hereby grants to Grantee the Easement, being a non-exclusive, ingress and egress right-of-way Easement, with complete unobstructed access, the right to maintain and the right of Grantee Parties (as defined below) to utilize the existing road on the Easement Area. The right-of-way Easement granted to Grantee pursuant to this Agreement is intended to amend and restate the existing right-of-way Easement defined in the Original Easement Agreement. The Easement granted pursuant to this Section 1 (i) is appurtenant to the Grantee Property, and (ii) shall benefit the Grantee Property and burden the Grantor Property, subject to the terms and conditions of this Agreement.
2. **Term.** Solely with respect to the non-exclusive, ingress and egress right-of-way Easement, this Agreement shall be perpetual, subject to the terms set forth herein.
3. **Limitations to Grantee’s Use of the Easement Area; Maintenance Obligations.**
 - A. **Use.** Grantee hereby covenants and agrees that it will use the Easement for the sole purpose of ingress and egress to and from the Grantee Property by Grantee Parties. Except as expressly provided for herein, Grantee shall not make any material change to the Easement Area without Grantor’s prior written consent, which may be given or withheld by Grantor in

its sole and absolute discretion. Grantee agrees not to bury or burn any rubbish, trash, drums or containers on the Easement Area. Grantee agrees to dispose of all debris, filth, refuse, surpluses, chemical containers, drums, cartons and discarded materials of every kind off the Easement Area in compliance with all State or federal requirements, and to at all times comply fully with all such requirements, whether now enacted or during this Agreement become law.

- B. No Right to Erect Improvements.** Except as expressly provided herein, Grantee shall not be permitted to erect any permanent improvements, fences or gates on the Easement Area without Grantor's prior express written consent, which consent may be given or withheld by Grantor in its sole and absolute discretion.
- C. No Fires.** Grantee shall not cause, start or cause to be started any fires on the Easement Area.
- D. Gates.** Grantee shall keep all gates on the Easement Area as it finds them from time to time (e.g., if a gate is found locked, then Grantee shall keep the gate locked).
- E. No Interference with Grantor's Use of Easement Area.** Subject to the terms of Sections 3.C. and D. above, Grantee shall not have the right to take any action or to construct or place any gate or other obstruction on the Easement Area that would (i) unreasonably restrict Grantor's ability to access, utilize and enjoy the Easement Area or any portion thereof, or (ii) create an unreasonably dangerous condition on the Easement Area or any portion thereof.

For the avoidance of doubt, Grantee's failure to comply with the provisions of this Section 3 shall be deemed to be an Event of Default.

- 4. Damages Caused by Grantee.** Grantee agrees, within sixty (60) days of the written demand therefor by Grantor, to either (i) reimburse Grantor for actual damages accompanied by reasonable evidence of the reasonable cost to repair damages to the Easement Area, other portions of the Grantor Property, and/or any buildings, roads, gates, fences, bridges, trees, timber, crops, grasses, landscaping, shrubbery, livestock, and other personal property and improvements of Grantor or any third party (collectively, "**Grantor's Specified Property**") to the extent such damage is caused by Grantee's activities on the Easement Area that exceeds ordinary wear and tear, or (ii), if damage is caused by Grantee's activities on the Easement Area that exceeds ordinary wear and tear, restore the Easement Area, other portions of Grantor Property and Grantor's Specified Property (as applicable) to substantially the same condition as the Easement Area, other portions of the Grantor Property and Grantor's Specified Property (as applicable) were in prior to the use by Grantee. Grantee's obligations under this Section 4 shall survive the expiration or earlier termination of this Agreement.

5. Taxes.

- A. Personal Property Taxes.** Grantee shall pay prior to delinquency all taxes, assessments, license fees, charges or other governmental impositions assessed against or levied or imposed upon Grantee's business operations on the Easement Area. Whenever possible, Grantee shall cause all such items to be assessed and billed separately from the property of Grantor. In the event any such items shall be assessed and billed with the property of Grantor, Grantee shall pay Grantor its share of such taxes, charges or other governmental impositions within ten (10) days after Grantor delivers to Grantee a statement and a copy of the assessment or other documentation showing the amount of such impositions.

- B. Real Property Taxes.** Grantor shall pay all real property taxes or assessments levied on the Easement Area.
- C. Other Taxes.** If, at any time this Agreement is in effect, the State or any political subdivision thereof so authorized (including, but not limited to, any county, city, city and county, public corporation, district, or any other political entity) levies or assesses against Grantor a tax, fee or excise on (A) any payments remitted to Grantor by Grantee as consideration for the grant of the Easement, (B) the act of entering into this Agreement, or (C) any other tax, fee or excise, however described or identified (including, without limitation, a value-added tax) as a substitute in whole or in part for, or in addition to, any real property taxes (collectively, "**Supplemental Property Taxes**"), Grantee shall pay to Grantor the Supplemental Property Taxes within ten (10) days after Grantor delivers to Grantee a statement and a copy of the assessment or other documentation showing the amount of the Supplemental Property Taxes.
- 6. Right to Assign or Transfer.** This Agreement shall run with the Grantor Property and the Grantee Property, and shall be binding upon and inure to the benefit of the successors in title of each of the parties hereto with respect to the Grantor Property and the Grantee Property, or any portion thereof. Grantee shall have the right to freely assign, transfer, mortgage, or encumber this Agreement to any party having an interest in the Grantee Property, and shall have the right to transfer its interest in the Easement Area or otherwise allow any such party to utilize the Easement or any part thereof, or allow any other Grantee Party to access the Grantee Property by the Easement, without the consent of Grantor. Any assignment not specified above would require consent of Grantor which shall not be unreasonably withheld. Any assignment, transfer, mortgage, or encumbrance if made in violation of this provision, is void.
- 7. Event of Default.** If Grantee breaches any of its obligations hereunder (including, without limitation, any failure to pay amounts which Grantee is obligated to pay Grantor pursuant to this Agreement), then prior to exercising any rights or remedies provided for in this Agreement, Grantor shall give written notice to Grantee (in accordance with Section 35 hereof) of the existence of such default, specifying the action or omission constituting such default, and Grantee shall have fifteen (15) days after receipt of such written notice to cure such default (the "**Cure Period**"). If such default remains uncured by Grantee after the Cure Period ends, then, as Grantor's sole and exclusive remedies, Grantor shall have the right to seek injunctive relief or sue Grantee for its actual and direct damages.
- 8. Additional Definitions.**
- A.** For purposes of this agreement, a "**Claim**" or collectively "**Claims**" shall mean personal injury, property damage or any other claims, causes of action, liabilities, losses, damages, demands, suits, fines, penalties, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees, consultant fees and expert fees) of every kind or character, known or unknown, and whether in contract, in tort or existing at common law, or by virtue of any statute, regulation or ordinance
- B.** For purposes of this agreement, a "**Grantor Party**" or collectively "**Grantor Parties**" shall mean Grantor and Grantor's employees, officers, members, managers, partners, agents (including without limitation, Grantor Agent One, if applicable, and Grantor Agent Two, including any officer, director or employee of Grantor Agent Two and any of its divisions, subsidiaries or

affiliates, and any of their partners, shareholders, or members, or their respective officers, agents, employees or representatives), investors, heirs, devisees, personal representatives, successors and assigns and affiliates (including, without limitation, Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce Fenner & Smith Incorporated ("MLPF&S")), and each of their current, former and future officers, directors, employees, parent companies, affiliates, divisions, predecessors, successors, subsidiaries, administrators, insurers, sureties, assigns, representatives, agents, heirs, attorneys, independent managers (excluding all Grantee Parties), and general and limited partners.

- C. For purposes of this agreement, a "**Grantee Party**" or collectively "**Grantee Parties**" shall mean Grantee or any employee, agent, contractor, subcontractor, invitee, licensee, representative, successor, assignee, guest of Grantee or any other person acting on behalf of Grantee.
- D. Notwithstanding anything to the contrary contained herein, in no event shall any Grantee Party be considered a Grantor Party for the purposes of this Agreement. For avoidance of doubt, the term "Grantor Parties" shall include Grantor, and the term "Grantee Parties" shall include Grantee.

9. Hazardous Substances. Grantee's obligations and responsibilities with respect to Hazardous Substances (as defined below) shall be as follows:

- A. Grantee hereby covenants and agrees to use and operate, and shall ensure that all Grantee Parties, use and operate, the Easement in compliance with any and all Environmental Laws (as defined below), and shall be solely responsible for securing all environmental and other permits and approvals required for Grantee's use and operations of the Easement Area. Except for pesticides, herbicides and other chemicals of a nature and in quantities customarily used in similar agricultural operations and in the ordinary course of Grantee's business, Grantee shall not cause or permit any Hazardous Substance to be brought upon, kept, used, stored, generated or disposed of on, in or about the Easement Area by Grantee or any Grantee Party.
- B. Any Hazardous Substance permitted on the Easement Area shall be used, kept, stored, handled, managed, generated and disposed of in compliance with Environmental Laws. Solely to the extent arising as a result of the actions of Grantee, Grantee shall at its own expense take any and all necessary preventative, corrective or remedial action regarding any Hazardous Substance affecting the Easement Area if, as and when any such preventative, corrective or other remedial action is required under any Environmental Law and, whether or not so required, solely to the extent required under applicable Environmental Laws, shall perform containment, removal or remediation of any Hazardous Substance affecting the Easement Area in compliance with all Environmental Laws. Grantee shall also take any and all actions necessary to return the Easement Area, to the condition existing prior to the presence of any such Hazardous Substance on the Easement Area.

WITHOUT LIMITING THE FORGOING COVENANTS AND RESTRICTIONS AND EXCEPT TO THE EXTENT DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF GRANTOR OR ANY GRANTOR PARTY, GRANTEE SHALL REIMBURSE GRANTOR PARTIES FOR, AND SHALL RELEASE, INDEMNIFY, DEFEND UPON REQUEST, AND HOLD HARMLESS GRANTOR PARTIES FROM AND AGAINST, ALL CLAIMS SUFFERED BY OR CLAIMED AGAINST GRANTOR PARTIES, DIRECTLY OR INDIRECTLY, BASED ON OR ARISING OUT OF, IN WHOLE OR IN PART: (A) CONTAMINATION OF OR FROM THE EASEMENT AREA OR THE GROUNDWATER THEREOF, (B) ANY DISCHARGE OF TOXIC OR HAZARDOUS SUBSTANCES INTO ANY

SEPTIC FACILITY OR SEWER SYSTEM, (C) ANY VIOLATION OR LIABILITY OF OR UNDER ENVIRONMENTAL LAWS, AND (D) THE RELEASE OR EXISTENCE OF HAZARDOUS SUBSTANCES ON, IN OR ABOUT THE EASEMENT AREA (IRRESPECTIVE OF WHETHER THERE HAS OCCURRED A VIOLATION OF APPLICABLE ENVIRONMENTAL LAW RELATING TO THE EASEMENT AREA), INCLUDING, WITHOUT LIMITATION, ANY LOSS OF VALUE TO THE EASEMENT AREA IN CONNECTION THEREWITH, IN EACH CASE OCCURRING, DIRECTLY OR INDIRECTLY, AS A RESULT OF GRANTEE'S OR ANY OTHER GRANTEE PARTIES' ACTIVITIES ON THE EASEMENT AND USE OF THE EASEMENT. Grantor Parties need not have first paid any such claim to be so indemnified and held harmless by Grantee. Grantee, upon written notice from Grantor Parties, shall defend any claim against Grantor Parties at Grantee's sole expense, using legal counsel reasonably satisfactory to Grantor Parties, and Grantor Parties shall cooperate with Grantee in such defense. Grantee's indemnity obligations under this Section 9 shall survive the expiration or termination of this Agreement.

For the purposes of this Agreement: (a) "**Hazardous Substances**" shall mean any and all pollutants, contaminants and toxic, caustic, radioactive or hazardous materials, substances or wastes including, without limitation, oil, petroleum or petroleum distillates and their by-products, any substance that is toxic, ignitable, reactive or corrosive, asbestos, urea-formaldehyde foam insulation, asbestos containing materials, whether or not friable, polychlorinated biphenyls, radon gas, infectious or medical wastes, and all other substances, pollutant, contaminant or waste of any nature, that are regulated under any Environmental Laws; and (b) "**Environmental Laws**" shall mean all federal, State and local statutes, laws (including common or case law), rulings, regulations, ordinances, codes, or governmental, administrative or judicial policies, directives, orders or interpretations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or governing in any way the environmental condition of the Easement Area, including, without limitation, (a) laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Substances, (b) the Resource Conservation & Recovery Act of 1976 as amended from time to time and regulations promulgated thereunder, (c) the Comprehensive Environmental Response, Compensation & Liability Act of 1980 as amended from time and time and regulations promulgated thereunder, and (d) the Federal Insecticide, Fungicide & Rodenticide Act as amended from time to time.

10. Insurance.

A. **Coverage.** Grantee shall maintain or shall cause to be maintained, in full force and effect throughout the Term, at its sole cost and expense, the insurance described below with reputable licensed insurance carriers satisfactory to Grantor and Grantor Agent, with coverages and limits at levels customary in the industry for performing work, activities, operations and services similar to those to be performed as described in this Agreement but at levels not less than the minimums indicated and with Grantor and Grantor Agent One and Grantor Agent Two, named as named insureds or additional insureds, as applicable:

- i. **General Liability Insurance.** General liability policy, including contractual liability, insuring Grantee as named insured and Grantor, Grantor Agent One and Grantor Agent Two, as named insureds or additional insureds, as applicable, against any claims of liability of every kind and nature, for bodily injury to, or death of, any person and for

damage to the property of any person or legal entity arising out of Grantee's performance hereunder and caused by Grantee's or its agents, contractors or employees acts, defaults or negligence in the Minimum Insurance Amount set forth in the Terms and Definitions. Such policy shall also include Premises Medical Expense coverage, Personal and Advertising Injury coverage, and Fire Damage (Damage to Rented Premises) in the Minimum Insurance Amount set forth for each on the Terms and Definitions.

- ii. **Commercial/Business Automobile Liability Insurance.** In the event Grantee is or becomes an entity, Grantee must maintain insurance covering all vehicles licensed for highway use (owned, hired, leased or borrowed) used by any Grantee Party against any claims of liability of every kind and nature, for bodily injury to, or death of, any person and for damage to the property of any person or legal entity in the Minimum Insurance Amount set forth on the Terms and Definitions.
 - iii. **Personal Automobile Liability Insurance.** In the event Grantee is or becomes an individual or individuals, Grantee must maintain insurance covering all vehicles licensed for highway use used by any Grantee Party against any claims of liability of every kind and nature, for bodily injury to, or death of, any person and for damage to the property of any person or legal entity in the Minimum Insurance Amount set forth on the Terms and Definitions.
- B. No Further Changes and Rating.** Each of the above policies shall contain provisions giving Grantor and its designated representatives (including, without limitation, Grantor Agent) at least thirty (30) days' prior written notice of a material change in or cancellation of coverage; provided, however, in the event such provisions cannot be incorporated in such policies, either by endorsement or otherwise, Grantee is obligated to provide at least thirty (30) days' prior written notice to Grantor of a material change in or cancellation of coverage. If Grantee is advised of any material change in coverage being made by any carrier, Grantee shall so notify Grantor or its designated representatives (including, without limitation, Grantor Agent) in writing. The cost of all insurance set forth above shall be paid solely by Grantee. All policies required to be carried by Grantee hereunder shall be issued by an insurance company licensed or authorized to do business in the State and with a rating of at least A- or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by Grantor.
- C. Certificates and Endorsements.** Upon execution of this Agreement, Grantee shall deliver to Grantor a certificate and endorsement from the insurance company issuing the policy listing Grantor, Grantor Agent One and Grantor Agent Two, as named insureds or additional insureds, as applicable, thereunder and, if requested, copies of the policies of insurance representing the required insurance coverage. This requirement is not applicable for Workers' Compensation Insurance, Employers' Liability Insurance, Commercial/Business Automobile Liability Insurance or Personal Automobile Liability Insurance.
- D. No Limitation of Liability.** The foregoing insurance coverages are minimum requirements and the maintenance thereof shall in no way limit the liability of Grantee under this Agreement. Any insurance maintained by Grantor shall in no way limit the liability of Grantee under this Agreement.

- E. Contractors and Subcontractors.** Grantee will require all contractors and subcontractors to carry general liability insurance covering its activities, which policy shall name Grantor, Grantee, Grantor Agent One and Grantor Agent Two, as named insureds or additional insureds, as applicable. Such policy shall provide coverage with the same minimum limits of liability as required of Grantee hereunder. Contractors and subcontractors shall carry automobile and property damage insurance which shall name Grantor, Grantee, Grantor Agent One and Grantor Agent Two, as named insureds or additional insureds, as applicable. Such policy shall provide coverage with the same minimum limits of liability as required of Grantee hereunder or higher limits if required by law. Contractors and subcontractors shall carry Workers' Compensation Insurance for all workers in the applicable statutory amounts. Contractors and subcontractors shall furnish to Grantor a certificate of such insurance policy prior to the commencement of any work on or related to the Easement Area.
- F. Waiver of Subrogation.** Grantee and Grantor agree on behalf of themselves, and all others under them, including any insurer, to waive all claims against each other for losses occurring due to operations undertaken as per this Agreement, to the extent covered by insurance, and to agree to obtain waivers of subrogation rights from any insurer, if available. This waiver shall apply only to the extent of actual insurance proceeds received with respect to losses occurring due to operations undertaken as per this Agreement existing between Grantor and Grantee and shall not be construed to be a waiver with respect to other operations. This waiver does not apply in any jurisdiction or situation in which such waiver is held to be illegal or against public policy or if insurance coverage would be voided by the waiver.
- G. Miscellaneous.** The insurance policies required to be obtained by Grantee in this Section 10 (except Workers' Compensation Insurance and Employers' Liability Insurance) shall be primary and non-contributory with any insurance carried by Grantor with respect to any claims arising out of the performance or non-performance of Grantee's duties and activities within the scope of this Agreement or arising from any action or activity on, or condition of, the Easement Area.

Grantee's insurance obligations set forth in this Section 10 shall survive the expiration or termination of this Agreement.

- 11. No Liens.** Grantee shall not incur or suffer any mechanic's, contractor's, or materialman's liens against the Easement Area (collectively, the "**Prohibited Liens**"). Grantee shall promptly notify Grantor of any Prohibited Liens so that Grantor may take reasonable steps to protect the Easement Area, at Grantee's sole cost and expense. Should there be a Prohibited Lien created by Grantee, then Grantee shall promptly pay or bond over the lien or otherwise remove such Prohibited Lien from title to the Easement Area within thirty (30) days of the filing of such lien. If any such Prohibited Lien remains of record and is not bonded by Grantee within thirty (30) days of the filing of such lien, then Grantor may, but is not obligated to, discharge such Prohibited Lien. Any amounts paid by Grantor to remove such lien, including, without limitation, costs, expenses, attorneys' fees and interest, shall be due from Grantee to Grantor within ten (10) business days of Grantee's receipt of notice thereof. Grantee will RELEASE, PROTECT, DEFEND upon request with counsel acceptable to Grantor, INDEMNIFY AND SAVE HARMLESS Grantor and Grantor Agent from and against any and all losses, claims, damages, liabilities, or actions arising out of or based upon any such Prohibited Lien. **For the avoidance of doubt and notwithstanding anything to the contrary contained herein, nothing in this Section 11 is intended to prohibit Grantee from encumbering, pledging, or otherwise granting a lien against Grantee's interest in this Agreement or the**

Easement Area to any mortgage lender of Grantee from time to time. The indemnity in this Section 11 shall survive the expiration or termination of this Agreement.

- 12. Damage by Casualty.** All personal property brought or placed in or upon any part of the Easement Area shall be at the risk of Grantee or of the person owning the same, and neither Grantor, Grantor Agent One, nor Grantor Agent Two shall be liable for any loss or damage thereto, except for any damages directly caused by any Grantor Party. Grantee does hereby release Grantor and Grantor Agent from all liability and responsibility for any loss or damage to Grantee's personal property as a result of fire or other casualty.
- 13. Binding on Heirs.** This Agreement shall bind and inure to the benefit of the parent companies, subsidiaries, affiliates, members, managers, owners, partners, officers, board members, directors, shareholders, executives, employees, insurers, agents, legal representatives, estates, heirs, successors, and assigns of each of the parties hereto, as applicable, subject to the terms of Section 6 hereof.
- 14. Entire Agreement and Amendments.** This Agreement and all exhibits attached hereto constitute the entire agreement between the parties hereto with respect to the subject matter hereof and no subsequent amendment or agreement shall be binding upon either party unless it is signed by each party.
- 15. Grantor Reservation of Rights.** Grantor reserves the right to use and enjoy the entire Easement Area for any purpose desired by Grantor, including but not limited to, the full, free and perpetual right and privilege, in common with Grantee, to use the Easement for any other purpose desired by Grantor; provided that any such use shall not unreasonably interfere with Grantee Parties' use of the Easement Area. Any construction or maintenance performed by Grantor on the Grantor Property or Easement Area shall not unreasonably obstruct any Grantee Party's use of or access to the Easement Area.
- 16. No Hunting, Fishing or Firearms.** It is provided, understood and agreed that (a) this Agreement does not cover nor include any right or privilege of hunting on any portion of the Easement Area, all such hunting and fishing rights being expressly reserved to Grantor, and (b) Grantee Parties shall not use any hunting dog, firearm, trap and/or fishing tackle upon the Easement Area and shall not fire any weapon or firearm thereon.
- 17. Captions and Interpretation.** The captions of this Agreement are for convenience only and are not to be construed as a part of this Agreement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof. This Agreement was initially drafted by Grantor as a matter of convenience and by agreement following negotiations with Grantee. The parties agree that no presumption or interpretation will be imposed by or against either party as a result thereof. Wherever in this Agreement (or any exhibits attached hereto) Grantor's approval or consent is required, Grantor's approval or consent may be withheld in Grantor's commercially reasonable discretion, unless expressly stated otherwise. The use of the terms "hereof," "hereunder" and "herein" shall refer to this Agreement as a whole except where noted otherwise. Additionally, feminine or neuter pronouns may be substituted for masculine and the plural may be substituted for singular or singular for plural. Whenever in this Agreement (or any exhibits attached hereto) the term "Property" is used, such use shall refer to the entire Property, including without limitation, the Easement Area. **For avoidance of doubt and notwithstanding anything to the contrary contained in this Agreement (or any exhibits hereto), the parties agree that the term "shall" as used in this Agreement (or any exhibits hereto) will not be construed as permissive, but as absolute, imperative and/or mandatory.**

18. Agency and/or Trustee Capacity. Notwithstanding anything to the contrary contained herein, both parties acknowledge and agree that Cushman & Wakefield U.S., Inc. is a party to this Agreement in its agency capacity and not in any manner in its corporate or individual capacity, and that Cushman & Wakefield U.S., Inc. (as well as all other Grantor Agent Two Parties and Grantee Agent Two Parties, as defined below), in its corporate or individual capacity, does not and shall not incur, directly or indirectly, any obligations or liabilities hereunder whatsoever. Notwithstanding anything to the contrary contained herein, Grantor and Grantee further acknowledge and agree that Bank of America, N.A. is a party to this Agreement in its agency and/or trustee capacity and not in any manner in its corporate or individual capacity, and that Bank of America, N.A. (as well as all other Grantor Agent One Parties and Grantee Agent One Parties, as defined below), in its corporate or individual capacity, does not and shall not incur, directly or indirectly, any obligations or liabilities hereunder whatsoever. Grantee shall look only to Grantor for the performance of Grantor's obligations under this Agreement. Grantor shall look only to Grantee for the performance of Grantee's obligations under this Agreement. The limitation of each party's liability under this Agreement, including any waiver of subrogation rights, shall apply with equal force and effect to, and as a limitation on and a waiver of any and all liability of Cushman & Wakefield U.S., Inc. and Bank of America, N.A. This Section 18 survives the expiration or termination of this Agreement.

19. Transfers. Each of Grantor and Grantee hereby acknowledges and agrees that if for any reason whatsoever the agency and/or trustee or other representative relationship of Bank of America, N.A. (or (i) Grantor Agent One or Grantor Agent One Parties (hereinafter defined) or (ii) Grantee Agent One or Grantee Agent One Parties (hereinafter defined)) is terminated as to the Easement Area or any portion thereof at any time prior to the expiration or termination of this Agreement, then the applicable party is authorized to convey and transfer its rights, title and interest in the Easement or any portion thereof and this Agreement to the successor trustee, beneficiary, devisee, legatee, or other appropriate successor or transferee, and whereupon Bank of America, N.A. and the applicable Grantor Agent One, Grantor Agent One Parties, Grantee Agent One and Grantee Agent One Parties affected by such transfer or termination shall be relieved of all obligations under this Agreement (as may be amended from time to time), and both parties shall thereafter look solely to the other party for the performance of obligations thereunder. For the purposes hereof, each of the following shall be an "**Grantor Agent One Party**" (collectively, the "**Grantor Agent One Parties**") or "**Grantee Agent One Party**" (collectively, the "**Grantee Agent One Parties**"), in each case, as context requires: an officer, director or employee of Bank of America Corporation and any of its divisions, subsidiaries or affiliates (including, without limitation, Bank of America, N.A. and/or MLPF&S), and any of their partners, shareholders, or members, or their respective officers, agents, employees or representatives. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

20. Waivers. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GRANTEE HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE GRANTOR PROPERTY AND/OR THE EASEMENT AREA, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE TO THE GRANTOR PROPERTY OR EASEMENT AREA OR ANY IMPLIED WARRANTY THAT THE EASEMENT AREA IS SUITABLE FOR ANY PARTICULAR PURPOSE. NO GRANTOR PARTY HAS MADE ANY REPRESENTATIONS, COVENANTS OR WARRANTIES AS TO TITLE OR ANY OTHER MATTERS AFFECTING OR RELATED TO THE GRANTOR PROPERTY, THE EASEMENT OR THE EASEMENT AREA AND THE SAME IS ACCEPTED BY GRANTEE "AS-IS, WHERE-IS."

21. JURY WAIVER. IT IS MUTUALLY AGREED BY AND BETWEEN GRANTOR AND GRANTEE THAT THE RESPECTIVE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT

BY EITHER OF THE PARTIES AGAINST THE OTHER (OR AGAINST ANY GRANTOR PARTY) ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE EASEMENT, THE RELATIONSHIP OF GRANTOR AND GRANTEE, OR GRANTEE'S USE OF THE EASEMENT AREA.

- 22. Choice of Law.** THIS AGREEMENT, AND ALL THE RIGHTS OF THE PARTIES SHALL BE GOVERNED AS TO THE VALIDITY, INTERPRETATION, CONSTRUCTION, ENFORCEMENT AND IN ALL OTHER RESPECTS BY THE LAW OF THE STATE, WITHOUT REGARD TO ITS RULES AND PRINCIPLES REGARDING CONFLICTS OF LAWS OR ANY RULE OR CANON OF CONSTRUCTION WHICH INTERPRETS AGREEMENTS AGAINST THE DRAFTSMAN.
- 23. Joint and Several Liability.** If two or more individuals, corporations, entities, partnerships or other business associations (or any combination of two or more thereof) shall sign this Agreement as Grantee, the liability of each such individual, corporation, partnership or other business association to perform all obligations hereunder shall be deemed to be joint and several with the other signatories, and all notices, payments and agreements given or made by, with or to any one or more of them, shall be binding upon each and all of the persons or entities executing this Agreement as Grantee with the same force and effect as if each and all of them had so acted or so given or received such notice or made such payment or so signed all of them. In like manner, if Grantee shall be a partnership or other business association, the members of which are, by virtue of statute or federal law, subject to personal liability, then the liability of each such member shall be joint and several.
- 24. Patriot Act and Controlled Substances.** The each party represents and warrants to, and covenants with, the other party that (a) neither party nor any of its respective constituent owners or affiliates currently are, or shall be at any time during the Term, in violation of any federal, state or local laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56), and (b) no amounts paid or to be paid hereunder were derived from a violation of any federal, state or local laws (including, without, limitation, any laws governing the production, use or sale of hemp, marijuana or other cannabis product). PARTIES AGREES TO DEFEND, INDEMNIFY, AND HOLD EACH OTHER AND THE OTHER GRANTOR OR GRANTEE PARTIES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING REPRESENTATIONS, WARRANTIES AND COVENANTS. The foregoing indemnity shall survive the expiration or termination of this Agreement. At any time and from time-to-time during the Term, either party shall deliver to the other party, within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to the requesting party evidencing and confirming the delivering party's compliance with this Section 24.
- 25. Time.** Time is of the essence of this Agreement. The term "**days**" shall be deemed to mean calendar days. If the expiration date by which a party is required to make a payment or notice to the other party or such other party's representative under the terms of this Agreement falls on a weekend or on a State or federal holiday, then such expiration date for receipt of payment or notice shall be extended until the next Monday or non-holiday, as the case may be. Otherwise, the expiration date for performance of any action or activity shall be on the calendar day specified, regardless of whether such expiration date falls on a weekend or State or federal holiday.

- 26. Severability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Agreement shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
- 27. No Implied Rights.** Grantor and Grantee agree that this Agreement will not be construed as conferring any legal or other implied rights, except for those rights and privileges expressly granted herein.
- 28. No Offer.** The submission of this Agreement to Grantee shall not be construed as an offer, and Grantee shall not have any rights under this Agreement unless Grantor executes a copy of this Agreement and delivers it to Grantee.
- 29. Counterparts.** This Agreement may be executed in any number of counterparts, by facsimile, attachment to an email, portable document format (.pdf) or other electronic transmission, each of which shall be deemed an original for all purposes, with the same effect as if all parties had executed one instrument. Executed signature pages from different counterpart originals of this Agreement may be combined to form a single original instrument for recording and evidentiary purposes.
- 30. Survival of Obligations.** All waivers, acknowledgements, releases, and indemnifications set forth in this Agreement and the provisions of this Agreement with respect to any obligation of either party to pay any sum owing or to perform any act after the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.
- 31. Authority.** Both parties, respectively, hereby represent and warrant: (a) They are in good standing under the laws of the State; (b) they have full power and authority to enter into this Agreement and to perform all of its obligations under this Agreement; and (c) each person (and all of the persons if more than one signs) signing this Agreement on behalf of them is duly and validly authorized to do so.
- 32. Subordination and Attornment.** Intentionally deleted.
- 33. Attorneys' Fees.** Should either party breach this Agreement, the non-breaching party, in addition to any other remedies it may have, may recover from the breaching party all costs, fees and damages the non-breaching party may incur by reason of such breach, including, without limitation, the non-breaching party's reasonable attorneys' fees.
- 34. No Joint Venture or Partnership.** It is expressly understood that no Grantor Party shall hereby, in any way or for any purpose whatsoever, become a partner or principal of Grantee in the conduct of Grantee's business or a joint venturer or member of a joint enterprise with Grantee, and any Grantor Party and Grantee will not, by virtue of this Agreement, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer. In addition, by virtue of this Agreement there shall not be deemed to have occurred a merger of any joint enterprise between Grantor and Grantee or Grantor Agent and Grantee or Grantor, Grantor Agent and Grantee.
- 35. Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by: (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the addresses set forth in the Terms and Definitions; (2) electronic

mail to the intended addressee; or (3) sent by a nationally recognized overnight courier service addressed to the parties hereto at the addresses set forth in the Terms and Definitions. All notices shall be effective upon the earlier to occur of actual receipt, one (1) business day following deposit with a nationally recognized overnight courier service prepaid and designated for next business day delivery, one (1) business day following delivery of electronic mail, or three (3) days following deposit in the United States mail. The parties hereto may change their addresses by giving written notice thereof to the other in conformity with this provision.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

EXHIBIT A-1

Legal Description of the Grantor Property

ALL of Section 20, Township 24 North, Range 50 West of the 6th P.M., Box Butte County, Nebraska.

**In Township 24 North, Range 50 West of the 6th P.M., Box Butte County, Nebraska:
Section 19: E½**

EXHIBIT A-2

Legal Description of the Grantee Property

The West Half (1/2) of Section 29 and the West Half (1/2) and Southeast Quarter (1/4) of Section 30, Township 24 North, Range 50 West of the 6th P.M., Box Butte County, Nebraska.

Exhibit B-1

Easement Area: Metes and Bounds Legal Description

AN ACCESS EASEMENT OVER AND ACROSS SECTIONS 19 AND 20, BOTH IN TOWNSHIP 24 NORTH, RANGE 50 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOX BUTTE COUNTY, NEBRASKA, FOR THE USE AND BENEFIT OF THE NORTHWEST QUARTER OF SECTION 29 AND THE NORTHEAST QUARTER OF SECTION 30, BOTH IN TOWNSHIP 24 NORTH, RANGE 50 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOX BUTTE COUNTY, NEBRASKA, BEING 40 FEET IN WIDTH AND BEING 20 FEET EITHER SIDE OF THE CENTERLINE WITH SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 19; THENCE, ALONG THE EAST LINE OF SAID SECTION 19, S01°32'53"W FOR A DISTANCE OF 1652.10 FEET; THENCE, ALONG A 200.00 FEET RADIUS CURVE TO THE RIGHT, SUPPORTING A CENTRAL ANGLE OF 28°54'04", CHORD BEING S15°59'55"W FOR 99.82 FEET, FOR AN ARC DISTANCE OF 100.88 FEET; THENCE, S30°26'57"W FOR A DISTANCE OF 224.11 FEET; THENCE, ALONG A 700.00 FEET RADIUS CURVE TO THE RIGHT, SUPPORTING A CENTRAL ANGLE OF 14°07'42", CHORD BEING S37°30'48"W FOR 172.17 FEET, FOR AN ARC DISTANCE OF 172.61 FEET; THENCE, S44°34'39"W FOR A DISTANCE OF 382.18 FEET; THENCE, ALONG A 350.00 FEET RADIUS CURVE TO THE LEFT, SUPPORTING A CENTRAL ANGLE OF 40°52'18", CHORD BEING S24°08'30"W FOR 244.41 FEET, FOR AN ARC DISTANCE OF 249.67 FEET; THENCE, S03°42'21"W FOR A DISTANCE OF 59.79 FEET; THENCE, ALONG A 250.00 FEET RADIUS CURVE TO THE LEFT, SUPPORTING A CENTRAL ANGLE OF 37°47'58", CHORD BEING S15°11'38"E FOR 161.96 FEET, FOR AN ARC DISTANCE OF 164.93 FEET; THENCE, S34°05'37"E FOR A DISTANCE OF 178.34 FEET; THENCE, ALONG A 700.00 FEET RADIUS CURVE TO THE LEFT, SUPPORTING A CENTRAL ANGLE OF 09°37'27", CHORD BEING S38°54'21"E FOR 117.44 FEET, FOR AN ARC DISTANCE OF 117.58 FEET; THENCE, S43°43'04"E FOR A DISTANCE OF 221.25 FEET; THENCE, ALONG A 700.00 FEET RADIUS CURVE TO THE RIGHT, TO A POINT OF INTERSECTION WITH THE EAST LINE OF SAID SECTION 19, SUPPORTING A CENTRAL ANGLE OF 45°15'57", CHORD BEING S21°05'06"E FOR 538.76 FEET, FOR AN ARC DISTANCE OF 553.03 FEET; THENCE, ALONG SAID EAST LINE, S01°32'53"W TO THE SOUTHEAST CORNER OF SAID SECTION 19, BEING A DISTANCE OF 1578.96 FEET AND ALSO BEING THE POINT OF TERMINUS.

Exhibit B-2

Easement Area: Survey

[See Attached]

RECORD OF EASEMENT SURVEY

A STRIP OF LAND OVER AND ACROSS SECTIONS 19 AND 20, BOTH IN TOWNSHIP 24 NORTH, RANGE 50 WEST OF THE 6TH P.M., BOX BUTTE COUNTY, NEBRASKA.

NE CORNER 19-24-50

LINE	BEARING	DISTANCE
L1	S 30°26'57" W	224.11'
L2	S 44°34'39" W	382.18'
L3	S 03°42'21" W	59.79'
L4	S 34°05'37" E	178.34'
L5	S 43°43'04" E	221.25'

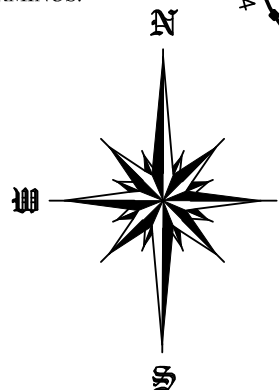
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	200.00'	100.88'	99.82'	S 15°59'55" W	28°54'04"
C2	700.00'	172.61'	172.17'	S 37°30'48" W	14°07'42"
C3	350.00'	249.67'	244.41'	S 24°08'30" W	40°52'18"
C4	250.00'	164.93'	161.96'	S 15°11'38" E	37°47'58"
C5	700.00'	117.58'	117.44'	S 38°54'21" E	9°37'27"
C6	700.00'	553.03'	538.76'	S 21°05'06" E	45°15'57"

EASEMENT DESCRIPTION:

AN ACCESS EASEMENT OVER AND ACROSS SECTIONS 19 AND 20, BOTH IN TOWNSHIP 24 NORTH, RANGE 50 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOX BUTTE COUNTY, NEBRASKA, FOR THE USE AND BENEFIT OF THE NORTHWEST QUARTER OF SECTION 29 AND THE NORTHEAST QUARTER OF SECTION 30, BOTH IN TOWNSHIP 24 NORTH, RANGE 50 WEST OF THE 6TH PRINCIPAL MERIDIAN, BOX BUTTE COUNTY, NEBRASKA, BEING 40 FEET IN WIDTH AND BEING 20 FEET EITHER SIDE OF THE CENTERLINE WITH SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CENTERLINE OF 40' ACCESS EASEMENT



● = CORNER FOUND SCALE 1"=600'

SURVEYOR'S CERTIFICATE:

I, SCOTT M. BOSSE', NEBRASKA REGISTERED LAND SURVEYOR NUMBER 603, DO HEREBY CERTIFY THAT I HAVE SURVEYED THE EASEMENT AS DESCRIBED IN THE LEGAL DESCRIPTION AND SHOWN ON THE ACCOMPANYING DRAWING; THAT THE ACCOMPANYING DRAWING IS A CORRECT DELINEATION OF SAID SURVEY DRAWN TO A SCALE OF 600 FEET TO THE INCH; THAT SAID SURVEY AND DRAWING WAS CONDUCTED BY ME OR UNDER MY DIRECT SUPERVISION; THAT THE DISTANCES ARE GROUND DISTANCES GIVEN IN FEET AND DECIMALS OF A FOOT; AND THE MONUMENTS WERE FOUND OR SET AS INDICATED AND THE CENTERLINE OF SAID EASEMENT IS DEPICTED BY A THICKENED LINE.

WITNESS MY HAND AND SEAL this 25th day of April, 2023.


 Scott M. Bosse'
 NEBRASKA REGISTERED LAND SURVEYOR NUMBER 603

SURVEYOR NOTES:

- 1) THIS TRACT MAYBE SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD OR APPARENT.
- 2) ONLY THE RECORD DOCUMENTS NOTED HEREON WERE PROVIDED TO OR DISCOVERED BY SURVEYOR. NO ABSTRACT, CURRENT TITLE COMMITMENT NOR OTHER RECORD TITLE DOCUMENTATION WAS PROVIDED FOR THIS SURVEY.
- 3) AS-SURVEYED EASEMENT CONNECTS THE LAND OWNED BY KAYAK INVESTMENTS LLC TO THOMAS ROAD AND THAT THE EASEMENT PROVIDES THE KAYAK INVESTMENTS LLC PROPERTY ACCESS TO THOMAS ROAD.

CORNER TIES:

NE CORNER 19-24-50
 FOUND 3/8" REBAR W/ALUM CAP
 LS-702 DATED 2022
 NW 45.28' TO FENCE CORNER
 NNW 36.76' TO GATE POST
 N 25.80' TO GATE POST

SE CORNER 19-24-50
 FOUND 1/2" X 36" BENT REBAR
 REPLACED WITH 3/8" X 24"
 REBAR W/PVC CAP
 NE, SE, SW, NW 46.67' TO 60D SPIKE



SHEET
1 OF 1

PROJECT:
 HAIN 19 & 20-24-50
 JIM HAIN
 THE LUND COMPANY

ACCUSTAR SURVEYING
 30601 COUNTY ROAD 17 MITCHELL, NE 69357
 PHONE: (308) 623-0197 CELL: (308) 631-0737

Scale 1"=600'
 Date: APRIL 10, 2023
 Dwn By: SMB
 REVISED: APRIL 25, 2023