

1,338,983.62

STATE OF ALABAMA )

SHELBY COUNTY )



20060403000151500 1/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO  
DAVID PACKER, ESQ.  
Pircher, Nichols & Meeks  
1925 Century Park East, Suite 1700  
Los Angeles, CA 90067  
310.201.8900  
310.201.8922 (fax)  
[dpacker@pircher.com](mailto:dpacker@pircher.com)

SOVEREIGN EO, LLC, a Delaware limited liability company,  
as mortgagor

to

CAPITALSOURCE FINANCE LLC, as mortgagee

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

Dated: March 15, 2006

Location: 136 First Street N, Alabaster, AL

County: Shelby County

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9-402(6), CODE OF ALABAMA, AS AMENDED.

THIS MORTGAGE SECURES A CREDIT AGREEMENT WHICH PROVIDES FOR A VARIABLE RATE OF INTEREST.

When recorded mail to:  
LandAmerica Financial Group, Inc.  
Attn: A. Brown  
1850 N. Central Avenue, Suite 300  
Phoenix, AZ 85004  
Escrow No. 26-4772



**MORTGAGE,  
ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT  
AND FIXTURE FILING**  
(136 First Street N, Alabaster, AL)

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Mortgage**") is made as of March 15, 2006, by Sovereign EO, LLC, a Delaware limited liability company ("**Mortgagor**"), to **CAPITALSOURCE FINANCE LLC**, a Delaware limited liability company ("**Mortgagee**").

1. **DEFINITIONS.** Certain terms used in this Mortgage are defined below; and certain other terms used in this Mortgage are defined elsewhere in this Mortgage or in that certain Amended and Restated Credit Agreement, dated as of May 11, 2005, between Sovereign JF, LLC, a California limited liability company ("**Borrower**") and Mortgagee (as it may be amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). All capitalized terms not otherwise defined herein shall have the meaning provided in the Credit Agreement.

"**Event of Default**" means the occurrence of any of the following, regardless of the cause thereof, or the circumstances giving rise thereto:

(1) Mortgagor's or Borrower's failure to make any payment when due in accordance with the terms of any of Credit Documents;

(2) Any of Mortgagor's or Borrower's representations or warranties contained in any Credit Document was untrue when made;

(3) A Transfer of the Property in violation of the terms of Section 6.16 hereof.

(4) Mortgagor's or Borrower's default in the performance of any other term, covenant or condition contained in any Credit Document, which is not cured within thirty (30) days after written notice of such default given by Mortgagee to Mortgagor or Borrower, as applicable (except that, if the default is such that it cannot be cured within said thirty (30) day period, and Mortgagor or Borrower promptly commences the cure of such default within thirty (30) days after such written notice and diligently pursues such cure to completion, then such thirty (30) day period shall be extended to such period of time as may be reasonably necessary, but in no event more than a total of ninety (90) days);

(5) Should any party be identified on the Addendum attached hereto as Exhibit "B" (the "**Addendum**") as an "Additional Essential Party" (being collectively herein called the "**Additional Essential Parties**"), Borrower, Mortgagor, any guarantor, any shareholder owning ten percent (10%) or more of the shares of Mortgagor or Borrower, any general partner, joint venturer, manager or any managing member of Mortgagor or Borrower, or any successors and permitted assigns of any of them:

(a) file a petition in voluntary bankruptcy or for an arrangement or reorganization under any bankruptcy or insolvency laws, or debtor relief statutes (hereinafter referred to as a "**Bankruptcy Proceeding**");

(b) file any answer in any Bankruptcy Proceeding or any other action or proceeding admitting insolvency or inability to pay its debts;

(c) fail to oppose, or fail to obtain a vacation or stay of, any involuntary Bankruptcy Proceeding within ninety (90) days after the filing thereof;



(d) be granted a decree or order for relief, or be adjudicated a bankrupt or declared insolvent in any Bankruptcy Proceeding, whether voluntary or involuntary;

(e) have a trustee or receiver appointed for or have any court take jurisdiction of its property, or the major part thereof, or the Property, in any voluntary or involuntary proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, if such trustee or receiver is not discharged or if such jurisdiction is not relinquished, vacated or stayed on appeal or otherwise, within ninety (90) days after the commencement thereof;

(f) make an assignment for the benefit of creditors;

(g) consent to any appointment of a receiver or trustee or liquidator of all of its property, or the major part thereof, or the Property;

(h) have an attachment or execution levied with respect to, or other judicial seizure be effected for, all or substantially all of its assets or interest in the Property, or the placing of any attachment, levy of execution, charging order, or other judicial seizure on the interest of any member in Mortgagor; or

(i) dissolve as an entity, whether voluntarily or involuntarily, or by operation of law;

(6) Failure by any guarantor, or of any obligation under any Credit Document, to perform any of its obligations under its guaranty agreement, or any of such guarantor's representations or warranties contained in its guaranty, or in any other document or instrument furnished or delivered to Mortgagee in connection therewith, is untrue in any material respect;

(7) The entry of a final judgment, final order or final decree for the payment of money against Mortgagor or Borrower in excess of \$50,000, which is not satisfied and paid, or enforcement of which has not been stayed, within sixty (60) days after the date of entry of such judgment, order or decree; or

(8) If (a) the term of any policy of insurance required by this Mortgage shall expire or lapse, or (b) Mortgagor receives notice of cancellation of any such policy and Mortgagor does not provide Mortgagee with written evidence of a replacement or renewal policy of insurance complying with this Mortgage at least five (5) business days prior to the date of cancellation or expiration of such policy;

(9) A default, beyond any applicable notice and cure periods, if any, shall have occurred under any other encumbrance or security agreement affecting the Property whether senior or junior; or

(10) An "Event of Default" shall occur as defined in the Credit Agreement or in any of the other Credit Documents.

"**Good Faith**" is used in this Mortgage and the Credit Documents in the manner defined in the Uniform Commercial Code.

"**Personal Property**" means all "Accounts", "Cash proceeds", "Chattel paper", "Collateral", "Commercial tort claims", "Deposit accounts", "Documents", "Electronic chattel paper", "Equipment", "Fixtures", "General intangibles", "Goods", "Instruments", "Inventory", "Investment property", "Letter-of-credit rights", "Noncash proceeds", "Payment intangibles", "Proceeds", "Software", "Supporting Obligations", and "Tangible chattel paper", as defined in the Uniform Commercial Code (as such Uniform Commercial Code may be amended from time to time) in which Mortgagor has any interest, whether currently owned or hereafter acquired, relating to, generated from, arising out of or incidental to the ownership, development, use or operation of the Real Property (whether or not subsequently removed from the Real Property (other than that portion of the Property consisting of the Real Property)), including, without limitation, all



(i) machinery and tools; (ii) rugs, carpets and other floor coverings; (iii) draperies and drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (iv) lamps, chandeliers and other lighting fixtures; (v) office maintenance and other supplies; (vi) apparatus, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment; (vii) rights, royalties, rents, security deposits, advance rentals, revenues, profits and benefits; (viii) leases, lease guarantees, contracts, contract rights, licenses, permits and certificates; (ix) deposits, funds, money and deposit accounts; (x) tenements, hereditaments and appurtenances; (xi) approvals and parcel maps (whether tentative or final), building permits and certificates of occupancy; (xii) names under or by which the Property or any of the Improvements may at any time be operated or known and rights to carry on business under any such names or any variant thereof; (xiii) trademarks and good will; (xiv) management agreements, service contracts, supply contracts or other contracts or agreements; (xv) warranties; (xvi) water stock; (xvii) shares of stock or other evidence of ownership of any part of the Property or Improvements that is owned by Mortgagor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing, maintaining or operating any part of the Property or Improvements; (xviii) plans and specifications prepared for construction of improvements on the Property, or any part thereof, and studies, data and drawings related thereto, including, without limitation, studies, data or reports relating to toxic or hazardous wastes or materials located on the Property and/or Improvements, and contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data, reports and drawings or to the construction of improvements on the Property; (xix) sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into respecting the sale to any purchasers of any part of the Property, and/or Improvements, together with all deposits and other proceeds of the sale thereof; (xx) damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Property; (xxi) deposits made with or other security given to utility companies by Mortgagor with respect to the Property and/or Improvements; (xxii) advance payments of insurance premiums made by Mortgagor with respect to, and all claims or demands with respect to, insurance; (xxiii) negotiable certificates of deposit of Mortgagor in Mortgagee's possession and all accounts of Mortgagor maintained with Mortgagee and each deposit account of Mortgagor assigned to Mortgagee pursuant to any agreement; (xxiv) insurance proceeds (including insurance proceeds for insurance not required under the terms of this Mortgage); (xxv) condemnation awards; (xxvi) causes of action, claims, compensation, awards and recoveries for any damage or injury to the Property and/or Improvements or for any loss or diminution in value of the Property and/or Improvements; (xxvii) books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof; (xxviii) guaranties of and security for any of the foregoing; (xxix) all substitutions, renewals, improvements, attachments, accessions, additions and replacements to any of the foregoing; and all "Proceeds" (as such term is defined in the Uniform Commercial Code), collections, insurance proceeds and products of any of the property listed in (i) through (xxix) above, including without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation award or otherwise) and all documents, instruments, general intangibles, goods, equipment, inventory, chattel paper, monies, accounts, deposit accounts and other personal property that may arise from the sale or disposition of any of the foregoing, all guaranties of and security for any of the foregoing, and all books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof, relating to any of the foregoing.

**"Property"** means the real property described in Exhibit "A" attached hereto and incorporated herein by reference, together with all buildings and other improvements (**"Improvements"**) now or hereafter located thereon, and any and all right, title or interest in any other real property or improvements comprised in such real property, which right, title or interest is acquired after the date of this Mortgage (such real property, buildings, improvements and after-acquired interest being hereinafter collectively referred to as the **"Real Property"**); the Personal Property; all easements and other rights now or hereafter made appurtenant to the Real Property; all additions and accretions to the Real Property; all fixtures, machinery, equipment, and appliances at any time attached to, or located in or on the Real Property in which Mortgagor



has an interest; all rights in or to existing or future streets or public places; all existing and future minerals, oil, gas and other hydrocarbon substances upon, under or through the Real Property; all water and water rights, pumps and pumping plants, and existing and future water stock relating thereto; all existing and future shares of stock or other evidence of ownership of any part of the foregoing property and all intangible property and rights relating to the foregoing property, or the operation thereof or used in connection therewith, including all options, sales contracts and rights of first refusal of any nature whatsoever, covering all or any portion of such property, together with any deposits or other payments made in connection therewith, existing and future development rights, permits and approvals, air rights and other similar land use permits, approvals or entitlements; and all proceeds of any of the foregoing. Any reference in this Mortgage to the "Property" shall mean the Property described in this Section, any part thereof, or any interest therein.

**"Taxes and Assessments"** means all taxes, assessments, levies and charges imposed by any public or quasi-public authority having jurisdiction over the Property which are or may affect, or become a lien upon, the Property, or the rents, royalties, profits and income of the Property, or interest therein, or imposed by any public or quasi-public authority upon Mortgagor or Mortgagee by reason of their respective interests in the Property or by reason of any payment, or portion thereof, made to Mortgagee hereunder or pursuant to any obligation secured by this Mortgage or any of the other Credit Documents, other than taxes which are measured by and imposed upon Mortgagee's general net income.

**"Transfer"** means the sale, transfer, hypothecation, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of the Property, or any portion thereof or interest therein (whether direct or indirect, legal or equitable, including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, mortgage or encumbrance of any ownership interest in Mortgagor or in any entity having an ownership interest in Mortgagor, whether direct or indirect); or, if any Additional Essential Party is an entity, the sale, transfer, hypothecation, encumbrance, mortgage, conveyance, lease, alienation, assignment, disposition, divestment, or leasing with option to purchase, or assignment of any interest in the Additional Essential Party (whether direct or indirect, legal or equitable, including the issuance, sale, assignment, alienation, conveyance, divestment, transfer, disposition, hypothecation, mortgage or encumbrance of any ownership interest in any entity having an ownership interest in the Additional Essential Party, whether direct or indirect); or entering into any agreement or contract to do any of the foregoing which is not conditioned on compliance with the terms of the Credit Documents with respect to Transfers, or undertaking, suffering or causing any of the foregoing to occur voluntarily, involuntarily or by operation of law. Notwithstanding the preceding provisions of this definition, transfers (but not encumbrances) of ownership interests, whether direct or indirect in Mortgagor, shall be permitted hereunder, provided that (a) such transfers are to affiliates of The Marcus & Millichap Company, (b) in no event may more than forty-nine percent (49%) of the beneficial interests in Mortgagor be transferred (whether directly or indirectly), and (c) no such changes otherwise result in a change in control in Mortgagor or cause the terms and conditions of Section 6.25 of the Credit Agreement to be violated.

**"Uniform Commercial Code"** means the Uniform Commercial Code as enacted in the State of Alabama.

2. **GRANT.** MORTGAGOR HAS GRANTED, CONVEYED, BARGAINED, SOLD, ALIENED, ENFEOFFED, RELEASED, CONFIRMED, MORTGAGED AND WARRANTED TO MORTGAGEE, ITS SUCCESSORS AND ASSIGNS, A LIEN UPON AND A SECURITY INTEREST IN, AND DOES HEREBY GRANT, CONVEY, BARGAIN, SELL, ALIEN, ENFEOFF, RELEASE, CONFIRM, MORTGAGE AND WARRANT UNTO MORTGAGEE, AND ITS SUCCESSORS AND ASSIGNS, THE PROPERTY.

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

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor or Borrower shall well and truly pay to Mortgagee all indebtedness evidenced by or arising under the Credit Agreement and this Mortgage at the time and in the manner provided in the Credit Agreement and this



Mortgage, shall perform all other obligations as set forth in the Credit Agreement and this Mortgage and shall abide by and comply with each and every covenant and condition set forth therein and herein, these presents and the estate hereby granted shall cease, terminate and be void.

3. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor absolutely, presently, unconditionally and irrevocably assigns to Mortgagee (a) all leases, subleases, occupancy agreements, licenses, usufructs, rental contracts and other agreements now or hereafter existing relating to the use or occupancy of the project located on the Property (including the license granted in Section 6.10.1 hereof), and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases, together with all deposits (including security deposits) of tenants thereunder, for the purposes and upon the terms and conditions hereinafter set forth. The foregoing assignment shall not impose upon Mortgagee any duty to produce rents from the Property, and such assignment shall not cause Mortgagee to be a "mortgagee in possession" for any purpose. This assignment is an absolute and present assignment from Mortgagor to Mortgagee and not merely the passing of a security interest, subject only to the provisions hereinafter contained pertaining to Mortgagor's right to collect the rents, issues and profits of the Property.

4. **OBLIGATIONS SECURED.** Mortgagor makes the foregoing grant and assignment for the purpose of securing the following in such order of priority as Mortgagee may determine (the "**Obligations**"):

4.1 **Payment of Advance.** Payment to Mortgagee of all indebtedness outstanding under the Credit Agreement in an aggregate principal amount of up to Seventy Six Million Thirty Two Thousand and No/100 Dollars (\$76,032,000.00) plus the amounts of any permitted over advances intended to be in an aggregate amount not in excess of \$93,800,000, together with interest thereon, including sums added to the principal balance of any amounts outstanding in accordance with the terms of the Credit Agreement and any other Credit Documents, and all prepayment, late charges or other charges or fees payable thereunder, and any and all modifications, extensions, renewals or substitutions thereof whether or not evidenced by any promissory note or notes;

4.2 **Payment of Further Advances.** Payment of such further indebtedness with interest thereon, and performance of and compliance with such further obligations as the then record owner of the Property may undertake to pay, perform or comply with for the benefit of Mortgagee, its successors or assigns, when such borrowing or obligation is consented to in writing by Mortgagor or Borrower by any writing reciting that it or they are so secured;

4.3 **Performance Under Credit Documents.** Performance of and compliance with each agreement, undertaking, obligation, warranty or representation of Mortgagor, Borrower or any other person contained in any Credit Document, or incorporated therein by reference, or in any and all documents, leases or instruments assigned to Mortgagee or executed in Mortgagee's favor and delivered thereunder, and payment of all sums, fees, costs and expenses as therein set forth or which may otherwise be advanced by or due to Mortgagee under any provision of any Credit Document, with interest thereon at the rate provided therein. However, if any document now or hereafter executed by Mortgagor and Mortgagee contains any obligation, covenant, representation or warranty of Mortgagor that by its express terms, or by the express terms of such document, is not intended to be secured by this Mortgage, then such obligation, covenant, representation or warranty shall not be secured by this Mortgage or any other Credit Document (but only to the extent necessary, with respect to temporal applicability, scope or otherwise, to render the same unsecured), and to the extent (if any) that such unsecured obligation, covenant, representation or warranty may be repeated in any provision of this Mortgage or any other Credit Document, it shall be deemed stricken and excluded from this Mortgage and such Credit Document (but only to the extent necessary, with respect to temporal applicability, scope or otherwise, to render the same unsecured) from and after the date on which such unsecured obligation, covenant, representation or warranty arises and becomes effective under terms of the document in which it is contained.

5. **SECURITY AGREEMENT AND FIXTURE FILING.**



5.1 **Grant of Security Interest.** Mortgagor hereby grants to Mortgagee a security interest in the Personal Property to secure all of the Obligations and all other obligations of Mortgagor or Borrower to Mortgagee under any other Credit Documents. This Mortgage constitutes a security agreement with respect to all personal property in which Mortgagee is granted a security interest hereunder, and Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as well as all other rights and remedies available at law or in equity.

5.2 **Perfection.** Mortgagor will execute, acknowledge, deliver and cause to be recorded or filed, in the manner and place required by any present or future law, any instrument that may be requested by Mortgagee to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Mortgagee in the Property, including, without limitation, mortgages, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Mortgagor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual (including the costs and expenses of in-house counsel allocated by Mortgagee) attorneys' fees and costs, incurred by Mortgagee in connection with the preparation, execution, and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of such instruments. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as the attorney-in-fact of Mortgagor, to execute, deliver and, if appropriate, file with the appropriate filing officer or office any such instruments if Mortgagor should fail to do so within five (5) days of written demand by Mortgagee. In addition, Mortgagor hereby authorizes Mortgagee to cause any financing statement or fixture filing to be filed or recorded without the necessity of any signature of Mortgagor on such financing statement or fixture filing.

5.3 **Remedies.** Upon the occurrence of any Event of Default, Mortgagee shall have the right to cause any of the Property that is Personal Property and subject to the security interest of Mortgagee hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Mortgagee shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law, specifically including, without limitation, the right to proceed as to both the real property and the personal property contained within the Property as permitted by the Uniform Commercial Code. Any such disposition may be conducted by an employee or agent of Mortgagee. Any person, including Mortgagee, shall be eligible to purchase any part or all of such property at any such disposition.

5.4 **Expenses.** Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Mortgagor and shall include, without limitation, Mortgagee's actual (including the costs and expenses of in-house counsel allocated by Mortgagee) attorneys' fees and legal expenses. Mortgagor, upon the occurrence of an Event of Default and demand of Mortgagee, shall assemble the Personal Property and make it available to Mortgagee at such place as shall be required by Mortgagee in its sole discretion. Mortgagee shall give Mortgagor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such personal property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Mortgagor, at the same address as is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Mortgagor.

5.5 **Place of Business.** Mortgagor maintains a place of business, as set forth as the address of Mortgagor provided herein and Mortgagor will immediately notify Mortgagee in writing of any change in its place of business.

5.6 **Fixtures.** This Mortgage is also to be recorded as a "fixture filing" as defined in Uniform Commercial Code Section and covers goods that are or are to become fixtures.

## 6. COVENANTS.



6.1 **Performance of Obligations.** Borrower or Mortgagor shall promptly pay when due all sums secured hereby, together with any interest thereon, and such parties shall perform and comply within a timely manner all other obligations secured by this Mortgage. All sums payable by Mortgagor hereunder shall be paid without notice, demand, protest, setoff, deduction, defense, abatement or deferment and all obligations and liabilities of Mortgagor hereunder shall not be released, discharged or otherwise affected by reason of any act, claim or circumstance of any kind or nature, whether or not Mortgagor has notice or knowledge thereof.

6.2 **Title.** Mortgagor warrants and represents that (a) Mortgagor lawfully holds and possesses the Property and has the right to encumber the same; (b) the persons executing this Mortgage on behalf of Mortgagor have the full right, power and authority so to do on behalf of Mortgagor; (c) this Mortgage, as so executed and delivered, is a valid and fully binding obligation of Mortgagor, enforceable in accordance with its terms; and (d) Mortgagor, its authorized employees, agents and representatives, have all reviewed, approved, and been fully advised with respect to this Mortgage, the advances evidenced by any document or instrument executed and delivered in connection therewith or as security therefor.

6.3 **Taxes and Assessments.**

6.3.1 **Mortgagor's Obligation for Payment of Taxes and Assessments.** Mortgagor shall pay or cause to be paid all Taxes and Assessments prior to delinquency. Mortgagor shall deliver promptly to Mortgagee receipts or other reasonable evidence evidencing such payment (and such evidence shall be furnished by no later than the date that Taxes and Assessments would otherwise be delinquent), except to the extent Mortgagee makes payments with deposits under Section 6.5. Mortgagor shall not suffer, permit, initiate, or otherwise cause for any tax purpose, the joint assessment of the real property described in Exhibit "A" hereto and any personal property located thereon, or any other procedure whereby the lien of real property taxes and assessments and the lien of personal property taxes shall be assessed, levied or charged against such real property as a single lien. While any obligation or indebtedness secured by any Credit Document or the lien of this Mortgage remains outstanding on the Property, the Property shall be segregated on the applicable tax rolls from all other property, both real and personal.

6.3.2 **Effect of Change in Law.** If at any time any law is enacted which deducts from the value of real property, for taxation purposes, any lien thereon, or changes in any way the laws now in force for the taxation of mortgages or deeds of trust or debts secured thereby, or the manner of collection of any such taxes so as to affect any interest of Mortgagee under this Mortgage then Mortgagor shall pay such tax if it may lawfully do so. If Mortgagor is not permitted by applicable law to pay such tax, or if such payment would violate any applicable law, then the whole of the principal sum secured by this Mortgage, together with accrued interest thereon, at the option of Mortgagee, without demand or notice, shall immediately become due and payable.

6.4 **Insurance.** For so long as this Mortgage is in effect, Mortgagor shall continuously maintain insurance in accordance with the following provisions:

6.4.1 **Required Coverage.** Mortgagor shall maintain or cause to be maintained insurance in such amounts and insuring against such risks as shall be required by Mortgagee from time to time, including the following:

A. **All Risk.** All risk coverage insurance, including loss or damage by fire, lightning, windstorm, hail, explosion, riot attending a strike, civil commotions, aircraft, vehicles, smoke and other risks from time to time included under "all risks coverage" policies in an amount equal to one hundred percent (100%) of the full replacement value of all improvements on the Property, with co-insurance clause, if any, only as acceptable to Mortgagee.

B. **Liability.** Commercial general liability insurance with respect to the Property providing for limits of liability of not less than \$10,000,000 for both injury to or death





of a person and for property damage per occurrence, \$10,000,000 in the aggregate, and (b) other liability insurance as reasonably required by Mortgagee.

**C. Flood and Mudslide.** Flood and mudslide insurance in amount equal to the lesser of (1) the amount required for one hundred percent (100%) of the full replacement value of all improvements, with co-insurance clause if any, only as acceptable to Mortgagee, or (2) the maximum limit of coverage available with respect to the Property under the Federal Flood Insurance Program; provided that such flood and mudslide insurance shall not be required if Mortgagor shall provide Mortgagee with evidence satisfactory to Mortgagee that the Property is not situated within an area identified by the Secretary of Housing and Urban Development (or any other appropriate governmental department, agency, bureau, board, or instrumentality) as an area having special flood or mudslide hazard, and that no flood or mudslide insurance is required on the Property by any regulations under which the Mortgagee is governed;

**D. Rent Loss.** Rent loss or business interruption insurance against any loss of income resulting from damage or destruction from insurable perils in an amount not less than twelve (12) months of principal and interest payments, together with escrow collections under Section 6.5;

**E. Mandatory Insurance.** Workers' compensation and all other insurance, if any, of whatsoever description and in such amounts as may be required by any ordinance, law or governmental regulation to be carried or maintained by Mortgagor or the owner of all or any part of the Property in connection with Mortgagor's operation of the same or the use of the same by Mortgagor or any other person, partnership, corporation or entity, or in connection with the construction, demolition, maintenance or repair of the Property or any part thereof; and

**F. Other Insurance Coverages.** Such increased amounts and additional insurance, and in such amounts, as may from time to time be required by Mortgagee including boiler and machinery insurance, and leasehold interest income insurance, which at the time are items being required by other institutional lenders for property similarly situated.

**6.4.2 General Requirements.** The policies of insurance to be maintained by Mortgagor under the provisions of this Mortgage shall be issued by responsible insurance carriers with a Best's rating of no less than AVII, licensed to do business in the State of Alabama, who are acceptable to Mortgagee and shall be in such form and with such endorsements (including a mortgagee clause in favor of Mortgagee), waivers and deductibles (in no event to exceed \$25,000) as Mortgagee shall designate or approve. Without limitation on the foregoing:

**A. Named Insureds.** All policies shall name Mortgagor as the insured, and (with the exception of policies for workmen's compensation insurance) shall name Mortgagee as mortgagee and as an additional insured (under a standard non-contributing mortgagee protection clause, in form reasonably satisfactory to Mortgagee, attached to such policy or policies whenever applicable, and providing, among other matters, that all insurance proceeds shall be paid to Mortgagee).

**B. Required Provisions.** All policies shall contain: (1) the agreement of the insurer to give Mortgagee at least 30 days' notice prior to cancellation or expiration of or change in such policies, or any of them; (2) a waiver of subrogation rights against Mortgagee and, if available Mortgagor; (3) an agreement that such policies are primary and non-contributing with any insurance that may be carried by Mortgagee; (4) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy; and (5) if obtainable, a provision that no act or omission of Mortgagor shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained. As of the date hereof, and subject to any changes in such requirements which Mortgagee may, in its discretion, make from time to time pursuant to its



rights under this Section 6.4, each policy of property insurance hereunder shall contain a lender's Loss Payable endorsement (Form 438 B.F.U.), Mortgagee Clause (Form 127B), or other non-contributory mortgagee clause of similar form and substance acceptable to Mortgagee in favor of Mortgagee as a first mortgagee.

**6.4.3 Delivery of Policies and Renewals.** Concurrently herewith, Mortgagor shall deliver to Mortgagee original policies or certificates with premiums prepaid evidencing the insurance required hereunder. Mortgagor shall procure and pay for renewals of such insurance (or shall cause the procurement and payment) from time to time before the expiration thereof, and Mortgagor shall deliver to Mortgagee such original renewal policies or certificates with premiums prepaid at least 30 days before the expiration of any existing policy.

**6.4.4 Adjustment and Distribution of Casualty Insurance Proceeds.** Mortgagor shall cause any insurance policy in respect of loss or damage to the Property to provide that any loss (a) shall be adjusted by Mortgagor and Mortgagee, and (b) shall be paid to Mortgagee.

**6.4.5 Release.** Mortgagor, for itself, and on behalf of its insurers, hereby releases and waives any right to recover against Mortgagee on any liability for: damages for injury to or death of persons; any loss or damage to property, including the property of any occupant of the Property; any loss or damage to buildings or other improvements comprising the Property; any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is or would be covered by the insurance required to be carried hereunder by Mortgagor, or is otherwise insured; or claims arising by reason of any of the foregoing, except to the extent caused solely by the active negligence of Mortgagee.

**6.4.6 Miscellaneous.** Mortgagee shall not, by reason of accepting, rejecting, obtaining or failing to obtain insurance, incur any liability for (a) the existence, non-existence, form, amount or legal sufficiency thereof, (b) the solvency or insolvency of any insurer, or (c) the payment of losses. All insurance required hereunder or carried by Mortgagor shall be procured at no cost and expense to Mortgagee. Mortgagor shall deliver to Mortgagee receipts satisfactory to Mortgagee evidencing full prepayment of the premiums therefor, except to the extent Mortgagee makes payments with Mortgagor's deposits under Section 6.5 (for the periods and payments so covered by such payments). In the event of foreclosure on, or other transfer of title in lieu of foreclosure of, the Property, all of Mortgagor's interest in and to any and all insurance policies in force shall pass to Mortgagee, or the transferee or purchaser as the case may be, and Mortgagee is hereby irrevocably authorized to assign in Mortgagor's name to such purchaser or transferee all such policies, which may be amended or rewritten to show the interest of such purchaser or transferee.

**6.5 Impound Account.** Mortgagor shall pay to Mortgagee each month (on the first day thereof, together with the principal and interest payments due and outstanding under the Credit Agreement) an amount estimated by Mortgagee to be equal to (a) the Taxes and Assessments payable under Section 6.3, and (b) premiums next due for all insurance carried under Section 6.4, each such estimate divided by the number of months to lapse preceding the month in which it will become due and Mortgagor irrevocably grants and assigns to Mortgagee a security interest in and to the amounts, if any, so paid by Mortgagor. Such funds shall not be claimed to be held in trust and no sums so paid shall bear interest, except to the extent of the minimum amount of interest, if any, required by law; and Mortgagee shall, unless Mortgagor has committed an Event of Default, apply such funds to, or (at the sole option of Mortgagee) release such funds to Mortgagor for, payment of such Taxes and Assessments and premiums. If Mortgagor has committed an Event of Default, Mortgagee may, in its sole discretion, apply all or any part of such sums in order of priority as Mortgagee may determine to any indebtedness secured by this Mortgage. Mortgagor shall restore all of the amounts so applied, as well as correct the other events or conditions constituting the Event of Default not corrected by such application. If the total amount retained in the impound account exceeds the amount of payments actually applied by Mortgagee as set forth above, such excess may be credited by Mortgagee on subsequent payments to be made by Mortgagor hereunder or, at the option of Mortgagee, refunded to Mortgagor; but if the security account shall not be sufficient to pay the sums required at least thirty (30) days before the same are due and payable, Mortgagor shall, within three (3) business days of receipt of written demand therefore from



Mortgagee, deposit with Mortgagee the full amount of any such deficiency. Upon repayment of the amounts due and outstanding under the Credit Agreement or any other Credit Documents and the satisfaction of all other obligations of Mortgagor secured hereby, any remaining funds held under this paragraph shall be released to Mortgagor. Notwithstanding the foregoing provisions of this Section 6.5, the obligation to make payments under Section 6.5 shall apply only (a) if Mortgagor fails for any reason to make payment when due of any Taxes and Assessments under Section 6.3, or of any premium for any policy of insurance carried under Section 6.4, or if Borrower or Mortgagor commits an Event of Default, and regardless of any cure of any Event of Default, in which event such obligation shall continue until every indebtedness secured by the Security Documents has been paid in full and (b) at Mortgagee's option exercised at any time after such non-payment or such Event of Default.

## **6.6 Liens and Encumbrances.**

**6.6.1 Liens and Encumbrances Prohibited.** Except as is specifically permitted by this Mortgage or otherwise approved by Mortgagee in writing, Mortgagor shall not cause, suffer or create any liens or encumbrances upon the Property (except to the extent such liens or encumbrances are shown in the Mortgagee's title insurance policy and approved by Mortgagee in writing); and Mortgagor shall pay, or cause to be paid, at or prior to maturity, all obligations secured by or reducible to liens and encumbrances which now or hereafter shall encumber the Property, whether senior or subordinate hereto, including all claims for work or labor performed, or materials or supplies furnished in connection with any work of improvement upon the Property. Notwithstanding the preceding sentence, Mortgagor may contest any such claim of lien without cost or expense to Mortgagee, but only upon posting, and concurrently supplying to Mortgagee a certified copy of a statutory bond or other security sufficient under applicable law fully to protect any and all of the Property encumbered by such claim of lien and otherwise sufficient in Mortgagee's sole opinion to protect Mortgagee against any judgment in favor of the lien claimant. If Mortgagee is made a party to any litigation concerning this Mortgage, or the Property or any part thereof or interest therein, or the occupancy thereof by any person or entity, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all claims and liability by reason of such litigation, including attorneys' fees and expenses (including the costs and expenses of in-house counsel allocated by Mortgagee) incurred by Mortgagee whether or not any such litigation is prosecuted to judgment. Any lien or encumbrance hereunder shall be paid or fully discharged by Mortgagor, within five (5) days after demand by Mortgagee.

## **6.7 Disposition of Insurance and Condemnation Proceeds and Damages.**

**6.7.1 Mortgagee's Rights in Proceeds and Damages.** Mortgagor hereby assigns to Mortgagee (a) any award for damages suffered or compensation paid by reason of a taking for public use, or an action in eminent domain, or the exercise of the police power, whether by a condemnation proceeding or otherwise (such as by inverse condemnation), or any transfer of all or any part of the Property in avoidance thereof, affecting the Property, (b) all proceeds of any insurance policies paid by reason of loss sustained to the Property, and (c) all claims, damages, causes of action, against or from any party or parties, with respect to the Property, or any funds received or receivable in connection with any damage to the Property, incurred as a result of any cause whatsoever. All proceeds of any such claims shall be paid by the person or entity making payment directly to Mortgagee and Mortgagor shall do all things necessary to obtain prompt settlement for each loss or claim covered by a policy of insurance. After first deducting all costs and expenses of Mortgagee incurred in connection with the settlement or recovery of any proceeds hereunder, Mortgagee may, at its option and without regard to the adequacy of the security hereunder, except as otherwise provided in Section 6.7.2, apply any such sum it retains hereunder to any indebtedness or obligation secured hereby whether due or not, and in such order or priority as Mortgagee may determine; however, after deducting its costs and expenses Mortgagee may, at the sole discretion of Mortgagee and regardless of any impairment of security or lack thereof, except as otherwise provided in Section 6.7.2, release to Mortgagor all or any part of the entire amount so collected for reimbursement for costs and expenses incurred by Mortgagor for the repair and restoration of the affected Property upon any conditions Mortgagee chooses. Application of all or any portion of such funds, or the release thereof, shall not cure or waive any Event of Default or notice of an Event of Default or invalidate any acts done pursuant to such notice. Mortgagor shall execute such further assignments, documents or instruments as Mortgagee may



from time to time require in order to evidence the assignment hereunder. If, on any loss of or damage to the Property or on a partial taking or condemnation of the Property, Mortgagee is not entitled under law to retain the entirety of any proceeds or award pursuant to this Section 6.7, then Mortgagee shall be entitled to apply the proceeds or award to the repayment of any indebtedness secured by any Credit Document to the extent necessary in Mortgagee's judgment to reduce such indebtedness by the ratio which the value of the Property remaining encumbered hereby bears to the value of the Property encumbered hereby immediately prior to such loss, damage or partial condemnation or taking, as determined by Mortgagee's appraiser retained for such purpose. In the event any insurance proceeds or condemnation awards are applied by Mortgagee under this Section 6.7.1, no prepayment premium shall apply.

#### **6.7.2 Use of Insurance Proceeds to Repair Property.**

A. In the event of damage to or destruction of the Property from any cause actually covered under insurance maintained by Mortgagor hereunder, then Mortgagee shall make available to Mortgagor the net insurance proceeds available as a result of such damage or destruction (after deducting costs and expenses incurred by Mortgagee in connection with the settlement or recovery of any proceeds as provided in Section 6.7.1) for use by Mortgagor, in the reconstruction and repair of the damaged improvements to the condition approved by Mortgagee, on the terms and conditions hereinafter set forth. In the event any of the conditions to Mortgagor's right to utilize the net proceeds hereunder are not satisfied or fulfilled at any time, then such net proceeds shall be applied as provided in Section 6.7.1.

B. Such net proceeds shall be made available hereunder only if: (a) no Event of Default exists; (b) Mortgagee is satisfied in its good faith discretion, that by expenditure of the net proceeds hereunder the Property damaged or destroyed shall be fully restored within a reasonable period of time to the equivalent of its original condition and value and all payments required under the Credit Agreement and any other Credit Document will continue to be paid; (c) in Mortgagee's sole judgment, such work of repair and restoration can be completed in the ordinary course of business within six (6) months from the commencement of work and at least five (5) months prior to the "Expiry Date" (as defined in the Credit Agreement); (d) Mortgagee has reviewed and approved Mortgagor's plans and specifications for the work of repair and restoration, Mortgagor's architect and any general contractors, subcontractors and material suppliers employed to perform such work; (e) if so required by Mortgagee in its discretion, all general contractors, all major subcontractors and material suppliers have supplied 100% performance and completion bonds and bonds protecting the Property from the imposition of mechanic's or other liens; (f) if the net insurance proceeds available are insufficient for payment of the full cost of restoration or repair and the payments under the Credit Agreement or any other Credit Document during the completion period (and re-leasing period, if any), as estimated by Mortgagee, Mortgagor has deposited with Mortgagee sufficient additional funds to insure payment of all such costs, or made arrangements acceptable to Mortgagee for such sufficient additional funds, such additional funds to be disbursed for costs incurred in the manner herein specified prior to the disbursement of any other funds held by Mortgagee; and (g) Mortgagor shall have satisfied such other conditions as Mortgagee may in good faith determine to be appropriate. Disbursement of funds by Mortgagee hereunder shall be subject to all of Mortgagee's then customary construction loan disbursement procedures.

C. Funds held by Mortgagee hereunder for Mortgagor's benefit shall bear interest; provided, however, that Mortgagee shall have no duties or obligations with respect thereto, or with respect to the provisions of this Section 6.7.2, other than that of a construction lender; and the reasonable costs and expenses of Mortgagee incurred in connection therewith (including the fees of a construction consultant and disbursing agent) shall be paid by Mortgagor (and Mortgagee shall be entitled to pay such costs and expenses out of the insurance proceeds held by Mortgagee). Specifically, but without limiting the generality of the foregoing, no relationship of trust, or any other duty in the nature of fiduciary duties or otherwise, shall be imposed or implied by the status or actions of Mortgagee hereunder; and under no circumstances shall Mortgagee become obligated to take any action to repair or reconstruct any damaged or destroyed Property. Any net proceeds not disbursed under this Section 6.7.2 shall be disbursed in accordance with Section 6.7.1.

#### **6.8 Maintenance and Preservation of the Property.**





20060403000151500 13/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT

**6.8.1 Mortgagor's Obligation for Maintenance of Property and Security.**

Mortgagor shall: (a) keep the Property in good condition and repair and replace any items comprising the Property as they become obsolete or worn out with items of at least the same utility, quality and value, free of any liens or security interests of any kind or character other than the lien of the Credit Documents; (b) not remove or demolish the Property; (c) restore promptly and in good and workmanlike manner any part of the Property which may be damaged or destroyed; (d) comply with and not suffer violations of laws, ordinances, regulations, covenants, conditions, restrictions, equitable servitudes and easements, whether public or private, of every kind and character, and requirements of insurance companies and any bureau or agency which establishes standards of insurability ("**Requirements**"); (e) not commit or permit waste of the Property; (f) do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value or to protect the security hereof; (g) perform and comply with all obligations required to be performed or complied with in leases, licenses, concessions, management agreements, or like agreements affecting the Property or the management, operation, occupation or use thereof; (h) pay any and all charges, assessments or fees imposed in connection with the delivery, installation or maintenance of any utility services or installations on, to or for the Property; (i) not change the character, the nature of the occupancy or use of the Property, or any portion thereof; (j) not drill for or extract, or enter into a lease or any other type of agreement for the drilling for or extraction of, oil, gas or other hydrocarbon substances, or any mineral of any kind, on, in or under the Property; (k) make no assignment of rents of the Property except to Mortgagee; and (l) execute and, where appropriate, acknowledge and deliver, such further documents or instruments as Mortgagee deems necessary or appropriate to preserve, continue and perfect the security provided for herein.

**6.8.2 Mortgagee's Approval Rights for Work.**

Except as provided in the Credit Agreement, Mortgagor shall not undertake or suffer to be made any alteration, addition, relocation, removal or demolition of, or structural or other material change in, any building, improvement, fixture, machinery, or equipment comprising the Property, without the prior written approval of Mortgagee, unless (a) the aggregate cost of such work does not exceed \$10,000, (b) such work does not affect the roof or the structure of the building and improvements comprising the Property, or adversely affect or diminish the value of the Property or arise as a result of any damage or destruction, and (c) such work is designed by licensed professionals and is constructed by licensed contractors, all qualified for such purpose, and in accordance with all applicable laws, ordinances, regulations, permits and approvals. The foregoing shall not limit Mortgagor's obligations under Section 6.8.1 and accordingly, Mortgagor shall immediately seek any consent required under this Section 6.8.2 in connection with its obligations under Section 6.8.1.

**6.8.3 Compliance with Laws.**

Mortgagor warrants and represents to Mortgagee that Mortgagor and the Property currently comply, and will in the future comply, fully with all applicable laws, ordinances and regulations, and all permits and approvals issued thereunder, affecting Mortgagor's right and qualification to do business, the construction and installation of the improvements located or to be located upon the Property, the operation, leasing, financing or sale of the Property and the occupancy, use and enjoyment thereof. Without limitation on the foregoing, Mortgagor represents and warrants to Mortgagee that it has complied with and shall continue to comply with all applicable laws relating to accessibility for the handicapped, including The Architectural Barriers Act of 1968, The Rehabilitation Act of 1973, The Fair Housing Act of 1988, and The Americans With Disabilities Act of 1990. Without the prior written consent of Mortgagee, Mortgagor shall not seek, make or consent to any change in the lot or parcel boundaries, zoning, conditions of use, or any other applicable land use laws, ordinances, regulations, permits, approvals or licenses pertaining to the Property, or which would constitute a violation of the warranties and representations herein contained, or would change the nature of the use or occupancy of the Property. Mortgagor shall within ten (10) days after receipt thereof by Mortgagor, or its agent or representative, deliver to Mortgagee copies of any and all approvals, permits and licenses procured by Mortgagor with respect to the Property, construction and installation of improvements thereon, or the occupancy, use and enjoyment thereof, pursuant to applicable laws, ordinances, or regulations.

**6.9 Defense and Notice of Actions.**

Mortgagor shall, without liability, cost or expense to Mortgagee, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Mortgagee hereunder, against all adverse claimants to title, or any possessory or non-possessory interest



in the Property. Mortgagor shall give Mortgagee prompt written notice of the filing or occurrence of any such event, action or proceeding, including fire or other casualty causing damage to the Property; notice of condemnation or other taking of the Property; notice from any governmental agency relating to the Property of any violation of law; a change in the nature of the occupancy or use of the Property; or the commencement of any litigation affecting the Property or the title thereto.

**6.10 Collection of Rents, Issues and Profits; Approval of Leases.**

**6.10.1 Mortgagor's Authority to Collect and Retain Rents.** Mortgagee confers upon Mortgagor the license to collect and retain the rents, issues and profits of the Property as they become due and payable, subject, however, to the right of Mortgagee to revoke such license at any time following the occurrence of an Event of Default in its sole discretion and without notice to Mortgagor. Mortgagee shall have the absolute right to revoke such authority and collect and retain the rents, issues and profits assigned herein, without taking possession of all or any part of the Property. The right to collect rents and profits herein provided shall not grant to Mortgagee the right to possession, except as expressly herein provided; nor shall such right impose upon Mortgagee the duty to produce rents or profits or maintain the Property in whole or in part. Possession of the Property by a receiver appointed by a court of competent jurisdiction shall not be considered possession of the Property by Mortgagee for purposes hereof. Following the occurrence of an Event of Default, Mortgagee may apply, in its sole discretion and in any order of priority, any rents, issues and profits collected against the costs of collection and any indebtedness secured by or obligations of Borrower or Mortgagor arising under the Credit Documents. Collection of any rents, issues and profits by Mortgagee shall not cure or waive any Event of Default or notice of Event of Default, or invalidate any acts done pursuant to such notice.

**6.10.2 Mortgagor's Authority to Enter into Leases.** Mortgagor shall not enter into any lease of the Property, or any portion thereof, or modify or amend or supplement any such lease without the prior written consent of Mortgagee in its sole discretion. Mortgagor shall, on demand, execute such further assignments to Mortgagee of any or all leases, agreements, rents, issues or profits of the Property as Mortgagee may require. Upon request of Mortgagee, Mortgagor shall promptly deliver to Mortgagee a copy of the fully executed original of any or all leases or agreements entered into hereunder. All leases of the Property shall be subordinate to this Mortgage unless Mortgagee elects in writing, at its sole option, to subordinate this Mortgage to a particular lease or leases; and all such leases shall provide, in a manner approved by Mortgagee, that the tenant thereunder shall recognize as its lessor and attorn to any person succeeding to the interest of Mortgagor upon foreclosure of this Mortgage (or deed in lieu thereof).

**6.11 Right of Inspection.** Mortgagee, its agents or employees, may enter the Property at any time on reasonable advance written notice and subject to the rights of tenants for the purpose of inspecting the Property or ascertaining Borrower's or Mortgagor's compliance with the terms of any Credit Document.

**6.12 Statements; Books and Records.** Mortgagor and Borrower shall furnish to Mortgagee all reports and other information as required under Section 7 of the Credit Agreement. **If any delivery required pursuant thereto is not made within the time period specified therein, such delivery must be accompanied by a fee of One Hundred Dollars (\$100),** which fee shall accrue on a daily basis for each day beyond such specified time period for delivery, until the date such delivery is made; provided, however, that Mortgagee's acceptance of any such late delivery shall not constitute a waiver of Mortgagee's rights and remedies hereunder, nor shall the same affect Mortgagee's right to declare an Event of Default hereunder.

**6.13 \*\*Omitted\*\*.**

**6.14 \*\*Omitted\*\*.**

**6.15 \*\*Omitted\*\*.**

**6.16 Acceleration Upon Sale or Further Encumbrance.**



**6.16.1 Obligations of Mortgagor Regarding Transfers.** By delivery of this Mortgage, Mortgagor acknowledges that the financial standing and managerial and operational ability of Mortgagor are substantial and material considerations to Mortgagee in its agreement to make the Advances and that any encumbrance or transfer of an interest in the Property will materially impair Mortgagee's reasonable security hereunder. In order to induce Mortgagee to make the Advances secured hereby, Mortgagor agrees Mortgagor shall not effect a Transfer, either directly or indirectly, or by operation of law, without in each instance first obtaining Mortgagee's prior written consent, which consent may be withheld for any reason, or given upon such terms and conditions as Mortgagee deems necessary or appropriate, all within Mortgagee's sole discretion, to the extent permitted by applicable law. Upon any Transfer made in violation of this Section 6.16, Mortgagee shall have the absolute right in its sole discretion, without demand or notice, to declare all sums, indebtedness and obligations secured hereby to be immediately due and payable (including the prepayment or termination premium set forth in the Credit Agreement), except to the extent that and in such particular circumstances where exercise of such right by Mortgagee is prohibited by law. Any Transfer effected pursuant to a consent or waiver by Mortgagee shall be subject to this Mortgage, and any such direct transferee shall, as a condition of the effectiveness of any such consent or waiver and as a covenant of Mortgagor and such transferee, and in form and substance prescribed by Mortgagee, assume all obligations hereunder and agree to be bound by all provisions contained herein (and, without limitation, such assumption shall contain an express acknowledgment of the prepayment provisions of the Credit Agreement or any other Credit Document and their application if there is an acceleration of any Advance by reason of a Transfer or otherwise, which acknowledgment shall be separately initialed by the transferee). Such assumption shall not, however, release Borrower, Mortgagor or any maker or guarantor of any obligation under the Credit Documents from any liability thereunder. Except as herein provided, any transaction or event of any kind effecting a Transfer or further encumbering the Property, or changing the identity of the parties primarily liable for performance of Mortgagor's covenants under this Mortgage, shall constitute an impairment of Mortgagee's reasonable security interests under this Mortgage.

**6.16.2 Mortgage Provisions Control Over Other Instruments.** The provisions of this Section 6.16 shall prevail notwithstanding any contrary provisions in any other instrument which evidences or secures obligations hereby secured. Mortgagor shall notify Mortgagee promptly in writing of, but in any event not later than thirty (30) days prior to, any transaction or event which may give rise to a right of acceleration under this Section 6.16.

**6.17 Reconveyance.** Upon Mortgagee's release of the Obligations secured hereby, Mortgagee shall reconvey, without warranty, the Property, or that portion thereof then held hereunder. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto." Mortgagee shall not have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such reconveyance expressly provides to the contrary.

**6.18 Defense and Indemnity Rights.** Whenever, under any Credit Document, Mortgagor is obligated to indemnify or defend Mortgagee, or defend or prosecute any action or proceeding, then Mortgagee shall have the right of full participation in any such action or proceeding, with counsel of Mortgagee's choice, and all costs and expenses incurred by Mortgagee in connection with such participation (including reasonable attorneys' fees and costs (including the costs and expenses of in-house counsel allocated by Mortgagee)) shall be reimbursed by Mortgagor to Mortgagee five (5) days of demand. Mortgagor shall give notice to Mortgagee of the initiation of all proceedings prosecuted or required to be defended by Mortgagor, or which are subject to Mortgagor's indemnity obligations under any Credit Document promptly after the receipt by Mortgagor of notice of the existence of any such proceeding. All costs or expenses required to be reimbursed by Mortgagor to Mortgagee hereunder shall, if not paid when due as herein specified, bear interest at the Default Rate, until paid by Mortgagor. As used herein, "proceeding" shall include litigation, arbitration and administrative hearings or proceedings.



6.19 **Destruction of Note. **[\*\*Omitted\*\*]**.**

6.20 **Provisions Relating to Hazardous Materials.**

6.20.1 Except as has been disclosed in writing to Mortgagee, Mortgagor represents and warrants that: (a) to the best of Mortgagor's knowledge, the Property complies with all Hazardous Materials Law as to use and conditions on, under or about the Property including soil and groundwater condition; (b) neither Mortgagor nor, to the best of Mortgagor's knowledge, neither Mortgagor nor any other person, has used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property any Hazardous Materials in violation of any Hazardous Material Law; and (c) to the best knowledge of Mortgagor, there are no Hazardous Materials in, attributable to or affecting the Property in violation of applicable law (including Hazardous Materials Laws). Without limitation on the foregoing, to the best knowledge of Mortgagor except as otherwise disclosed in writing to Mortgagee: (i) the primary potable or drinking water source and groundwater has never been known to exceed the EPA Recommended Maximum Contaminant Level Goals set forth under the Safe Drinking Water Act and Clean Water Act, as amended; (ii) there is not and has never been landfill containing decomposable material, petroleum wells, mineral bearing mines, sewage treatment facilities, underground storage tanks, sinkholes, radon or other toxic emissions within the Property, and (iii) no electrical transformers, fluorescent light fixtures with ballasts or other equipment containing polychlorinated biphenyls (PCBs) have been located on the Property at any time.

6.20.2 Mortgagor covenants and agrees that Mortgagor shall not cause or permit the presence, use, generation, manufacture, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property in violation of applicable law (including Hazardous Materials Laws). Mortgagor shall promptly notify Mortgagee in writing of: (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened in connection with any Hazardous Materials of which it has received written notice or is otherwise aware; (b) any claim made or threatened by any third party against Mortgagor or the Property relating to damage, contribution, cost recovery, compensation, loss or injury to persons or property resulting from any Hazardous Materials of which it has received written notice or is otherwise aware; and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause all or any portion of the Property to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law. Without Mortgagee's prior written consent, Mortgagor shall not take any remedial action in response to the presence of any Hazardous Materials on, in, under or about the Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any Hazardous Materials (except that in the case of an emergency, Mortgagor shall take such action as may be reasonably required under the circumstances and shall immediately notify Mortgagee in writing of any such action taken). Notwithstanding the provisions of this Section 6.20.2, this paragraph does not prohibit any tenant (or its agents, employees, contractors or invitees) from bringing cleaning and other materials onto the Property in reasonable quantities as are customarily used in connection with normal use of the Property, in all cases in compliance with Hazardous Material Laws.

6.20.3 Mortgagor shall indemnify, defend and hold Mortgagee, its employees, agents, officers and directors, harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage or expense (including attorneys', experts' and consultant fees (including the costs and expenses of in-house counsel allocated by Mortgagee)), directly or indirectly resulting from, arising out of, or based upon (a) the presence, release, use, manufacture, generation, discharge, storage or disposal of any Hazardous Materials on, under or, in, or the transportation of any such materials to or from, the Property, or (b) the violation, or alleged violation, of any Hazardous Materials Law affecting the Property. This indemnity shall (i) include any damage, liability, fine, penalty, punitive damage, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, release or other adverse effect on the environment, and the cost of any required or necessary repair, cleanup, treatment or detoxification of the Property, and the preparation and implementation of any closure, disposal, remedial or other required actions in connection



with the Property, and (ii) survive foreclosure (whether judicial or nonjudicial) of this Mortgage and the full or partial payment or discharge of all indebtedness secured hereby, but shall exclude liability to the extent resulting from Mortgagee's gross negligence or willful misconduct.

6.20.4 At any time during the term of this Mortgage, Mortgagee shall have the right, on seventy-two (72) hours prior written notice to Mortgagor, at Mortgagor's expense, to enter the Property and to conduct such tests and investigations as Mortgagee requires, in the event that Mortgagee has a good faith belief that such tests or investigations are required or advisable, or at any time following an Event of Default, to determine whether any Hazardous Materials are present in, under, on or about the Property in violation of any Hazardous Materials Law. Such tests and investigation shall include underground borings, ground water analyses and borings from the floors, ceilings and walls of any improvements located on the Property. Without limitation on any other terms provided herein, Mortgagor shall, at Mortgagor's sole cost and expense, implement any and all operations and maintenance plans recommended for asbestos or other matters relating to Hazardous Materials recommended in any environmental report and shall complete all surveys and/or questionnaires in connection therewith.

6.20.5 "**Hazardous Materials Law**", for purposes of this Section 6.20, means any federal, state, or local law, ordinance or regulation or any rule adopted or guideline promulgated pursuant thereto, or any order, ruling or directive of any federal, state, local, executive, judicial, legislative, administrative or other governmental or public agency, board, body or authority relating to health, industrial hygiene, the environment, or the occupational or environmental conditions on, under or about the Property (including ambient air, soil, soil vapor, groundwater, surface water or land use), whether now or hereafter in force, including those relating to the release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property. "Hazardous Materials Law" shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, and the Carpenter-Presley-Tannel Hazardous Substance Account Act, as the same are now or hereafter amended.

"**Hazardous Materials**", for purposes of this Section 6.20, means any chemical, substance, object, condition, material or waste that is or may be hazardous to human health or safety or to the environment, due to its radioactivity, ignitability, corrosivity, flammability, reproductive toxicity, infectiousness or other harmful properties or effects, including all chemicals, substances, materials and wastes that are now or hereafter may be regulated in any manner, classified as dangerous, hazardous or toxic, or as pollutants or contaminants, or to which exposure is prohibited or restricted by any federal, state or local government or public agency, board, body or authority or by any Hazardous Material Law. "Hazardous Materials" include flammable explosives, radioactive materials, polychlorinated biphenyls, asbestos, hazardous waste, radon, toxic substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise, including those materials defined as "hazardous substances", "hazardous materials", "toxic substances", "air pollutants", "toxic pollutants", "hazardous wastes", "extremely hazardous waste" or "restricted hazardous waste" by any Hazardous Materials Law.

6.20.6 Nothing herein shall be construed for purposes of any Hazardous Materials Law as devolving control of the Property or imposing owner or operator status on the Mortgagee.

## 6.21 **Default Provisions.**

6.21.1 **Rights and Remedies.** At any time after the occurrence of an Event of Default, Mortgagee shall have each and all of the following rights and remedies:

A. **Immediate Payment of Obligations.** With or without notice, to declare all obligations secured by any Credit Document immediately due and payable.

B. **Cure Default.** With or without notice, and without releasing Mortgagor from any obligation hereunder, to cure any default of Mortgagor or Borrower and, in connection



therewith, to enter upon the Property in person, or by an agent or employee, or by a receiver appointed by a Court of competent jurisdiction, and to do such acts and things as Mortgagee may deem necessary or desirable to protect the security hereof.

C. **Judicial Proceedings. Foreclosure Proceedings:** Institute a proceeding or proceedings, judicial or non-judicial, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; notwithstanding the foregoing, upon an Event of Default of this Mortgage or any Credit Document, or other obligation secured thereby, Mortgagee shall have the right to sell the Property by power of sale to the extent available under applicable law.

D. **Manage and Operate Property.** To enter upon, possess, manage and operate the Property, or any part thereof, either in person, or by an agent or employee, or by a receiver appointed by a Court of competent jurisdiction; to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Mortgagee deems necessary or proper and to act in any manner which Mortgagee may deem necessary or desirable in connection therewith; and to make repairs, alterations and improvements to the Property necessary, in Mortgagee's judgment, to protect or enhance the security hereof. All sums realized by Mortgagee under this Section 6.21.1(d), less all costs and expenses incurred by it hereunder, including reasonable attorneys' fees and costs (including the costs and expenses of in-house counsel allocated by Mortgagee) actually incurred, shall be applied on any indebtedness secured hereby in such order of priority as Mortgagee shall determine. Neither application of such sums to such indebtedness, nor any other action taken by Mortgagee under this Section 6.21.1(d), shall cure or waive any Event of Default or notice of Event of Default or nullify the effect of any such notice.

E. **Resort to Security.** To resort to and realize upon the security hereunder and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its sole discretion determine. Resort to any or all such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

F. **Appointment of Receiver.** To apply to any court having jurisdiction to appoint a receiver or receivers for the Property, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Property, the adequacy of any security for the obligations secured hereby, Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefore. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided herein. Mortgagor agrees to promptly deliver to any such receiver all leases, rents, issues and profits (including security deposits), documents, financial data and other information requested by such receiver in connection with the Property and, without limiting the foregoing, Mortgagor hereby authorizes Mortgagee to deliver to any such receiver any or all of the leases, rents, issues and profits, documents, data and information in Mortgagee's possession relating to the Property.

G. **Exercise Other Rights and Remedies.** To exercise or invoke any and all other rights and remedies as may be available to Mortgagee now or hereafter at law or in equity.

No action taken, or right or remedy invoked, by Mortgagee under this Section 6.21.1, including the appointment of a receiver for the Property, or the entry into possession of the Property, or any part thereof, by such receiver, or otherwise, shall be deemed to make Mortgagee a "mortgagee in possession" or otherwise responsible or liable in any manner with respect to the Property, or the use, occupancy, enjoyment or operation of all or any part thereof. In no event shall Mortgagee be required to accept a cure of any default beyond the applicable grace, notice and cure periods provided in the Credit Documents, if any, notwithstanding any statement or provision to the effect that rights or remedies are available while an Event of Default "exists", "continues" or is "outstanding", or during the "existence" or "continuation" of an Event of Default (or any similar statement or provision) in any of the Credit Documents, or anything else in the Credit Documents.



**6.21.2 Payment of Costs, Expenses and Attorneys' Fees.** All costs and expenses incurred by Mortgagee pursuant to Section 6.21.1 and under Section 6.41 (including court costs and attorneys' fees and costs (including the costs and expenses of in-house counsel allocated by Mortgagee)), whether or not incurred in litigation and whether or not foreclosure is concluded, including, without limitation, attorney's fees and costs incurred in connection with any judicial or nonjudicial foreclosure of this Mortgage or the other Credit Documents, or in connection with both judicial and nonjudicial foreclosure, if Mortgagee shall elect to pursue each such remedy whether concurrently or independently) shall be secured by this Mortgage and shall bear interest at the Default Rate, from the date of expenditure until such sums have been paid. Mortgagee shall be entitled to bid, at any sale of the Property held pursuant to Section 6.21.1(e) above, the amount of all such costs, expenses, and interest in addition to the amount of any other obligations hereby secured by a credit bid as the equivalent of cash.

**6.21.3 Remedies Cumulative; No Waiver.** All rights and remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to all rights and remedies otherwise provided by law. No exercise of any right or remedy by Mortgagee shall constitute a waiver of any other right or remedy. No delay or omission by Mortgagee to exercise any right, power or remedy hereunder shall impair any such right or remedy, or be construed as a waiver of any Event of Default, or any acquiescence therein. By accepting payment of any sum secured hereby after its due date or later performance of any obligation secured hereby, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder, or on any obligation hereby secured, either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make such prompt payment or render such performance; and Mortgagee's acceptance of partial payment of any sum secured hereby after its due date (which may be applied to such outstanding payment obligations as Mortgagee may elect, notwithstanding Mortgagor's instructions to the contrary), or acceptance of partial performance of any obligation secured hereby in default, shall not cure such payment failure or default, or affect any notice of an Event of Default or sale heretofore given or recorded, unless such notice is expressly revoked in writing by Mortgagee.

**6.21.4 Releases, Extensions, Modifications and Additional Security.** Without affecting the liability of any person for payment of any indebtedness secured hereby, or the lien or priority of this Mortgage or any other Credit Document upon the Property, Mortgagee may, from time to time, with or without notice, do one or more of the following: release the liability of any person for the payment of any indebtedness secured hereby; make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of any indebtedness secured hereby; and accept additional security, or release all or a portion of the Property and other security held to secure the indebtedness secured hereby. If Mortgagee holds any other or additional security for the payment of any indebtedness or performance of any obligation hereby secured, then any sale or foreclosure of such security upon any Event of Default, in the sole discretion of Mortgagee, may be prior to, subsequent to, or contemporaneous with, any sale or foreclosure hereunder and any property in which Mortgagee holds a security interest may be sold as a unit with the Property.

**6.21.5 Marshalling of Assets.** Mortgagor waives all right to require a marshalling of assets by Mortgagee; and Mortgagor waives the right to require Mortgagee to resort first to any portion of the Property retained by Mortgagor before resorting to any other portion of the Property which may have been transferred or conveyed subject hereto, whether such resort to security is undertaken by non-judicial sale or through proceedings in judicial foreclosure.

**6.22 Amendments.** This Mortgage may be amended at any time and from time to time only by an amendment in writing, executed by Mortgagee and Mortgagor, and recorded or filed as required by applicable law for the giving of constructive notice.

**6.23 Consents.** Any consent or waiver by Mortgagee to or of any term, covenant or condition under this Mortgage, or of any Event of Default, or failure by Mortgagee to insist upon strict performance by Mortgagor of any term, covenant or condition contained in any Credit Document, shall be effective or binding on Mortgagee only if made in writing by Mortgagee and no such consent or waiver shall



be implied from any conduct or act of Mortgagee, or any omission by Mortgagee to take action with respect to any such term, covenant, condition or default. No express written consent to or waiver of any term, covenant or condition of this Mortgage or Event of Default shall affect any other term, covenant or condition, or any other matter or Event of Default, or cover any other time period or event, other than the application of any such term, covenant or condition to the matter as to which a consent or waiver has been given or the Event of Default, time period or event specified in such express consent or waiver.

6.24 **Further Assurances.** Mortgagor shall, upon request by Mortgagee, execute, with acknowledgment or affidavit if required, and deliver, any and all documents and instruments required to effectuate the provisions hereof.

6.25 **Statement of Condition.** From time to time as required by law, Mortgagee shall furnish to Mortgagor such statements as may be required by law concerning the condition of the obligations secured hereby. As a condition to Mortgagee's obligation to issue any such statement, Mortgagor shall pay to Mortgagee such charge as Mortgagee has established for the issuance of such statements, or the maximum amount allowed by law for each such statement, if such amount is less than Mortgagee's charge.

6.26 **Single Purpose Entity.** Mortgagor represents and warrants to Mortgagee that is and has at all times since its formation been a Single Purpose Entity and shall continue to be a Single Purpose Entity, as defined in the Credit Agreement.

6.27 **Mortgagor and Mortgagee Defined.** As used in this Mortgage, the term "Mortgagor" includes each original signatory of this Mortgage as Mortgagor and each of its permitted successors and assigns; or the term "Mortgagee" includes the Mortgagee named herein or any future owner or holder, including pledgees, of any instrument secured hereby, or any participation therein.

6.28 **Rules of Construction.** When the identity of the parties or other circumstances make appropriate, the neuter gender shall include the feminine and masculine, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Mortgagee and of acts which they may do and of acts Mortgagor must do or not do shall not exclude or limit the general. The headings of each Section are for information and convenience and do not limit or construe the contents of any provision hereof. The provisions of this Mortgage shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of these grants. The use in this Mortgage (including any Exhibit hereto) of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter; the use herein of the words "costs" or "expenses" shall include the cost of title evidence and fees and costs of attorneys for Mortgagee (including the costs and expenses of in-house counsel allocated by Mortgagee)); and the use herein of the word "prompt", or "immediately" in any form, or words of similar import, when used with reference to any notice required to be given or act to be undertaken by Mortgagor shall mean notice given or act performed not later than five (5) days after the occurrence of the specified event for which notice or action is required, unless another time period is made expressly applicable. If Mortgagor is composed of more than one person or entity, then the obligations of Mortgagor under this Mortgage and under the other Credit Documents are joint and several; and each covenant, warranty, representation and agreement of Mortgagor hereunder and thereunder shall be deemed made by each such person or entity comprising Mortgagor, both individually and collectively.

6.29 **Severability.** If any term of this Mortgage, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

6.30 **Successors in Interest.** Subject to the limitations herein contained regarding Transfers, the terms, covenants and conditions herein contained shall be binding upon and inure to the



benefit of the parties, and their respective heirs, successors and assigns, and shall also be binding upon all tenants, lessees, occupants or other persons in possession of all, or any part of, the Property, or holding under Mortgagor.

**6.31 Estoppel Certificates; Information to Third Persons.**

**6.31.1 Execution of Estoppel Certificates by Mortgagor.** Within ten (10) business days after Mortgagee's request therefor, Mortgagor shall deliver a duly acknowledged written statement setting forth the amount of the indebtedness secured by this Mortgage, stating either that no setoffs or defenses exist against the Mortgage, or, if such setoffs or defenses are alleged to exist, the specific nature thereof, and attesting to such other matters with respect to this Mortgage, or any indebtedness secured hereby, which Mortgagee may request. Failure of Mortgagor to execute, acknowledge and return such statement within the time period herein specified shall be deemed an admission by Mortgagor that the information contained in the statement is true and correct. Mortgagor acknowledges that any statement rendered hereunder may be relied upon by any transferee or assignee of Mortgagee, or any other person or entity participating in the Credit Agreement or this Mortgage.

**6.31.2 Mortgagor's Obligation to Supply Information to Third Persons.** If, at any time, Mortgagee desires to sell, transfer or grant a participation interest in all or any portion of any Advance, this Mortgage or any other Credit Document to any third person, Mortgagor shall furnish in a timely manner any and all information concerning the Property and leases thereof, and concerning Mortgagor's and the Property's financial condition, which information is requested by Mortgagee or such person in connection with any such sale, transfer or participation. All such financial information shall conform to the standards set forth in Section 6.12 and shall otherwise be in such form, substance and detail as Mortgagee, or such person, may require.

**6.32 Commingling of Funds.** No sums collected or retained by Mortgagee shall be deemed to be held in trust; and Mortgagee may commingle any and all such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the minimum extent required by law.

**6.33 Certain Warranties and Representations.** All representations and warranties contained in any Credit Document, and each representation or warranty of Mortgagor incorporated by reference therein or herein, and any modification or amendment thereof, shall survive the closing and funding of the Advance, shall not be deemed to have merged herein or in any other document or instrument delivered concurrently herewith or hereafter, and shall remain as continuing representations and warranties of Mortgagor so long as any portion of the indebtedness secured hereby remains unpaid.

**6.34 Mortgagor Waiver of Rights.** Mortgagor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Property, (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the obligation secured hereby in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Alabama pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce any obligation secured hereby, and (e) any rights, legal or equitable, to require marshalling of assets or to require foreclosure sales in a particular order. Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any of all portions of the obligations secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein.

**6.35 Effect of Waivers.** Mortgagor acknowledges, warrants and represents in connection with each waiver of any right or remedy of Mortgagor contained in this Mortgage, or any other Credit Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has



presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

6.36 **Late Charges; Default Rate; Prepayment.** The Credit Documents may contain provisions imposing a late charge and Default Rate of interest if payments are not timely made, and prepayment restrictions and premiums as more particularly described in the Credit Documents.

6.37 **[\*\*Omitted\*\*].**

6.38 **Governing Law.** This Mortgage shall be governed by and construed and enforced in accordance with the laws of the State of Alabama (without regard to conflicts of law), except where federal law is applicable (including, without limitation, any applicable federal law preempting state laws).

6.39 **Notices.** Except when otherwise required by law, any notice which a party is required or may desire to give the other shall be in writing and may be sent by personal delivery or by mail (either [i] by United States registered or certified mail, return receipt requested, postage prepaid, or [ii] by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery), addressed as follows to Mortgagee and as provided on the Addendum as to Mortgagor (subject to the right of a party to designate a different address for itself by notice similarly given at least 15 days in advance):

To Mortgagee:

CapitalSource Finance LLC  
4445 Willard Avenue  
12<sup>th</sup> Floor  
Chevy Chase, Maryland 20815  
Attention: Portfolio Manager: Structured Finance Group

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given. Mortgagor requests that a copy of any notice of default and notice of sale hereunder be mailed to Mortgagor at the address specified in the Addendum hereto.

6.40 **Representation by Legal Counsel.** Mortgagor acknowledges that it has been advised by Mortgagee to seek the advice of legal counsel in connection with the negotiation and preparation of the Credit Documents. If Mortgagor has chosen not to obtain legal representation, whether due to cost considerations or for other reasons, the lack of such representation shall not furnish Mortgagor with any defense to the enforcement of Mortgagee's obligations under the Credit Documents.

6.41 **Reimbursement of Expenses.** Mortgagor or Borrower shall pay all expenses incurred by Mortgagee in connection with the making or administration of the Advances and the Credit Agreement, including fees and expenses of Mortgagee's attorneys (including the costs and expenses of in-house counsel allocated by Mortgagee), environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of Credit Documents, audit costs, attorneys' fees and costs, and inspection fees, and fees and costs relating to settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto.

6.42 **Management.** There shall be no change in the day-to-day control and management of Mortgagor or Borrower; nor shall there be any change in any manager of the Property without the prior written consent of Mortgagee, to be granted or withheld by Mortgagee in good faith. Mortgagor shall not terminate, replace or appoint any manager or terminate, amend or enter into any management agreement for the Property without Mortgagee's prior written approval, to be granted or withheld by Mortgagee in good faith. Each property manager shall hold and maintain all necessary licenses, certifications and permits required by law. Mortgagor shall fully perform all of its covenants, agreements and



obligations under any management agreement of the Property. Any management agreement will be subordinated to Mortgagee's rights hereunder.

7. **Representations and Warranties.** Mortgagor represents and warrants to Mortgagee that:

7.1 **Organization and Power.** Mortgagor and each Additional Essential Party that is not an individual is duly organized, validly existing and in good standing under the laws of the state of its formation or existence, and is in compliance with legal requirements applicable to doing business in the State. Mortgagor is not a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code.

7.2 **Validity of Credit Documents.** The execution, delivery and performance by Mortgagor, if applicable, and each Additional Essential Party of the Credit Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not been obtained; and (2) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Credit Documents. The Credit Documents constitute the legal, valid and binding obligations of Mortgagor, if applicable, and each Additional Essential Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

7.3 **Liabilities; Litigation.**

7.3.1 The financial statements delivered by Mortgagor and each Additional Essential Party are true and correct in all material respects with no significant change since the date of preparation. Except as disclosed in such financial statements, there are no liabilities (fixed or contingent) affecting the Property, Borrower, Mortgagor or any Additional Essential Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to the knowledge of Borrower or Mortgagor, threatened, against the Property, Borrower, Mortgagor or any Additional Essential Party which if adversely determined could have a material adverse effect on such party, the Property or the Credit Agreement or the repayment of any Advances.

7.3.2 Neither Mortgagor nor any Additional Essential Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Mortgagor nor any Additional Essential Party has knowledge of any Person contemplating the filing of any such petition against it.

7.4 **Taxes and Assessments.** The Property is comprised of one or more parcels, each of which constitutes a separate legal parcel and a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Mortgagor's best knowledge, proposed, special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

7.5 **Other Agreements; Defaults.** Neither Mortgagor nor any Additional Essential Party is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which might adversely affect the Property or the business, operations, or condition (financial or otherwise) of Mortgagor or any Additional Essential Party. Neither Mortgagor nor any Additional Essential Party is in violation of any agreement which violation would have a material adverse effect on the Property, Mortgagor, or any Additional Essential Party or Mortgagor's or any Additional Essential Party's business, properties, or assets, operations or condition, financial or otherwise.

7.6 **Compliance with Law.**

7.6.1 Mortgagor and each Additional Essential Party, have all requisite licenses, permits, franchises, qualifications, certificates of occupancy or other governmental authorizations to own, lease and operate the Property and carry on its business, and the Property is in compliance with all



applicable legal requirements and is free of structural defects, and all building systems contained therein are in good working order, subject to ordinary wear and tear. Except as may have been disclosed to Mortgagee in writing, the Property does not constitute, in whole or in part, a legally nonconforming use under applicable legal requirements;

7.6.2 No condemnation has been commenced or, to Mortgagor's knowledge, is contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property; and

7.6.3 The Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of the Property are located in the public right-of-way abutting the Property, and all such utilities are connected so as to serve the Property without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Property. All roads necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

7.7 **Location of Mortgagor.** Mortgagor's principal place of business and chief executive offices are located at the address stated in the Addendum hereto.

7.8 **ERISA.** Mortgagor has not established any pension plan for employees which would cause Mortgagor to be subject to the Employee Retirement Income Security Act of 1974, as amended.

7.9 **Margin Stock.** No part of proceeds of any Advances will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations G, T, U or X of the Board of Governors of the Federal Reserve System.

7.10 **Tax Filings.** Mortgagor and each Additional Essential Party have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Mortgagor and each Additional Essential Party, respectively.

7.11 **Solvency.** Giving effect to the Advances, the fair saleable value of Mortgagor's assets exceeds and will, immediately following the making of the Advances, exceed Mortgagor's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Mortgagor's assets is and will, immediately following the making of the Advances, be greater than Mortgagor's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured, Mortgagor's assets do not and, immediately following the making of Advances will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Mortgagor does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be received by Mortgagor and the amounts to be payable on or in respect of obligations of Mortgagor).

7.12 **Untrue Statements.** No statement of fact made by or on behalf of Mortgagor or any Additional Essential Party in this Agreement or in any of the other Credit Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Mortgagor which has not been disclosed to Mortgagee which materially adversely affects, nor as far as Mortgagor can foresee, might materially adversely affect, the Property or the business, operations or condition (financial or otherwise) of Mortgagor or any Additional Essential Party.

7.13 **Representations and Warranties on Lease.** Mortgagor represents and warrants to Mortgagee with respect to leases of the Property that: (1) Mortgagor has delivered true, correct and complete copies of all leases (the "**Leases**") affecting the Property to Mortgagee; (2) all Leases are true and





20060403000151500 25/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT

correct and are valid and in full force and effect; (3) neither the landlord nor any tenant is in default under any Lease; (4) there has been no notice of termination or default with respect to any of the Lease; (5) Mortgagor has not assigned or pledged any of the Lease, the rent or any interest therein except to Mortgagee; (6) no tenant or other party has an option to purchase all or any portion of the Property; (7) none of the tenants under the Leases has a right to terminate the Leases prior to expiration of the stated term of such lease; and (8) no tenant under the Leases has prepaid more than one month's rent in advance.

**7.14 Physical Condition of Property.** To the best of Mortgagor's knowledge, there are no material physical or mechanical defects of the Property, including, without limitation, the structural and load bearing components of the Property, the roof(s), the parking lot(s), the plumbing, heating, air conditioning and electrical systems, and all such items are in good operating condition and repair. Mortgagor agrees that there shall be no such material physical or mechanical defects to the Property.

**7.15 Accuracy of Documents and Instruments.** The survey, mechanical and structural plans and specifications, soil reports, leases, certificates of occupancy, warranties, operating statements, rent roll and income and expense reports, and all other books and records relating to the Property and all other contracts or documents delivered to Mortgagee in connection with this Agreement are to the best of Mortgagor's knowledge, true, correct and complete copies of such documents, and are in full force and effect, without default by (or notice of default to) any party.

**7.16 Condemnation.** Mortgagor does not have knowledge of any condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would detrimentally affect the use, operation or value of the Property, nor unless disclosed in writing to Mortgagee has Mortgagor received notice of any special assessment proceedings affecting the Property.

**7.17 No Litigation.** There is no litigation pending or, after due and diligent inquiry, to the best of Mortgagor's knowledge threatened, against Mortgagor or any tenant at the Property that might detrimentally affect the value or the use or operation of the Property for its intended purpose or the ability of Mortgagor to perform its obligations under this Agreement.

**7.18 Title to Property.** Mortgagor is the legal and equitable owner of the Property, with full right to convey a security interest in the same, and without limiting the generality of the foregoing, Mortgagor has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in any of the Property.

**7.19 Wetlands.** Unless as otherwise disclosed to Mortgagee in writing, no portion of the Property is located in a wetland area, as defined by applicable laws, or in a designated or recognized floodplain, flood plain district, flood hazard area or area of similar characterization. No commercial use of any portion of the Property will violate any requirement of the United States Corps of Engineers or laws relating to wetland areas.

**7.20 No Anticipated Lease Terminations.** Except as may have been disclosed in writing to Mortgagee, none of the tenants at the Property has indicated to Mortgagor either orally or in writing its intent to terminate its respective lease prior to expiration of the respective term of such Lease.

**7.21 Disclosure.** Each of Mortgagor and any Additional Essential Parties has disclosed to Mortgagee all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

**7.22 Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE ADVANCES, OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF MORTGAGEE OR MORTGAGOR OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE CREDIT DOCUMENTS OR



IN ANY WAY RELATING TO THE ADVANCES OR THE PROPERTY. THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE ADVANCES TO MORTGAGOR.

7.23. **Seal.** This Mortgage is a sealed instrument.





20060403000151500 27/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound hereby, has executed this Mortgage under seal on the day and year set forth above.

Sovereign EO, LLC,  
a Delaware limited liability company

By: Sovereign JF, SPE Manager, Inc.,  
a Delaware corporation,  
its managing member

By:

Name: Peter Mavroides

Title: President

By:

Name: Craig Vachris

Title: Vice President



STATE OF New Jersey )  
COUNTY OF Middlesex )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Peter Maybides, whose name as President of Sovereign JF, SPE Manager, Inc., a Delaware corporation, as managing member of Sovereign EO, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on behalf of said company.

Given under my hand and official seal this 13<sup>th</sup> day of March, 2006.

Robin Friedman  
Notary Public

My commission expires: 5/16/2010

[NOTARY SEAL]

**ROBIN FRIEDMAN**  
NOTARY PUBLIC STATE OF NEW JERSEY  
MY COMMISSION EXPIRES 5/16/2010

STATE OF New Jersey )  
COUNTY OF Middlesex )

I, the undersigned, a notary public in and for said county in said state, hereby certify that CRAG Vachris, whose name as Vice President of Sovereign JF, SPE Manager, Inc., a Delaware corporation, as managing member of Sovereign EO, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on behalf of said company.

Given under my hand and official seal this 13<sup>th</sup> day of March, 2006.

Robin Friedman  
Notary Public

My commission expires: 5/16/2010


[NOTARY SEAL]

**ROBIN FRIEDMAN**  
NOTARY PUBLIC STATE OF NEW JERSEY  
MY COMMISSION EXPIRES 5/16/2010



Exhibit "A"  
Legal Description

**[See attached]**


  
20060403000151500 29/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT



**Exhibit "A" continued**

**Parcel 5:**

**(Store No.10- 136 First St. North - 06-47729)**

  
20060403000151500 30/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT

Lots 3, 4, 5, 6, 7 and the South half of Lot 8, Block 2, according to Nickerson-Scott Survey as recorded in Map Book 3, page 34, in the Probate Office of Shelby County, Alabama.





20060403000151500 31/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT

Exhibit "B"  
**ADDENDUM TO MORTGAGE**

The following provisions are made a part of the Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "**Mortgage**") to which this Addendum is attached:

1. Certain Limitations on Mortgagee's Remedies. The Credit Agreement secured hereby contains certain provisions which impose certain limitations on Mortgagee's right, otherwise available under this Mortgage or at law, to enforce against Borrower or Mortgagor a judgment imposing liability on Borrower or Mortgagor for a deficiency in payment of the indebtedness under the Credit Agreement.

2. Additional Essential Party. "Additional Essential Parties" shall mean each of the "Principals" (as defined in the Credit Agreement).

3. Notice. The address of the Mortgagor for notice pursuant to Section 6.39 of the Mortgage is as follows:

777 California Avenue  
Palo Alto, California 94304  
Attention: Chief Financial Officer

With a copy to:

Sovereign Investment Corp.  
777 California Avenue  
Palo Alto, California 94304  
Attention: General Counsel

4. No Setoff. Payment obligations under the Credit Documents are absolute and unconditional without any right of rescission, setoff, counterclaim or defense for any reason against Mortgagee. Mortgagor and Borrower, as applicable, are unconditionally and irrevocably obligated to make the payments required under the Credit Documents notwithstanding any damage to, defects in or destruction of the Property or any other event, including obsolescence of any property or improvements.

5. State-Specific Provisions for Alabama.

(a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 8 and the terms and conditions of this Mortgage, the terms and conditions of this Section 8 shall control and be binding.

(b) Power of Sale. Mortgagor hereby vests Mortgagee with full power and authority, upon the happening of an Event of Default, at Mortgagee's option, to declare the entire Obligations to be immediately due and payable, and at Mortgagee's option, to take possession of the Property if and to



the extent allowed by law, and to sell the Property at public outcry to the highest bidder for cash in front of the main entrance of the county courthouse in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The proceeds of any foreclosure sale pursuant to this paragraph shall be applied first, to the payment of the costs of said sale, including reasonable attorney's and auctioneer's fees; second, to the payment of the Obligations hereby secured, whether due or not, with the unpaid interest thereon to the date of sale, and any amount that may be due Mortgagee by virtue of any of the special liens or agreements herein contained; and, third, the balance, if any, to be paid over to Mortgagor, or as may otherwise be provided by law.

(c) Maximum Principal Amount Secured. Notwithstanding anything contained herein to the contrary, the maximum amount of principal indebtedness secured by this Mortgage at the time of execution hereof or which under any contingency may become secured by this Mortgage at any time hereafter is \$93,800,000, plus (a) taxes, charges or assessments which may be imposed by law upon the Property; (b) premiums on insurance policies covering the Property; and (c) expenses incurred in upholding the lien of this Mortgage, including, but not limited to, (i) the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; (ii) any amount, cost or charges to which Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority and (iii) interest at the Default Rate (or regular interest rate).

(d) Mortgagor waives all the benefits of Alabama Code 1975, §§ 6-10-122 and 6-10-121.

6. Waivers. In addition, and without limitation on any waivers contained in this Mortgage:



(a) Obligation Absolute. Mortgagor hereby unconditionally waives any defense to the enforcement of this Mortgage based on the characterization of Mortgagor as a guarantor of the Borrower and without limitation:

(i) The obligations of Mortgagor hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, the following, any of which may be taken without the consent of, or notice to, Mortgagor, nor shall any of the following give Mortgagor any recourse or right of action against Mortgagee:

(a) Any express or implied amendment, modification, renewal, addition, supplement, extension (including extensions beyond the original term) or acceleration of or to any of the Credit Documents;

(b) Any exercise or non-exercise by Mortgagee of any right or privilege under the Credit Documents;

(c) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Borrower or any guarantor (which term shall include any other party at any time directly or contingently liable for any Borrowers' obligations under the Credit Documents) or any affiliate of Borrower (any such party, including any Borrower, a "**Borrower Party**" and collectively, the "**Borrower Parties**"), or any action taken with respect to the Credit Documents by any trustee or receiver, or by any court, in any such proceeding, whether or not Mortgagor shall have had notice or knowledge of any of the foregoing;

(d) Any release or discharge of any other Borrower Party from its liability under any of the Credit Documents or any release or discharge of any endorser or guarantor or of any other party at any time directly or contingently liable for the obligations secured by this Mortgage;

(e) Any subordination, compromise, release (by operation of law or otherwise), discharge, compound, collection, or liquidation of any or all of the Property or other collateral described in any of the Credit Documents or otherwise in any manner, or any substitution with respect thereto;

(f) Any assignment or other transfer of any of the Credit Documents;

(g) Any acceptance of partial performance of the obligations;

(h) Any transfer or consent to the transfer of the Property or any portion thereof or any other collateral described in the Credit Documents or otherwise (by one or more of the Borrower Parties); and

(i) Any bid or purchase at any sale of the Property or any other collateral described in the Credit Documents or otherwise.

B. Waivers. Mortgagor unconditionally waives any defense to the enforcement of this Mortgage, including:

(1) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Mortgage or any of the Credit Documents;

(2) Any right to require Mortgagee to proceed against any other Borrower Party at any time or to proceed against or exhaust any security held by Mortgagee at any time or to pursue any other remedy whatsoever at any time;

(3) The defense of any statute of limitations affecting the liability of Mortgagor



hereunder, the liability of any other Borrower Party, or the enforcement hereof, to the extent permitted by law;

(4) Any defense arising by reason of any invalidity or unenforceability of (or any limitation of liability in) any of the Credit Documents or any disability of any Borrower Party or of any manner in which Mortgagee has exercised its rights and remedies under the Credit Documents, or by any cessation from any cause whatsoever of the liability of any Borrower Party;

(5) Without limitation, any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of any Borrower Party or any principal of any Borrower Party or any defect in the formation of any Borrower Party or any principal of any Borrower Party;

(6) Any defense based upon the application by any Borrower Party of the proceeds of any of the Loans for purposes other than the purposes represented by any of the Borrower Parties to Mortgagee or intended or understood by Mortgagee or Mortgagor;

(7) Any defense based upon an election of remedies by Mortgagee, including any election to proceed by judicial or nonjudicial foreclosure of any security, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, or any election of remedies, including remedies relating to real property or personal property security, which destroys or otherwise impairs the subrogation rights of Mortgagor or the rights of Mortgagor to proceed against any other Borrower Party or any guarantor for reimbursement, or both;

(8) Any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a principal;

(9) Any defense based upon Mortgagee's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute;

(10) Any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code;

(11) Any duty of Mortgagee to advise Mortgagor of any information known to Mortgagee regarding the financial condition of any other Borrower Party and all other circumstances affecting any other Borrower Party's ability to perform its obligations to Mortgagee, it being agreed that Mortgagor assumes the responsibility for being and keeping informed regarding such condition or any such circumstances; and

(12) Any right of subrogation, reimbursement, exoneration, contribution or indemnity, or any right to enforce any remedy which Mortgagee now has or may hereafter have against any other Borrower Party or any benefit of, or any right to participate in, any security now or hereafter held by Mortgagee.

C. Subrogation. Mortgagor understands that the exercise by Mortgagee of certain rights and remedies may affect or eliminate Mortgagor's right of subrogation against any other Borrower Party and that Mortgagor may therefore incur partially or totally nonreimbursable liability hereunder. Nevertheless, Mortgagor hereby authorizes and empowers Mortgagee, its successors, endorsees and assigns, to exercise in its or their sole discretion, any rights and remedies, or any combination thereof, which may then be available, it being the purpose and intent of Mortgagor that the obligations hereunder shall be absolute, continuing, independent and unconditional under any and all circumstances. Notwithstanding any other provision of this Mortgage to the contrary, Mortgagor hereby waives and releases any claim or other rights which Mortgagor may now have or hereafter acquire against any other Borrower Party of all or any of the obligations of Mortgagor hereunder that arise from the existence or performance of Mortgagor's obligations under this Mortgage or any of the other Credit Documents, including any right of subrogation, reimbursement, exoneration, contribution or indemnification, any right to participate in any claim or remedy of Mortgagee



against any other Borrower Party or any collateral which Mortgagee now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from any other Borrower Party, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights.

D. Additional Waivers. Mortgagor shall not be released or discharged, either in whole or in part, by Mortgagee's failure or delay to (i) perfect or continue the perfection of any lien or security interest in any collateral which secures the obligations of any other Borrower Party or Mortgagor, or (ii) protect the property covered by such lien or security interest.

E. Independent Obligations. The obligation of Mortgagor hereunder is independent of the obligation of any other Borrower Party and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Mortgagor whether or not Mortgagor is the alter ego of any other Borrower Party and whether or not any other Borrower Party is joined therein or a separate action or actions are brought against any other Borrower Party. Mortgagee's rights hereunder shall not be exhausted until all of the obligations secured by this Mortgage have been fully paid and performed.

F. Subordination. Without limitation on the waiver and release contained in subsection C above:

(a) Mortgagor subordinates all present and future indebtedness owing by any other Borrower Party to Mortgagor to the obligations at any time owing by any other Borrower Party to Mortgagee under any of the Credit Documents. Mortgagor assigns all such indebtedness to Mortgagee as security for this Mortgage and the other Credit Documents.

(b) Mortgagor agrees to make no claim on such indebtedness until all obligations of any other Borrower Party under the Credit Documents have been fully discharged.

(c) Mortgagor further agrees not to assign all or any part of such indebtedness unless Mortgagee is given prior notice and such assignment is expressly made subject to the terms of this Mortgage. If Mortgagee so requests, (i) all instruments evidencing such indebtedness shall be duly endorsed and delivered to Mortgagee, (ii) all security for such indebtedness shall be duly assigned and delivered to Mortgagee, (iii) such indebtedness shall be enforced, collected and held by Mortgagor as trustee for Mortgagee and shall be paid over to Mortgagee on account of the Loan but without reducing or affecting in any manner the liability of Mortgagor under the other provisions of this Mortgage, and (iv) Mortgagor shall execute, file and record such documents and instruments and take such other action as Mortgagee deems necessary or appropriate to perfect, preserve and enforce Mortgagee's rights in and to such indebtedness and any security therefor. If Mortgagor fails to take any such action, Mortgagee, as attorney-in-fact for Mortgagor, is hereby authorized to do so in the name of Mortgagor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

G. Bankruptcy No Discharge; Repayments. So long as any of the obligations guaranteed hereunder shall be owing to Mortgagee, Mortgagor shall not, without the prior written consent of Mortgagee, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against any other Borrower Party. Mortgagor understands and acknowledges that by virtue of this Mortgage, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to any other Borrower Party. As an example and not in any way of limitation, a subsequent modification of the obligations secured by this Mortgage in any reorganization case concerning any other Borrower Party shall not affect the obligation of each Mortgagor to pay and perform the obligations secured by this Mortgage in accordance with its original terms. In any bankruptcy or other proceeding in which the filing of claims is required by law, Mortgagor shall file all claims which Mortgagor may have against any other Borrower Party relating to any indebtedness of any other Borrower Party to Mortgagor and shall assign to Mortgagee all rights of Mortgagor thereunder. If Mortgagor does not file any such claim, Mortgagee, as attorney-in-fact for Mortgagor, is hereby authorized to do so in the name of Mortgagor or, in Mortgagee's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name



of Mortgagee's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Mortgagee or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Mortgagee the amount payable on such claim and, to the full extent necessary for that purpose, Mortgagor hereby assigns to Mortgagee all of Mortgagor's rights to any such payments or distributions; provided, however, Mortgagor's obligations hereunder shall not be satisfied except to the extent that Mortgagee receives cash by reason of any such payment or distribution. If Mortgagee receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Mortgage. Notwithstanding anything to the contrary herein, the liability of Mortgagor hereunder shall be reinstated and revised, and the rights of Mortgagee shall continue, with respect to any amount at any time paid by or on behalf of Mortgagor on account of any of the Credit Documents which Mortgagee shall restore or return by reason of the bankruptcy, insolvency or reorganization of Mortgagor or for any other reasons, all as though such amount had not been paid.





20060403000151500 37/41 \$132.00  
Shelby Cnty Judge of Probate, AL  
04/03/2006 09:10:43AM FILED/CERT

## Table of Contents

	Page
1. DEFINITIONS .....	2
2. GRANT .....	5
3. ASSIGNMENT OF RENTS .....	6
4. OBLIGATIONS SECURED .....	6
4.1 Payment of Advance .....	6
4.2 Payment of Further Advances .....	6
4.3 Performance Under Advance Documents .....	6
5. SECURITY AGREEMENT AND FIXTURE FILING .....	6
5.1 Grant of Security Interest .....	7
5.2 Perfection .....	7
5.3 Remedies .....	7
5.4 Expenses .....	7
5.5 Place of Business .....	7
5.6 Fixtures .....	7
6. COVENANTS .....	7
6.1 Performance of Obligations .....	8
6.2 Title .....	8
6.3 Taxes and Assessments .....	8
6.4 Insurance .....	8
6.5 Impound Account .....	10
6.6 Liens and Encumbrances .....	11
6.7 Disposition of Insurance and Condemnation Proceeds and Damages .....	11
6.8 Maintenance and Preservation of the Property .....	12
6.9 Defense and Notice of Actions .....	13
6.10 Collection of Rents, Issues and Profits; Approval of Leases .....	14
6.11 Right of Inspection .....	14
6.12 Statements; Books and Records .....	14
6.13 <b>[**Omitted**]</b> .....	14
6.14 <b>[**Omitted**]</b> .....	14
6.15 <b>[**Omitted**]</b> .....	14
6.16 Acceleration Upon Sale or Further Encumbrance .....	14
6.17 <b>[**Omitted**]</b> .....	15
6.18 Defense and Indemnity Rights .....	15
6.19 Destruction of Note .....	16
6.20 Provisions Relating to Hazardous Materials .....	16
<b>6.21 Default Provisions</b> .....	17
6.22 Amendments .....	19
6.23 Consents .....	19
6.24 Further Assurances .....	20
6.25 Statement of Condition .....	20
6.26 Single Purpose Entity .....	20
6.27 Mortgagor and Mortgagee Defined .....	20
6.28 Rules of Construction .....	20



6.29	Severability .....	20
6.30	Successors in Interest .....	20
6.31	Estoppel Certificates; Information to Third Persons.....	21
6.32	Commingling of Funds.....	21
6.33	Certain Warranties and Representations .....	21
6.34	Mortgagor Waiver of Rights .....	21
6.35	Effect of Waivers .....	21
6.36	Late Charges; Default Rate; Prepayment .....	22
6.38	[**Omitted**] .....	22
6.38	Governing Law .....	22
6.39	Notices .....	22
6.40	Representation by Legal Counsel .....	22
6.41	Reimbursement of Expenses .....	22
6.42	Management.....	22
7.	Representations and Warranties .....	23
7.1	Organization and Power .....	23
7.2	Validity of Advance Documents .....	23
7.3	Liabilities; Litigation .....	23
7.4	Taxes and Assessments .....	23
7.5	Other Agreements; Defaults .....	23
7.6	Compliance with Law .....	23
7.7	Location of Mortgagor.....	24
7.8	ERISA .....	24
7.9.	Margin Stock.....	24
7.10	Tax Filings .....	24
7.11	Solvency .....	24
7.12	Untrue Statements.....	24
7.13	Representations and Warranties on Lease .....	24
7.14	Physical Condition of Property .....	25
7.15	Accuracy of Documents and Instruments.....	25
7.16	Condemnation .....	25
7.17	No Litigation.....	25
7.18	Title to Property .....	25
7.19	Wetlands.....	25
7.20	No Anticipated Lease Terminations .....	25
7.21	Disclosure .....	25





# MORTGAGE RECORDATION TAX ORDER

**STATE OF ALABAMA**                      §                      A proceeding authorized by  
**MONTGOMERY COUNTY**               §                      Ala. Code § 40-22-2(8)(a) (1975)

**BEFORE THE ALABAMA DEPARTMENT OF REVENUE:**

Comes now the Petitioner, CapitalSource Finance LLC, a Delaware limited liability company, and asks the Department of Revenue to fix and determine the amount of mortgage recording tax due, pursuant to Ala. Code § 40-22-2(8) (1975), upon recordation of those certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filings (collectively, the “Mortgages”), from Sovereign EO, LLC, a Delaware limited liability company (the “Mortgagor”), to Petitioner. The Mortgages encompass property located within and without the State of Alabama and encompass property in more than one county in Alabama.

Upon consideration of the Petition and evidence offered in support thereof, the Alabama Department of Revenue finds as follows:

1. That the total amount of indebtedness owed to the Petitioner, and secured by the Mortgages, is \$93,800,000.
2. That the total value of all property covered by the Mortgages, both within and without the State of Alabama, is \$123,490,000.
3. That the total value of all property located within the State of Alabama, and covered by the Mortgages, is \$43,500,000.
4. That the amount of indebtedness which is allocable to the properties located in Alabama, and upon which mortgage recording tax is due upon recordation of the Mortgages is \$33,045,740.



5. That the amount of mortgage recording tax to be paid, at the rate of \$.15 for each \$100.00, or fraction thereof, of indebtedness, which is attributable to the property located within the State of Alabama, is \$49,568.70.

6. That the Mortgages are to be recorded in Jefferson, Calhoun, Lee, Shelby, Madison, Morgan and Lauderdale Counties, State of Alabama.

7. That the relative property values of the properties lying within the State of Alabama are as follows:

<u>COUNTY</u>	<u>VALUE</u>	<u>PERCENTAGE</u>
Jefferson	\$22,700,000	52.185%
Calhoun	\$ 2,450,000	5.632%
Lee	\$ 1,670,000	3.839%
Shelby	\$ 1,680,000	3.862%
Madison	\$11,250,000	25.862%
Morgan	\$ 2,390,000	5.494%
Lauderdale	\$1,360,000	3.126%

IT IS ORDERED, THEREFORE, that the Probate Judge in the county wherein the first Mortgage will be recorded, shall collect mortgage recording tax in the amount of \$49,568.70, and, pursuant to Ala. Code § 40-22-2(7) (1975), after deducting the Probate Judge's 5% commission, shall make distribution of such tax to the State of Alabama and to the counties named herein, in the percentages as set out in Paragraph 7. The Probate Judge of the county wherein the first Mortgage will be recorded also is entitled to collect any applicable recording fees. Upon the payment of the mortgage recording tax and upon the filing of the first Mortgage, the remainder of the Mortgages shall be acceptable for recordation in the other counties, pursuant



to Ala. Code § 40-22-2(5) (1975), without the payment of any further mortgage recording tax.

The Probate Judges of these counties are entitled to collect applicable recording fees, however. §

40-22-2(5). Also, the Petitioner is ORDERED to abide by the reporting and paying provisions of

Ala. Code § 40-22-2(2)(b) (1975) concerning any future advances.

DONE this 10th day of March, 2006.

**ALABAMA DEPARTMENT OF REVENUE**

By: Cynthia Underwood  
Assistant Commissioner of Revenue

ATTEST:

[Signature]  
As Secretary

[Signature]  
Legal Division