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**AMENDED AND RESTATED
DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING
(Leasehold)**

Grantor:

SeaWend, Ltd., dba SeaWend Ltd., L.L.C.,
an Ohio limited liability company

Name of Grantee (Beneficiary):

The Huntington National Bank, a national banking association

Name of Trustee:

Fidelity National Title Company of Washington

Abbreviated Legal Description:

Tract C, Plat of K-Mart Commercial Park, Plat
Volume 14, Pages 126-127

Assessor's Tax Parcel ID Number:

4532-000-003-0006

March 28, 2003, recorded as Instr. No. 200304160107; modified in 200610030148; 200904200163; 201105020061; 201308070050 and 201403270038

**AMENDED AND RESTATED
DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING
(Leasehold)**

THIS AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Instrument") is made effective this 15th day of December, 2014, among the Trustor, **SEAWEND, LTD.**, dba SeaWend Ltd., L.L.C., an Ohio limited liability company, whose address is 1328 Dublin Road, Suite 300, Columbus, Ohio 43215 ("Grantor"), and the Beneficiary, **THE HUNTINGTON NATIONAL BANK**, a national banking association, whose address is 41 South High Street, Columbus, Ohio 43215 ("Huntington", and in its capacity as Administrative Agent for the Lenders, the "Agent"), and the Trustee, **FIDELITY NATIONAL TITLE COMPANY OF WASHINGTON**, whose address is 3500 188th Street SW, Suite 300, Lynnwood, Washington 98037 ("Trustee").

Recitals

A. Grantor and certain affiliates of Grantor operate Wendy's Old-Fashioned Hamburgers restaurants ("Restaurants") in several metropolitan areas under franchise agreements from Wendy's International, LLC, an Ohio limited liability company ("Wendy's").

B. Grantor and certain of its affiliates (collectively, the "Companies") have entered into a Credit Agreement, dated December 15, 2014 (the "Loan Agreement"), with Huntington and Bank of America, N. A., a national banking association (collectively, the "Initial Lenders"), and Huntington as Administrative Agent, Bookrunner, Swingline Lender and Issuing Bank.

C. Pursuant to the terms and conditions of the Loan Agreement, the Initial Lenders have agreed: (i) to make a term loan (the "Term Loan") to the Companies in order to refinance existing term and revolving indebtedness of the Companies to Huntington, in the aggregate principal balance of Thirty-Two Million and 00/100 Dollars (U.S. \$32,000,000.00) on the date hereof, which indebtedness previously was evidenced by a Fourth Amended and Restated Loan Agreement, dated October 4, 2013, and by a Term Note, an Acquisition Term Note and a Revolving Note, all executed on October 4, 2013; (ii) to make an additional term loan (the "Acquisition Term Loan") to the Companies in the principal amount of Eleven Million and 00/100 Dollars (U.S. \$11,000,000.00), the proceeds of which will be used by the Companies to acquire certain Wendy's Old-Fashioned Hamburgers restaurants located in the Vancouver, British Columbia metropolitan area; (iii) to provide a development line of credit (the "Development Facility") to the Companies in the maximum principal amount of Thirty Million and 00/100 Dollars (U.S. \$30,000,000.00), subject to possible increase at the option of the Companies as provided in the Loan Agreement, the proceeds of borrowings under the Development Facility from time to time (the "Development Facility Loans") to be used by the

Companies for acquisition and development of additional Restaurants in certain metropolitan areas pursuant to the terms of area Development Agreements and individual Franchise Agreements with Wendy's; (iv) to make additional term loans (the "Converted Term Loans") from time to time to the Companies in the maximum principal amount of Thirty Million and 00/100 Dollars (U.S. \$30,000,000.00), subject to possible increase at the option of the Companies as provided in the Loan Agreement, in order to convert borrowings under the Development Facility into longer term amortizing loans; (v) to provide a revolving line of credit (the "Revolving Loan") to the Companies in the maximum principal amount of Two Million and 00/100 Dollars (U.S. \$2,000,000.00), and to issue letters of credit thereunder from time to time upon requests from the Companies, the remaining availability to be used by the Companies for working capital purposes; and (vi) to make available to the Companies from time to time certain other financial accommodations, including without limitation certain interest rate risk management agreements (the "Hedging Contracts"). The Term Loan, the Acquisition Term Loan, the Development Facility Loans, the Converted Term Loans and the Revolving Loan are referred to collectively as the "Loans", and the term notes, draw notes and revolving notes further evidencing the Loans are referred to collectively as the "Notes".

D. As security for repayment of existing indebtedness and obligations to Huntington, Grantor and certain of the other Companies have executed and delivered to Huntington from time to time certain Mortgages/Deeds of Trust, Assignments of Rents, Security Agreements and Fixture Filings ("Mortgages" or "Deeds of Trust") encumbering their fee simple, ground lease and leasehold estates in their Restaurants. The Deed of Trust previously granted by Grantor, and modifications thereof, related to this Instrument are described by dates and recording references in **Exhibit "B"** attached hereto and made a part hereof.

E. Grantor and Huntington desire to amend and restate the previously granted Deeds of Trust in order to confirm the parties' intention that the existing term and revolving indebtedness to Huntington now evidenced by the Loan Agreement and the term notes of even date will continue to be secured by the previously granted Deeds of Trust and to extend the liens of such Deeds of Trust as security for repayment of the other Loans and performance of the other obligations now evidenced by the Loan Agreement and the Notes.

Grant and Covenants

NOW, THEREFORE, IN CONSIDERATION OF THE INDEBTEDNESS HEREIN RECITED AND IN ORDER TO SECURE to the Initial Lenders, the Swingline Lender and the Issuing Bank, and all other banks or financial institutions that may become Lenders or agents or Issuing Banks pursuant to the terms of the Loan Agreement, and to Huntington and BOA, as providers of interest rate risk protection under Hedging Contracts, and to their respective affiliates, successors, participants and assigns (collectively, the "Secured Parties"), the repayment of the indebtedness and performance of the obligations described below of Grantor under this Instrument, the Loan Agreement, the Notes and other loan documents further evidencing or securing the Secured Obligations (defined below), and also for and in consideration of the sum

of Ten Dollars (\$10.00) paid by Agent at or before the execution and delivery of these presents, the receipt thereof and legal sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, convey and assign to Trustee, its successors and assigns, **IN TRUST, WITH POWER OF SALE**, the following:

ALL OF GRANTOR'S rights, title and interest in and to the lease dated April 5, 1993, assigned and assumed by Grantor by Lease Assignment and Assumption Agreement, dated March 26, 1999 (the "Lease") of, and the leasehold estate created in, (i) THE TRACT(S) OR PARCEL(S) OF LAND lying and being in Skagit County, Washington, and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "Premises"), and (ii) all modifications, extensions and renewals of the Lease, and all rights to renew or extend the Lease, and (iii) all credits, deposits, options, rights of first refusal, privileges and other rights of Grantor under the Lease;

TOGETHER WITH all estate, right, title and interest of Grantor in and to the Premises arising upon any acquisition of fee title to the Premises, or any part thereof, during the term of the Loans;

TOGETHER with Grantor's leasehold estates in all improvements constructed on the Premises and in all fixtures, machinery, equipment, engines, boilers and incinerators, now existing or hereafter arising and now or hereafter located in, on, or about the Premises, and now or hereafter incorporated into the improvements, including without limitation fixtures and equipment for supplying or distributing heating, cooling, electricity, gas, water, sewage, air and light, and all fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, water closets, sinks, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, unattached rugs, carpet and other attached floor coverings, antennas, trees and plants; and

TOGETHER with all ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, restaurant equipment, furniture, furnishings, computer equipment, office equipment, and goods of every nature whatsoever, now owned or hereafter acquired by Grantor, located at the Premises and/or used in the operation of the Restaurants; and Grantor's rights under equipment leases; and all accounts arising from all rents and revenues, whether now due, past due, or to become due by virtue of any sublease, license or other agreement for the occupancy or use of all or any part of the Premises; and all permits, licenses and approvals necessary to operate the Restaurants; and Grantor's rights in the plans and specifications for the improvements; and all accounts receivable, contract rights and all other intangible personal property owned by Grantor and arising from or used in connection with Grantor's business at the Premises, including without limitation Grantor's rights in those certain Franchise Agreements entered into with Wendy's for operation of the Restaurants; and all other property now owned or hereafter acquired by Grantor and used in or about the Premises; all of which, including replacements therefor and proceeds thereof, being hereby deemed a part of the property encumbered by this Instrument and, together with the Leases, collectively, the "Property";

TO HAVE AND TO HOLD the same, with all the rights, privileges and appurtenances thereunto belonging, unto the Trustee, and its substitutes or successors forever; and Grantor does bind itself its successors and assigns, to warrant and forever defend the Property unto the Trustee, its substitutes or assigns forever, against the claims of all persons claiming the same or any part thereof.

If Grantor promptly pays and performs the Secured Obligations, then this conveyance shall become null and void and of no further force and effect, and shall be released, at the expense of Grantor, by the Agent or its successor or assign as the holder hereof.

Grantor covenants with the Agent that Grantor is lawfully seized of the leasehold estates hereby conveyed and has the right to mortgage, grant, convey and assign the Property; that the Property is unencumbered except for the lien of this Instrument and the lien of real estate taxes and assessments not yet due; and that Grantor will warrant and defend generally the title to the Property against all claims and demands, whatsoever, except for the Permitted Encumbrances (as defined in the Loan Agreement) and except for those other items approved by Agent.

This Instrument is made and intended to secure payment and performance of: (i) the Loan Agreement, as it may be further amended or amended and restated; (ii) the Notes, together with any and all renewals, extensions or modifications thereof, and substitutions therefor, either in whole or in part; (iii) all advances, if any, made by the Secured Parties pursuant to the terms of this Instrument or the other Loan Documents (defined below); (iv) all expenses incident to the collection of the Secured Obligations; (v) all obligations incurred by Grantor and/or any of the other Companies under the Hedging Contracts or under any other agreement between Grantor and/or the other Companies and Initial Lenders or any affiliate of either, now existing or hereafter entered into, which provides for an interest rate, currency, equity, credit or commodity swap, currency, option, any combination of, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging the Companies' exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by an Initial Lender or any affiliate thereof in connection with any other agreement or transaction between an Initial Lender or affiliate and Grantor and/or the other Companies); (vi) all other duties and obligations of Grantor and the other Companies under the Loan Agreement, the Notes, the Hedging Contracts, this Instrument, the other Deeds of Trust and Mortgages, and all related loan documents (collectively, the "Loan Documents"); (vii) reimbursement obligations to the Issuing Bank for any letters of credit now outstanding or hereafter issued for the account of Grantor and/or any of the other Companies, and (viii) all other indebtedness and obligations now or hereafter owing by Grantor and the other Companies to the Secured Parties, however or whenever created, incurred, arising or evidenced, whether direct or indirect, primary or secondary, joint or several, absolute or contingent, and whether due or to become due, and whether from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred, and any and all renewals, extensions, modifications of or substitutions for such indebtedness and obligations, either in whole or in part; all such indebtedness and obligations of Grantor and the other Companies which this Instrument is given to secure, collectively, the "Secured Obligations".

Grantor further covenants and agrees with the Agent as follows:

1. **PAYMENT AND PERFORMANCE.** Grantor shall promptly pay when due the principal of and interest on the Secured Obligations and prepayment and late charges evidenced by the Loan Agreement or the Notes, and all other sums secured by this Instrument, and shall timely perform or cause to be performed the other Secured Obligations.

2. **FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES.** Upon default in payment of any of the following described items, or upon the occurrence of any other Event of Default (as hereinafter defined), then the Secured Parties (or certain of them as provided in the Loan Agreement) shall have the right, at their option, and if they do not elect to accelerate the Secured Obligations and to pursue their other remedies, to require Grantor to pay to the Agent monthly, until the Secured Obligations are fully paid and performed, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments which may be levied on the Property; (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as the Agent may require pursuant to paragraph 5 hereof; (c) the yearly rents and other amounts payable under the Leases; and (d) such other Funds for other taxes, charges, premiums, assessments and impositions ("Other Impositions") in connection with Grantor or the Property which the Agent shall reasonably deem necessary to protect the interest of the Secured Parties; all as reasonably estimated initially and from time to time by the Agent.

The Funds shall be held and applied by the Agent to pay said rates, taxes, assessments, insurance premiums, rents and Other Impositions so long as no subsequent Event of Default occurs. The Agent shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless the Agent is required under applicable law to pay Grantor interest, earnings or profits on the Funds and applicable law permits the Agent to make such a charge. Unless applicable law requires interest, earnings or profits to be paid, the Agent shall not be required to pay Grantor any interest, earnings or profits on the Funds. The Agent shall give to Grantor, without charge, an annual accounting of the Funds in the Agent's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the Secured Obligations and shall be subject to the right of set off.

If the amount of the Funds held by the Agent at the time of the annual accounting thereof shall exceed the amount deemed necessary by the Agent to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Grantor on the next installment or installments of Funds due. If at any time the amount of the Funds held by the Agent shall be less than the amount deemed necessary by the Agent to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Grantor shall pay to the Agent any amount necessary to make up the deficiency immediately after notice from the Agent to Grantor requesting payment thereof.

Upon the subsequent occurrence of an Event of Default, the Agent may apply, in any amount and in any order as the Secured Parties shall determine in their sole discretion, any Funds held by the Agent at the time of application (a) to pay rates, taxes, assessments, insurance premiums, rents and Other Impositions which are now or will hereafter become due, or (b) as a credit against the Secured Obligations. Upon payment in full of the Secured Obligations, the Agent shall promptly refund to Grantor any Funds held by the Agent.

3. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received from Grantor under the Notes or the Loan Agreement or the Hedging Contracts or this Instrument shall be applied by the Secured Parties in the following order of priority: (a) amounts payable to Grantor under paragraph 2 hereof; (b) interest payable under the Notes; (c) principal payable under the Notes; (d) interest payable on advances made pursuant to paragraph 8 hereof; (e) principal of advances made pursuant to paragraph 8 hereof; and (f) any other sums secured by this Instrument in such order as the Secured Parties, at their option, may determine; provided, however, that Secured Parties may, at their option, apply any sums payable pursuant to paragraph 8 hereof prior to interest and principal, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

4. **CHARGES; LIENS.** Grantor shall pay all water and sewer rates, taxes, assessments, premiums, and Other Impositions attributable to the Property and, upon the Agent's written request, shall promptly furnish to the Agent receipts evidencing such payments; provided that Grantor may contest taxes and assessments in good faith and by appropriate proceedings and shall establish and maintain an adequate book reserve with respect thereto; further provided that Grantor's title to and right to use the individual property for which taxes and/or assessments are being contested are not adversely affected thereby; further provided that, if the amount of taxes and assessments being contested exceeds the threshold of materiality established by Grantor's independent public accountants for the purposes of their audit of the then-current year, then the appropriateness of such proceedings shall be supported by the opinion of the independent counsel responsible for such proceedings, and the adequacy of such reserves shall be supported by the opinion of the independent accountants; further provided that the Agent shall retain the right to protect the security of this Instrument pursuant to paragraph 8 hereof.

Grantor shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument. Grantor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property; provided that Grantor may contest such claims in good faith by appropriate proceedings if the enforcement of any lien which has arisen or may arise with respect to such claim is effectively stayed; further provided that all such claims against the Companies may not at any time exceed the aggregate amount permitted under the Loan Agreement; further provided that the Agent shall retain the right to protect the security of this Instrument pursuant to paragraph 8 hereof. Without the Agent's prior written permission, Grantor shall not allow any lien, encumbrance, or other interest in the Property inferior to the lien of this Instrument to be perfected against the Property.

5. **HAZARD INSURANCE.** Grantor shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to the Agent against loss by fire, hazards included within the term "special form", rent loss and such other hazards, casualties, liabilities and contingencies as the Agent and the Landlords under the Leases shall require and in such amounts and for such periods as the Agent and the Landlords shall require.

All insurance policies and renewals thereof shall be in a form acceptable to the Agent and shall include a standard mortgagee clause in favor of and in form acceptable to the Agent. Grantor shall promptly furnish to the Agent all renewal notices and all receipts of paid premiums. At least 10 days prior to the expiration date of a policy, Grantor shall deliver to the Agent a renewal or substitute certificate in form satisfactory to the Agent.

In the event of loss, Grantor shall give immediate written notice to the insurance carrier and to the Agent and shall promptly make proof of loss and take such other actions as are necessary to prosecute its insurance claim. Grantor hereby authorizes and empowers the Agent, as attorney-in-fact for Grantor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom the Agent's expenses incurred in the collection of such proceeds; provided, however, that the Agent agrees to provide Grantor with 3 business days' written notice before taking any such action; further provided that nothing contained in this paragraph shall require the Agent to incur any expense or take any action hereunder. Subject to the terms of the Leases, Grantor further authorizes the Agent: (a) to hold the balance of such proceeds to be used to reimburse Grantor for the cost of restoration of the Property or (b) to apply the balance of such proceeds toward the payment of the Secured Obligations, whether or not then due, in the order of application set forth in paragraph 3 hereof, with any remaining balance to be paid to the person or persons legally entitled thereto; provided, however, if no Event of Default exists, and if insurance proceeds are sufficient to pay for estimated costs of restoration or Grantor deposits any additional funds required in a construction account with the Agent, and if the Landlords agree to make the proceeds available for restoration, then the Agent will hold the insurance proceeds in a construction fund, at Grantor's request, and the Agent will make same available to Grantor to pay for costs of restoration, with any remaining balance to be applied in reduction of the Secured Obligations and, after payment and performance of all Secured Obligations, to be paid to the person or persons legally entitled thereto.

If the insurance proceeds are held by the Agent to reimburse Grantor for the cost of restoration of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as the Agent may approve in writing. The Agent may, at its option, condition disbursement of said proceeds on approval of such plans and specifications of an architect satisfactory to the Agent, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as the Agent may reasonably require.

If the insurance proceeds are applied toward the payment of the Secured Obligations, any such application of proceeds shall not extend or postpone the due dates of the installments due on the Notes or the installments referred to in paragraph 2 hereof or change the amounts of such installments.

If the Property is sold pursuant to paragraph 26 hereof or if the Agent acquires title to the Property, the Secured Parties shall have all of the right, title and interest of Grantor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS. Grantor (a) shall not commit waste or permit impairment or deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as the Agent may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are sufficient to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair; (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (f) shall operate and maintain the Property as Wendy's Old-Fashioned Hamburgers restaurants and promptly pay and perform its obligations under the franchise agreements and related Wendy's agreements so as to keep same in good standing; (g) shall maintain the Leases in full force and effect and unmodified, subject to the terms of the Loan Agreement; and (h) shall give notice in writing to the Agent of and, unless otherwise directed in writing by the Agent, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of the Secured Parties. Except as permitted by the Loan Agreement, neither Grantor nor any other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

Grantor represents and warrants to the Agent that the Leases have not been amended except as disclosed to the Agent pursuant to the Loan Agreement, that Grantor has not received any notice of default thereunder nor does Grantor have knowledge of the occurrence of any event or the existence of any circumstance which, with notice or passage of time or both, would constitute a default by Grantor under any of the Leases, and that the Leases continue in full force and effect in accordance with their terms. Grantor (a) shall comply with the provisions of the Leases; (b) shall give immediate written notice to the Agent of any default by the Landlord under any of the Leases or of any notice received by Grantor of any default under any of the Leases by Grantor; (c) subject to the terms of the Loan Agreement, shall exercise any option to renew or extend the Leases and give written confirmation thereof to the Agent within 30 days after such option becomes exercisable; (d) shall give immediate written notice to the Agent of the

commencement of any remedial proceedings under any of the Leases by any party thereto or under a prime lease in the event that the Lease is a sublease, and, if required by the Agent, shall permit the Agent as Grantor's attorney-in-fact to control and act for Grantor in any such remedial proceedings; and (e) after written request by the Agent, shall within 30 days use commercially reasonable efforts to obtain from a Landlord and deliver to the Agent an estoppel certificate as to absence of default by Grantor, absence of amendments and other customary representations. Subject to the terms and conditions of the Leases, Grantor hereby expressly transfers and assigns to the Agent the benefit of all covenants contained in the Leases, whether or not such covenants run with the land, but the Agent shall have no liability with respect to such covenants nor any other covenants contained in the Leases. Grantor shall not surrender the leasehold estates and interests herein conveyed nor terminate or cancel any Lease creating said estate and interests, except as may be permitted pursuant to the terms of the Loan Agreement, and Grantor shall not, without express written consent of the Agent, alter or amend any Lease, except as may be permitted pursuant to the terms of the Loan Agreement. Grantor covenants and agrees that there shall not be a merger of any Lease, or of the leasehold estate created thereby, with the fee estate or with any greater leasehold estate covered by the Lease by reason of said leasehold estate or the fee estate or any greater leasehold estate, or any part of any such estates, coming into common ownership, unless the Agent shall consent in writing to such merger; and if Grantor shall acquire such fee estate or greater leasehold estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate or greater leasehold estate.

7. **USE OF PROPERTY.** Unless required by applicable law or unless the Agent has otherwise agreed in writing, Grantor shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Grantor shall not initiate or acquiesce in a change in the zoning classification of the Property without the Agent's prior written consent.

8. **PROTECTION OF SECURITY.** If any Event of Default occurs or if any action or proceeding is commenced which affects the Property or title thereto or the interest of the Secured Parties therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the Agent, at its option, may make such appearances, disburse such sums and take such action as the Agent deems necessary, in its sole discretion, to protect the interest of the Secured Parties, including, but not limited to, (a) disbursement of attorney's fees, (b) entry upon the Property to make repairs, (c) procurement of satisfactory insurance as provided in paragraph 5 hereof, and (d) exercising of any right to renew the term of any Lease or curing of any defaults under any Lease. The foregoing notwithstanding, the Agent shall have the right to obtain insurance during the notice/cure period if the Property is or may become uninsured during the notice/cure period.

Any amounts disbursed by the Agent pursuant to this paragraph, with interest thereon, shall become an additional Secured Obligation. Unless Grantor and the Agent agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate stated in the Notes unless collection from

Grantor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Grantor under applicable law. Grantor hereby covenants and agrees that the Agent shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Secured Obligations. Nothing contained in this paragraph shall require the Agent to incur any expense or take any action hereunder.

9. **INSPECTION.** The Agent may make or cause to be made reasonable entries upon and inspections of the Property upon 10 days' prior written notice to Grantor.

10. **BOOKS AND RECORDS.** Grantor shall keep and maintain at all times complete and accurate books of accounts and records in accordance with the terms and conditions of the Loan Agreement to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by the Agent upon 10 days' prior written notice. Grantor shall furnish to the Agent the financial statements required by the terms of the Loan Agreement.

11. **CONDEMNATION.** Grantor shall promptly notify the Agent of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Grantor shall appear in and prosecute any such action or proceedings unless otherwise directed by the Agent in writing. Grantor authorizes the Agent, at its option, as attorney-in-fact for Grantor to commence, appear in and prosecute, in the Agent's or Grantor's name any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that the Agent agrees to provide Grantor with 3 business days' written notice before taking any such action; further provided that nothing contained in this paragraph shall require the Agent to incur any expense or take any action hereunder. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to the Agent, subject to the terms of the Leases.

Subject to the terms of the Leases, Grantor authorizes the Agent to apply such awards, payments, proceeds or damages, after the deduction of the Agent's expenses incurred in the collection of such amounts, at its option, to restoration of the Property or toward payment of the Secured Obligations, whether or not then due, in the order of application set forth in paragraph 3 hereof, with the balance, if any, to the person or persons legally entitled thereto. Unless Grantor and the Secured Parties otherwise agree in writing, any application of proceeds shall not extend or postpone the due dates of the installments due on the Notes or the monthly installments referred to in paragraph 2 hereof or change the amount of such installments. Grantor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as the Agent may require.

12. **GRANTOR AND LIEN NOT RELEASED.** From time to time, the Secured Parties may, at their option, without giving notice to or obtaining the consent of Grantor (except as provided in this paragraph), its successors or assigns or of any junior lienholder or guarantor, without liability on their part and notwithstanding Grantor's breach of any covenant or agreement of Grantor in this Instrument or existence of any other Event of Default, extend the time for payment or performance of the Secured Obligations or any part thereof, reduce the payments thereon, release anyone liable on any of the Secured Obligations, accept a renewal note or notes therefor, release from the lien of this Instrument any part of the Property or take or release other or additional security or reconvey any part of the Property or consent to any map or plan of the Property or consent to the granting of any easement, join in any extension or subordination agreement or agree in writing with Grantor or with the other Companies to modify the rate of interest on the Notes or to change the amount of the installments payable thereunder. Any actions taken by the Secured Parties pursuant to the terms of this paragraph shall not affect the obligation of Grantor and its successors or assigns to pay and perform the Secured Obligations and to observe the other covenants of Grantor contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment and performance of the Secured Obligations, and shall not affect the lien or priority of lien hereof on the Property. Grantor shall pay the Agent a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at the Agent's option for any such action if taken at Grantor's request.

13. **FORBEARANCE BY SECURED PARTIES NOT A WAIVER.** Any forbearance by the Secured Parties in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by the Secured Parties of payment or performance of any portion of the Secured Obligations after the due date of such payment shall not be a waiver of the Secured Parties' right to either require prompt payment and performance when due of the balance of the Secured Obligations or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by the Agent shall not be a waiver of the Secured Parties' right to accelerate the maturity of the Secured Obligations. The Agent's receipt of any awards, proceeds or damages under paragraphs 5 or 11 hereof shall not operate to cure or waive an Event of Default.

14. **ESTOPPEL CERTIFICATE.** Grantor shall, within 10 days of a written request from the Agent, furnish the Agent with a written statement, duly acknowledged, setting forth the balance of the Secured Obligations and any right of set-off, counterclaim or other defense which exists against the Secured Obligations.

15. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended as a deed of trust pursuant to the laws of the State of Washington governing such instruments, and is also a security agreement granting a present and continuing security interest in, and lien on, the portion of the Property constituting personal property and fixtures, pursuant to the Uniform Commercial Code of the State of Washington, and Grantor hereby grants the Agent a security interest in said items. Grantor agrees that the Agent may file this Instrument, or a

reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements which the Agent may reasonably require. Without the prior written consent of the Agent, Grantor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto, except for "purchase money" security interests permitted by the Loan Agreement. Upon occurrence of an Event of Default, including the covenants to pay and perform the Secured Obligations when due, the Agent shall have the remedies of a secured party under the Uniform Commercial Code and, at its option, may also invoke the remedies provided in paragraph 26 of this Instrument as to such items. In exercising any of said remedies, the Agent may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of the Agent's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 26 of this Instrument.

FIXTURE FILING: Certain items of the Property are or will become "fixtures" (as that term is defined in the Uniform Commercial Code as enacted in the State of Washington) on the real property, and upon filing for record in the real estate records of the county wherein such fixtures are situated, this Instrument shall constitute a fixture filing upon such of the Property that is or may become fixtures. Grantor is the debtor, and the Agent is the secured party. The addresses of the debtor and secured party are set forth in the preamble of this Instrument. The debtor is an Ohio limited liability company. Its Ohio registration number is 1008892.

16. **SUBLEASES OF THE PROPERTY.** Grantor has covenanted to operate the Property, and agrees not to enter into any sublease or any management agreement with respect to any portion of the Property without the prior written consent of the Agent, which may be given or withheld in the Agent's sole and absolute discretion.

Grantor does hereby assign to the Agent, as additional security, all subleases hereafter made of all or any part of the Property and, to the extent permitted by applicable law, all security deposits made by tenants in connection with such subleases. Upon the occurrence of an Event of Default, the Agent, at its option, shall have all of the rights and powers possessed by Grantor prior to such assignment.

17. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

18. **ACCELERATION IN CASE OF GRANTOR'S INSOLVENCY.** If Grantor shall voluntarily file a petition under the Federal Bankruptcy Code, as such Code may from time

to time be amended, or under any similar or successor Federal Statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or failure to pay debts as they come due, or if any Grantor shall fail within 60 days to obtain a vacation, stay or dismissal of involuntary proceedings brought for the reorganization, dissolution or liquidation of Grantor, or if an order for relief under the Federal Bankruptcy Code shall be entered against Grantor, or if a trustee, receiver or custodian shall be appointed for Grantor or its property, or if any portion of the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if any Grantor shall make an assignment for the benefit of its creditors, or if there is an attachment, execution or other judicial seizure of any portion of any Grantor's assets and such seizure is not discharged within 60 days, then the Secured Parties may, at their option, declare the Secured Obligations to be immediately due and payable without prior notice to Grantor, and the Agent may invoke any remedies permitted by paragraph 26 of this Instrument. Any attorney's fees and other expenses incurred by the Agent in connection with Grantor's bankruptcy or any of the other aforesaid events shall be additional Secured Obligations pursuant to paragraph 8 hereof.

19. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN GRANTOR. On sale, encumbrance, or transfer of (a) all or any part of the Property, or any interest therein, or (b) beneficial interests in Grantor, the Secured Parties may, at their option, declare the Secured Obligations to be immediately due and payable and the Agent may invoke any remedies permitted by paragraph 26 of this Instrument. This option shall not apply to: (i) sales or transfers of fixtures or any personal property pursuant to paragraph 6 hereof; or (ii) any transfers of beneficial interests in Grantor permitted in the Loan Agreement; or (iii) any dispositions of personal property permitted in the Loan Agreement.

20. NOTICE. Except for any notice required under applicable law to be given in another manner, and notices given as provided in the Loan Agreement: (a) any notice to Grantor provided for in this Instrument or in the Notes shall be given by mailing such notice by certified mail, return receipt requested, addressed to Grantor at its address as shown in the Agent's records or at such other address as Grantor may designate by notice to the Agent as provided herein, and (b) any notice to the Agent shall be given by certified mail, return receipt requested, to the Agent's principal place of business at the address set forth in the Notes or to such other address as the Agent may designate by notice to Grantor as provided herein. Any notice provided for in this Instrument or in the Notes shall be deemed to have been given to Grantor or the Agent when given in the manner designated herein.

21. SUCCESSORS AND ASSIGNS BOUND; AGENTS; JOINT AND SEVERAL OBLIGATIONS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the Secured Parties and Grantor, subject to the provisions of paragraph 19 hereof. All covenants of Grantor in the Notes, the Loan Agreement, the Hedging Contracts and this Instrument shall be joint and several with other obligors. In exercising any rights hereunder or taking any actions provided for herein, the Agent may act through its employees, agents or independent contractors.

The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

22. **GOVERNING LAW; SEVERABILITY.** The remedial provisions and real property covenants of this Instrument shall be governed by Washington law, but the Notes, the Hedging Contracts, the Loan Agreement, and the other provisions of this Instrument and the Secured Obligations are governed by Ohio law. In the event that any provision of this Instrument or the Notes or the Hedging Contracts or the Loan Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Notes or the Hedging Contracts or the Loan Agreement which can be given effect without the conflicting provisions, and to this end the provisions of such documents are declared to be severable. In the event that any applicable law limiting the amount of interest or other charge permitted to be collected from Grantor is interpreted so that any charge provided for in this Instrument or in the Notes or in the Hedging Contracts or in the Loan Agreement, whether considered separately or together with other charges levied in connection with this Instrument and the Notes and the Hedging Contracts, violates such law, and Grantor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to the Secured Parties in excess of the amounts payable to the Secured Parties pursuant to such charges as reduced shall be applied by the Secured Parties to reduce the principal of the Secured Obligations. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Grantor has been violated, all Secured Obligations which constitute interest, as well as all other charges levied in connection with such Secured Obligations which constitute interest, shall be deemed to be uniformly allocated and spread over the stated terms of the Notes and the Hedging Contracts.

23. **WAIVER OF STATUTE OF LIMITATIONS.** To the extent permitted by law, Grantor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Notes or the Hedging Contracts or any other Secured Obligation.

24. **WAIVER OF MARSHALLING; WAIVER OF VALUATION AND APPRAISEMENT.** Notwithstanding the existence of any other security interests in the Property held by the Agent or by any other party, the Secured Parties shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. The Secured Parties shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Grantor, any party who consents to this Instrument, and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, to the extent permitted by law.

Grantor hereby waives the benefit of all valuation and appraisal laws, to the extent permitted by law.

25. **DEFAULT.** An "Event of Default" shall have the meaning ascribed to it in the Loan Agreement and the Notes, which includes, without limitation, the following events: if Grantor (i) cancels, modifies, alters or amends any Lease without the prior written consent of the Agent, which consent the Agent may withhold or condition in its reasonable discretion, or (ii) fails to maintain any Lease in full force and effect.

26. **ACCELERATION; REMEDIES.** Upon the occurrence of an Event of Default, the Secured Parties, at their option, may declare the Secured Obligations to be immediately due and payable without further demand, and the Agent may invoke the power of sale and any other remedies permitted by applicable law or provided herein. In addition to any other remedies herein provided, Trustee is hereby authorized and empowered, three (3) months after recordation of the notice of default, to sell the Property at such time and at such place in the State of Washington as Trustee, in its sole discretion, deems best to accomplish the objects of these trusts, having first given notice of such sale as then required by law. The place of sale may be either in the county in which the Property to be sold or any part thereof is located, or at the office of the Trustee located in the State of Washington.

To the extent permitted by applicable law, any sale hereunder may be adjourned by the Trustee and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date that such sale is originally set.

Grantor agrees that Trustee may, at any time after occurrence of an Event of Default in the payment of any part of the Secured Obligations, enter and take possession of the Property, and Grantor further agrees that, in the event Trustee fails to enter and take possession of the Property prior to selling the same as herein provided, purchaser shall nevertheless be entitled to immediate possession thereof upon the delivery to such purchaser by Trustee of an instrument of conveyance of the Property.

At any time after the occurrence of an Event of Default, the Agent may, at its option, continue the abstract/search of title to the Property or obtain other appropriate title evidence, and may add the cost thereof to the Secured Obligations.

In the event of Trustee's death, absence, inability or refusal to act any time when action under the foregoing powers and trusts may be required or contemplated, or for any other reason at the option of the Agent, the Agent is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to the above-named Trustee shall be vested in the successor without the necessity of any other or further conveyance.

In the event of a sale of the Property under and by virtue of this trust, Grantor and all persons holding under it shall be and become the tenants at will of the purchaser, said tenancy to be terminable at the option of said purchaser upon five (5) days written notice unless otherwise agreed in writing by the Agent. Trustee shall deliver to the purchaser an instrument conveying

the Property so sold without any covenant or warranty, expressed or implied. The recitals in the instrument of conveyance shall be prima facie evidence of the truth of the statements made therein.

Upon any sale under this Instrument, the proceeds will be applied by Trustee:

First -- To pay all the costs and charges of executing this trust, including attorneys fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith as above provided.

Second -- To pay all of the Secured Obligations, or any balance thereof then remaining unpaid, principal and/or interest, in such order of priority as the Secured Parties shall determine in their sole discretion.

Third -- The residue to be paid to Grantor or such other person or persons as may be lawfully entitled thereto.

27. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; MORTGAGEE IN POSSESSION. As part of the consideration for the Secured Obligations, Grantor hereby absolutely and unconditionally assigns and transfers to the Agent all of the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Grantor hereby authorizes the Agent or its agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to the Agent or its agents; provided, however, that prior to written notice given by the Agent to Grantor of the existence of an Event of Default, Grantor shall collect and receive all rents and revenues of the Property as trustee for the benefit of the Secured Parties and Grantor, to apply the rents and revenues so collected to the Secured Obligations in the order provided in paragraph 3 hereof with the balance, so long as no such Event of Default has occurred, to the account of Grantor, it being intended by Grantor and the Agent that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by the Agent to Grantor of the existence of an Event of Default, and without the necessity of the Agent entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, the Agent shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Grantor as trustee for the benefit of the Secured Parties only; provided, however, that the written notice by the Agent to Grantor of the Event of Default shall contain a statement that the Secured Parties exercise their rights to such rents.

Grantor hereby covenants that Grantor has not executed any prior assignment of said rents, that Grantor has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent the Agent from exercising its rights under

this paragraph, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property. Grantor covenants that Grantor will not hereafter collect or accept payment of any rents of the Property more than one month prior to the due dates of such rents. Grantor further covenants that Grantor will execute and deliver to the Agent such further assignments of rents and revenues of the Property as the Agent may from time to time request.

Upon the occurrence of an Event of Default, the Agent may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of the Agent's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of subleases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event the Agent elects to seek the appointment of a receiver for the Property, Grantor hereby expressly consents to the appointment of such receiver. the Agent or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by the Agent to Grantor of existence of an Event of Default shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Grantor as lessor or landlord of the Property and then to the Secured Obligations. The Agent or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. The Agent shall not be liable to Grantor, anyone claiming under or through Grantor or anyone having an interest in the Property by reason of anything done or left undone by the Agent under this paragraph.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by the Agent for such purposes shall become additional Secured Obligations pursuant to paragraph 8 hereof. Unless the Agent and Grantor agree in writing to other terms of payment, such amounts shall be payable upon notice from the Agent to Grantor requesting payment thereof and shall bear interest from the date of disbursement at the default rate stated in the Notes.

Any entering upon and taking and maintaining of control of the Property by the Agent or the receiver and any application of rents as provided herein shall not cure or waive any Event of Default or invalidate any other right or remedy of the Agent under applicable law or as provided herein. This assignment of rents shall terminate at such time as this Instrument ceases to secure the Secured Obligations.

28. **HAZARDOUS SUBSTANCES.** (A) Grantor hereby covenants and agrees with the Agent that the following terms shall have the following meanings:

(i) "Environmental Laws" mean all federal, state and local laws, statutes, ordinances, and codes relating to the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives with respect thereto.

(ii) "Hazardous Substance" means, without limitation, any flammable explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum based products, methane, hazardous materials, hazardous wastes, hazardous or toxic Substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), or any other applicable Environmental Law.

(iii) "Indemnitee" means the Secured Parties, any participants in the Loans, and all subsequent holders of this Instrument, their respective successors and assigns, their respective officers, directors, employees, agents, representatives, contractors and subcontractors and any subsequent owner of the Property who acquires title thereto from or through the Agent.

(iv) "Release" has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), and the regulations promulgated thereunder.

(B) Grantor represents and warrants to the Agent that, to Grantor's knowledge after due investigation, and except as may have been disclosed to the Agent within environmental questionnaires or environmental site assessments prior to the date of this Instrument: (i) the Property is not being or has not been used for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance in violation of any Environmental Laws; (ii) the Property does not contain any Hazardous Substances in violation of any Environmental Laws; (iii) there has been no Release of any Hazardous Substances on, at or from the Property or any property adjacent to or within the immediate vicinity of the Property, and Grantor has not received any form of notice or inquiry with regard to such a Release or the threat of such a Release; (iv) no event has occurred with respect to the Property which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law; (v) there are no agreements or orders or directives of any federal, state or local governmental agency or authority relating to the Property which require any work, repair, construction, containment, clean up, investigation, study, removal or other remedial action with

respect to the Property and (vi) there are no actions, suits, claims or proceedings, pending or threatened, which seek any remedy that arise out of the condition, ownership, use, operation, sale, transfer or conveyance of the Property and (a) a violation or alleged violation of any applicable Environmental Law, (b) the presence of any Hazardous Substance or a Release of any Hazardous Substance or the threat of such a Release, or (c) human exposure to any Hazardous Substance.

(C) Grantor covenants and agrees with the Agent as follows:

(i) Grantor shall keep, and shall cause all operators, tenants, sub-tenants, licensees, and occupants of the Property to keep, the Property free of all Hazardous Substances, except for Hazardous Substances stored, treated, generated, transported, processed, handled, produced or disposed of in the normal operation of the Property as Restaurants in accordance with all Environmental Laws.

(ii) Grantor shall comply with, and shall cause all operators, tenants, sub-tenants, licensees, and occupants of the Property to comply with, all Environmental Laws.

(iii) Grantor shall promptly provide the Agent with a copy of all notifications which Grantor gives or receives with respect to any past or present Release of any Hazardous Substance or the threat of such a Release on, at or from the Property or any property adjacent to or within the immediate vicinity of the Property.

(iv) Grantor shall undertake and complete all investigations, studies, sampling and testing for Hazardous Substances required by the Agent and, in accordance with all Environmental Laws, all removal and other remedial actions necessary to contain, remove, and clean up all Hazardous Substances that are determined to be present at the Property in violation of any Environmental Law.

(v) The Agent shall have the right, but not the obligation, to cure any violation by Grantor of the Environmental Laws, and the Agent's cost and expense to so cure shall be secured by this Instrument.

(D) Grantor covenants and agrees, at its sole cost and expense, to indemnify, defend and save harmless Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, reasonable attorneys' and experts' fees and expenses) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Indemnitee arising out of the condition, ownership, use, operation, sale, transfer or conveyance of the Property and (i) the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance, (ii) the presence of any Hazardous Substance or a Release of any Hazardous Substance, (iv) a violation of any Environmental Law, or (v) a material misrepresentation or

inaccuracy in any representation or warranty or material breach of or failure to perform any covenant made by Grantor herein (collectively, the "Indemnified Matters").

The liability of Grantor to Indemnitee hereunder shall in no way be limited, abridged, impaired or otherwise affected by (a) the repayment of all sums and the satisfaction of all obligations of Grantor under the Notes, this Instrument, the Hedging Contracts, the Loan Agreement and any other Loan Documents, (b) the foreclosure of this Instrument or the acceptance of a deed in lieu thereof, (c) any amendment or modification of the Loan Documents by or for the benefit of Grantor or any subsequent owner of the Property, (d) any extensions of time for payment or performance required by any of the Loan Documents, (e) the release or discharge of this Instrument or of Grantor, any guarantor of the Loans, or any other person from the performance of observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents whether by the Secured Parties, by operation of law, or otherwise, (f) the invalidity or unenforceability of any of the terms or provisions of any of the Loan Documents, (g) any applicable statute of limitations, (h) the sale or assignment of the Notes or this Instrument, (i) the sale, transfer, or conveyance of all or part of the Property, (j) the dissolution or liquidation of Grantor, (k) the release or discharge, in whole or in part, of Grantor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (l) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of Grantor under the Notes, the Hedging Contracts, the Loan Agreement or this Instrument.

The foregoing indemnity shall be in addition to any and all other obligations and liabilities Grantor may have to the Secured Parties at common law.

29. **PRIORITY OF LIEN.** This Instrument shall remain in full force and effect notwithstanding any extension or extensions of the maturity date or other modification of the obligations which this Instrument secures and notwithstanding the fact that such extensions and modifications may be evidenced by a note or notes signed and dated after the date of this Instrument.

30. **RECONVEYANCE.** Upon receipt of a written request from the Agent reciting that the Secured Obligations have been paid and performed and upon surrender of this Instrument to Trustee for cancellation and retention and upon the payment of the Trustee's fees by Grantor, the Trustee shall reconvey without warranty the Property then held hereunder. The recitals in such conveyance of any matters of fact shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described in general terms as "the person or persons legally entitled thereto," and Trustee is authorized to retain this Instrument and the Notes.

31. **SUBSTITUTE TRUSTEE.** The Agent may, at any time, by instrument in writing, appoint a successor or successors to the Trustee named herein or acting hereunder, which instrument, executed and acknowledged by the Agent and recorded in the Office of the County Recorder in the county in which the Property is located, shall be conclusive proof of the proper substitution of such successor or Trustee, who shall have all the estate, powers, duties and trusts

in the Property vested in or conferred on the original Trustee. If there be more than one Trustee, either may act alone and execute the Trusts upon the request of the Agent, and his acts shall be deemed to be the acts of all Trustees, and the recital in any conveyance executed by such sole Trustee of such requests shall be conclusive evidence thereof, and of the authority of such sole Trustee to act. The Agent agrees to provide prompt written notice to Grantor of the name and address of any substitute trustee.

32. **TRUSTEE'S ACCEPTANCE.** Trustee accepts these trusts when this Instrument, executed and acknowledged by Grantor, is made a public record as provided by law.

33. **LOAN ADVANCES.** This Instrument shall secure unpaid balances of loan advances and other financial accommodations which the Secured Parties may make to Grantor and/or to the other Companies, after this Instrument is delivered to the Recorder for record, pursuant to the provisions of the Loan Agreement, the Notes and the Hedging Contracts, whether made after a reduction to a zero or other balance. The maximum amount of the unpaid balance of loan advances and other financial accommodations funded under the Notes or incurred under the Loan Agreement and/or the Hedging Contracts, in the aggregate and exclusive of interest thereon and exclusive of advances under paragraph 8 to protect the Property or the lien of this Instrument, which may be outstanding at any time is Ninety Million and no/100 Dollars (\$90,000,000.00).

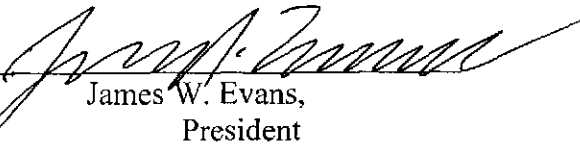
34. **NON-AGRICULTURAL** The Property which is the subject matter of this Deed of Trust is not used principally for agricultural purposes.

WASHINGTON NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

(Signature page follows.)

IN WITNESS WHEREOF, Grantor, by its duly authorized officer, has executed and delivered this Instrument.

SEAWEND, LTD., dba SeaWend, Ltd., L.L.C.,
an Ohio limited liability company

By: 
James W. Evans,
President

STATE OF OHIO


COUNTY OF FRANKLIN, SS:


I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this 12th day of December, 2014, before me personally appeared James W. Evans, known to me to be the President of SeaWend, Ltd., dba SeaWend, Ltd., L.L.C., the limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.





 JULIA A. BROWN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MARCH 26, 2015

(Use this space for notarial seal stamp.)

EXHIBIT "A"
(Legal Description)

UNOFFICIAL DOCUMENT

SWL 19

Tract "C", Plat of K-Mart Commercial Park, as per plat recorded in Volume 14 of Plats, Pages 126 and 127, records of Skagit County, Washington.

UNOFFICIAL DOCUMENT

EXHIBIT "B"

(Previous Recordings)

Dated March 28, 2003, recorded as Instr. No. 200304160107; modified in 200610030148; 200904200163; 201105020061; 201308070050 and 201403270038