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Shelby Cnty Judge of Probate, AL
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**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, NATIONAL ASSOCIATION
Real Estate Merchant Banking
2030 Main Street, 8th Floor
Irvine, CA 92614
Attn: Sally Sison

Loan No.: 101914
Loan Name: Sovereign GL, LLC Guidance Line
AU# 2014

**THIS MORTGAGE SECURES ONE OR MORE NOTES WHICH PROVIDE FOR A VARIABLE
INTEREST RATE**

**MORTGAGE
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THE PARTIES TO MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), made as of November 8, 2005 (and effective as of November 18, 2005), are SOVEREIGN RA, LLC, a Delaware limited liability company ("Mortgagor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, on behalf of and for the benefit of all current and future Lender(s) under the Credit Agreement referred to in Section 2.1 below ("Mortgagee").

ARTICLE 1. MORTGAGE

- 1.1. **GRANT.** For the purposes of and upon the terms and conditions in this Mortgage, Mortgagor, for valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to Mortgagee all of that leasehold estate created under that certain Ground Lease dated November 1, 2005 between Babington Properties, L.P., an Alabama limited partnership, as Landlord and Harco, Inc., an Alabama corporation, as Tenant (the "Ground Lease"), covering certain real property located in the City of Birmingham, County of Shelby, State of Alabama, and other interests more particularly described on Exhibit A attached hereto (the "Land"), together with all right, title, interest, and privileges of Mortgagor in and to all streets, ways, roads and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights, water, water rights and water stock related to the real property, all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all rights of Mortgagor as declarant under any and all covenants, conditions and restrictions now or hereafter pertaining to such real property, *provided, however*, that Mortgagee shall have no liability under such rights unless and until Mortgagee forecloses on and acquires such real property; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the "Improvements"); all interest or estate which Mortgagor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

Cahaba Title, Inc.

TO HAVE AND TO HOLD the above granted and described Subject Property to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee forever.

- 1.2. **ADDRESS.** The address of the Subject Property (if known) is: 4501 Valleydale Road, Birmingham, AL 35242. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Mortgage on the Subject Property as described on Exhibit A.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1. **OBLIGATIONS SECURED.** Mortgagor makes this Mortgage for the purpose of securing the following obligations ("Secured Obligations"):

- (a) Payment and performance of all covenants and obligations on the part of Sovereign GL, LLC, a Delaware limited liability company ("Borrower") under that certain Guidance Line Loan Agreement ("Credit Agreement") dated as of May 9, 2005 between Borrower and Mortgagee, as lender, as amended as of July 14, 2005 and as of the date hereof; and
- (b) Payment to Mortgagee of all sums at any time owing under any and all promissory notes ("Notes") issued and outstanding from time to time under the Credit Agreement, whether now existing or hereafter executed as the same may be extended, renewed, modified or amended from time to time or such portion thereof as has been disbursed from time to time under the provisions of the Credit Agreement; and
- (c) Payment and performance of all covenants and obligations of Mortgagor under this Mortgage, and all covenants and obligations of all "Property Owners" (as such term is defined in the Credit Agreement) under other deeds of trust or mortgages executed from time to time in connection with the Credit Agreement; and
- (d) Payment and performance of all covenants and obligations of any rider attached as an Exhibit to this Mortgage; and
- (e) Payment and performance of all future advances and readvances that may subsequently be made and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Mortgage; and Mortgagor hereby acknowledges and agrees that this Mortgage is given to secure advances that may be made by Mortgagee and obligations that may be incurred by Mortgagor in addition and subsequent to the advances evidenced by the Notes; and
- (f) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

Notwithstanding anything herein to the contrary, the maximum principal amount secured hereby shall be Two Million Three Hundred Fifteen Thousand Dollars (\$2,315,000).

- 2.2. **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

- 2.3. **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Credit Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not permanently reduce the amounts of the Secured Obligations from time to time secured hereby; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.4. **DEFEASANCE CLAUSE.** PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor or Borrower, as applicable, shall pay to Mortgagee the Secured Obligations at the time and in the manner provided in the Credit Agreement, the Notes and this Mortgage, shall perform the other obligations as set forth in the Credit Agreement and this Mortgage and shall comply with each and every covenant and condition set forth herein and in the Credit Agreement and the Notes, then except as expressly set forth herein, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1. **ASSIGNMENT.** Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.
- 3.2. **GRANT OF LICENSE.** Mortgagee confers upon Mortgagor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined); *provided, however*, in accordance with and subject to the Credit Agreement, Mortgagor shall arrange to have all tenants make Payments under Leases directly to the Lockbox (as defined in the Credit Agreement) at all times while the Credit Agreement is outstanding. Upon a Default, the License shall be automatically revoked and Mortgagee may collect and apply the Payments pursuant to Section 6.9 without notice and without taking possession of the Subject Property. Mortgagor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the lessees from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee.
- 3.3. **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Mortgagee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted

to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

- 3.4. **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) the Schedule of Leases attached hereto as Schedule 1 is, as of the date hereof, a true, accurate and complete list of all Leases; (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.
- 3.5. **COVENANTS.** Mortgagor covenants and agrees at Mortgagor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Mortgagee prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) exercise Mortgagor's best efforts to keep all portions of the Subject Property that are capable of being leased at all times at rentals not less than the fair market rental value; (d) deliver to Mortgagee fully executed, counterpart original(s) of each and every Lease if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease to the Mortgage, in form and substance acceptable to Mortgagee, as Mortgagee may request. Mortgagor shall not, without Mortgagee's prior written consent or as otherwise permitted by any provision of the Credit Agreement: (i) enter into any Leases after the date hereof; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when they become due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Mortgagee's consent hereunder, any sums received by Mortgagor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Mortgagor shall be held in trust by Mortgagor for such purpose.
- 3.6. **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Mortgagee, Mortgagor shall deliver to Mortgagee and to any party designated by Mortgagee estoppel certificates executed by Mortgagor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Mortgagor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Mortgagee.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1. **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Mortgagee as of the "Closing Date" (defined in the Credit Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be

incorporated into, used in connection with, or appropriated for use on the Subject Property (to the extent the same are not effectively made a part of the real property pursuant to Section 1.1 above); together with all rents and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Mortgagor (including without limitation all of Mortgagor's right and interest in any purchase agreement(s) relating to the Subject Property); all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, land and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Subject Property; all advance payments of insurance premiums made by Mortgagor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Mortgagee, whether or not disbursed; all funds deposited with Mortgagee pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing under the California Uniform Commercial Code, as amended or recodified from time to time ("UCC").

- 4.2. **REPRESENTATIONS AND WARRANTIES.** Mortgagor represents and warrants that: (a) Mortgagor has, or will have, good title to the Collateral; (b) Mortgagor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) Mortgagor's principal place of business is located at the address shown in Section 7.11; and (d) Mortgagor's legal name is exactly as set forth on the first page of this Mortgage and all of Mortgagor's organizational documents or agreements delivered to Mortgagee are complete and accurate in every respect.
- 4.3. **COVENANTS.** Mortgagor agrees: (a) to execute and deliver such documents as Mortgagee deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Mortgagee prior written notice thereof; (c) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Mortgagee is authorized to file financing statements in the name of Mortgagor to perfect Mortgagee's security interest in the Collateral.
- 4.4. **RIGHTS OF MORTGAGEE.** In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral; and (d) endorse, collect and receive any

right to payment of money owing to Mortgagor under or from the Collateral. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under UCC §9620, (Alabama Code §7-9A-620), or other applicable law.

4.5. **RIGHTS OF MORTGAGEE ON DEFAULT.** Upon the occurrence of a Default (hereinafter defined) under this Mortgage, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

- (a) Mortgagee may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales;
- (b) Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell, lease, license or dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Collateral; and
- (c) In disposing of Collateral hereunder, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Mortgagee to the payment of expenses incurred by Mortgagee in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Mortgagee toward the payment of the Secured Obligations in such order of application as Mortgagee may from time to time elect.

Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under UCC §9620, (Alabama Code §7-9A-620), or other applicable law. Mortgagor agrees that Mortgagee shall have no obligation to process or prepare any Collateral for sale or other disposition.

4.6. **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Mortgagee may, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; *provided, however*, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

4.7. **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents (as defined in the Credit Agreement), so long as no Default exists under this Mortgage or any of the Loan Documents, Mortgagor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Mortgagor's business and in accordance with the Credit Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1. **TITLE.** Mortgagor represents and warrants that, except as disclosed to Mortgagee in a writing which refers to this warranty, Mortgagor lawfully holds and possesses a leasehold estate to the Subject Property without limitation on the right to encumber, and that this Mortgage is a first and prior lien on the Subject Property.
- 5.2. **TAXES AND ASSESSMENTS.** Subject to Mortgagor's rights to contest payment of taxes as may be provided in the Credit Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Mortgagee by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; *provided, however*, Mortgagor shall have no obligation to pay taxes which may be imposed from time to time upon Mortgagee and which are measured by and imposed upon Mortgagee's net income.
- 5.3. **TAX AND INSURANCE IMPOUNDS.** At any time following the occurrence of a Default, at Mortgagee's option and upon its demand, Mortgagor, shall, until all Secured Obligations have been paid in full, pay to Mortgagee monthly, annually or as otherwise directed by Mortgagee an amount estimated by Mortgagee to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due. If Mortgagee determines that any amounts paid by Mortgagor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to pay all amounts when due, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Mortgagee shall, unless Mortgagor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Mortgagee release said funds to Mortgagor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Mortgagor hereunder or under any Secured Obligation, Mortgagee may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Mortgagor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Mortgage, Mortgagee shall have the right to assign all amounts collected and in its possession to its assignee whereupon Mortgagee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Mortgagee may elect, the balance of all amounts collected and in Mortgagee's possession shall be paid to Mortgagor and no other party shall have any right or claim thereto.
- 5.4. **PERFORMANCE OF SECURED OBLIGATIONS.** Mortgagor shall promptly pay and perform each Secured Obligation when due.
- 5.5. **LIENS, ENCUMBRANCES AND CHARGES.** Mortgagor shall immediately discharge any lien not approved by Mortgagee in writing that has or may attain priority over this Mortgage. Subject to the provisions of the Credit Agreement regarding mechanics' liens, Mortgagor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.6. **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- (a) Subject to Section 5.6(c) below, the following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Mortgagee and, at the request of Mortgagee, shall be paid directly to Mortgagee: (i) all awards of damages and all other compensation payable directly or indirectly to Mortgagor by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards payable to Mortgagor for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Mortgagee to be maintained by Mortgagor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law and without regard to any requirement contained in Section 5.7(d), but subject to the provisions of Section 5.6(b) and Section 5.6(c) below, Mortgagee may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose, and/or Mortgagee may release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; *provided, however*, in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Mortgagee or its employees or agents.
- (b) Subject to Section 5.6(c) below, provided there does not then exist a Default under the Loan Documents, Mortgagee shall permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in the Credit Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Mortgagee; and (iv) the delivery to Mortgagee of evidence acceptable to Mortgagee (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Mortgagee; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Mortgagor since the date of this Mortgage; and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

- (c) Notwithstanding anything contained herein to the contrary, if there is any inconsistency between the terms and provisions of this Section 5.6 with respect to the disposition of casualty, condemnation and/or insurance proceeds or awards, as applicable, and the terms and provisions in the Lease governing such disposition, the terms and provisions of the Lease governing such disposition shall govern and control except to the extent that there is a contrary provision in the subordination and non-disturbance agreement executed by the tenant under such Lease.

- 5.7. **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Subject to the provisions of the Credit Agreement, Mortgagor covenants: (a) to insure the Subject Property and Collateral against such risks as Mortgagee may require and, at Mortgagee's request, to provide evidence of such insurance to Mortgagee, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Mortgagee's prior written consent or as provided in the Credit Agreement; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Mortgagee elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6, but subject to the provisions of Section 5.6(b) and Section 5.6(c); (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or Collateral; and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.
- 5.8. **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.
- 5.9. **ACTIONS BY MORTGAGEE.** From time to time, and without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Mortgagee, without liability thereof and without notice, may: (a) release all or any part of the Subject Property from this Mortgage; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Mortgage.
- 5.10. **DUE ON SALE OR ENCUMBRANCE.** If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Mortgagor), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Mortgagee, or as otherwise provided in the Credit Agreement, THEN Mortgagee, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.11. **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Mortgagee may, from time to time, release any person or entity

from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Mortgage upon the Subject Property and Collateral.

- 5.12. **RECONVEYANCE**. Upon Mortgagee's written request, and upon surrender to Mortgagee for cancellation of this Mortgage or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Mortgagee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Mortgagee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.
- 5.13. **SUBROGATION**. Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to the Loan Documents or by the proceeds of any loan secured by this Mortgage.
- 5.14. **RIGHT OF INSPECTION**. Mortgagee, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof.
- 5.15. **PRESERVATION OF LEASEHOLD ESTATE**.
- (a) Mortgagor shall timely perform and comply with all covenants, agreements, obligations and use restrictions imposed upon the lessee under the Ground Lease, and shall not do or permit to be done anything to impair Mortgagor's rights and interest thereunder. Mortgagor shall cause lessor to perform all of lessor's obligations under the Ground Lease. Mortgagor shall give Mortgagee prompt written notice of any default, breach or noncompliance by any party under the Ground Lease. Except with the prior written consent of Mortgagee, Mortgagor shall not modify or amend any of the terms or provisions of the Ground Lease, or terminate or surrender the Ground Lease, or release or discharge the lessor from any of its material covenants, agreements, or obligations thereunder. Mortgagor represents and warrants to Mortgagee that (i) Mortgagor has not executed any prior mortgage, pledge, hypothecation, assignment or other transfer of its right, title and interest under the Ground Lease, other than in favor of Mortgagee, (ii) Mortgagor has not performed any act or executed any instrument with respect to the Ground Lease which might prevent Mortgagee from exercising its rights under this Mortgage or the other Loan Documents with respect thereto, (iii) Mortgagor has provided Mortgagee true and complete copies of the Ground Lease, and (iv) no party is in default thereunder.
- (b) Mortgagor acknowledges that, pursuant to Section 365 of the Bankruptcy Reform Act of 1978, as amended (hereinafter, as the same may be amended or recodified from time to time, the "Bankruptcy Reform Act"), it is possible that a trustee in bankruptcy of the Landlord, its successors and assigns, as a debtor-in-possession, could reject the Ground Lease, in which case Mortgagor, as lessee, would have the election described in Section 365(h) of the Bankruptcy Reform Act ("Election") to treat the Ground Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of the Ground Lease and any renewal or extension thereof that is enforceable by the lessee under applicable non-bankruptcy law. Mortgagor covenants that Mortgagor will not

suffer or permit the termination of the Ground Lease by exercise of the Election or otherwise without the prior written consent of Mortgagee. Mortgagor acknowledges that because the Ground Lease is a primary part of Mortgagee's security for the Secured Obligations, Mortgagee does not anticipate that it would consent to the termination of the Ground Lease and shall not under any circumstances be obligated to give such consent.

- (c) In order to secure the covenant made in Subsection (b) above and as further security for the Secured Obligations, Mortgagor hereby assigns the Election to Mortgagee. Mortgagor acknowledges and agrees that the foregoing assignment of the Election is one of the rights which Mortgagee may use at any time in order to protect and preserve the other rights and interests of Mortgagee under this Mortgage and the other Loan Documents. Mortgagor further acknowledges and agrees that the Election is in the nature of a remedy and is not a property interest which Mortgagor can separate from the Ground Lease. Therefore, Mortgagor agrees that exercise of the Election in favor of preserving the right to possession under the Ground Lease shall not be deemed a partial or other taking or sale of the Subject Property by Mortgagee and should not entitle Mortgagor to any credit against the Secured Obligations.
- (d) Mortgagor acknowledges and agrees that, in the event that the Election is exercised in favor of Mortgagor remaining in possession, then Mortgagor's resulting right to possession and use of (and the rents, issues and profits from) the Subject Property, as adjusted by the effect of Section 365 of the Bankruptcy Reform Act, shall then be subject to the lien and encumbrance of this Mortgage. However, Mortgagor acknowledges and agrees that such right to possession and use of the Subject Property as so adjusted is not equivalent to Mortgagor's leasehold estate under the Ground Lease as of the date hereof. Therefore, Mortgagor agrees that the rejection of the Ground Lease under the Bankruptcy Reform Act shall constitute a Default under this Mortgage if, in Mortgagee's sole judgment, such rejection shall result in material impairment to the value of the Subject Property and shall entitle Mortgagee to all rights and remedies provided for in this Mortgage of the other Loan Documents in the event of the occurrence of a Default.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1. **DEFAULT.** For all purposes hereof, the term "Default" shall mean the existence of any Default as defined in the Credit Agreement.
- 6.2. **RIGHTS AND REMEDIES.** At any time after Default, Mortgagee shall have all the following rights and remedies:
 - (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee under this Mortgage; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Mortgagee, is or may be senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (v) to employ counsel, accountants, contractors and other appropriate persons.
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of the covenants of Mortgagor

hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations;

- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right without the giving of notice to any other party and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment;
- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Mortgagee deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Mortgagee's sole judgment, to protect or enhance the security hereof;
- (f) To resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Mortgagee determines in its sole discretion.
- (g) Upon sale of the Subject Property at any foreclosure sale, Mortgagee may credit bid (as determined by Mortgagee in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Mortgagee in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Mortgagee; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Mortgagee (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Mortgagee; and (z) Mortgagee's credit bid may be (at Mortgagee's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.
- (h) Upon the completion of any foreclosure of all or a portion of the Subject Property, commence an action to recover any of the Secured Obligations that remains unpaid or unsatisfied.

- (i) Any of the rights and remedies granted in the Credit Agreement.
- 6.3. **JUDICIAL FORECLOSURE.** Mortgagee may obtain a judicial decree foreclosing mortgagor's interest in all or any part of the Property.
- 6.4. **DEFICIENCY JUDGMENT.** If permitted by applicable law, Mortgagee may obtain a judgment for any deficiency remaining in the indebtedness due to Mortgagee after application of all amounts received from the exercise of the rights provided in this section. Mortgagor shall be liable to Mortgagee for any deficiency remaining owed.
- 6.5. **SALE OF THE SUBJECT PROPERTY.** To the extent permitted by applicable law, Mortgagor hereby waives any and all right to have the Subject Property marshaled. In exercising its rights and remedies, Mortgagee shall be free to sell all or any part of the Subject Property, together or separately in one sale, or by separate sales. Mortgagee shall be entitled to bid at any public sale on all or any portion of the Subject Property.
- 6.6. **NOTICE OF SALE.** Mortgagee shall give Mortgagor reasonable notice of the time and place of any public sale of the personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice that is at least ten (10) days before the time of the sale or disposition.
- 6.7. **ELECTION OF REMEDIES.** Election by Mortgagee to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action or to perform an obligation of the Mortgagor under this Mortgage, after Mortgagor's failure to perform, shall not affect Mortgagee's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Mortgagee following event of Default, or in any way to limit or restrict the rights and ability of Mortgagee to proceed directly against Mortgagor and/or against any other co-maker, guarantor, surety, or endorser, and/or to proceed against any other collateral, directly or indirectly securing the indebtedness.
- 6.8. **FORECLOSURE SALE.** Upon the occurrence of any Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Subject Property is taken, after giving notice by publication once a week for three (3) successive weeks of the time, place and terms of each such sale, together with a description of the Subject Property, by publication in a newspaper published in the county or counties wherein the Subject Property is located, to sell the Subject Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's main or front courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Subject Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Subject Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Subject Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Subject Property not previously sold shall have been sold or all the Secured Indebtedness shall have been paid in full.
- 6.9. **FORECLOSURE DEEDS.** Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute

and deliver to the purchaser or purchasers of any of the Subject Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

- 6.10. **APPLICATION OF PROCEEDS.** All payments received by Mortgagee as proceeds of the Subject Property, or any part thereof, as well as any and all amounts realized by Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, (ii) to the payment in full of any of the Secured Obligations that is then due and payable (including without limitation principal, accrued interest, advances and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, and (iii) the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.
- 6.11. **NO CURE OR WAIVER.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Mortgagee or any receiver shall cure or waive any breach, Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or impair the status of the security, or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of or security interests created by this Mortgage.
- 6.12. **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Mortgagee (and each Lender, as applicable) immediately and without demand all costs and expenses incurred by Mortgagee (and each Lender, as applicable) pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Notes as specified therein or as allowed by applicable law. In addition, Mortgagor shall pay to Mortgagee all Mortgagee's reasonable fees hereunder and shall reimburse Mortgagee for all reasonable expenses incurred in the administration of this mortgage, including, without limitation, any attorneys' fees.
- 6.13. **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, (b) upon the issuance of a mortgage pursuant to the foreclosure of the lien of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Mortgagee may perform any obligation of Mortgagor hereunder; *provided, however*, that: (i) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (ii) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act (whether or not such failure constitutes negligence) by Mortgagee under this Section.

- 6.14. **REMEDIES CUMULATIVE.** All rights and remedies of Mortgagee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Mortgagee. No failure on the part of Mortgagee to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Mortgagee in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while the Default is continuing. Mortgagee may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not thereby waive the agreement contained herein that time is of the essence, nor shall Mortgagee waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1. **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference.
- 7.2. **MERGER.** No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Subject Property unless Mortgagee consents to a merger in writing.
- 7.3. **OBLIGATIONS OF MORTGAGOR, JOINT AND SEVERAL.** If more than one person has executed this Mortgage as "Mortgagor", the obligations of all such persons hereunder shall be joint and several.
- 7.4. **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Mortgage as a Mortgagor agrees that any money judgment which Mortgagee obtains pursuant to the terms of this Mortgage or any other obligation of that married person secured by this Mortgage may be collected by execution upon that person's separate property, and any community property of which that person is a manager.
- 7.5. **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation ("Other Property") marshalled upon any foreclosure of the lien of this Mortgage or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Mortgagee may designate.
- 7.6. **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.
- 7.7. **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; *provided, however*, that this Section 7.7 does not waive or modify the provisions of Section 5.10.

- 7.8. **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.9. **GOVERNING LAW.** This Mortgage was accepted by Mortgagee in the State of California and the proceeds of the Notes secured hereby were disbursed from the State of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Mortgage, the Notes and other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such state and any applicable law of the United States of America, except that at all times the provisions for enforcement of Mortgagee's right to foreclose this Mortgage and Mortgagee's other rights and remedies under this Mortgage, and the creation, perfection, priority and enforcement of the Mortgage, and any liens and the security interests created by this Mortgage, shall be governed by and construed according to the laws of the State of Alabama. Except as provided in the immediately preceding sentence, Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than the State of California governs this Mortgage, the Notes and other Loan Documents.
- 7.10. **INCORPORATION.** Exhibits A and B and Schedule 1, as attached, are incorporated into this Mortgage by this reference.
- 7.11. **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; *provided, however*, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

20051209000639740 17/29 \$3567.50
Shelby Cnty Judge of Probate, AL
12/09/2005 04:07:58PM FILED/CERT

Loan No. 101914

Mortgagor:	SOVEREIGN RA, LLC, a Delaware limited liability company c/o Sovereign Investment Company 116 Village Boulevard, Suite 200 Princeton, NJ 08540 Attn: Chief Financial Officer
Mortgagee:	WELLS FARGO BANK, NATIONAL ASSOCIATION Real Estate Merchant Banking 2030 Main Street, 8th Floor Irvine, CA 92614 Attn: Sally Sison Loan No. 101914 AU# 2014
With a copy to:	WELLS FARGO BANK, NATIONAL ASSOCIATION Real Estate Merchant Banking 333 South Grand Avenue, 9th Floor Los Angeles, CA 90071 Attn: Raymond W. Lowe

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Mortgagee, without delay, any notices, letters or other communications delivered to the Subject Property or to Mortgagor naming Mortgagee, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the ability of Mortgagor to perform its obligations to Mortgagee under the Notes or the Credit Agreement.

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20051209000639740 18/29 \$3567.50
Shelby Cnty Judge of Probate, AL
12/09/2005 04:07:58PM FILED/CERT

Loan No. 101914

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year set forth above.

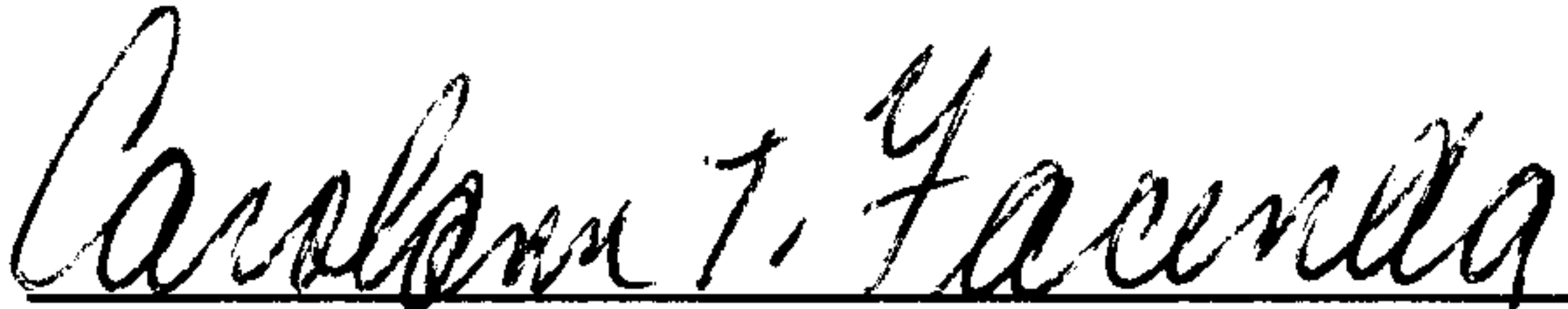
"MORTGAGOR"


**SOVEREIGN RA, LLC,
a Delaware limited liability company**

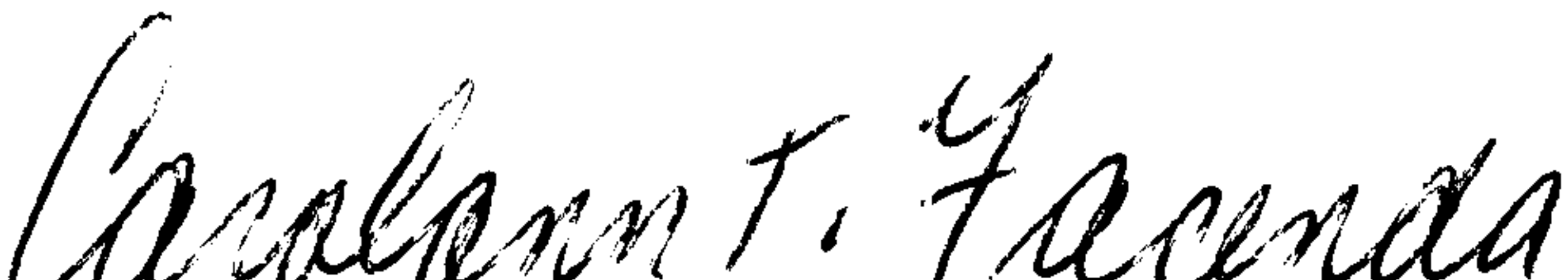
By: Sovereign GL, LLC, a Delaware limited liability company
Its: Sole Manager

By: Sovereign Investment Company, a California corporation
Its: Sole Manager

By 
Name: Jeffrey G. Hoppen
Its: Chief Investment Officer


Witness

By 
Name: Barry D. Bain
Its: Vice President


Witness

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Philadelphia

SS

On this, the 8th day of November, 2005, before me, a Notary Public in and for the Commonwealth and County aforesaid, the undersigned officer, personally appeared Jeffrey G. Hoppen who acknowledged himself to be the Chief Investment Officer of Sovereign Investment Company, a California corporation, sole manager of Sovereign GL, LLC, a Delaware limited liability company, the sole manager of Sovereign RA, LLC, a Delaware limited liability company and that he as such officer, being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Carolann T. Facenda

NOTARY PUBLIC

My Commission Expires:

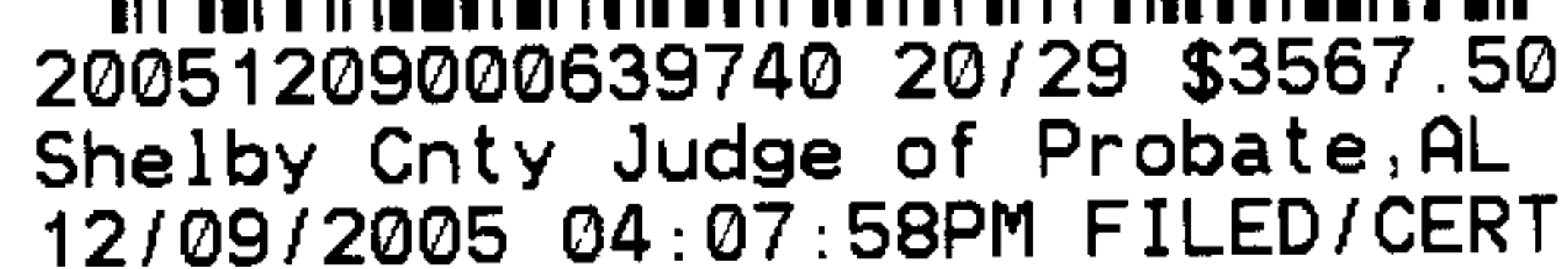
COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

CAROLANN T. FACENDA, Notary Public

City of Philadelphia, Phila. County

My Commission Expires March 21, 2009



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EXHIBIT A
Loan No. 101914

DESCRIPTION OF SUBJECT PROPERTY

Exhibit A to Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by SOVEREIGN RA, LLC, a Delaware limited liability company, as Mortgagor and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee, dated as of November 8, 2005 (and effective as of November 18, 2005).

All of Mortgagor's interest, as lessee, in that certain leasehold estate in real property located in the County of Shelby, State of Alabama, described as follows:

1. Ground Lease dated November 1, 2005 between Babington Properties, L.P., an Alabama limited partnership, and Harco, Inc., an Alabama corporation, with offices at P.O. Box 3165, Camp Hill, Pennsylvania 17105, covering the real property more particularly set forth on Schedule 1 hereto.

SCHEDULE 1—PROPERTY DESCRIPTION

All that certain real property located in the County of Shelby, State of Alabama, described as follows:

Lot 1 according to the survey of Valleydale Rite Aid Survey as recorded in Map Book 36 page 21 in the Probate Office, Shelby County, Alabama.



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NON-BORROWER MORTGAGOR RIDER

Exhibit B to Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by SOVEREIGN RA, LLC, a Delaware limited liability company, as Mortgagor, and Wells Fargo Bank, National Association, on behalf of and for the benefit of all current and future Lender(s), as Mortgagee, dated as of November 8, 2005 (and effective as of November 18, 2005).

To the extent the Mortgage secures one or more promissory notes and other loan documents ("Loan Documents") made by a party or parties ("Borrower") not identical to the party Mortgagor, Mortgagor agrees as follows:

1. **CONDITIONS TO EXERCISE OF RIGHTS.** Mortgagor hereby waives any right it may now or hereafter have to require Mortgagee, as a condition to the exercise of any remedy or other right against Mortgagor hereunder or under any other document executed by Mortgagor in connection with any Secured Obligation: (a) to proceed against any Borrower or other person, or against any other collateral assigned to Mortgagee by Mortgagor or any Borrower or other person; (b) to pursue any other right or remedy in Mortgagee's power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Mortgagee by any Borrower or other person (other than Mortgagor), or otherwise to comply with the UCC (as modified or recodified from time to time) with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Secured Obligation or any collateral (other than the Subject Property) for any Secured Obligation.
2. **DEFENSES.** Mortgagor hereby waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Borrower or other person; (b) the cessation, from any cause other than full performance, of the obligations of Borrower or any other person; (c) the application of the proceeds of any Secured Obligation, by any Borrower or other person, for purposes other than the purposes represented to Mortgagor by any Borrower or otherwise intended or understood by Mortgagor or any Borrower; (d) any act or omission by Mortgagee which directly or indirectly results in or contributes to the release of any Borrower or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment (other than this Mortgage) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien hereof) which secures any Secured Obligation; (f) any failure of Mortgagee to marshal assets in favor of Mortgagor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (h) any and all rights and defenses arising out of an election of remedies by Mortgagee, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Mortgagor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Mortgagee to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Mortgagee, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Mortgagor further waives any and all rights and defenses that Mortgagor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Mortgagee may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Mortgagee forecloses on any real property collateral pledged by

Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Mortgagee may collect from Mortgagor even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right Mortgagor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because Borrower's debt is secured by real property. These rights and defenses being waived by Mortgagor include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, Mortgagor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Mortgagor under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections.

3. **SUBROGATION**. Mortgagor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against any Borrower that relates to any Secured Obligation; (b) any right to enforce any remedy Mortgagor may now or hereafter have against any Borrower that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Mortgagee with respect to any Secured Obligation.
4. **BORROWER INFORMATION**. Mortgagor warrants and agrees: (a) that Mortgagee would not make any loans under the Credit Agreement ("Loans") but for this Mortgage; (b) that Mortgagor has not relied, and will not rely, on any representations or warranties by Mortgagee to Mortgagor with respect to the credit worthiness of any Borrower or the prospects of repayment of any Secured Obligation from sources other than the Subject Property; (c) that Mortgagor has established and/or will establish adequate means of obtaining from each Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each Borrower; (d) that Mortgagor assumes full responsibility for keeping informed with respect to each Borrower's business operations, if any, and financial condition; (e) that Mortgagee shall have no duty to disclose or report to Mortgagor any information now or hereafter known to Mortgagee with respect to any Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial condition; and (f) that Mortgagor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.
5. **REINSTATEMENT OF LIEN**. Mortgagee's rights hereunder shall be reinstated and revived, and the enforceability of this Mortgage shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Mortgagee is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Borrower.
6. **SUBORDINATION**. Until all of the Secured Obligations have been fully paid and performed: (a) Mortgagor hereby agrees that all existing and future indebtedness and other obligations of each Borrower to Mortgagor (collectively, the "Subordinated Debt") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Borrower, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; (b) Mortgagor shall not collect or receive any cash or non-cash payments on any Subordinated Debt or transfer all or any portion of the Subordinated Debt; and (c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Borrower with respect to any Subordinated Debt is received by Mortgagor, such payment or distribution shall be held in trust and immediately paid over to Mortgagee, is hereby assigned to Mortgagee as security for the Secured Obligations, and shall be held by Mortgagee in an interest bearing account until all Secured Obligations have been fully paid and performed.

7. **HAZARDOUS MATERIALS.**

7.1. **Special Representations and Warranties.** Without in any way limiting the other representations and warranties set forth in this Mortgage, and after reasonable investigation and inquiry, Mortgagor hereby specifically represents and warrants to the best of Mortgagor's knowledge as of the date of this Mortgage as follows:

- (a) **Hazardous Materials.** Except as previously disclosed to Mortgagee in that certain Phase 1 Environmental Site Assessment prepared by BL Companies and dated September 30, 2005 (BL Project No. 05L0554) (the "Environmental Report"), the Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials"). "Hazardous Materials" shall not include commercially reasonable amounts of such materials used in the ordinary course of construction of the Subject Property which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.
- (b) **Hazardous Materials Laws.** The Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.
- (c) **Hazardous Materials Claims.** There are no claims or actions ("Hazardous Materials Claims") pending or threatened against Mortgagor or the Subject Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.
- (d) **Border Zone Property.** The Subject Property has not been designated as Border Zone Property under the provisions of California Health and Safety Code, Sections 25220 et seq. and there has been no occurrence or condition on any real property adjoining or in the vicinity of the Subject Property that could cause the Subject Property or any part thereof to be designated as Border Zone Property.

7.2. **Hazardous Materials Covenants.** Mortgagor agrees as follows:

- (a) **No Hazardous Activities.** Mortgagor shall not cause or permit the Subject Property to be used as a site for the use, generation, manufacture, storage, treatment,

release, discharge, disposal, transportation or presence of any Hazardous Materials (except in small quantities in the ordinary course of business and in compliance with all Hazardous Materials Laws).

- (b) Compliance. Mortgagor shall comply and cause the Subject Property and Collateral to comply with all Hazardous Materials Laws.
 - (c) Notices. Mortgagor shall immediately notify Mortgagee in writing of: (i) the discovery of any Hazardous Materials on, under or about the Subject Property and Collateral; (ii) any knowledge by Mortgagor that the Subject Property and Collateral does not comply with any Hazardous Materials Laws; (iii) any Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Subject Property and Collateral that could cause the Subject Property and Collateral or any part thereof to be designated as Border Zone Property.
 - (d) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Subject Property, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
- 7.3. Inspection By Mortgagee. Upon reasonable prior notice to Mortgagor, Mortgagee, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Subject Property and Collateral for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Subject Property and Collateral.
- 7.4. Hazardous Materials Indemnity. MORTGAGOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH MORTGAGEE MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE SUBJECT PROPERTY AND COLLATERAL. MORTGAGOR SHALL IMMEDIATELY PAY TO MORTGAGEE UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTES. MORTGAGOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGEE SHALL SURVIVE THE CANCELLATION OF THE NOTES AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE MORTGAGE; PROVIDED THAT MORTGAGOR'S DUTY TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGEE SHALL NOT EXTEND TO ANY CLAIMS WHICH ARISE SOLELY FROM EVENTS OCCURRING FOLLOWING THE TRANSFER OF THE SUBJECT PROPERTY BY JUDICIAL OR NON-JUDICIAL FORECLOSURE (OR DEED-IN-LIEU THEREOF).
- 7.5. Legal Effect of Section. Mortgagor and Mortgagee agree that: (a) this Section 7 is intended as Mortgagee's written request for information (and Mortgagor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure §726.5; and (b) each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the

environmental condition of the real property security is intended by Mortgagee and Mortgagor to be an "environmental provision" for purposes of California Code of Civil Procedure §736, and as such it is expressly understood that Mortgagor's duty to indemnify Mortgagee hereunder shall survive: (a) any judicial or non-judicial foreclosure under the Mortgage, or transfer of the Subject Property in lieu thereof (**except that Mortgagor's duty to indemnify Mortgagee shall not extend to any claims which arise solely from events occurring following the transfer of the Subject Property by judicial or non-judicial foreclosure or by deed-in-lieu thereof**), (b) the release and reconveyance or cancellation of the Mortgage; and (c) the satisfaction of all of Mortgagor's obligation under the Loan Documents.

8. **LAWFULNESS AND REASONABLENESS.** Mortgagor warrants that all of the waivers in this Mortgage are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Mortgagor may destroy or impair rights which Mortgagor would otherwise have against Mortgagee, Borrower and other persons, or against collateral. Mortgagor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.
9. **ENFORCEABILITY.** Mortgagor hereby acknowledges that: (a) the obligations undertaken by Mortgagor in this Mortgage are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Mortgagee's consideration for entering into this transaction, Mortgagee has specifically bargained for the waiver and relinquishment by Mortgagor of all such defenses, and (d) Mortgagor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Mortgagor does hereby represent and confirm to Mortgagee that Mortgagor is fully informed regarding, and that Mortgagor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Mortgagor, and (iv) the legal consequences to Mortgagor of waiving such defenses. Mortgagor acknowledges that Mortgagor makes this Mortgage with the intent that this Mortgage and all of the informed waivers herein shall each and all be fully enforceable by Mortgagee, and that Mortgagee is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.
10. **DISCLOSURE OF INFORMATION; PARTICIPATIONS.** Mortgagor understands and agrees that Mortgagee may elect, at any time, to sell, assign, or participate all or any part of Mortgagee's interest in the Loans, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Mortgagee's sole discretion. Mortgagor further agrees that Mortgagee may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Mortgagee with respect to: (a) the Subject Property and Collateral and its operation; (b) any party connected with the Loans (including, without limitation, the Mortgagor, the Borrower, any partner of Borrower and any guarantor); and/or (c) any lending relationship other than the Loans which Mortgagee may have with any party connected with the Loans.
11. **WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS MORTGAGE, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN

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EXHIBIT B
Loan No. 101914

CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY AND MORTGAGEE HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS MORTGAGE AND MORTGAGEE MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO AND MORTGAGEE TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.


12. **INTEGRATION; INTERPRETATION.** This Mortgage and the other Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. This Mortgage and the other Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Mortgagee in writing.

SCHEDULE OF LEASES

Schedule 1 to Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by SOVEREIGN RA, LLC, a Delaware limited liability company, as Mortgagor, and Wells Fargo Bank, National Association, on behalf of and for the benefit of all current and future Lender(s), as Mortgagee, dated as of November 8, 2005 (and effective as of November 18, 2005).

1. That certain Lease Agreement between SOVEREIGN RA, LLC, a Delaware limited liability company, as "Lessor", and HARCO, INC., an Alabama corporation, as "Lessee", dated November 8, 2005 for that certain premises located at 4501 Valleydale Road, Birmingham, AL 35242, together with all exhibits and addenda attached thereto.

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