

2

MW

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2014 025806

2014 MAY -8 AM 8:32

511106707a

SPACE ABOVE FOR RECORDER'S USE ONLY
MICHAEL B. BROWN
RECORDER

Return to:

Fidelity National Title
4215 Edison Lakes Parkway
Suite 115
Mishawaka, IN 46545

Cross-Reference: Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement recorded on February 27, 2012 as Instrument No. 2012-013985, in the records of Lake County, Indiana, as assigned by Assignment of Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement recorded on or about the date hereof, in the records of Lake County, Indiana

Store No. 27891
820 W. Lincoln Highway
Scherville, Indiana 46375
Lake County
See attached Exhibit A for legal description

When recorded, should be returned to:
Wells Fargo Bank, National Association
1700 Lincoln Street, 3rd Floor
Denver, CO 80203-4500
MAC C7300-033
Attn.: Doc Team 4
Obligor No.: 8656536762

Document is
NOT OFFICIAL!

NOTE: THE INDEBTEDNESS SECURED BY THE MORTGAGE, AS AMENDED HEREBY, SHALL HAVE A MATURITY DATE OF APRIL 22, 2019

FIRST MODIFICATION OF LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

This FIRST MODIFICATION OF LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Modification") is made as of this 22nd day of April, 2014, by and between **WINDY LANDINGS, INC.**, a Michigan corporation, having an address at 7915 Kensington Court, Brighton, Michigan 48116 (hereinafter, together with its successors and assigns, "Mortgagor"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, having an address at 1808 Aston Avenue, Suite 250, Carlsbad, California 92008, as administrative agent (hereinafter, in such capacity, "Administrative Agent" or "Mortgagee") for itself and other lending institutions (collectively, "Lenders") which are or may become parties to the Credit Agreement (as defined in the Mortgage (as hereinafter defined)).

1. Mortgage. Mortgagor has heretofore executed and delivered that certain Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement made by Mortgagor to Mortgagee, recorded on February 27, 2012 as Instrument No. 2012-013985, in the records of Lake County, Indiana, as assigned by that certain Assignment of Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Financing

8601771 v2

29-00
1820207743
1/26/14
AP

Statement recorded on or about the date hereof, in the records of Lake County, Indiana (as the same has been and may hereafter be amended from time to time, the "Mortgage"). Terms defined in the Mortgage and used without definition herein shall have the same respective meanings herein as in the Mortgage.

2. Existing Notes. The Mortgage secured existing indebtedness in the aggregate principal amount of \$47,500,000.00, which was evidenced by those certain promissory notes (collectively, the "Existing Notes") described on Annex I attached to the Mortgage.

3. Specific Amendments to the Mortgage. Effective as of the date hereof:

(a) The Mortgage is hereby amended by deleting Recital A in its entirety and simultaneously replacing it with the following:

"A. Mortgagor has, together with Sundance, Inc., a Michigan corporation and Kensington Management, Inc., a Michigan corporation (collectively with Mortgagor, the "Borrowers"), entered into that certain Amended and Restated Credit Agreement dated as of April 22, 2014 with Lenders and Administrative Agent (said Credit Agreement, as it may hereafter be amended, amended and restated, supplemented, extended, renewed, replaced or otherwise modified from time to time, being the "Credit Agreement"; the terms defined in the Credit Agreement and not otherwise defined herein being used herein as defined in the Credit Agreement)."

(b) The Mortgage is hereby amended by deleting the figure \$47,500,000.00 from Recital C on page 1 of the Mortgage and replacing it with the figure \$216,000,000.00.

(c) The Mortgage is hereby amended by deleting Recital D in its entirety and simultaneously replacing it with the following:

"D. To evidence and secure such indebtedness, Borrowers have executed and delivered the Credit Agreement, one or more promissory notes (collectively, the "Notes") and certain other Loan Documents."

(d) The Mortgage is hereby amended by deleting "Annex I" thereto in its entirety.

(e) The Mortgage is hereby amended by deleting Section 9 in its entirety from the Rider attached to the Mortgage and simultaneously replacing it with the following new Section 9:

"**SECTION 9. Future Advances – Maximum Amount Secured**. The

amounts secured by this Mortgage are intended to and shall include, for all purposes (i) future advances made from time to time after the date hereof, whether made by Mortgagee pursuant to the Credit Agreement or other Loan Documents, or otherwise at the option of Mortgagee, and whether made after a reduction to a zero (0) or other balance, or made otherwise, and (ii) future modifications, extensions, and renewals of the Notes, Credit Agreement and any and all other Obligations, such that the lien of this Mortgage with respect to any and all other such future advances (to the maximum amount hereinafter stated), modifications, extensions, and renewals, shall have the same priority, pursuant to IC 32-29-1-10, to which this Mortgage otherwise would be entitled (upon execution and recording) under IC 32-21-4-1, without regard to whether any such future advance, modification, extension, or renewal may occur after this Mortgage is executed, up to a maximum amount of \$216,000,000.00. The foregoing maximum amount secured by this Mortgage shall not be deemed to limit interest, default rate interest, prepayment premium charges and other obligations (other than the principal amount, including future advances) secured by this Mortgage.”

4. Additional Advances. The Notes evidence additional advances by, and obligations in favor of, the Lenders. It is agreed that these additional advances and obligations shall be equally secured with the original indebtedness evidenced by the Existing Notes and are subject to all of the terms and provisions of the Mortgage and the Credit Agreement.

5. Continuing Effectiveness of Mortgage. Except as specifically modified by this Modification, the terms of the Mortgage shall remain in full force and effect. Mortgagor ratifies and reaffirms all promises, covenants, warranties and representations in the Mortgage and warrants that it is not in default under the Mortgage. The Mortgage is hereby ratified and confirmed, shall continue to constitute the binding obligation and agreement of Mortgagor in favor of Mortgagee, and shall secure the Notes and all other obligations under the Credit Agreement as fully as if the Mortgage had been executed and delivered concurrently with the execution and delivery of this Agreement. Nothing herein shall be deemed to constitute a novation of the Mortgage or any of the Obligations. This Modification is effective upon recording, which shall take place only if title is satisfactory to Mortgagee and the priority of the Mortgage remains unchanged. This Modification shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns.

6. Execution in Counterparts. This Modification may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

MORTGAGEE:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: Maureen S. Malphus
Name: Maureen S. Malphus
Title: Vice President

ACKNOWLEDGEMENT

STATE OF CALIFORNIA §
 §
COUNTY OF SAN DIEGO §

On April 14, 2014, before me, Carla Lee Ward, Notary Public, personally appeared Maureen S. Malphus who 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 she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Carla Lee Ward

Notary Public

(SEAL)



CARLA LEE WARD
COMM. # 1893929
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXP. JULY 16, 2014

Unit:
Store No. 27891
820 W. Lincoln Highway
Scherverville, Indiana 46375
Lake County

EXHIBIT A

DESCRIPTION OF LAND

A PART OF THE E 1/2 OF THE E 1/2 OF THE NE 1/4 OF SECTION 17 T35N, R9W OF THE 2ND P.M., LAKE COUNTY, INDIANA, BEING PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION POINT OF THE WEST LINE OF THE E 1/2 OF THE E 1/2 OF THE NE 1/4 OF SAID SECTION 17 AND THE N 45 FOOT RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 30 AS PRESENTLY LAID OUT EXTENDED WEST; THENCE S 89° 32' 21" E 77.4 FEET MORE OR LESS TO A 3/4 INCH I.D. IRON PIPE SET THIS SURVEY, BEING THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING ON THE NORTH 45 FOOT RIGHT-OF-WAY LINE OF US HIGHWAY NO. 30, THENCE ON THE FOLLOWING 3 COURSES ALONG THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 30 (1) S 89° 32' 21" E, 74.00 FEET, (2) N 85° 26' 52" E 137.32 FEET (3) S 89° 32' 21" E, 14.20 FEET, THENCE N 0° 27' 39" E, 132.00 FEET; THENCE S 85° 26' 52" W, 167.00 FEET; THENCE S 45° 05' 08" W, 83.47 FEET; THENCE S 0° 27' 39" W 70.00 FEET TO THE POINT OF BEGINNING.

EXCEPT (DEEDED TO THE STATE OF INDIANA, AS INSTRUMENT #976094)

FOR THE PURPOSES OF ESTABLISHING A LIMITED ACCESS FACILITY, THE PERMANENT EXTINGUISHMENT OF ALL RIGHTS AND EASEMENTS OF INGRESS AND EGRESS TO, FROM AND ACROSS THE LIMITED ACCESS FACILITY (TO BE KNOWN AS U.S.R. 30 AND U.S.R. 41 AND AS PROJECT USR-41(45)), TO AND FROM THE OWNER'S ABUTTING LANDS, ALONG THE LINE DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 9 WEST, LAKE COUNTY, INDIANA; THENCE SOUTH 621.7 FEET ALONG THE EAST LINE OF SAID SECTION; THENCE WEST 61.9 FEET TO THE WEST BOUNDARY OF U.S.R. 41; THENCE SOUTH 0 DEGREES 11 MINUTES 00 SECONDS WEST 143.59 FEET ALONG THE BOUNDARY OF SAID U.S.R. 41 TO THE POINT OF BEGINNING OF THIS DESCRIPTION, WHICH POINT IS 60.00 FEET SOUTH FROM THE NORTH LINE OF OWNER'S LAND; THENCE SOUTH 0 DEGREES 11 MINUTES 00 SECONDS WEST 74.51 FEET ALONG SAID BOUNDARY TO THE NORTHWESTERN BOUNDARY OF THE INTERSECTION OF SAID U.S.R. 41 AND U.S.R. 30; THENCE SOUTH 49 DEGREES 02 MINUTES 00 SECONDS WEST 126.20 FEET ALONG THE BOUNDARY OF INTERSECTION OF SAID U.S.R. 41 AND SAID U.S.R. 30 TO THE NORTH BOUNDARY OF SAID U.S.R. 30; THENCE NORTH 89 DEGREES 49 MINUTES 00 SECONDS WEST 161.60 FEET ALONG THE BOUNDARY OF SAID U.S.R. 30 AND TERMINATING ON THE WEST LINE OF THE OWNER'S LAND.

ALSO EXCEPT (TO THE STATE OF INDIANA IN INSTRUMENT #2003036340)

A PART OF THE EAST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 9 WEST, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION; THENCE NORTH 89 DEGREES 42 MINUTES 50 SECONDS WEST 668.46 FEET (659.30 FEET DEDUCED FROM DEED RECORD 1394, PAGE 39 AND DEED RECORD 1394, PAGE 42) ALONG THE NORTH LINE OF SAID

SECTION TO THE NORTHWEST CORNER OF SAID HALF-HALF QUARTER SECTION; THENCE SOUTH 1 DEGREE 36 MINUTES 25 SECONDS EAST 884.89 FEET ALONG THE WEST LINE OF SAID HALF-HALF QUARTER SECTION TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 14 DEGREES 45 MINUTES 10 SECONDS EAST 362.4 FEET; THENCE SOUTH 89 DEGREES 45 NORTH 00

SECONDS EAST 72.61 FEET; THENCE SOUTH 0 DEGREES 12 MINUTES 39 SECONDS EAST 15.00 FEET TO THE NORTH BOUNDARY OF U.S.R. 30 (ALSO KNOWN AS LINCOLN HIGHWAY); THENCE NORTH 89 DEGREES 45 MINUTES 00 SECONDS WEST 16.00 FEET ALONG THE BOUNDARY OF SAID U.S.R. 30; THENCE SOUTH 0 DEGREES 15 MINUTES 00 SECONDS WEST 5.00 FEET ALONG SAID BOUNDARY; THENCE NORTH 89 DEGREES 45 MINUTES 00 SECONDS WEST 64.33 FEET ALONG SAID BOUNDARY TO THE WEST LINE OF SAID HALF-HALF QUARTER SECTION; THENCE NORTH 1 DEGREE 36 MINUTES 25 SECONDS WEST 55.03 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING AND CONTAINING

ALSO EXCEPT (TO THE STATE OF INDIANA IN INSTRUMENT #2003036340)

A PART OF THE EAST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 9 WEST, LAKE COUNTY, INDIANA DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION; THENCE NORTH 89 DEGREES 42 MINUTES 50 SECONDS WEST 668.46 FEET (659.30 FEET DEDUCED FROM DEED RECORD 1394, PAGE 39 AND DEED RECORD 1394, PAGE 42) ALONG THE NORTH LINE OF SAID SECTION TO THE NORTHWEST CORNER OF SAID HALF-HALF QUARTER SECTION; THENCE SOUTH 1 DEGREE 36 MINUTES 25 SECONDS EAST 884.89 FEET ALONG THE WEST LINE OF SAID HALF-HALF QUARTER SECTION; THENCE SOUTH 14 DEGREES 45 MINUTES 10 SECONDS EAST 36.24 FEET; THENCE SOUTH 89 DEGREES 45 MINUTES 00 SECONDS EAST 72.61 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 89 DEGREES 45 MINUTES 00 SECONDS EAST 210.92 FEET; THENCE SOUTH 0 DEGREES 15 MINUTES 00 SECONDS WEST 3.00 FEET TO THE NORTH BOUNDARY OF U.S.R. (ALSO KNOWN AS LINCOLN HIGHWAY); THENCE SOUTH 85 DEGREES 14 MINUTES 13 SECONDS WEST

137.33 FEET ALONG THE BOUNDARY OF SAID U.S.R. 30; THENCE NORTH 89 DEGREES 45 MINUTES 00 SECONDS WEST 74.00 FEET ALONG SAID BOUNDARY; THENCE NORTH 0 DEGREES 12 MINUTES 39 SECONDS WEST 15.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.054 ACRES, MORE OR LESS.

ALSO EXCEPT (TO THE STATE OF INDIANA IN INSTRUMENT #2003036340)

A PART OF THE EAST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 35 NORTH, RANGE 9 WEST, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT AN IRON PIPE ON THE WEST RIGHT OF WAY LINE OF STATE ROAD #41 AT A POINT 46.05 FEET WEST OF THE NORTHEAST CORNER OF SAID SECTION 17, (THE FOREGOING PORTION OF THIS DESCRIPTION BEGINNING WITH THE WORDS "AT AN IRON PIPE" IS QUOTED FROM DEED RECORD 1394, PAGE 39 AND DEED RECORD 1394, PAGE 42); THENCE ALONG THE BOUNDARY OF SAID U.S.R. 41 (ALSO KNOWN AS STATE ROAD #41) SOUTHERLY 126.43 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 48,287.94 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 0 DEGREES 16 MINUTES 08 SECONDS EAST AND A LENGTH OF 126.43 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 22 SECONDS WEST 5.00 FEET; THENCE NORTH 30 DEGREES 29 MINUTES 25 SECONDS WEST 13.88 FEET; THENCE NORTHERLY 114.55 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 48,275.94 FEET AND SUBTENDED BY A LONG CHORD

HAVING A BEARING OF NORTH 0 DEGREES 16 MINUTES 34 SECONDS WEST AND A LENGTH OF 114.55 FEET TO THE NORTH LINE OF SAID SECTION; THENCE SOUTH 89 DEGREES 42 MINUTES 50 SECONDS EAST 12.00 FEET ALONG SAID SECTION TO THE POINT OF BEGINNING AND CONTAINING 0.034 ACRES, MORE OR LESS. ALL BEARINGS IN THIS DESCRIPTION WHICH ARE NOT QUOTED FROM PREVIOUS INSTRUMENTS ARE BASED ON THE BEARING SYSTEM FOR INDIANA DEPARTMENT OF TRANSPORTATION PROJECT STP-2001(010).



THIS INSTRUMENT WAS PREPARED BY: *Steven Sauro*

Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road
Atlanta, GA 30326
Attn: Steven J. Sauro, Esq.

I affirm under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Steven Sauro

Steven J. Sauro, Esq.

