

A

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2016 035783

2016 JUN -9 AM 9:13

MICHAEL B. BROWN  
RECORDER

[SPACE ABOVE FOR RECORDER'S USE ONLY]

When recorded, should be returned to:  
Frederick C.C. Boyd, III, Esq.  
Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road NE  
Atlanta, Georgia 30326

Cross-Reference:

Mortgage, Assignment of Leases and Rents,  
Security Agreement and Financing Statement  
recorded April 21, 2015, as Instrument No. 2015-  
023595 in the records of Lake County, Indiana

**Document is NOT OFFICIAL!**

**This Document is the property of Fidelity National Lake County Recorder!**

**Title Company LLC**



Unit:

Store No. 31070  
10138 Indianapolis Boulevard  
Highland, Indiana 46322  
Lake County (109341)  
See attached Exhibit A for legal description

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

This **FIRST MODIFICATION OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT** (this "Modification") is made as of this 31<sup>st</sup> day of May, 2016, by and between **SUNDANCE, 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 Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement recorded April 21, 2015, as Instrument No. 2015-023595 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.

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2. Existing Notes. The Mortgage secures existing indebtedness, which is evidenced by one or more promissory notes (collectively, the "Existing Notes").

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 Old West Properties, L.L.C. (collectively with Mortgagor, the "Borrowers"), entered into that certain Third Amended and Restated Credit Agreement dated as of May 31, 2016 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 \$216,000,000.00 from Recital C on page 1 of the Mortgage and replacing it with the figure \$350,000,000.00.

(c) The Mortgage is hereby amended by deleting the figure \$216,000,000.00 from Section 9 of the Rider to the Mortgage and replacing it with the figure \$350,000,000.00.

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]



IN WITNESS WHEREOF, Mortgagor has executed and delivered this Modification on the day and year first above written.

**MORTGAGOR:**

**SUNDANCE, INC.,**  
a Michigan corporation

By: *Peter Lyders-Petersen*  
Name: Peter Lyders-Petersen  
Title: President

STATE OF Michigan  
COUNTY OF Dakland

**Document is  
ACKNOWLEDGEMENT  
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This Document is the property of  
the Lake County Recorder!



On this 19th day of May, 2016, before me, a Notary Public in and for the aforesaid State of Michigan personally appeared Peter Lyders-Petersen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the President of SUNDANCE, INC., a Michigan corporation, to be the free and voluntary act and deed of said corporation, for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

*Tammi Lanning*  
Signature of the Notary  
Print Name: Tammi Lanning

My Commission Expires: 5/20/2020

My County of Residence is: Dakland

[Notary Seal]

**MORTGAGEE:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
a national banking association

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.



STATE OF CALIFORNIA §  
COUNTY OF SAN DIEGO §

On May 20, 2016, 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)



Unit:  
Store No. 31070  
10138 Indianapolis Boulevard  
Highland, Indiana 46322  
Lake County

EXHIBIT A

DESCRIPTION OF LAND

PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN AND BEING PART OF MEIJER PLAT, SAID PLAT AS SHOWN IN PLAT BOOK 82, PAGE 94 IN THE OFFICE OF THE RECORDER, LAKE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 32; THENCE NORTH 89 DEGREES 43 MINUTES 56 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 84.97 FEET TO THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 41 (INDIANAPOLIS BOULEVARD); THENCE SOUTH 04 DEGREES 08 MINUTES 30 SECONDS EAST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 308.45 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 04 DEGREES 08 MINUTES 30 SECONDS EAST ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 149.20 FEET TO THE NORTH LINE OF A PARCEL DESCRIBED IN A QUIT-CLAIM DEED AS RECORDED IN SAID RECORDER'S OFFICE AS DOCUMENT NO. 98075994; THENCE SOUTH 89 DEGREES 56 MINUTES 34 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 14.85 FEET TO THE WEST LINE OF SAID PARCEL; THENCE SOUTH 00 DEGREES 03 MINUTES 22 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 85.01 FEET; THENCE SOUTH 89 DEGREES 53 MINUTES 57 SECONDS WEST, A DISTANCE OF 33.15 FEET; THENCE SOUTH 00 DEGREES 03 MINUTES 22 SECONDS EAST, A DISTANCE OF 23.24 FEET; THENCE SOUTH 89 DEGREES 53 MINUTES 57 SECONDS WEST, A DISTANCE OF 149.73 FEET TO A CURVE CONCAVE TO THE NORTHEAST WITH A RADIUS OF 35.00 FEET AND A CHORD WHICH BEARS NORTH 45 DEGREES 04 MINUTES 42 SECONDS WEST, A DISTANCE OF 49.52 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 55.01 FEET; THENCE NORTH 00 DEGREES 03 MINUTES 22 SECONDS WEST, A DISTANCE OF 141.07 FEET; THENCE NORTH 22 DEGREES 57 MINUTES 50 SECONDS WEST, A DISTANCE OF 49.57 FEET; THENCE NORTH 35 DEGREES 06 MINUTES 14 SECONDS WEST, A DISTANCE OF 56.00 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF LOT 1 OF DISCOUNT TIRE ADDITION AS SHOWN IN PLAT BOOK 98, PAGE 89 IN SAID RECORDER'S OFFICE, SAID POINT LYING ON A CURVE; SAID CURVE PORTION FOR THIS DESCRIPTION BEING CONCAVE TO THE NORTHEAST WITH A RADIUS OF 38.50 FEET AND A CHORD WHICH BEARS SOUTH 68 DEGREES 20 MINUTES 48 SECONDS EAST, A DISTANCE OF 28.54 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 29.23 FEET; THENCE NORTH 89 DEGREES 53 MINUTES 57 SECONDS EAST ALONG SAID SOUTHERLY BOUNDARY, A DISTANCE OF 247.06 FEET TO THE POINT OF BEGINNING, CONTAINING, 1.33 ACRES, MORE OR LESS, ALL IN LAKE COUNTY, INDIANA.

NOW BEING KNOWN AS LOT 1, OF THE FINAL PLAT OF TACO BELL ADDITION RECORDED AUGUST 21, 2014 AS INSTRUMENT NUMBER 2014-050515 OF THE LAKE COUNTY RECORDS.

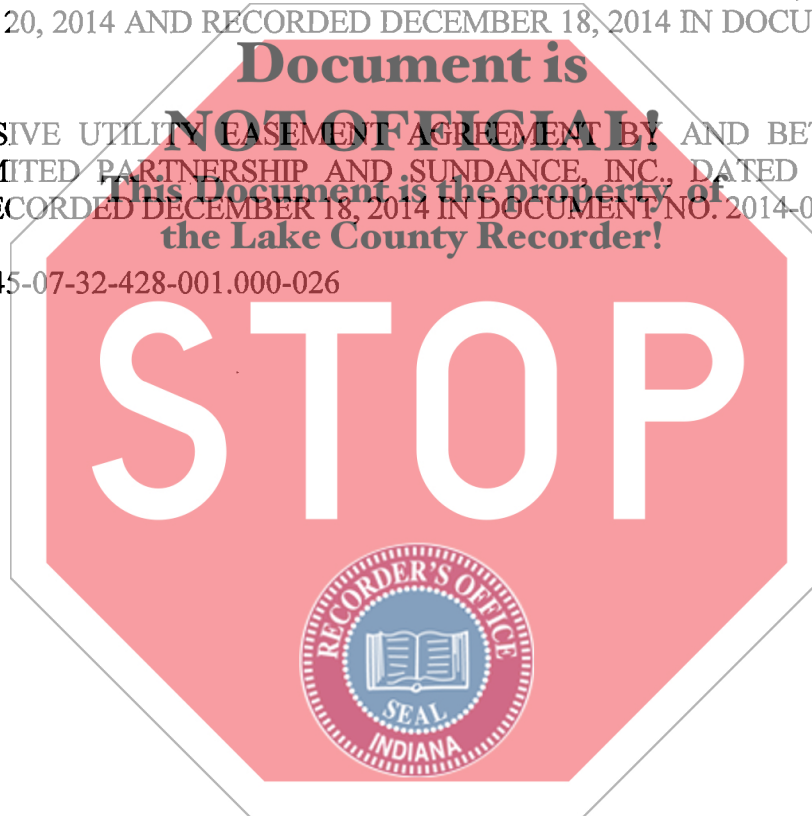
TOGETHER WITH

NONEXCLUSIVE DRIVEWAY ACCESS EASEMENT AGREEMENT BY AND BETWEEN MEIJER STORES LIMITED PARTNERSHIP AND SUNDANCE, INC., DATED NOVEMBER 20, 2014 AND RECORDED DECEMBER 18, 2014 IN DOCUMENT NO. 2014-080390.

NONEXCLUSIVE STORM WATER DISCHARGE AGREEMENT BY AND BETWEEN MEIJER STORES LIMITED PARTNERSHIP AND SUNDANCE, INC., DATED NOVEMBER 20, 2014 AND RECORDED DECEMBER 18, 2014 IN DOCUMENT NO. 2014-080391.

NONEXCLUSIVE UTILITY EASEMENT AGREEMENT BY AND BETWEEN MEIJER STORES LIMITED PARTNERSHIP AND SUNDANCE, INC., DATED NOVEMBER 20, 2014 AND RECORDED DECEMBER 18, 2014 IN DOCUMENT NO. 2014-080392.


Tax ID No.: 45-07-32-428-001.000-026



THIS INSTRUMENT WAS PREPARED BY:

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 J. Sauro, Esq.

**Document is**

**NOT OFFICIAL!**

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the Lake County Recorder!**

**STOP**

