

When Recorded Return To:
Wade R. Budge
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

Ent 509888 Bk 823 Pg 317 - 322
Date: 07-OCT-2015 9:44:39AM
Fee: None
Filed By: GW
JOHN ALAN CORTES, Recorder
GRAND COUNTY CORPORATION
For: SNELL & WILMER LLP

Affecting Parcel No. 01-0001-0020

DEED OF TRUST

THIS DEED OF TRUST (as it may be amended and modified from time to time, the "Deed of Trust") is made and entered into effective as of September __, 2015, by and among GREGORY S. MILLER and HEIDI MILLER, individuals residing in Utah ("Trustors"), whose mailing address is 9350 South 150 East, Suite 1000, Sandy, Utah 84070-2721, FOUNDERS TITLE COMPANY ("Trustee"), whose mailing address is 746 East Winchester, Sandy, Utah, 84107, and MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company ("Beneficiary"), whose mailing address is 9350 South 150 East, Suite 1000, Sandy, Utah 84070-2721.

WITNESSETH:

WHEREAS, Beneficiary has agreed to loan certain funds in the principal amount of \$222,892.26.00 (the "Loan"), to Trustors pursuant to a Promissory Note of even date herewith (the "Note");

WHEREAS, Beneficiary desires to secure the performance of Trustors' obligations under the Note;

NOW, THEREFORE, upon the terms, covenants and conditions set forth in this Deed of Trust, and for good and valuable consideration, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustors hereby (i) irrevocably grant, transfer, convey and assign to Trustee, IN TRUST, WITH POWER OF SALE, and (ii) hereby grant to Beneficiary, as secured party, a security interest in for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, that certain real property located in the County of Grand, State of Utah (the "Property"), more particularly described on Exhibit A attached hereto and incorporated herein.

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Property including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

The entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate".

ARTICLE 1: OBLIGATIONS SECURED

For the purpose of securing payment and performance of all obligations of Trustors under the Note, including without limitation, the payment of indebtedness in the total principal amount of \$222,892.26, with interest thereon as evidenced by the Note (the "Obligations").

ARTICLE 2: REPRESENTATIONS AND WARRANTIES.

Trustors represent and warrant to Beneficiary as follows:

- (a) Trustors are the owners of fee simple marketable title in and to the Property and Trust Estate; and
- (b) Trustors shall defend title to the Property and Trust Estate against all claims and demands whatsoever.

ARTICLE 3: MAINTENANCE OF TRUST ESTATE

(a) Trustors shall (i) maintain the Property at all times in good condition and repair; (ii) not commit any waste of the Property, or remove, damage, demolish, or structurally alter any of improvement on the Property without the consent of Trustee; and (iii) comply at all times with all laws, ordinances, regulations, covenants and restrictions in any manner affecting the Property.

(b) Trustors shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire. This insurance shall be maintained in the amounts, to the extent and for the periods required by Beneficiary; and if no amount of insurance is specified, Trustors shall maintain insurance sufficient to replace all improvements on the Property. All insurance shall be carried with companies approved by Beneficiary. The insurance policies and any renewals shall be held by Beneficiary and shall include loss payable clauses in favor of, and in a form acceptable to, Beneficiary.

(c) In the event of loss, Trustors shall give Beneficiary immediate notice by mail. Beneficiary may make proof of loss if not made promptly by Trustors. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Beneficiary instead of to Trustors and to Beneficiary jointly. Insurance proceeds shall be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and Beneficiary's security is not lessened. If the restoration or repair is not economically feasible or Beneficiary's security would be lessened, the insurance proceeds shall be applied the reduction of the indebtedness under the Note and this Deed of Trust. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note shall be paid to the entity/person legally entitled thereto.

ARTICLE 4: EVENTS OF DEFAULT AND REMEDIES

(a) In order to induce Beneficiary to make the loan evidenced by the Note, Trustors agree that, in the event of any transfer whatsoever, without prior written consent of Beneficiary, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may require immediate payment in full of all sums secured by this Deed of Trust if:

- (i) Either Trustor dies; or
- (ii) Trustors' title in the Property is sold or otherwise transferred; or
- (iii) Trustors make an assignment for the benefit of creditors or file for bankruptcy protection under any state or federal law; or

- (iv) Trustors offer or make the Property collateral for any loan other than the Note, or otherwise encumber the Property with a monetary encumbrance; or
- (v) Trustors allow a mechanic's lien to be recorded against the Property and fail to have such lien removed, by either payment or bond, within 15 days of notice from Beneficiary; or
- (vi) An obligation of the Trustors under this Deed of Trust, or the Note, is not performed; (each of the above, an "Event of Default").

Trustors shall notify Beneficiary whenever any of the events listed in this Paragraph (ii) through (vi) occur. Conveyance of a Trustors' interest in the Property to a trust for purposes of estate planning shall not be considered a conveyance for purposes of this Article 4.

(b) Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable. Beneficiary may, in addition to the exercise of any or all of the remedies specified herein:

(i) Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law; or

(ii) Exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Trust Estate to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law.

(c) Exercise of Power of Sale. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustors, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustors' statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the 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 deemed 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 forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's 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 as follows:

FIRST: To 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 actually incurred not to exceed the amount which may be provided for in the trust deed.

SECOND: To payment of the obligations secured by the trust deed.

THIRD: To the balance, if any, to the person or person's legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Trust Estate, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1) (b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the Obligations of Trustors secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

ARTICLE 5: GENERAL PROVISIONS

(a) **Notices.** All notices and other communications required to be given under this Deed of Trust shall be given in writing and shall be delivered in person, or by first class, postage prepaid, addressed as follows:

If to Trustors:

Gregory S. and Heidi Miller
9350 South 150 East, Suite 1000
Sandy, UT 84070-2721

If to Beneficiary:

Miller Family Real Estate, L.L.C.
9350 South 150 East, Suite 1000
Sandy, UT 84070-2721

Such notice shall be deemed to have been given when delivered in person or two (2) days after deposit of the notice in the United States mail in the manner provided above. Any party may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications directed to it shall be sent.

(b) **Forbearance by Lender Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

(c) **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation shall be paid to Beneficiary. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note, and secured by this Deed of Trust, shall be paid to the entity legally entitled thereto.

(d) **Severability.** If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or

provisions contained in this Deed of Trust or render the same invalid, inoperative, or unenforceable to any extent whatever.

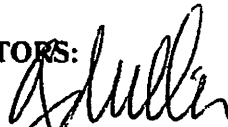
(c) Governing Law. This Deed of Trust shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah, without giving effect to its conflict of laws principles.

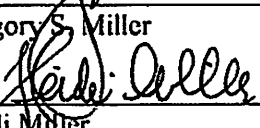
(f) Interpretation. Whenever the context shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Deed of Trust are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

(g) Assignment/ Binding Effect. This Deed of Trust shall be binding upon Trustors and may not be assigned without a written consent executed by Beneficiary. This Deed of Trust shall inure to the benefit of Beneficiary, and Beneficiary's successors and assigns, and the holders of any of the Obligations secured hereby.

(h) Acceptance of Trust. 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 any action or proceeding in which Trustors, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

IN WITNESS WHEREOF, this Deed of Trust has been executed the date and year first above written.

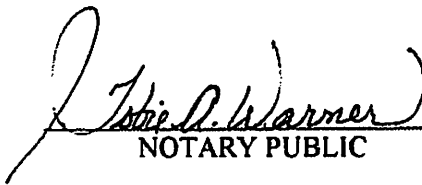
TRUSTORS:


Gregory S. Miller


Heidi Miller

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 29 day of SEPTEMBER ²⁰¹⁵ ~~2013~~
Gregory S. Miller and Heidi Miller.

SEAL 
NOTARY PUBLIC

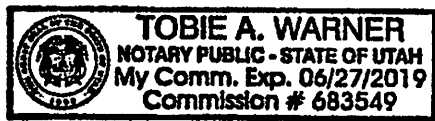


EXHIBIT A

Description of Real Property

That certain real property located in Grand County, State of Utah, and more particularly described as:

Beginning 847.5 feet East of the Northwest Corner of the SW1/4SE1/4, Section 1, T26S, R21E, SLM, and running thence South 263.0 feet; thence West 81.8 feet; thence North 263.0 feet; thence East 81.8 feet to the point of beginning. (Parcel No. 01-001-0020)

EXCEPTING therefrom a Right of Way described as follows: T26S, R21E, Section 1: Beginning at a point which lies South 0 degrees 17' West 299.3 feet from the intersection of the centerlines of Main Street and 300 South Street, Moab Townsite, and which lies North 89 degrees 47' West 49.5 feet and South 0 degrees 17' West 348.8 feet from the Southwest Corner Block 4, Moab Townsite, thence South 89 degrees 47' East 606.0 feet to the intersection of the center lines of 100 East Street Extension and Grand Avenue; together with 30.0 feet on each side of the above described centerline.

Parcel No. 01-0001-0020