

Ent 485415 Bk 1314 Pg 1384 - 1392  
PEGGY FOY SULSER, Recorder  
WASATCH COUNTY CORPORATION  
2020 Sep 25 04:25PM Fee: \$40.00 TC  
For: Cottonwood Title Insurance Agency, In  
ELECTRONICALLY RECORDED

WHEN RECORDED, RETURN TO:

Moab Base, LLC  
Attn: Stanley Soper  
PO Box 256  
127 N 200 W  
Spring City, UT 84662

133 966 - CAP

Tax Parcel 00-0006-6212

**TRUST DEED**  
**With Assignment of Rents**

THIS TRUST DEED is made and entered into on September 25, 2020, by and among MIDWAY HERITAGE DEVELOPMENT, LLC a Utah limited liability company as TRUSTOR, with an address at 143 W Farm Springs Lane, Midway, Utah 84049, COTTONWOOD TITLE INSURANCE AGENCY, INC., as TRUSTEE, with an address at 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121; and MOAB BASE, LLC, a Utah limited liability company, CHI INVESTMENTS, LLC, a Colorado limited liability company, and KEVIN CROFT, an individual, as BENEFICIARY, with an address at PO Box 256, 127 N 200 W, Spring City, UT 84662.

Trustor hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, all right, title, interest and estate of Trustor in and to that certain real property located in Wasatch County, State of Utah, as more particularly described in **Exhibit A** hereto, 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 the subject property, or any part thereof, together with all associated water rights in Midway Irrigation Company or otherwise, which shall be hereinafter collectively referred to as the "**Property**", subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits in the absence of a default.

Together with all improvements thereon and all rights appurtenant thereunto belonging, now or hereafter used or enjoyed with the Property, or any part thereof;

**FOR THE PURPOSE OF SECURING:** (1) payment of the indebtedness evidenced by that certain Amended and Restated Promissory Note (the "**Promissory Note**") of even date herewith, in the principal sum of One Million Eight Hundred Twenty Nine Thousand Eight Hundred Sixty Nine Dollars and no cents (\$1,829,869.00), made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and such additional amounts as may be advanced thereunder, and any extensions and/or renewals, refinancing, modifications, or consolidations thereof; (2) payment of all other obligations of Trustor under the Promissory Note or this Trust Deed; (3) the performance of each agreement of Trustor herein contained or contained in the Promissory Note; (4) the payment of such additional loans or advances as hereafter may be made to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; (5) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided; and (6) all other presently existing or hereafter incurred

obligations of Trustor to prior existing encumbrances.

**TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:**

1. Trustor shall promptly pay when due any and all financial obligations pursuant to the Note.

2. Trustor is lawfully seized and possessed of good and indefeasible title and estate to the Property and has the right to grant and convey the Property pursuant to this Trust Deed; the lien created hereby shall constitute a first lien, financial encumbrance and security interest against the Property,; the Property is free and clear of all other liens and financial encumbrances; and Trustor will warrant and defend the title to the Property as conveyed herein to Trustee against any and all claims and demand.

3. To keep the Property in good condition and repair; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to permit Beneficiary to make reasonable entries upon and inspections of the property and Trustor's book and records pertaining to the property; to do all other acts which from the character or use of the 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 the 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 the 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.

4. To provide and maintain insurance, of such reasonable type or types, including general liability insurance, and in such reasonable amounts as Beneficiary may require, on the property and on any improvements now existing or hereafter erected or placed on the Property.

5. 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.

6. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also 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.

7. To pay at least 10 days before delinquency all taxes and assessments affecting the

Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens with interest (including any prior mortgages or trust deeds affecting the property), on the 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.

8. Should Trustor fail to make any payment or to 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 the 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 or either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in his absolute discretion as it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

9. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of 18% per annum until paid, and the repayment thereof shall be secured hereby.

**IT IS MUTUALLY AGREED THAT:**

10. Should the 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 to the extent of the outstanding obligations of Trustor to Beneficiary hereunder, and shall be entitled at Beneficiary's 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 the Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all of its expenses, including attorney 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.

11. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed 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, Trustee may (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) grant any extension or modification of the terms of the note; or (e) reconvey, without warranty, all or any part of the 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.

12. As additional security, Trustor hereby assigns to Beneficiary, any and all rents, issues, royalties, and profits of the Property 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, Trustor's right to collect any such monies shall cease and Beneficiary shall have the right, but in no event the obligation, with or without taking possession of the Property, to collect all rents, royalties, issues, and profits, including, but not necessarily limited to, the right, power and authority, but in no event the obligation, of Beneficiary to enter into new leases and agreements with respect to the Property in an attempt to maximize the revenue to be generated and collected from the Property, and to employ such property managers and/or other agents as may be appropriate to facilitate the same, all at the expense of Trustor to be paid on the same terms as any other payment made by Beneficiary on behalf of Trustor and/or the Property pursuant to this Trust Deed. 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 be 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 Trust Deed to any such tenancy, lease or option. Nevertheless, in the event of a default by Trustor, Beneficiary shall have the ability, but not the obligation, to enter into new leases with respect to the Property. Beneficiary shall not, by reason of any of the foregoing, nor by reason of the collection of any rents, be deemed liable to any tenant for any failure of Trustor to perform and comply with any of Trustor's obligations to such tenant. Trustor hereby irrevocably authorizes and directs any tenant of the Property, upon receipt of written notice from Beneficiary that Trustor is in default with respect to its obligations pursuant to this Trust Deed and/or the Note, to pay Beneficiary all rents and other payments otherwise due and owing to Trustor. Such tenants shall rely upon any such written notice from Beneficiary and shall pay all such rents and other payments to Beneficiary without any obligation or right to inquire as to whether such default actually exists, notwithstanding any claim from Trustor to the contrary.

13. The entering upon and taking possession of the 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 the 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. Trustor further agrees to keep and maintain the premises free from hazardous, toxic or chemical wastes or substances, as the same may be defined from time to time by governmental authorities having jurisdiction over the property which is the subject of this Trust Deed.

15. The failure on the part of 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.

16. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in any performance secured hereby, 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 the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

17. 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 the 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 45 days 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 the Property so sold, but without any covenant or 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 (a) 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; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate of 12% per annum; and (d) all other sums secured hereby.

18. 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.

19. Upon the occurrence of any default hereunder, under the Promissory Note, or under the Real Property Purchase Agreement pursuant to which the Promissory Note was made; Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property.

20. 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 the 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 law.

21. Notwithstanding anything to the contrary contained herein, by its signature below, and by its acceptance of this instrument, Beneficiary hereby acknowledges that the loan secured by this instrument is a non-recourse loan, and hereby waives its entitlement to any amounts to which it would otherwise be entitled under Utah Code Ann. § 57-1-32, or any successor statute providing for the award of a post-foreclosure deficiency judgment.

22. This Trust Deed 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 pledgee, of the note secured hereby. In this Trust Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

23. Trustee accepts this Trust when this Trust Deed, 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 Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

24. Notwithstanding any other provision of this Trust Deed or Utah law, the loan secured by this Trust Deed is a non-recourse loan. Accordingly, Beneficiary's sole source of satisfaction of said indebtedness and Trustor's other obligations under the Note shall be limited to the foreclosure of Beneficiary's security interest in the Real Property. Trustor shall have the right to cure any purported default hereunder by executing and delivering a warranty deed to the Property to Beneficiary. Beneficiary shall not seek to procure payment out of any other assets of Trustor, or any person or entity comprising Trustor, or to seek judgment for any sums which are or may be payable under the Note, as well as any claim or judgment for any deficiency remaining after foreclosure of this Trust Deed.

25. This Trust Deed shall be construed according to the laws of the State of Utah.

26. 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 hereinabove set forth.

27. In the event any portion of this Trust Deed is declared invalid by a court of law or by legislative enactment all other provisions not so affected shall be valid and binding upon the parties hereto.

MIDWAY HERITAGE DEVELOPMENT,  
LLC, a Utah limited liability company

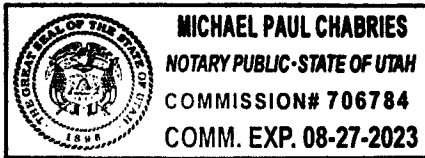
  
Daniel Luster, Manager

STATE OF UTAH            )  
  : ss.  
COUNTY OF WASATCH    )

On September 25, 2020, personally appeared before me DANIEL LUSTER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
NOTARY



**EXHIBIT A**

**Legal Description of Property**



File No. 133966-CAP.

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Beginning East 1006.50 feet and South 596.30 feet from the center of Section 35, Township 3 South, Range 4 East, Salt Lake Base and Meridian; thence South 88°10' East 165 feet; thence South 300 feet; thence West 165 feet; thence North 300 feet to the point of beginning.

Tax Id No.: 00-0006-6212