

Inst # 1996-07516

MORTGAGE AND SECURITY AGREEMENT

Dated as of February 1, 1996

Between

**YOUNG MEN'S CHRISTIAN
ASSOCIATION OF BIRMINGHAM**

and

**SHELBY COUNTY HEALTH CARE AUTHORITY
D/B/A SHELBY MEDICAL CENTER**

Relating to
First Mortgage Revenue Bonds,
Series 1996
(YMCA-SMC Project)

03/06/1996-07516
04:30 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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STATE OF ALABAMA)
SHELBY COUNTY)

MORTGAGE AND SECURITY AGREEMENT
(Junior Mortgage)

THIS MORTGAGE AND SECURITY AGREEMENT (this "Agreement") dated as of January 1, 1996 is executed by **Young Men's Christian Association of Birmingham**, a non-profit corporation organized under the laws of the State of Alabama (the "YMCA"), as mortgagor, and **Shelby County Health Care Authority d/b/a Shelby Medical Center**, a public corporation organized and existing pursuant to § 22-21-30 et. seq., Code of Alabama 1975, as amended ("Shelby"), as mortgagee.

Recitals

A. Capitalized terms used in these Recitals have the meanings defined for them in Section 1.2 hereof. The Public Park and Recreation Board of the City of Pelham, a public corporation and instrumentality organized under the laws of the State of Alabama (the "Board") will issue its Series 1996 Bonds pursuant to the Trust Indenture. The Series 1996 Bonds will be issued to provide financing for the YMCA to pay a portion of the costs of acquiring and constructing certain recreational, physical, athletic, sports, health, rehabilitation and sports medicine facilities to be located on the Land, which the YMCA has agreed to purchase from the Board pursuant to the Installment Sales Agreement.

B. The YMCA has asked Shelby to execute the Guaranty Agreement in favor of the Trustee in order to guarantee (i) payment of the Series 1996 Bonds, and (ii) certain other obligations described in the Guaranty Agreement.

C. The Guaranty Agreement will be executed by Shelby pursuant to the Credit Agreement, whereby the YMCA will agree, among other things, to reimburse Shelby for all amounts paid by Shelby to the Trustee pursuant to the Guaranty Agreement.

D. As security for the YMCA's obligations under the Credit Agreement, the YMCA has agreed to execute this Agreement in favor of Shelby, whereby Shelby will be granted a mortgage on and security interest in the Property, the rights and interests of the YMCA under the Installment Sales Agreement and certain other collateral described herein.

Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals, and to induce Shelby to execute the Credit Agreement and the Guaranty Agreement, the YMCA agrees with Shelby as follows:

ARTICLE 1

Rules of Construction and Definitions

SECTION 1.1 Rules of Construction. For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this Agreement.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) All Recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Agreement by reference.

(f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.

(g) All references in this Agreement to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

SECTION 1.2 Definitions. As used in this Agreement, capitalized terms that are not otherwise defined herein have the meanings defined for them in the Credit Agreement, and the following terms are defined as follows:

(a) **Bankruptcy Code** is defined in Section 2.1(b).

(b) **Business Day** means any day other than a Saturday, a Sunday or a day on which banking institutions are required or authorized to close in Birmingham, Alabama.

(c) **Credit** means, individually and collectively, all loans, forbearances, advances, disbursements and other extensions of credit now or hereafter made by Shelby to or for the account of the YMCA under the Credit Documents.

(d) **Credit Agreement** means that certain Credit and Reimbursement Agreement dated as of even date herewith executed by and between Shelby and the YMCA.

(e) **Credit Documents** means this Agreement, the Credit Agreement, the Notes and all other documents now or hereafter executed or delivered in connection with the transactions contemplated thereby.

(f) **Default Rate** means a rate of interest equal to eight percent.

(g) **Event of Default** is defined in Section 5.2. An Event of Default "exists" if the same has occurred and is continuing.

(h) **Governmental Authority** means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(i) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(j) **Guaranty Agreement** means that certain Guaranty Agreement dated of even date herewith executed by Shelby in favor of the Trustee.

(k) **Impositions** means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the Liens or other interests created by this Agreement, the filing or recording of this Agreement or the Obligations.

(l) **Improvements** is defined in Section 2.1(c).

(m) **Installment Sales Agreement** means that certain Installment Sales Agreement dated as of February 1, 1996 executed by and between the YMCA and the Board.

(n) **Land** is defined in Section 2.1(a).

(o) **Notes** means any and all such promissory notes, if any, executed by the YMCA in favor of Shelby, pursuant to the Credit Agreement.

(p) **Lien** means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.

(q) **Obligations** means (1) the payment of all amounts now or hereafter becoming due and payable under the Credit Documents, including the principal amount of the Credit, all interest thereon (including interest that, but for the filing of a petition in bankruptcy, would accrue on any such principal) and all other fees, charges and costs (including attorneys' fees and disbursements) payable in connection therewith; (2) the observance and performance by the

YMCA of all of the provisions of the Credit Documents; (3) the payment of all sums advanced or paid by Shelby in exercising any of its rights, powers or remedies under the Credit Documents, and all interest (including post-bankruptcy petition interest, as aforesaid) on such sums provided for herein or therein; (4) the payment and performance of all other indebtedness, obligations and liabilities of the YMCA to Shelby (including obligations of performance) of every kind whatsoever, arising directly between the YMCA and Shelby or acquired outright, as a participation or as collateral security from another person by Shelby, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tort-feasor, account party with respect to a letter of credit, indemnitor or otherwise; and (5) all renewals, extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

(r) **Obligors** means the YMCA and any other maker, endorser, surety, guarantor or other person now or hereafter liable for the payment or performance, in whole or in part, of any of the Obligations.

(s) **Operating Agreement** means that certain Ground Lease, Ownership, Operating and Tenancy in Common Agreement dated as of February 1, 1996, between Shelby and the YMCA.

(t) **Permitted Encumbrances** means any Liens and other matters affecting title to the Property that are described in Exhibit B.

(u) **Person** (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies and Governmental Authorities.

(v) **Personal Property** is defined in Section 2.1(d).

(w) **Property** is defined in Section 2.1.

(x) **Real Property** is defined in Section 2.1(c).

(y) **Series 1996 Bonds** means the Board's \$3,000,000 aggregate principal amount of First Mortgage Revenue Bonds, Series 1996 issued pursuant to the Trust Indenture in order to provide financing for the YMCA to pay a portion of the costs of acquiring and constructing certain recreational, physical, athletic, sports, health, rehabilitation and sports medicine facilities located on the Land.

(z) **Trust Indenture** means that certain Mortgage, Security Agreement and Indenture of Trust dated as of February 1, 1996 between the Trustee and the Board.

(aa) **Trustee** means First Alabama Bank, a bank organized and existing under the laws of the State of Alabama.

(ab) **UCC Property** means the Personal Property and all other personal property and fixtures included in the Property.

ARTICLE 2

Granting Clauses

SECTION 2.1 Granting Clauses. As security for the Obligations, the YMCA hereby grants, bargains, sells, assigns and conveys unto Shelby, and hereby grants to Shelby a security interest in, all of the YMCA's right, title and interest in, to and under the following property and interests in property (collectively, the "Property"):

(a) **Land.** The land located in Shelby County, Alabama more particularly described in Exhibit A, and all reversions and remainders in and to said land and all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; all rights of ingress and egress to parking facilities on or within said land; and all claims or demands of the YMCA, at law or in equity, in possession or expectancy of, in or to any of the same (all of the foregoing hereinafter collectively called the "Land").

(b) **Rights Under Installment Sales Agreement.** (1) The Installment Sales Agreement and the YMCA's rights and interest under the Installment Sales Agreement in and to the Land; (2) all other rights, titles and interests under the Installment Sales Agreement in and to the Land, or any part thereof, including any reversions and remainders in and to the YMCA's interest in the Land; and, (3) all right, title and interest of the YMCA in and to (A) all modifications, extensions, renewals, supplements and restatements of the Installment Sales Agreement; (B) all credits and deposits made thereunder; (C) all options and rights to purchase or of first refusal with respect to the Land, or any part thereof, including the options and rights contained in the Installment Sales Agreement; and (D) all other titles, estates, options, privileges, interests and rights that the YMCA may now have or hereafter acquire in and to the Land and the Installment Sales Agreement, including the right of the YMCA to possession under Section 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code") in the event of the rejection of the Installment Sales Agreement by the Board or its trustee pursuant to said section, the right to exercise options or give consents with respect to the Installment Sales Agreement, or to modify, extend or terminate the Installment Sales Agreement, the right to surrender the Installment Sales Agreement, reject the Installment Sales Agreement or elect to treat the Installment Sales Agreement as rejected or remain in

possession under Section 365 of the Bankruptcy Code, and the right to receive all deposits and other amounts payable to YMCA under the Installment Sales Agreement.

(c) **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building materials, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by the YMCA (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Property").

(d) **Personal Property.** All goods, equipment, inventory, supplies and other items or types of tangible personal property (including additions and accessions thereto and replacements and substitutions therefor) now owned or hereafter created or acquired by the YMCA and attached to the Real Property (other than fixtures); or placed on the Real Property and used or useful in connection with, or in any way pertaining or relating to, the Real Property or the use and occupancy thereof, though not attached to the Real Property; or for which the proceeds of the Credit have been or may be advanced, wherever the same may be located (all of the foregoing hereinafter collectively called the "Personal Property").

(e) **Rents and Leases.** All leases, subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Real Property or Personal Property, and all rents, profits, issues and revenues of the Real Property and Personal Property now or hereafter accruing, whether accruing before or after the filing of any petition by or against the YMCA under the federal Bankruptcy Code; provided, however, that if no Event of Default exists, the YMCA shall have a license (but limited as set forth in Section 5.3(f)) to collect and receive all of such rents, profits, issues and revenues.

(f) **Insurance Policies.** All policies of hazard insurance now or hereafter in effect that insure the Improvements, the Personal Property or any other property conveyed or encumbered hereby, together with all right, title and interest of the YMCA in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(g) **Litigation Awards.** All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, together with the right to receive the same, that may be made or due to the YMCA or any subsequent owner of any of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property, the Personal Property, or any other such property.

(h) **General Intangibles and Agreements.** (1) All general intangibles relating to the development or use of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, or the management and operation of any business of the YMCA thereon, including all patents, patent applications, trade names, trademarks, trademark applications,

knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (2) the good will of any business conducted or operated on the Real Property, all governmental licenses and permits relating to the construction, renovation or operation thereof, all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (3) all contracts and agreements (including construction, renovation, maintenance, engineering, architectural, leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Agreement, or used or useful in connection therewith, whether now or hereafter entered into.

(i) **Accounts.** All accounts, membership dues, initiation fees, vending machine receipts, snack bar receipts, or other funds received by the YMCA in connection with the YMCA's operations on the Real Property.

(j) **Supplemental Documents.** All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing.

(k) **Proceeds.** All proceeds of any of the foregoing.

SUBJECT, HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto Shelby, its successors and assigns forever.

ARTICLE 3

Representations and Warranties

The YMCA represents and warrants to Shelby that:

SECTION 3.1 Valid Title, Debt, etc. (a) The YMCA is the lawful owner of, and has good title to, all rights as purchaser under the Installment Sales Agreement, pertaining to the Land, the Improvements and the other Property, and the YMCA has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (b) the YMCA is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the remainder of the Property, and the YMCA has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (c) the Property is free of all Liens other than Permitted Encumbrances; (d) the YMCA has full power to encumber, assign and convey the Property as provided herein; (e) this Agreement is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (f) the YMCA shall forever warrant and defend the title to the Property unto Shelby against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

SECTION 3.2 Installment Sales Agreement. (a) The Installment Sales Agreement is in full force and effect and unmodified except as hereinabove expressly stated; (b) all fees, expenses and costs to be paid under the Installment Sales Agreement have been paid to the extent payable prior to the date hereof; and (c) there is no existing default under the provisions of the Installment Sales Agreement or in the observance of any of the terms, covenants, conditions or warranties thereof on the part of the YMCA to be observed and performed.

ARTICLE 4

Covenants and Agreements of YMCA

SECTION 4.1 Performance of Installment Sales Agreement. The YMCA shall (a) at all times observe and perform all of its obligations, covenants and conditions under the Installment Sales Agreement and shall conform to and comply with all of the terms and conditions of the Installment Sales Agreement; (b) not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, would impair or tend to impair the security of this Agreement or would be grounds for declaring a forfeiture or termination of the Installment Sales Agreement.

SECTION 4.2 No Modification, etc. of Installment Sales Agreement. The YMCA shall not modify, extend or in any way alter the terms of the Installment Sales Agreement or cancel or surrender the Installment Sales Agreement without the prior written consent of Shelby, which consent shall not be unnecessarily withheld or delayed as long as such alterations do not cause, effect, or result in a detriment to Shelby.

SECTION 4.3 Notice of Default in Installment Sales Agreement, etc. The YMCA shall (a) give immediate notice to Shelby of any default under the Installment Sales Agreement; (b) furnish to Shelby promptly any information requested by Shelby concerning the performance by the YMCA of the covenants of the Installment Sales Agreement; (c) permit Shelby or its representatives at all reasonable times to make investigation or examination concerning the performance by the YMCA of the covenants of the Installment Sales Agreement or of this Agreement; and (d) promptly deposit with Shelby an original executed copy of the Installment Sales Agreement and each amendment thereto and any documentary evidence requested by Shelby showing compliance by the YMCA with the provisions of the Installment Sales Agreement and an exact copy of any notice or other instrument or document received or given by it relating to or affecting the Installment Sales Agreement or the estate of the seller or purchaser in or under the Installment Sales Agreement or in the Land.

SECTION 4.4 Payment of Impositions. The YMCA shall pay or cause to be paid all Impositions before any fine, penalties, interest or cost may be added for non-payment. If any such Imposition may lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), the YMCA may exercise the option to pay same (and all accrued interest on the unpaid balance of such Imposition) in installments. The YMCA may, at the YMCA's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such

contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed. If, subsequent to the date hereof, any Governmental Requirement should become effective that in any manner changes or modifies the Governmental Requirements in effect on the date hereof governing the taxation of mortgages, deeds of trust, deeds to secure debt, assignments of rents and leases or security agreements, or the debts or other obligations secured thereby, or the manner of collecting such taxes, so as to adversely affect Shelby or the YMCA, in the opinion of Shelby, the YMCA shall pay any such tax on or before the due date thereof and shall reimburse Shelby for any out-of-pocket loss or expense suffered by Shelby as a result of such Governmental Requirement. If the YMCA fails to make such prompt payment or reimbursement, or if, in the opinion of Shelby, any such Governmental Requirement prohibits the YMCA from making such payment or reimbursement or would penalize Shelby if the YMCA makes such payment or reimbursement or if, in the opinion of Shelby, the making of such payment or reimbursement might result in the imposition of interest beyond the maximum amount permitted by applicable Governmental Requirement, then the entire balance of the Obligations and all interest accrued thereon shall, at the option of Shelby, become immediately due and payable.

SECTION 4.5 Insurance. The YMCA shall keep or cause to be kept the Property insured against loss or damage by flood (if the Property is located in a flood-prone area) fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties and other contingencies as from time to time may be required by Shelby, all in such manner and with such companies and in such amounts as Shelby may approve; provided that, Shelby agrees that the amounts provided for in the Operating Agreement is approved. All such policies shall be subject to Shelby's approval and shall name Shelby as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to Shelby, to be attached to each policy) be payable to Shelby, subject to the rights of the holders of any prior mortgages. The YMCA shall cause duplicate originals of such insurance policies (or, at Shelby's option, certificates satisfactory to Shelby) to be deposited with Shelby. If requested by Shelby, the YMCA shall furnish to Shelby evidence of the payment of the premiums for such policies. The YMCA shall cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to Shelby) to give Shelby at least 10 business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The YMCA shall not take any action or fail to take any action that would result in the invalidation of any insurance policy required hereunder. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by Shelby and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property.

SECTION 4.6 Damage and Destruction.

(a) **YMCA's Responsibilities.** In the event of any damage to or loss or destruction of the Property, the YMCA shall (1) promptly notify Shelby of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (2) unless otherwise instructed by Shelby and subject to the rights of the holders of any prior mortgages, promptly, regardless whether any insurance proceeds are sufficient for the purpose or (unless

such insurance proceeds are otherwise applied by Shelby as provided herein), commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Shelby.

(b) **Lender's Rights: Application of Proceeds.** If any portion of the Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 4.5, then, subject to the terms of any Permitted Encumbrance and the Operating Agreement (1) Shelby may, but shall not be obligated to, make proof of loss, and may settle, adjust or compromise any claims thereunder, (2) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Shelby, and (3) Shelby shall have the right to apply the insurance proceeds, first, to reimburse Shelby for all reasonable costs and expenses, including all attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied, at Shelby's option, (A) in payment of all or any part of the Obligations in the order and manner determined by Shelby in its sole discretion (provided that the remainder of the Obligations shall continue in full force and effect and the Obligors who are obligated therefor shall not be excused from the payment thereof), (B) to the cure of any then-existing Event of Default, or (C) to the repair, restoration, or replacement, in whole or in part, of the Property. The YMCA expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against. Shelby shall not be liable for any failure to collect, or exercise any due diligence in the collection of, any insurance proceeds.

SECTION 4.7 Condemnation.

(a) **YMCA's Responsibilities: Proceedings.** The YMCA, immediately upon obtaining knowledge thereof, shall notify Shelby of any pending or threatened proceedings for the condemnation of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. Shelby may participate in any such proceedings, and the YMCA from time to time shall execute and deliver to Shelby all instruments requested by Shelby to permit such participation. The YMCA shall, at the YMCA's expense, diligently prosecute any such proceedings, deliver to Shelby copies of all papers served in connection therewith and consult and cooperate with Shelby, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by the YMCA without Shelby's consent, not to be unreasonably withheld.

(b) **Lender's Rights to Proceeds.** Subject to any contrary terms of any Permitted Encumbrance and the Operating Agreement, all proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to Shelby. The YMCA authorizes Shelby to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. Shelby shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** Subject to any contrary terms of any Permitted Encumbrances and the Operating Agreement, Shelby shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.7(b), first, to reimburse Shelby for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.6(b) with respect to insurance proceeds.

SECTION 4.8 Liens and Liabilities.

(a) **Discharge of Liens.** The YMCA shall pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in, or permit the creation of, a Lien on any of the Property, and in general, the YMCA shall do, or cause to be done, at the YMCA's sole cost and expense, everything necessary to fully preserve the Lien and priority of this Agreement.

(b) **Creation of Liens.** The YMCA shall not, without Shelby's consent, create, place or permit to be created or placed, or allow to remain, any voluntary or involuntary Lien on any of the Property, whether prior to, on a parity with or subordinate to the Lien of this Agreement, other than Permitted Encumbrances. If any such Lien is created or placed on the Property without Shelby's consent, the YMCA shall cause the same to be discharged, released or bonded off to Shelby's satisfaction within 40 days after the filing thereof.

(c) **No Consent.** Nothing in the Credit Documents shall be deemed or construed as constituting the consent or request by Shelby, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, renovation, alteration or repair of the Property. The YMCA agrees that Shelby does not stand in any fiduciary relationship to the YMCA by reason of the transactions contemplated by the Credit Documents.

SECTION 4.9 Tax and Insurance Deposits. At any time during the term of this Agreement if an Event of Default exists, upon demand by Shelby, the YMCA shall deposit with Shelby a sum that bears the same relation to the annual insurance premiums for all insurance required by the terms hereof and Impositions assessed against the Property for the insurance period or tax year then in effect, as the case may be, as the number of months elapsed as of the date of such demand since the last preceding installment of said premiums or Impositions shall have become due and payable bears to twelve (12); provided, however, no such deposits shall be required hereunder if the holder of a Permitted Encumbrance is already requiring deposits for such Impositions. For the purpose of this computation, the month in which the last preceding installment of premiums or Impositions became due and payable and the month in which such demand is given shall be included and deemed to have elapsed. On the first day of the month next succeeding the month in which such demand is given, and thereafter on the first day of each and every month during the term of this Agreement, the YMCA shall deposit with Shelby a sum equal to one-twelfth of such insurance premiums and such Impositions for the then-current annual insurance period and tax year, so that as each installment of such premiums

and Impositions shall become due and payable, the YMCA shall have deposited with Shelby a sum sufficient to pay the same. All such deposits shall be received and held by Shelby, and shall be applied to the payment of each installment of such premiums and Impositions as they shall become due and payable. Shelby shall, upon demand, furnish evidence to the YMCA of the making of each such payment. If the amount of such premiums and Impositions has not been definitely ascertained at the time when any such monthly deposits are required to be made, the YMCA shall make such deposits based upon the amount of such premiums and Impositions for the preceding year, subject to adjustment as and when the amount of such premiums and Impositions are ascertained. If at the time when any installment of such premiums and such Impositions becomes due and payable the YMCA shall not have deposited a sum sufficient to pay the same, the YMCA shall, within 30 days after demand, deposit any deficiency with Shelby. Upon the termination of this Agreement in accordance with Section 6.20, any remaining amount on deposit with Shelby shall be repaid to the YMCA without interest. The YMCA shall deliver to Shelby all insurance and tax bills promptly following receipt during any period when such monthly deposits are to be made with Shelby. If the Obligations are accelerated as provided in Section 5.3, all funds so deposited may, at Shelby's option, be applied to the Obligations in any order determined by Shelby or to cure any existing Event of Default or to the payment of insurance premiums and Impositions as provided in this Section 4.9.

SECTION 4.10 Operations; Utilities; Waste, Demolition, Alteration or Replacement.

The YMCA shall (a) continuously operate the YMCA's business (if any) on the Improvements in accordance with sound business practices and the Operating Agreement; (b) not engage in any activity that would diminish the value of the Property or decrease the income from the Property; (c) pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property; (d) cause the Property and every part thereof to be maintained and kept in good and safe repair, working order and condition; (e) not commit or permit waste thereon; (f) not remove, demolish or alter the design or structural character of any Improvements; and (g) make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. The YMCA shall not remove from the Real Property any of the fixtures or Personal Property included in the Property unless the same are immediately replaced with like property of at least equal value and utility.

SECTION 4.11 Sale, Lease or Transfer, etc.

(a) **Real Property.** The YMCA shall not (1) sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Real Property or any interest therein; (2) contract with any person for any of the foregoing; or (3) subject any of the Real Property or any interest therein to any additional Lien, either voluntarily or involuntarily.

(b) **Equity Interests in YMCA.** The YMCA (if a partnership or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the YMCA, or any other transaction whereby the legal or beneficial ownership of the YMCA is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the YMCA, the merger or consolidation of the YMCA with any other person, or

the participation by the YMCA in a statutory share exchange with any other person, shall be treated as a transfer of the Real Property for purposes of this Section 4.11.

(c) **Lender's Rights.** The occurrence of any of the events described in Section 4.11(a) or 4.11(b) will constitute an Event of Default under this Agreement, and Shelby may, in its sole discretion, exercise any of its rights and remedies on default under Section 5.3 or require the payment after the date of such occurrence of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such rights and remedies, whether such rights and remedies be exercised by Shelby to obtain a higher rate of interest on the Obligations or to protect the security afforded by this Agreement.

(d) **Lender's Reliance.** The YMCA acknowledges Shelby's express reliance on this Section 4.11 in extending Credit under the Credit Documents based on the security of this Agreement.

SECTION 4.12 Use, Governmental Compliance, etc. The YMCA shall (a) use the Property solely for the uses contemplated by the Credit Documents and the Operating Agreement or otherwise permitted in writing by Shelby; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the use of the Property and the conduct of any business or activity on the Real Property, including all required zoning, building, land use, environmental, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Property or any business or activity conducted on the Real Property; and (d) not permit any act to be done on the Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto.

SECTION 4.13 Zoning; Title Matters. The YMCA shall not: (a) initiate or support any zoning reclassification of the Property or seek any variance under existing zoning laws or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or otherwise violate, applicable zoning laws; (b) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the YMCA or adversely affect the rights of Shelby under the Credit Documents; (c) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality; or (d) permit the Property to be used by the public or any person in any manner that might make possible a claim of adverse possession or of any implied dedication easement or easement by prescription.

SECTION 4.14 Hazardous Substance Compliance. The YMCA shall: (a) not permit any Hazardous Substances to be installed, used, generated, manufactured, treated, handled, refined, produced, processed, transported, stored or disposed of, or otherwise present in, on or under the Property that would cause a violation of, or that would support a claim under any Hazardous Substance Law; (b) not permit any activity to be undertaken with respect to the Property that would cause a violation of, or support a claim under any Hazardous Substance Law; (c) not permit any Hazardous Substance to be present in, on or under the Property, and

nor any activity to be undertaken with respect to the Property, that would cause (1) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of any Hazardous Substance Law, (2) a release or threatened release of Hazardous Substance from the Property within the meaning of any Hazardous Substance Law, (3) the discharge of Hazardous Substance into any watercourse, body or surface or subsurface water or wetland, or into the atmosphere, that would be prohibited by or require a permit under any Hazardous Substance Law, or (4) the Property otherwise to be subject to special remediation, regulation, restriction or treatment under any Hazardous Substance Law; (d) not permit any underground storage tanks or underground deposits of Hazardous Substances to be located on the Property; (e) not permit the Property to be used in any manner that would cause a violation of, or that would support a claim under any Hazardous Substance Law; (f) permit Shelby from time to time to inspect the Property and observe the operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property; (g) undertake all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (1) required by any applicable Hazardous Substance Law or (2) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or the operations on the Property; and (h) deliver to Shelby, at Shelby's request, copies of any and all documents in the YMCA's possession or to which the YMCA have access relating to Hazardous Substances or Hazardous Substance Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If Shelby at any time reasonably believes that the YMCA is not complying with all applicable Hazardous Substance Laws applicable to the Property or the requirements of this Agreement regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, or if any other Event of Default exists, Shelby may require the YMCA to furnish to Shelby an environmental audit or site assessment reasonably satisfactory to Shelby with respect to the matters of concern to Shelby. Such audit or assessment shall be performed at the YMCA's expense by a qualified consultant approved by Shelby.

SECTION 4.15 Required Hazardous Substance Notices. The YMCA shall immediately advise Shelby in writing of (a) any violation of any Hazardous Substance Law with respect to the Property or the operations at the Property; (b) any spill, release, discharge, disposal of any Hazardous Substances, or imminent threat thereof, at the Property, in connection with the operations at the Property, or at any property adjoining or in the vicinity of the Property, that could result in the violation of any Hazardous Substance Law with respect to the Property or such operations; (c) any action instituted or threatened by any Governmental Authority under any Hazardous Substance Law affecting the Property or the operations thereon, including any notice of inspection, abatement or noncompliance; (d) all claims made or threatened by any person against the YMCA, Shelby or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from the presence of any Hazardous Substance in, on, under or from the Property or any violation of any Hazardous Substance Law with respect to the Property or the operations at the Property; (e) the YMCA's discovery of any occurrence or condition on the Property or on any real property adjoining or in the vicinity of the Property that could (1) result in the violation of any Hazardous Substance

Law, (2) support any claim under any Hazardous Substance Law, or (3) subject the YMCA, Shelby or the Property to any restrictions on ownership, occupancy, transferability or use of the Property under any Hazardous Substance Law. The YMCA shall immediately deliver to Shelby any documentation or records that Shelby may reasonably request in connection with any such notices, inquiries, and communications and shall advise Shelby of any subsequent developments.

SECTION 4.16 Maintenance of Lien Priority. The YMCA shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property purported to be created by this Agreement. The YMCA shall execute, acknowledge, deliver, file and record such additional instruments as Shelby may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property or proceeds to such Liens. If the Liens, validity or priority of this Agreement, or if title to any of the rights of the YMCA or Shelby in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the YMCA or Shelby with respect thereto, the YMCA shall promptly notify Shelby thereof and shall diligently endeavor to cure any defect that may be claimed, and shall take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to Shelby's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. Shelby (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Agreement, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of adverse claims, and the removal of prior Liens. The YMCA shall, on demand, reimburse Shelby for all expenses (including attorneys' fees and disbursements) reasonably incurred by Shelby in connection with any of the foregoing matters.

SECTION 4.17 Permitted Encumbrances. The YMCA shall not permit any default or violation to occur with respect to any agreement, covenant or restriction included in Permitted Encumbrances.

SECTION 4.18 Certain Rights Pertaining to the Installment Sales Agreement Under the Bankruptcy Code.

(a) The YMCA hereby unconditionally assigns, transfers and sets over to Shelby all of the YMCA's claims and rights to the payment of damages arising from any rejection by the Board of the Installment Sales Agreement under the Bankruptcy Code. Shelby shall have the right to proceed in its own name or in the name of the YMCA in respect of any claim, suit, action or proceeding relating to the rejection of the Installment Sales Agreement, including the right to file and prosecute, to the exclusion of the YMCA, any proofs of claim, complaints, motions, applications, notices and other documents in any case involving the YMCA under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing, and shall continue in effect until all of the Obligations have been paid in full and this Agreement has been terminated as provided herein. Any amount received

by Shelby as damages arising out of the rejection of the Installment Sales Agreement as aforesaid shall be applied first to all costs and expenses of Shelby (including attorney's fees and disbursements) incurred in connection with the exercise of any of its rights, powers or remedies under this Section 4.18(a).

(b) The YMCA shall not, without Shelby's prior written consent, elect to treat the Installment Sales Agreement as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Shelby's prior written consent shall be void.

(c) If pursuant to Section 365(h)(1) of the Bankruptcy Code, the YMCA seeks to offset against monies reserved in the Installment Sales Agreement the amount of any damages caused by the non-performance by the Board of any of the Board's obligations under the Installment Sales Agreement after the rejection by the Board of the Installment Sales Agreement under the Bankruptcy Code, the YMCA shall, prior to effecting such offset, notify Shelby of its intention to do so, setting forth the amounts proposed to be offset and the basis therefor. Shelby shall have the right, within 10 days after receipt of such notice from the YMCA, to object to all or any part of such offset, and in the event of such objection, the YMCA shall not effect any offset of the amounts so objected to by Shelby for a period of 30 days after Shelby has delivered its objection notice to the YMCA, during which time Shelby shall have the right to bring its objections to the attention of any court supervising the bankruptcy of the Board of the Installment Sales Agreement and both Shelby and the YMCA agree to abide by the decision of any such court. If (1) Shelby has failed to object as aforesaid within 10 days after notice from the YMCA or (2) the court fails to render its decision within the above-mentioned 30-day period, the YMCA may proceed to effect such offset in the amount set forth in the YMCA's notice. Neither Shelby's failure to object as aforesaid nor any objection or other communication between Shelby and the YMCA relating to such offset shall constitute an approval of any such offset by Shelby.

(d) If any action, proceeding, motion or notice shall be commenced or filed in respect of the YMCA or the Property in connection with any case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to the YMCA), Shelby shall have the option, to the exclusion of the YMCA, exercisable upon notice from Shelby to the YMCA, to conduct and control any such litigation with counsel of Shelby's choice. Shelby may proceed in its own name or in the name of the YMCA in connection with any such litigation, and the YMCA agrees to execute any and all powers, authorizations, consents and other documents required by Shelby in connection therewith. The YMCA shall pay to Shelby all costs and expenses (including reasonable attorneys' fees and disbursements) paid or incurred by Shelby in connection with the prosecution or conduct of any such proceedings within five days after notice from Shelby setting forth such costs and expenses in reasonable detail. Any such costs or expenses not paid by the YMCA as aforesaid shall be secured by the Lien of this Agreement and shall be added to the principal amount of the Obligations secured hereby. The YMCA shall not commence any action, suit or proceeding, or file any application or make any motion, in respect of the Installment Sales Agreement in any such case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to the YMCA) without the prior written consent of Shelby.

(e) The YMCA shall promptly, after obtaining knowledge thereof, notify Shelby orally of the filing by or against the Board of any petition under the Bankruptcy Code. The YMCA shall thereafter forthwith give written notice of such filing to Shelby, setting forth any information available to the YMCA as to the date of such filing, the court in which such petition was filed, and the relief sought therein. The YMCA shall promptly deliver to Shelby following receipt any and all notices, summonses, pleadings, applications and other documents received by the YMCA in connection with any such petition and any proceedings relating thereto.

(f) If there shall be filed by or against the YMCA a petition under the Bankruptcy Code, and the YMCA, as the purchaser under the Installment Sales Agreement, shall determine to reject the Installment Sales Agreement pursuant to Section 365(a) of the Bankruptcy Code, then the YMCA shall give Shelby not less than 10 days' prior notice of the date on which the YMCA intends to apply to the Bankruptcy Court for authority to reject the Installment Sales Agreement. Shelby shall have the right, but not the obligation, to serve upon the YMCA within such 10-day period a notice stating that (1) Shelby demands that the YMCA assume and assign the Installment Sales Agreement to Shelby pursuant to Section 365 of the Bankruptcy Code and (2) Shelby covenants to cure or provide adequate assurance of future performance of the YMCA's obligations under the Installment Sales Agreement. If Shelby serves upon the YMCA the notice described in the preceding sentence, the YMCA shall not seek to reject the Installment Sales Agreement and shall seek court approval to comply with the demand provided for in Section 4.18(f)(1) within 30 days after the notice is given, subject to the performance by Shelby of the covenant provided for in Section 4.18(f)(2). The YMCA hereby unconditionally assigns, transfers and sets over to Shelby all of the YMCA's rights to reject the Installment Sales Agreement in any proceeding instituted by or against the YMCA under the Bankruptcy Code.

(g) Effective upon the entry of an order for relief in respect of the YMCA under the Bankruptcy Code, the YMCA hereby assigns and transfers to Shelby a non-exclusive right to apply to the Bankruptcy Court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Installment Sales Agreement may be rejected or assumed.

SECTION 4.19 Performance of the Operating Agreement. The YMCA shall at all times observe and perform all of its obligations, covenants and conditions under the Operating Agreement and shall conform to and comply with all of the terms and conditions of the Operating Agreement. Notwithstanding anything set forth in Sections 4.4, 4.5, 4.6, 4.7, 4.9, or Subsections 4.10 (a), (b) and (c) the YMCA shall be deemed to be in full compliance with the terms of those Sections as long as the Operating Agreement is in full force and effect and the YMCA is in compliance with the provisions thereof concerning the subject matter of those Sections.

ARTICLE 5

Defeasance, Default and Remedies

SECTION 5.1 Defeasance. This Agreement is made upon the condition that if (a) all of the Obligations (as defined in Section 1.2(q), including all future advances and other future

indebtednesses, obligations and liabilities included therein) are paid in full, and (b) the YMCA reimburses Shelby for any amounts Shelby has paid in respect of the Guaranty Agreement, and any other advancements hereunder, and interest thereon, and (c) the YMCA fulfills all of the YMCA's other obligations under this Agreement, and (d) Shelby has no obligation to extend any further Credit to or for the account of the YMCA and there is in existence no contingent liability of the YMCA that is secured by this Agreement, this conveyance shall be null and void upon the filing by Shelby of the written instrument of termination described in Section 6.20.

SECTION 5.2 Events of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, order, rule or regulation of any Governmental Authority):

(a) any representation or warranty made in this Agreement or in any of the other Credit Documents shall prove to be false or misleading in any material respect as of the time made; or

(b) any report, certificate, financial statement or other instrument furnished in connection with the Credit, this Agreement or any of the other Credit Documents, shall prove to be false or misleading in any material respect as of the time furnished; or

(c) default shall be made in the payment when due of any of the Credit; or

(d) default shall be made in the due observance or performance of any of the Obligations, any covenant, condition or agreement on the part of the YMCA to be observed or performed pursuant to the terms of this Agreement (other than any of the Obligations, any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 5.2 specifically dealt with) and the following cure periods and minimum amounts have been exhausted or exceeded: (1) if such default is curable by the payment of a sum certain and such sum (whether paid by Shelby on the YMCA's behalf to a third party or payable directly to Shelby) when aggregated with all other sums due and owing from the YMCA to Shelby equals or exceeds \$500,000, or (2) if such default is not curable by payment of a sum certain and such default shall continue unremedied until the first to occur of (A) the date that is forty-five (45) days after written notice by Shelby to the YMCA; or (B) the date that is forty-five (45) days after an officer of the YMCA first obtains knowledge thereof; provided, however, if at the end of such 45-day period, the YMCA has not cured such default despite continually and diligently attempting to cure such default, the said cure period shall be extended for an additional thirty (30) days; provided further, however, notwithstanding the foregoing, in no event shall such cure period extend beyond seventy-five (75) days without the express written consent of Shelby and no cure period shall extend past a point in time the effect of which would be to jeopardize the existing priority of Shelby's lien under this Agreement on the Property.

(e) any event of default, as therein defined, shall occur under any of the other Credit Documents (after giving effect to any applicable notice, grace or cure period specified therein); or

(f) any Obligor shall (1) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian of such Obligor or any of such Obligor's properties or assets (including the Property), (2) fail or admit in writing such Obligor's inability to pay such Obligor's debts generally as they become due, (3) make a general assignment for the benefit of creditors, (4) suffer or permit an order for relief to be entered against such Obligor in any proceeding under the federal Bankruptcy Code, or (5) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against such Obligor in any proceeding under any such law or statute, or if corporate action shall be taken by any Obligor for the purpose of effecting any of the foregoing; or

(g) a petition shall be filed, without the application, approval or consent of any Obligor in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of such Obligor or of all or a substantial part of the properties or assets of such Obligor, or seeking any other relief under any law or statute of the type referred to in Section 5.2(f)(5) against such Obligor, or the appointment of a receiver, trustee, liquidator or other custodian of such Obligor or of all or a substantial part of the properties or assets of such Obligor, and such petition shall not have been stayed or dismissed within 30 days after the filing thereof; or

(h) any Obligor shall become insolvent, suspend its business or be dissolved or liquidated or any writ of execution, attachment or garnishment shall be issued against the assets of any Obligor and such writ of execution, attachment or garnishment shall not be dismissed, discharged or quashed within 30 days of issuance; or

(i) any final judgment for the payment of money shall be rendered against any Obligor and the same shall remain undischarged for a period of 60 days during which execution shall not be effectively stayed.

SECTION 5.3 Rights and Remedies of Shelby Upon Default.

(a) **Acceleration of Obligations.** If an Event of Default exists under Section 5.2(f) or 5.2(g), all of the Obligations shall automatically become immediately due and payable. If any other Event of Default exists, Shelby shall have the right without further notice to the Grantor (except any such notice as may be specifically required under the other Credit Documents) to declare all of the Obligations immediately due and payable.

(b) **Possession and Operation of Property.** Subject to Section 6.14, if an Event of Default exists, Shelby (or any person designated by Shelby) may, but will not be obligated to, (1) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude the YMCA therefrom, and hold, use, administer,

manage and operate the same to the extent that the YMCA could do so, without any liability to the YMCA resulting therefrom; (2) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (3) make repairs and purchase needed additional property; (4) insure or reinsure the Property; (5) maintain and restore the Property; (6) prepare the Property for resale, lease or other disposition; (7) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (8) exercise every power, right and privilege of the YMCA with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** Subject to Section 6.14, if an Event of Default exists, Shelby, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Grantor for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Shelby shall be entitled, as a matter of right (upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Agreement, to the extent required by law), to the appointment by any competent court or tribunal, without notice to the Grantor or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** If an Event of Default exists, this Agreement shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Shelby shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as Shelby may from time to time elect to sell) under the power of sale which is hereby given to Shelby, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Shelby may bid at any sale held under this Agreement and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the YMCA hereby waiving the application of any doctrine of marshalling or like proceeding. In case Shelby, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Agreement shall have been terminated as provided herein.

(e) **Personal Property and Fixtures.** If an Event of Default exists, Shelby shall have with respect to the UCC Property all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At Shelby's request, the YMCA shall assemble the UCC Property and make it available to Shelby at any place designated by Shelby. To the extent permitted by law, the YMCA expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. The YMCA agrees that Shelby may sell or dispose of both the Real Property and the UCC Property in accordance with the rights and remedies granted under this Agreement with respect to Real Property.

(f) **Rents and Leases.** If an Event of Default exists, Shelby, at its option, shall have the right, power and authority to terminate the license granted to the YMCA in Section 2.1(e) to collect the rents, profits, issues and revenues of the Real Property, whether paid or accruing before or after the filing of any petition by or against the YMCA under the federal Bankruptcy Code, and, without taking possession, in Shelby's own name to demand, collect, receive, sue for, attach and levy all of such rents, profits, issues and revenues, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.3(h).

(g) **Foreclosure Deeds.** To the extent permitted by applicable law, the YMCA hereby authorizes and empowers Shelby or the auctioneer at any foreclosure sale had hereunder, for and in the name of the YMCA, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) **Order of Application of Proceeds.** All payments received by Shelby as proceeds of any of the Property, as well as any and all amounts realized by Shelby in connection with the enforcement of any right or remedy under this Agreement, shall be applied by Shelby as follows: (1) to the payment of all expenses incident to the exercise of any remedies under this Agreement, including attorneys' fees and disbursements as provided in the Credit Documents, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (2) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) in such order as Shelby may elect in its sole discretion, (3) to a cash collateral reserve fund to be held by Shelby in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (4) the remainder, if any, shall be paid to the YMCA or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) **Multiple Sales.** If an Event of Default exists, Shelby shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in this Agreement, but without declaring the whole Obligations due. Any such sale may be made subject to the unmaturing part of the Obligations, and such sale, if so made, shall not affect the unmaturing part of the Obligations, but as to such unmaturing part of the Obligations this Agreement shall remain in full force and effect as though no sale had been made under this

Section 5.3(i). Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Obligations, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(j) **Waiver of Certain Laws.** The YMCA waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisal before sale of any portion of the Property (commonly known as appraisal laws), or (2) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws). The YMCA also waives any and all rights the YMCA may have to a hearing before any Governmental Authority prior to the exercise by Shelby of any of its rights or remedies under the Credit Documents and applicable law.

(k) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this Section 5.3, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

SECTION 5.4 Default Rate. If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

SECTION 5.5 Remedies Cumulative. The rights, powers and remedies of Shelby under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.

SECTION 5.6 Right of Lender to Cure Installment Sales Agreement, etc. Upon the occurrence of any default or event of default under the Installment Sales Agreement (or any event which, upon the giving of notice or the lapse of time, or both, would constitute such a default or event of default), Shelby shall have the right, but shall be under no obligation, to pay any amount, to perform any other act or to take such action as may be appropriate to cure or prevent such default or event of default under the Installment Sales Agreement, to the end that the YMCA's rights in, to and under the Installment Sales Agreement shall be kept unimpaired and free from default. Shelby and any person designated by Shelby shall have, and is hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of paying any such amount, performing any such act or taking any such action, and all moneys expended by Shelby in connection therewith (including reasonable attorneys' fees and disbursements), together with interest thereon at the Default Rate, shall be payable by the YMCA to Shelby forthwith upon demand by Shelby, and shall constitute part of the Obligations. In the event of any failure by the YMCA to pay, observe or perform any covenant on the part of the YMCA to be paid, observed and performed under the Installment Sales Agreement, the payment or performance by Shelby in behalf of the YMCA of said covenant shall not remove

or waive, as between the YMCA and Shelby, the corresponding default under the terms hereof, and any such failure aforesaid shall be subject to all of the rights and remedies of Shelby hereunder when any Event of Default exists.

SECTION 5.7 No Merger. Unless Shelby shall otherwise expressly consent in writing, fee title to the Land and the YMCA's rights as purchaser estate under the Installment Sales Agreement shall not merge but shall always remain separate and distinct, notwithstanding that both of said estates may at any time be held by the YMCA or by any third party by purchase or otherwise.

ARTICLE 6

Miscellaneous

SECTION 6.1 Notices.

(a) **Methods.** Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the YMCA or Shelby must (except as otherwise expressly provided in this Agreement) be in writing and be delivered by one of the following methods: (1) by personal delivery at the hand delivery address specified below, (2) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (3) if facsimile transmission facilities for such party are identified below or pursuant to a separate written notice from such party, sent by facsimile transmission to the number specified below or in such notice.

(b) **Addresses.** The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

<u>YMCA</u>	By hand or mail:	YMCA of Birmingham, Alabama 321 North 21st Street Birmingham, Alabama 35203 Attention: Mr. James Lombard, Vice President, Operations
	By facsimile:	(205) 324-7185
	With a copy to:	Steven A. Brickman, Esquire Sirote & Permutt, P.C. 2222 Arlington Avenue South Birmingham, Alabama 35205
	By facsimile:	(205) 930-5301

Shelby By hand: Shelby County Health Care Authority
d/b/a Shelby Medical Center
1000 First Street North
Alabaster, Alabama 35007
Attention: Charles C. Colvert

By mail: Shelby County Health Care Authority
d/b/a Shelby Medical Center
Post Office Box 488
Alabaster, Alabama 35007
Attention: Charles C. Colvert

By facsimile: (205) 620-7203

With a copy to: James M. Pool, Esquire
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North, Suite 2400
Birmingham, Alabama 35203

By facsimile: (205) 254-1999

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 6.1.

(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, director, partner or other legal representative of the party) at the address or number specified pursuant to Section 6.1(b), or, if sent by mail, three Business Days after such notice or document is deposited in the United States mail, addressed as provided above.

(d) Five Business Days' written notice to the YMCA as provided above shall constitute reasonable notification to the YMCA when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

SECTION 6.2 Expenses. The YMCA shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to Shelby, incurred by Shelby in connection with (a) the enforcement of this Agreement, (b) the custody and preservation of the Property, (c) the protection or perfection of Shelby's rights and interests under this Agreement in the Property, (d) the exercise by or on behalf of Shelby of any of its rights, powers or remedies under this Agreement, and (e) the prosecution or defense of any action or proceeding by or against Shelby, the YMCA, any other Obligor, or any one or more of them, concerning any matter related to this Agreement, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be

included in the Obligations secured hereby. The YMCA's obligations under this Section 6.2 shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 6.3 Heirs, Successors and Assigns. Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the YMCA may not assign or transfer this Agreement without the prior written consent of Shelby; and all covenants and agreements of the YMCA contained in this Agreement shall bind the YMCA's heirs, successors and assigns and shall inure to the benefit of the successors and assigns of Shelby.

SECTION 6.4 Joint and Several Liability. If the YMCA is comprised of more than one person, all of the YMCA's representations, warranties, covenants and agreements under this Agreement shall be joint and several and shall be binding on and enforceable against either, any or all of such persons comprising the YMCA. If any one or more of the persons comprising the YMCA is in default, Shelby may exercise its remedies on default against any or all of the persons comprising the YMCA.

SECTION 6.5 Independent Obligations. The YMCA agrees that each of the obligations of the YMCA to Shelby under this Agreement may be enforced against the YMCA without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

SECTION 6.6 Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

SECTION 6.7 Date of Agreement. The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

SECTION 6.8 Separability Clause. If any provision of the Credit Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 6.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

SECTION 6.10 No Oral Agreements. This Agreement is the final expression of the agreement between the parties hereto, and this Agreement may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Agreement and the other Credit Documents, and there is no unwritten oral agreement between the parties hereto in existence.

SECTION 6.11 Waiver and Election. The exercise by Shelby of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Liens granted by this Agreement, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose by judicial foreclosure the Liens granted by this Agreement. No failure or delay on the part of Shelby in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Credit Documents, nor consent to any departure by the YMCA therefrom, shall be effective unless in writing and signed by an authorized officer of Shelby, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the YMCA in any case shall entitle the YMCA to any other or further notice or demand in similar or other circumstances.

SECTION 6.12 No Obligations of Lender; Indemnification. Shelby does not by virtue of this Agreement or any of the transactions contemplated by the Credit Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by Shelby under a separate agreement in writing, and this Agreement shall not be deemed to confer on Shelby any duties or obligations that would make Shelby directly or derivatively liable for any person's negligent, reckless or wilful conduct. The YMCA agrees to indemnify and hold Shelby harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments (collectively, "claims and losses") directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the YMCA or any Obligor in this Agreement or any other Credit Document; (b) any breach of any of the warranties or obligations of the YMCA or any Obligor under this Agreement or any other Credit Document; and (c) the Property, or the Liens of Shelby thereon. Without limiting the generality of the foregoing, the YMCA agrees that the YMCA's obligation to defend, indemnify and save harmless Shelby set forth in this Section 6.12 shall specifically include all claims and losses asserted against or suffered by Shelby that are related to or arise out of (1) any representations or warranties in Article 3 that prove to be false or untrue in any material respect, (2) any default in the performance or nonperformance of the YMCA's covenants in Section 4.14, and (3) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, that may be required by any Hazardous Substance Law or Governmental Authority. The provisions of this Section 6.12 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Agreement. The YMCA's obligations under this Section 6.12 shall be in addition to any obligations of the YMCA under any Environmental Indemnity Agreement or similar document executed in favor of Shelby.

SECTION 6.13 Advances by Shelby. If the YMCA shall fail to comply with any of the provisions of this Agreement, Shelby may (but shall not be required to) make advances to

perform the same, and where necessary enter the Property for the purpose of performing the YMCA's obligations under any such provision. The YMCA agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by Shelby of any Event of Default resulting from the YMCA's failure to pay such amounts.

SECTION 6.14 Nonrecourse. Notwithstanding any provision to the contrary contained in this Agreement, the liability of the YMCA to pay or perform the YMCA's obligations under this Agreement is expressly limited to the security provided herein. Nothing in this paragraph shall preclude Shelby from foreclosing under this Agreement or from offsetting any amounts owed by Shelby to the YMCA. Notwithstanding the foregoing provisions and any delay on the part of Shelby in exercising any of Shelby's rights and remedies or obtaining title to the collateral provided as security for this Agreement, the YMCA agrees that the YMCA shall be personally liable, and will promptly account to Shelby, and Shelby will have full recourse against the YMCA, for (a) any fraud or material misrepresentation by the YMCA in connection with the delivery of this Agreement or the performance of the YMCA's obligations under the Security Documents and (b) any deliberate waste of the collateral by the YMCA. The YMCA further agrees that the foregoing limitations on the YMCA's personal liability for the indebtedness in the Event of a Default are personal to the YMCA and are not assignable to nor assumable by any other person or entity. For purposes of this Section, a material misrepresentation shall mean a misrepresentation which adversely affects the Property or the validity or priority of Shelby's lien under this Agreement.

SECTION 6.15 Rights, Liens and Obligations Absolute. All rights of Shelby hereunder, all Liens granted to Shelby hereunder, and all obligations of the YMCA hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Credit Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Credit Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

SECTION 6.16 Construction of Mortgage. This Agreement is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, fixture filing, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

SECTION 6.17 Fixture Filing. This Agreement shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in Section 2.1. The YMCA is the debtor, and Shelby is the secured party. The names of the debtor (YMCA) and the secured party (Lender) are given in the first paragraph of this Agreement. This Agreement is signed by the debtor (YMCA) as a fixture filing. The mailing address of Shelby set out in Section 6.1 is an address of the

secured party from which information concerning the security interest may be obtained. The mailing address of the YMCA set out in Section 6.1 is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 6.17 and in Section 2.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. The YMCA is a record owner of the real estate.

SECTION 6.18 Landlord-Tenant Relationship. Any sale of the Property under this Agreement shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the YMCA.

SECTION 6.19 Other Mortgages Encumbering the Real Property.

(a) **Junior Mortgage.** This mortgage is subordinate to that certain Mortgage, Security Agreement and Indenture of Trust dated as of February 1, 1996 executed by the Board in favor of the Trustee, as recorded as Instrument Number 1996-07512 in the Office of the Judge of Probate of Shelby County, Alabama.

(b) **Authorization to Disclose.** The YMCA hereby authorizes the holder of any other mortgage encumbering any of the Real Property to disclose to Shelby at any time the following information: (1) the amount of debt secured by such mortgage; (2) the amount of such debt that is unpaid; (3) whether such debt is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (5) any other information regarding such mortgage or the debt secured thereby that Shelby may request from time to time.

(c) **No Amendments; Default, etc.** The YMCA agrees to comply with the terms of any other mortgage encumbering any of the Real Property and agrees not to consent to or permit any amendment or modification thereof without the prior written consent of Shelby. The YMCA further agrees not to permit any default to occur under any other mortgage encumbering any of the Real Property, but that if any default should be made in the payment of principal, interest or any other sum secured by any such mortgage, Shelby may (but shall not be required to) pay all or any part of such amount in default, without notice to the YMCA. Any such action by Shelby shall not cure any Event of Default created under this Agreement by virtue of the default in the other mortgage.

SECTION 6.20 Termination. This Agreement and Shelby's Liens under this Agreement in the Property will not be terminated until a written mortgage satisfaction instrument executed by one of Shelby's officers is filed for record in the county in which the Land is located. Except as otherwise expressly provided in this Agreement, no satisfaction of this Agreement shall in any way affect or impair the representations, warranties, agreements or other obligations of the YMCA or the powers, rights and remedies of Shelby under this Agreement with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction.

SECTION 6.21 Reinstatement. This Agreement, the obligations of the YMCA hereunder, and the Liens, rights, powers and remedies of Shelby hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount

applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the YMCA, any Obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the YMCA, any Obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

SECTION 6.22 Submission to Jurisdiction. The YMCA irrevocably (a) acknowledges that this Agreement will be accepted by Shelby and performed by the YMCA in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Shelby County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any of the other Credit Documents (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection or defense that the YMCA may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon the YMCA and may be enforced in any other court to the jurisdiction of which the YMCA is subject, by a suit upon such judgment; (e) consents to the service of process on the YMCA in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the YMCA at the YMCA's address designated in or pursuant to Section 6.1; (f) agrees that service in accordance with Section 6.22(e) shall in every respect be effective and binding on the YMCA to the same extent as though served on the YMCA in person by a person duly authorized to serve such process; and (g) **AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO THE YMCA THAT THE EXECUTION OF THIS AGREEMENT MAY SUBJECT THE YMCA TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA WITH RESPECT TO ANY AGREEMENT ACTIONS, AND THAT IT IS FORESEEABLE BY THE YMCA THAT THE YMCA MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY AGREEMENT ACTIONS.** Nothing in this Section 6.22 shall limit or restrict Shelby's right to serve process or bring Agreement Actions in manners and in courts otherwise than as herein provided.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by its duly authorized officer on the date of the acknowledgment of the YMCA's signature below.

**YOUNG MEN'S CHRISTIAN ASSOCIATION
OF BIRMINGHAM**

By: James A. Raine
Its: President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that James A. Raine, whose name as President of Young Men's Christian Association of Birmingham, Alabama, an Alabama non-profit corporation, 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 4 day of March, 1996.

Jeanette L. Ayer
Notary Public

AFFIX SEAL

My commission expires: MY COMMISSION EXPIRES JUNE 15, 1996

This instrument prepared by:
Randall H. Morrow
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

EXHIBIT A

A tract of land lying in the SE 1/4 of the SE 1/4 and the NE 1/4 of the SE 1/4, all in Section 1, Township 20 South, Range 3 West, more particularly described as follows: Commence at the SW corner of the SE 1/4 of the SE 1/4 of Section 1, Township 20 South, Range 3 West, and run Northerly along the West line of said 1/4-1/4 Section 442.22 feet to an old iron found in place and the point of beginning; thence continue along last described course 398.78 feet to an old iron found in place; thence right 27 degrees 23 minutes 19 seconds and run 770.94 feet to an old iron found in place; thence right 95 degrees 51 minutes 59 seconds and run 603.36 feet to an old iron found in place on the Westerly right of way of U.S. Highway No. 31; thence right 84 degrees 21 minutes 50 seconds and run along said right of way 225.0 feet; thence right 90 degrees and run 300.00 feet; thence left 90 degrees and run 781.22 feet; thence right 62 degrees 24 minutes 02 seconds and run 126.92 feet to the point of beginning.

Situated in Shelby County, Alabama.

EXHIBIT B

(Permitted Encumbrances)

1. The Trust Indenture.
2. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.
3. The exceptions set forth in Schedule B-2 of the mortgagee's title insurance policy issued or to be issued pursuant to that certain Commitment to Issue Title Insurance No. 100292 prepared by Cahaba Title, Inc., as agent for First American Title Insurance Company having an effective date of January 19, 1996, at 8:00 a.m. (as marked down by said title insurance agent through the date of closing), to the extent only that such exceptions refer expressly to instruments recorded against, or otherwise specifically affect, the Property and not to any general, standard or similar exceptions that may appear in said policy.

Inst # 1996-07516

**03/06/1996-07516
03:30 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
035 MCB .00**