

Recording Requested by:
First American Title Insurance
Company
150 North Main Street, Suite 103A
Heber, UT 84032
(435)654-1414

Ent 442323 Bk 1200 Pg 632 - 638
PEGGY FOY SULSER, Recorder
WASATCH COUNTY CORPORATION
2017 Sep 01 03:14PM Fee: \$26.00 TC
For: First American - Heber City
ELECTRONICALLY RECORDED

AFTER RECORDING RETURN TO:
The Geoffrey David Smart Family
Living Trust
2002 E. Princeton Ave.
Salt Lake City, UT 84108-1904

SPACE ABOVE THIS LINE (3 1/2" X 5") FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

Escrow No. **380-5837926 (nh)**
A.P.N.: **00-0014-5479**

This Deed of Trust, made September 1, 2017 between Luster Development Inc., a Utah corporation, as TRUSTOR, whose address is 143 W. Farm Springs Lane, **Midway, UT 84049**, First American Title Insurance Company, as TRUSTEE, and The Geoffrey David Smart Family Living Trust dated May 7, 2008, Geoffrey David Smart, Trustee, as BENEFICIARY, Witnesses: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property, situated in Wasatch County, State of Utah:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

TOGETHER WITH SEVEN (7) SHARES IN THE MIDWAY IRRIGATION COMPANY

Tax ID Number: **00-0014-5479, Ser No. OWC-0397-2-035-034; 00-0006-4720, Ser No. OMI-0417-0-035-034**

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

For the Purpose of Securing:

(1) payment of the indebtedness evidenced by a promissory note of even date hereof in the principal sum of **\$350,000.00** made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

To Protect the Security of This Deed of Trust, Trustor Agrees:

1. To keep said property in good condition and repair; not to remove or demolish any building

thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property Trustor further agrees:

- (a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and
- (b) To allow Beneficiary to inspect said property at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary, instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf, insurance in favor of the Beneficiary alone. If insurance cannot be secured by the Trustor to provide the required coverage, this will constitute an act of default under the terms of this Deed of Trust.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or trustee elect to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

5. To pay at least 10 days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

6. To pay to Beneficiary monthly, in advance, an amount, as estimated by Beneficiary in its discretion, sufficient to pay all taxes and assessments affecting said property, and all premiums on insurance therefor, as and when the same shall become due.

7. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

8. To pay immediately and without demand all sums expended hereunder by Beneficiary or

Trustee, with interest from date of expenditure at the rate of **5.00%** per annum until paid, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

9. Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

10. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the note for endorsement (in case of full reconveyance, for cancellation and retention) without affecting the liability of any person for the payment of the indebtedness secured hereby, and without releasing the interest of any party joining in this Deed of Trust, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of trust or the lien or charge thereof; (d) grant any extension or modification of the terms of this loan; (e) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable trustee's fees for any of the services mentioned in this paragraph.

11. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties and profits of the property affected by this Deed of trust and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option.

12. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

13. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. The failure on the part of the Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

15. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness

secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said property to be sold to satisfy the obligations hereof and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

16. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than such time as may be required by law beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at **12.00%** per annum from date of expenditure; (4) all other sums then secured hereby; and 5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the country in which the sale took place.

17. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

18. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

19. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by the law.

20. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledge, of the note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

21. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or trustee shall be a party, unless brought by Trustee.

22. This Deed of trust shall be construed according to the laws of the State of Utah.

23. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

Luster Development Inc., a Utah corporation

By: [Signature]
Name: Daniel J. Luster
Title: President

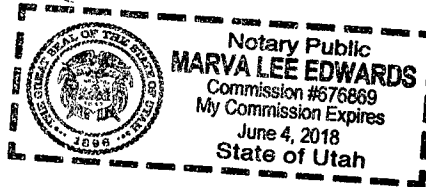
STATE OF **UT**)
County of Wasatch)ss.

On Sept. 1, 2017, before me, the undersigned Notary Public, personally appeared **Daniel J. Luster, President of Luster Development Inc.**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires: 6/4/18

[Signature]
Notary Public



**Addendum No. One
to Deed of Trust and Assignment of Rents**

This serves as Addendum No. One to that Deed of Trust and Assignment of Rents made 9/1, 2017, between Luster Development Inc. as Trustor, whose address is 143 W. Farm Springs Lane, Midway, Utah 84049, First American Title Insurance Company, as Trustee and The Geoffrey David Smart Family Living Trust (Geoffrey David Smart, Trustee), as Beneficiary.

The Legal descriptions under the referenced Deed of Trust and Assignment of Rents are those stated in the above referenced document.

Concurrently with conveyance by Seller (Beneficiary) of the above referenced Property, seven (7) Shares in the Midway Irrigation Company are also being conveyed (currently held in the name of Geoffrey David Smart). The Trustor affirmatively agrees that said water shares are intended to be used exclusively for irrigation purposes for Parcels referenced in the preceding paragraph and shall be used for no other purpose until the Promissory Note and any and all Trustor obligations under the Deed of Trust and Assignment of Rents have been fully complied with and the Note has been fully paid off. Use of the referenced Water Shares for any other purpose shall be deemed a Default under the Deed of Trust and Assignment of Rents with all default cures as stated in the Deed of Trust and Assignment of Rents being available without requirement of prior notice to Trustor.

Luster Development Inc.

By: [Signature]
Daniel J. Luster

Its: President

State of Utah } ss.
County of Wasatch }

On the 1st day of September, 2017, before me, personally appeared Daniel J. Luster, President, Luster Development, Inc., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are/is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that his/her/their signature(s) on the instrument that person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
NOTARY PUBLIC

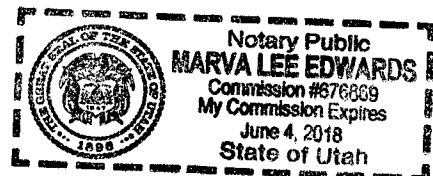


EXHIBIT "A "

Escrow No. **380-5837926 (nh)**
A.P.N.: **00-0014-5479; 00-0006-4720**

PARCEL 1:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THAT PROPERTY DESCRIBED IN BOOK 574 AT PAGE 400 OF THE WASATCH COUNTY RECORDERS SAID POINT BEING NORTH 89°47'29" WEST 1576.70 FEET (WEST BY RECORD) ALONG THE SECTION LINE AND EXISTING FENCE FROM THE EAST QUARTER CORNER OF SECTION 35, TOWNSHIP 3 SOUTH RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG SAID SECTION LINE AND EXISTING FENCE NORTH 89°47'29" WEST 1035.10 FEET TO A FENCE CORNER; THENCE ALONG AN EXISTING FENCE NORTH 0°33'08" EAST 127.04 FEET (NORTH 132.5 FEET BY DEED) TO THE SOUTHEASTERLY LINE OF MEMORIAL HILL AS DESCRIBED IN BOOK 21 AT PAGE 142 OF SAID RECORDS; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 73°52'00" EAST 460.00 FEET; THENCE NORTH 58°11'00" EAST 237.00 FEET; THENCE NORTH 43°06'00" EAST 351.00 FEET; THENCE NORTH 24°41'00" EAST 63.52 FEET TO THE NORTHWEST CORNER OF THAT PROPERTY DESCRIBED IN BOOK 574 AT PAGE 400 OF SAID RECORDS AND A FENCE CORNER; THENCE ALONG THE WEST LINE OF SAID PROPERTY AND SAID FENCE SOUTH 10°05'55" EAST 708.55 FEET TO THE POINT OF BEGINNING.

PARCEL 1A:

A PERPETUAL EASEMENT AND RIGHT OF WAY ON, OVER AND ACROSS THE LAND DESCRIBED BELOW:

BEGINNING AT A POINT LOCATED 2681.92 FEET DUE NORTH AND 900.07 FEET DUE EAST FROM THE SOUTH QUARTER CORNER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°45'28" EAST 136.12 FEET, THENCE NORTH 60.00 FEET, THENCE NORTH 89°45'28" WEST 146.81 FEET, THENCE SOUTH 10°05'55" EAST 60.99 FEET TO THE POINT OF BEGINNING.

PARCEL 1B:

TOGETHER WITH A RIGHT OF WAY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF AN EXISTING PUBLIC HIGHWAY, SAID POINT BEING EAST 15.25 CHAINS, SOUTH 896.3 FEET, AND EAST 165 FEET, MORE OR LESS FROM THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 35, IN TOWNSHIP 3 SOUTH, RANGE 4 EAST OF THE SALT LAKE MERIDIAN, AND RUNNING THENCE NORTH 896.3 FEET, MORE OR LESS TO THE NORTH LINE OF THE SOUTHEAST QUARTER; THENCE EAST 40 FEET, THENCE SOUTH 896.3 FEET, MORE OR LESS TO THE NORTH LINE OF SAID PUBLIC HIGHWAY; THENCE WEST 40 FEET TO THE PLACE OF BEGINNING.

PARCEL 2A:

BEGINNING AT A POINT 40 FEET WEST FROM THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST OF THE SALT LAKE MERIDIAN, AND RUNNING THENCE WEST 317.72 FEET; THENCE NORTH 20 FEET; THENCE EAST 327.72 FEET; THENCE SOUTH 36° WEST 12 FEET; THENCE SOUTH 13 FEET TO THE PLACE OF BEGINNING.

PARCEL 2B:

BEGINNING AT A POINT 40 FEET WEST FROM THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST OF THE SALT LAKE MERIDIAN, AND RUNNING THENCE EAST 40 FEET; THENCE NORTH 40 FEET; THENCE WEST 20 FEET; THENCE SOUTH 36° WEST 34 FEET, MORE OR LESS, TO A POINT DUE NORTH FROM THE PLACE OF BEGINNING; THENCE SOUTH 13 FEET TO THE PLACE OF BEGINNING.