

NH-90001

WHEN RECORDED, MAIL TO:
Sundance Debt Partners, LLC
Attn: Mike Nixon
1525 North Technology Way
Building A, Suite 2100
Orem, Utah 84097

Ent 528561 Bk 865 Pg 246 - 263
Date: 15-Feb-2018 03:00 PM
Fee: \$44.00 ACH
Filed By: JAC
JOHN CORTES, Recorder
GRAND COUNTY CORPORATION
For: Cottonwood Title Insurance A
Recorded Electronically by Simplifile

APN: 02-0007-0090

**TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT,
AND FINANCING STATEMENT**

THIS TRUST DEED CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT (this "*Trust Deed*"), made as of February 14, 2018, is given by View Gate Development LLC, a Utah limited liability company having a file number of 10562764-0160, whose address is 5442 South 900 East, Suite 531, Salt Lake City, Utah 84117, as "*Trustor*," to Cottonwood Title Insurance Agency, Inc. with an address of 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121, as "*Trustee*," for the benefit of Sundance Debt Partners, LLC, a Utah limited liability company, with an address of 1525 North Technology Way, Building A, Suite 2100, Orem, Utah 84097, as "*Beneficiary*."

WITNESSETH: That Trustor hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of Trustor's right, title and interest, whether fee, leasehold or otherwise, in and to the following described property, situated in Grand County, State of Utah:

See Exhibit A attached hereto.

TOGETHER WITH all of Trustor's right, title, and/or interest in the following (all of which, together with such real property described on Exhibit A, is referred to herein collectively as the "*Property*"):

- (a) all buildings, structures, and improvements of every nature whatsoever now or hereafter situated thereon, including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements, all of which shall be deemed and construed to be a part of the real property;

(b) 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 such 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;

(c) all present and future right, title, and interest of Trustor in and to all fixtures (as that term is defined in the Utah Uniform Commercial Code (the "UCC"), and whether existing now or in the future) now or in the future located at, upon, or about or affixed or attached to or installed in the real property described on Exhibit A, including, without limitation, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating, ventilating and air conditioning equipment, and all other types of fixtures of any kind or nature and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements, and substitutions of or to any such property (the "Fixtures"); and

(d) all insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of such real property and improvements or any business now or hereafter conducted thereon by Trustor; all development rights and credits, development agreements, bonding agreements, other applicable agreements, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to such real property and improvements; all licenses, permits, approvals, or other authorizations (federal, state, and local) used or useful in connection with or in any way relating to the Property, including any building permits relating to the development of the Property and all improvements thereon; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with such real property and improvements, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to such real property and improvements; all advance payments of insurance premiums made by Trustor with respect to such real property and improvements; and all reports, plans, drawings and specifications relating to such real property and improvements and all contracts and agreements related thereto, Trustor hereby granting to Beneficiary a security interest in and to the same as a secured party under the UCC, in addition to and not in limitation of Trustee's rights and remedies hereunder. Beneficiary shall have the right to file and record such financing statements and other instruments desired by Beneficiary for the purpose of perfecting Beneficiary's security interest in and to any fixture or other item of personal property comprising the Property.

FOR THE PURPOSE OF SECURING:

(1) payment of indebtedness and all other lawful charges evidenced by that certain Secured Promissory Note of even date herewith in the principal amount of \$13,266,667.00 made

by Trustor and payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth (herein sometimes referred to as the "Note") and any extensions and/or renewals or modifications thereof; (2) the performance of all other covenants and obligations of Trustor under that certain Loan Agreement of even date herewith entered into by and between Trustor and Beneficiary (the "Loan Agreement") and all other documents entered into by and between Trustor and Beneficiary as set forth therein; (3) the performance of each agreement of Trustor herein and therein contained; (4) the payment of such additional loans or advances as hereafter may be made to Trustor or its successors or assigns, which additional loans or advances may or may not be related to the loan evidenced by the Note and may be in any amount, when such additional loans or advances are evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; (5) performance of every obligation of Trustor contained in any agreement, document, or instrument now or hereafter executed by Trustor regardless of whether the agreement, document, or instrument recites that the obligations thereunder are secured by this Trust Deed; (6) 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 (7) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

AND, Trustor hereby warrants, covenants and agrees that Trustor is the lawful owner of the Property, with good and marketable title, free and clear of all encumbrances, liens or charges, excepting only those matters currently of record.

For purposes of Utah Code Annotated Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees, and similar amounts, if any, owing from time to time under the Note, Loan Agreement, or Trust Deed shall constitute a part of and be entitled to the benefits of Beneficiary's Trust Deed lien upon the Property and Beneficiary may add all such amounts to the principal balance of the Note, in its sole discretion, and Beneficiary may include such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Trust Deed. For purposes of Utah Code Annotated Section 57-1-25 and 78B-6-901.5, Trustor agrees that the stated purpose for which this Trust Deed was given is not to finance residential rental property.

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

1. **Maintenance and Repair.** To keep the 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 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 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 the 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.

2. **Required Insurance.** 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 the Property. Such insurance shall be carried in companies approved by Beneficiary with loss payable and cancellation protection clauses in favor of and in form acceptable to Beneficiary. In 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 reduction of the indebtedness hereby secured or to the restoration or repair of the Property damaged.

To keep the buildings and improvements now existing or hereafter erected or placed on the Property insured against loss by fire, and such other casualties and in such types and forms of insurance, and in such amounts as may be required by, and in such companies as may be satisfactory to Beneficiary, with loss payable clauses in favor of Beneficiary, and to pay the premiums therefor promptly when due, and the policies of insurance shall be held by Beneficiary, it being understood, however, that Beneficiary shall in no event be responsible for the sufficiency or form or substance of any policy of insurance, or for the solvency or sufficiency of any insurance company with respect to the insurance herein provided. In 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.

Beneficiary is hereby authorized to settle all insurance claims and collect all insurance funds accruing to the benefit of Trustor and/or Beneficiary, and to facilitate the collection of such insurance, Trustor hereby authorizes Beneficiary to execute, sign and deliver all necessary and proper proofs of loss, claims, waivers, and all other documents necessary for or incidental to the collection of such insurance, and if necessary to institute such proceeding in law or equity as may be necessary for the collection of such insurance, to receive all insurance proceeds, and to make such compromise and/or settlements as may be deemed necessary and advisable, and to

sign, endorse and cash, in its own name or as attorney-in-fact for Trustor, any and all drafts, checks, or other instruments delivered in payment of any insurance claim.

In the event Trustor or any subsequent owner or purchaser of the Property shall desire to substitute for a then existing policy of insurance, a policy of insurance issued by another insurance carrier, Beneficiary will be entitled to charge and collect a substitution fee for each substitution in an amount not to exceed \$250.00, to compensate Beneficiary for additional clerical and record keeping services occasioned by such substitution. Such fee shall become part of the indebtedness due from Trustor and payment thereof will be and is hereby secured by this Trust Deed and will be payable upon demand of Beneficiary. Failure to pay such fee upon demand shall constitute a default under this Trust Deed. All substituted policies of insurance shall be in such amounts, in such forms and will be issued by such insurance carriers as may be required by and as may be satisfactory to Beneficiary.

3. **Evidence of Title.** 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. Without limiting the foregoing, Trustor agrees to pay the premium applicable to any policy of title insurance required to be issued by Beneficiary and applicable to Beneficiary's interest in the Property granted hereunder.

4. **Actions Affecting the Property.** To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, the priority of the security interest created by this Trust Deed, 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 attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

5. **Taxes and Assessments.** To pay at least fifteen (15) days before delinquency all taxes and assessments affecting the Property, including without limitation greenbelt rollback taxes, 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 (including without limitation charges for utility services), and liens with interest, on the Property or any part thereof; to pay and at all times be current with respect to all impact fees, park fees, and any other fees and assessments levied against or otherwise related to the Property and any penalties and interest associated with such taxes; to provide proof of such payments to Beneficiary not later than fifteen (15) days prior to the due date for each such payment; and to pay all costs, fees, and expenses of this trust. Trustor will deliver to Beneficiary, within fifteen (15) days after their respective due dates, evidence satisfactory to Beneficiary that the taxes, assessments, encumbrances, and other charges and expenses to be paid by Trustor hereunder have been timely paid.

6. **Hazardous Materials.** Not to cause, permit, allow or suffer the presence, use, generation, manufacture, release, discharge, storage or disposal of any hazardous or toxic materials, substances or wastes as designated or regulated by applicable federal, state or local environmental laws (collectively "*Hazardous Materials*") on, under, in or about the Property, or

the transportation of any Hazardous Materials to or from the Property. Trustor shall immediately notify Beneficiary in writing of: (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened in connection with any Hazardous Materials; (b) any claim made or threatened by any third party against Trustee or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; and (c) Trustee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause all or any portion of the Property to be subject to any restrictions on the ownership, occupancy, transferability or use.

7. **Self-Help.** 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: (a) 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; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and (d) in exercising any 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 its reasonable fees.

8. **Default Interest.** To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of twenty-four percent (24%) per annum until paid, and the repayment thereof shall be secured hereby.

9. **Late Charge.** To pay Beneficiary a "late charge" of five percent (5%) of each payment due hereunder, or amounts due pursuant to the Note (whether principal, interest, or fees) which is more than five (5) days in arrears. This payment shall be made to cover the extra expense involved in handling delinquent payments.

IT IS MUTUALLY AGREED THAT:

10. **Condemnation; Property Damage.** 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, 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.

Beneficiary shall apply the proceeds of any award against the outstanding balance of the Note in the manner prescribed therein as if such amount were paid to Beneficiary by Trustor as of the date the proceeds were received by Beneficiary. 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 its expenses, including attorneys' 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. **Certain Trustee Rights.** 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 an extension or modification of the terms of this Trust Deed upon written request of Beneficiary; and (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 truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

12. **Subdivision Maps.** Prior to recording any final map, plat, parcel map, lot line adjustment or other subdivision map of any kind covering any portion of the Property ("**Subdivision Map**"), Trustor shall submit such Subdivision Map to Beneficiary for Beneficiary's review and approval, which approval shall not be unreasonably withheld. Within ten (10) business days after Beneficiary's receipt of such Subdivision Map, Beneficiary shall provide to Trustor written notice if Beneficiary disapproves of said Subdivision Map. Within ten (10) business days after Beneficiary's request, Trustor shall execute, acknowledge and deliver to Beneficiary such amendments to the Loan Documents (as defined in the Loan Agreement) as Beneficiary may reasonably require to reflect the change in the legal description of the Property resulting from the recordation of any Subdivision Map. In connection with and promptly after the recordation of any amendment or other modification to the Trust Deed recorded in connection with such amendments, Trustor shall deliver to Beneficiary, at Trustor's sole expense, a title endorsement to any title policy issued to in connection with this Trust Deed in form and substance satisfactory to Beneficiary insuring the continued first-priority lien of this Trust Deed. Subject to the execution and delivery by Trustor of any documents required under this section, Beneficiary shall, if required by applicable law, sign any Subdivision Map approved by Beneficiary pursuant to this section.

13. **Assignment of Rents.** As additional security, Trustor hereby assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the Property affected by this Trust Deed and of any personal property located thereon. Until the occurrence of an Event of Default (as defined below), Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to such Event of Default as they become due and payable. If any Event of Default shall occur, 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. In furtherance thereof, Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact (which appointment is coupled with an interest), at the option of Beneficiary at any time and from time to time following any Event of Default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all rents and

apply the same to the payment of Trustor's obligations to Beneficiary in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under any leases affecting the Property directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor. 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. Trustor agrees that it will not collect rent on the Property more than one month in advance or lease the Property other than on commercially reasonable terms.

The assignment of the rents of the Property in this Section is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary's rights to the rents are not contingent upon and may be exercised without possession of the Property.

Upon the occurrence of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the obligations secured hereby, enter upon and take possession of the Property, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to payment of the obligations secured hereby in such order as Beneficiary may determine. The collection of such rents, or the entering upon and taking possession of the Property, or the application of the rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Property and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new leases, to cancel, surrender, alter or amend the terms of, and/or renew existing leases, and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

It is not the intention of the parties hereto that an entry by Beneficiary upon the Property under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Beneficiary, this

assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this assignment by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor, prior to such actual entry and taking of possession.

This Section is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated Section 57-26-101 et seq. (the "*Act*"), and in the event of any conflict or inconsistency between the provisions of this Section and the provisions of the Act, the provisions of the Act shall control.

Trustor acknowledges that Beneficiary has taken all actions necessary to obtain, and that, upon recordation of this Trust Deed, Beneficiary shall have (to the extent permitted under applicable law) a valid and fully perfected first priority present assignment of all rents and all security for the related leases, and that Beneficiary's interest in the rents shall be deemed fully perfected, "choate" and enforced as to Trustor and all third parties, including without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "*Bankruptcy Code*"), without the necessity of commencing a foreclosure action with respect to this Trust Deed, making formal demand for the rents, obtaining the appointment of a receiver or taking any other affirmative action. Trustor agrees that (a) this Trust Deed shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Trust Deed extends to the property of Trustor acquired before the commencement of a case in bankruptcy and to all amounts paid as rents, and (c) such security interest shall extend to all rents acquired by the estate after the commencement of any case in bankruptcy. So long as part of the Note remains unpaid and undischarged, the fee and leasehold estates to the Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Trustor, Beneficiary, any tenant or any third party, by purchase or otherwise

14. **No Encumbrance.** Other than pursuant to the Subordinated Loans (as defined in the Loan Agreement), as an express condition of Beneficiary making the loan secured by this Trust Deed, Trustor shall not further encumber, pledge, mortgage, hypothecate, place any lien (or permit any lien to be placed, or fail to promptly remove any lien that is placed without Trustor's permission), charge, or claim upon, or otherwise give as security the Property or any interest therein nor cause or allow by operation of law the encumbrance of the Property or any interest therein without the written consent of Beneficiary even though such encumbrance may be junior to the encumbrance created by this Trust Deed. Encumbrance of the Property contrary to the provisions of this paragraph without the express written consent of Beneficiary shall constitute a default hereunder and at Beneficiary's option, Beneficiary may declare the entire balance of principal and interest secured hereby immediately due and payable, whether such default is created by Trustor or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect; *provided that* Beneficiary shall not exercise such option if such exercise is prohibited by applicable law.

15. **Due on Sale.** Should Trustor sell or convey, or agree to sell or convey any portion of the Property, or of any building or improvement now or hereafter located thereon, or any

interest whatever therein to any person, firm, or corporation, or should Trustor permit or suffer the occupancy of any portion of the Property by anyone, whether as a tenant or otherwise, then each such occurrence shall be deemed a default by Trustor, and the entire indebtedness secured by this Trust Deed at the option of Beneficiary shall become immediately due and payable, and thereupon, Beneficiary may demand immediate payment in full of such indebtedness and may exercise all legal limits to collect such indebtedness, including but not limited to foreclosure of this Trust Deed. It is expressly acknowledged and agreed that, if Trustor is an entity, any direct or indirect transfer of more than ten percent (10%) of the capital stock, partnership or member interests of Trustor (whether in a single transaction or a series of related transactions), as the case may be, shall constitute a transfer of the entire Property within the meaning of this paragraph.

16. **Right of Entry.** Upon the occurrence of any Event of 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 the Property or any part thereof, take any action it deems necessary, in its sole discretion, to prepare the Property for sale, in its own name sue for or otherwise collect the rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (and preparation for sale), including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

17. **No Invalidation.** 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.

18. **Certain Remedies.** In addition to all other remedies available to Beneficiary hereunder or at law, upon any (a) Event of Default (in this case only as such term is defined in the Note), (b) breach of any representation, warranty, or covenant of Trustor hereunder, or (c) any breach of any representation, warranty, or covenant of Trustor or any other loan party under any Loan Document, (each of which shall constitute a "default" hereunder for purposes of the UCC) (each an "*Event of Default*"), Beneficiary may dispose of any fixture or other personal property comprising the Property (including without limitation all reports, plans, and specifications related to the Property or any improvements thereon) in any manner now or hereafter permitted by the UCC or in accordance with any other remedy provided by law. Both Trustor and Beneficiary shall be eligible to purchase any part or all of such personal property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the UCC. Beneficiary shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale or other disposition of such personal property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, it shall constitute reasonable notice to Trustor.

Notwithstanding the foregoing, if any event occurs that would constitute an Event of Default hereunder, other than a default related to a payment required to be made by Trustor, and

such event is curable, and if Trustor has not already been given notice of a breach of the same provision of this Trust Deed, the event may be cured (and no Event of Default will have occurred) if Trustor, after receiving written notice from Beneficiary demanding cure of such event, cures the event within ten (10) days of Beneficiary's delivery to Trustor of such written notice.

19. **Security Agreement.** This Trust Deed shall be self-operative and shall constitute a Security Agreement as defined in the UCC with respect to all of those portions of the Property which constitute personal property or Fixtures governed by the UCC, provided, however, Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor (such power coupled with an interest) to execute, deliver and, if appropriate, to file any agreement, financing statement, continuation statement, or other instruments as Beneficiary may request or require in order to impose or perfect the lien or security interest hereof. Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the UCC. Notwithstanding the foregoing, this Trust Deed is intended to serve as a financing statement filed as a fixture filing pursuant to the terms of the UCC. This filing is to be recorded in the real estate records in the county in which the Property is located. In addition, a carbon, photographic or other reproduced copy of this Trust Deed and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Certain financing statement information is set forth on Exhibit B to this Trust Deed.

20. **No Waiver.** 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.

21. **Time of the Essence.** Time is of the essence hereof. Upon the occurrence of any Event of Default, 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 such 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.

22. **Foreclosure.** After the lapse of such time as may then be required by law following the recordation of such 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 the 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 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 one day beyond the day designated in the notice of sale, notice thereof shall be given in the same

manner as the original notice of sale. Trustor agrees to surrender possession immediately after any such sale of the Property, if possession has not previously been surrendered. Trustee shall execute and deliver to the purchaser its Deed conveying such 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 Trustee's and attorneys' fees and all costs incurred to prepare the Property for sale (including without limitation any costs incurred to remove equipment, clean the Property, stage the Property, and otherwise prepare it for sale, as determined by Beneficiary in its sole discretion); (b) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (c) all sums expended under the terms hereof, not then repaid, with accrued interest at twenty-four percent (24%) per annum from date of expenditure; (d) all other sums then secured hereby; and (e) 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 county in which the sale took place.

Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any Trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Annotated Section 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Annotated Section 57-1-32 that the value of the Property as determined and set forth in an MAI appraisal of the Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of Utah Code Annotated Section 57-1-32.

Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Annotated Section 78B-6-901 and any successor or replacement statute or any similar laws or benefits.

23. **Acceleration; Costs.** Upon the occurrence of any Event of Default, 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 in real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be fixed by the court.

24. **Successor Trustee.** 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.

25. **Reconveyances.** From time to time, Beneficiary may require Trustee to reconvey, release and discharge from the operation of this Trust Deed any part or parts of the property described in this Trust Deed, given to secure payment of the indebtedness evidence by the Note. Trustee shall execute and deliver unto Beneficiary a written reconveyance and release upon receiving from Beneficiary a written request therefor. Such written request shall include a description of the Property to be reconveyed or released, a statement of the consideration, if any, received by Beneficiary for such reconveyance or release, and a declaration that Beneficiary is the owner and holder of the debt mentioned in this Trust Deed and that the same has never been assigned or transferred. The partial reconveyance or release executed by Trustee shall identify this Trust Deed and describe the property to be reconveyed or released. A partial reconveyance or release executed and delivered by Trustee under authority of this paragraph shall not affect or impair the security remaining under this Trust Deed. This Trust Deed need not accompany any request for a partial reconveyance or release, but upon demand of Trustee, Beneficiary will exhibit to Trustee the Note. Successive partial reconveyances or releases may be requested by Beneficiary.

26. **Incidents of Title.** Each abstract of title, title insurance policy, or all other evidences of title, and all insurance policies placed or deposited with Beneficiary shall be deemed an incident to the title of the Property herein described and upon sale or foreclosure or otherwise shall pass to the purchaser, and same are hereby pledged as additional security for payment of the indebtedness secured hereby.

27. **Collection Costs.** In the event Beneficiary and Trustee or either of them shall (a) determine to foreclose this Trust Deed by court action, or (b) find it necessary to resort to the courts to secure protection of the security given hereunder or to enforce or protect the rights hereunder of Beneficiary, or (c) be involved in court action involving or affecting this Trust Deed, the security given thereunder or the indebtedness secured thereby, Trustor agrees to pay all costs and expenses incurred therein and reasonable compensation for the attorneys representing Beneficiary and Trustee, or either of them.

28. **Order of Remedies.** Notwithstanding the existence of any other security interests in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided in this Trust Deed, the Note, any other document secured hereby, or applicable law. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of such remedies. Trustor and any party who now or in the future acquires a security interest in the Property and who has actual or constructive notice of this Trust Deed waives any and all right to require the marshalling of assets or to require that any of the Property be sold in the inverse order of alienation or that any of the Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Trust Deed.

29. **Successors and Assigns.** 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 requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. Beneficiary may assign all of its rights and obligations hereunder without the need to obtain Trustor's prior consent to any such assignment. Trustor may not assign its rights or obligations hereunder without Beneficiary's prior written consent to such assignment.

30. **Beneficiary Approval Rights.** Any option, election, notice or right granted to Beneficiary may be exercised only by written approval of Beneficiary.

31. **No Usury.** If the loan secured by this Trust Deed is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Trustor which exceed permitted limits will be refunded to Trustor. Beneficiary may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Trustor.

32. **Indemnification.** Trustor hereby agrees to indemnify and defend Beneficiary and its members, owners, investors, lenders, officers, legal counsel, employees and agents from and against, and Trustor will hold Beneficiary and all such persons harmless from and against, any liability, loss, expense, damage, fees (including reasonable attorneys' fees), suits, action or proceedings, whether pending or threatened, suffered or incurred as a result of Trustor's failure to observe, perform or discharge any of its obligations pursuant to this Trust Deed or any misrepresentation made by or on behalf of Trustor pursuant to this Trust Deed.

33. **Riders.** If one or more riders are executed by Trustor and recorded together with this Trust Deed, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Trust Deed as if the rider(s) were part of this Trust Deed.

34. **Sale of Note.** The Note or a partial interest therein (together with this Trust Deed) may be sold one or more times without prior notice to Trustor. There also may be one or more changes of the loan servicer unrelated to a sale of the Note.

35. **Severability.** If any provision of this Trust Deed is declared by a court of competent jurisdiction to be invalid for any reason such invalidity shall not affect the remaining provisions of this Trust Deed. The remaining provisions shall be fully severable, and this Trust Deed shall be construed and enforced as if the invalid provision had never been included herein.

36. **Trustee Acceptance.** 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.

37. **Governing Law.** THIS TRUST DEED AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH EXCLUDING ANY UTAH CONFLICT OF LAWS RULES.

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

39. **No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Trust Deed and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Trust Deed on the Property pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

40. **Additional Obligations Secured.** In addition to the foregoing, this Trust Deed secures all obligations, debts and liabilities, plus interest thereon, of Trustor or any affiliate of Trustor owed to Beneficiary or any affiliate of Beneficiary, as well as all claims by Beneficiary against Trustor or any affiliate of Trustor, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Trustor or its affiliate may be liable individually or jointly with others, whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

41. **Survival.** The representations, warranties, and covenants of Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan (as defined in the Loan Agreement).

[Remainder of page intentionally left blank.]

TRUSTOR:

VIEW GATE DEVELOPMENT LLC

By: Alan O. Melchior
Name: Alan Melchior
Title: Member

STATE OF UTAH)
 : ss.
COUNTY OF Salt)
 Lake

On February 14, 2018, personally appeared before me Alan O. Melchior a manager of View Gate Development LLC, the signer of the above instrument, who duly acknowledged to me that he executed the same on behalf of such limited liability company.



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF GRAND, STATE OF UTAH AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 7, TOWNSHIP 26 SOUTH, RANGE 22 EAST, SALT LAKE MERIDIAN; THENCE WEST ALONG SAID SECTION LINE 660.0 FEET; THENCE NORTHERLY TO A POINT 1301.39 FEET NORTH AND 1950.55 FEET EAST OF THE SOUTHWEST CORNER OF SECTION 7; THENCE NORTH 88°41' EAST 91.32 FEET; THENCE NORTH 89°45' EAST 177 FEET; THENCE NORTH 53°54' EAST 22.65 FEET; THENCE NORTH 63.05 FEET TO THE SOUTH LINE OF U.S. HIGHWAY 191 RIGHT-OF-WAY; THENCE SOUTH 65°39' EAST ALONG SAID RIGHT-OF-WAY TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7; THENCE SOUTH ALONG SAID 40 ACRE LINE TO THE POINT OF BEGINNING.

PARCEL NO. 02-0007-0090

EXHIBIT B

FINANCING STATEMENT INFORMATION

The Beneficiary/Secured Party is:

Sundance Debt Partners, LLC
1525 North Technology Way
Building A, Suite 2100
Orem, Utah 84097
Attention: Mike Nixon

The Debtor is:

View Gate Development LLC
5442 South 900 East, Suite 531
Salt Lake City, Utah 84117

The Collateral is the Fixtures and all other personal property described in the Trust Deed, together with all proceeds, replacements, substitutions and additions thereto.