

This Instrument Prepared By:  
Felton W. Smith  
Balch & Bingham  
Post Office Box 306  
Birmingham, Alabama 35601

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

Inst # 1996-18801

06/10/1996-18801  
01:31 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
007 MCD 23.50

## ASSUMPTION AGREEMENT

### KNOW ALL MEN BY THESE PRESENTS:

**NATIONWIDE LIFE INSURANCE COMPANY** ("Lender") is the present holder of a Mortgage Note executed by **HARBERT PROPERTIES CORPORATION**, an Alabama corporation (hereafter called "Borrower") in the principal sum of \$9,725,000.00 dated March 6, 1991 (the "Note"), evidencing a loan from Lender to Borrower in such amount (the "Loan"), which Note is secured by, among other collateral, (i) that certain Mortgage and Security Agreement dated March 6, 1991, and recorded at Book 332, Page 641 in the Office of the Judge of Probate of Shelby County, Alabama, in favor of Lender, and covering the real property described on **Exhibit A** attached hereto and hereby incorporated herein, all as more particularly set forth therein (the "Mortgage") and (ii) that certain Assignment of Leases, Rents and Profits dated MARCH 6, 1991, and recorded in Book 332, Page 678 in said Office (the "Assignment of Rents"). The Borrower proposes to sell the property covered by the Mortgage to MarRay-Concourse 100, Inc., an Alabama corporation (hereinafter called "Purchaser"), and the Purchaser desires to assume all of the obligations of the Borrower under the Note, the Mortgage, the Assignment of Rents and any other document executed or furnished by the Borrower in connection with the Note, the Mortgage or the Assignment of Rents (collectively, the "Loan Documents"), as part of the consideration for the conveyance to the Purchaser of the property covered by the Mortgage. Lender is willing to consent to said conveyance and assumption of said obligations, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, IT IS HEREBY AGREED AMONG THE PARTIES as follows:

1. Lender does hereby consent to the sale and conveyance of all of Borrower's right, title and interest in the property covered by the Mortgage (the "Property") by the aforesaid Borrower to said Purchaser, subject, however, to all of the provisions of this Agreement.

2. The Property shall remain in all respects subject to the lien, charge or encumbrance of said Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained and nothing done pursuant hereto, shall affect or be construed to affect the lien, charge or encumbrance of, or conveyance effected by, the Mortgage, or the priority thereof over other liens, charges, encumbrances or conveyances, nor shall anything herein contained or done pursuant hereto affect or be construed to affect any other security or instrument held by Lender as additional security for or evidence of the aforesaid indebtedness.

3. The Purchaser does hereby assume, accept and agree to perform all of the obligations provided in the Note, the Mortgage and the Assignment of Rents and to be subject to and comply with all terms and conditions thereof.

4. Purchaser shall pay any recording and other expenses incurred by Lender, the Borrower or Purchaser in connection with the assumption of the Note, the Mortgage and the Assignment of Rents effected hereby, including, without limitation, title or other insurance premiums, legal expenses and recording fees and taxes.

5. The failure by the Harbert Group to own one hundred percent (100%) of the outstanding capital stock of MarRay Corporation, an Alabama corporation and the parent company of the Purchaser ("MarRay"), or the failure by MarRay to own one hundred percent (100%) of the outstanding capital stock of the Purchaser, shall constitute a "Non-Monetary Default" as such term is defined in the Loan Documents. For purposes hereof, the term "Harbert Group" shall mean any of Raymond J. Harbert, Marguerite H. Gray, their respective spouses or lineal descendants, any trusts for the sole benefit of any such persons and Harbert Corporation or any direct or indirect wholly owned subsidiary thereof.

6. Each of the Loan Documents shall be deemed amended hereby to the extent necessary to carry out the intent of this Agreement and, except as expressly set forth herein, all of the Loan Documents shall remain in full force and effect in accordance with their respective terms and shall continue to evidence, secure or relate to, as the case may be, the Loan.

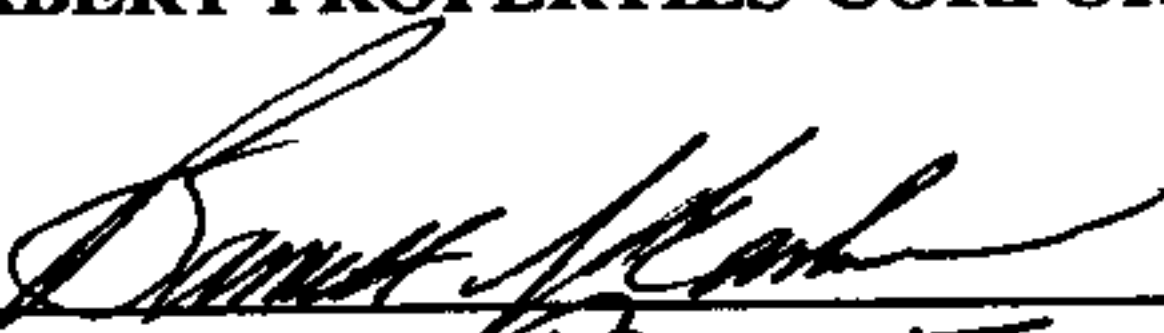
7. This Agreement shall be binding upon the parties hereto, their successors and assigns.

8. In case any one or more of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining covenants, agreements, terms or provisions contained herein shall in no way be prejudiced, diminished or otherwise effected thereby.

IN WITNESS WHEREOF, Borrower, Purchaser and Lender have hereunto caused this Agreement to be duly and properly executed as of December 23, 1994.

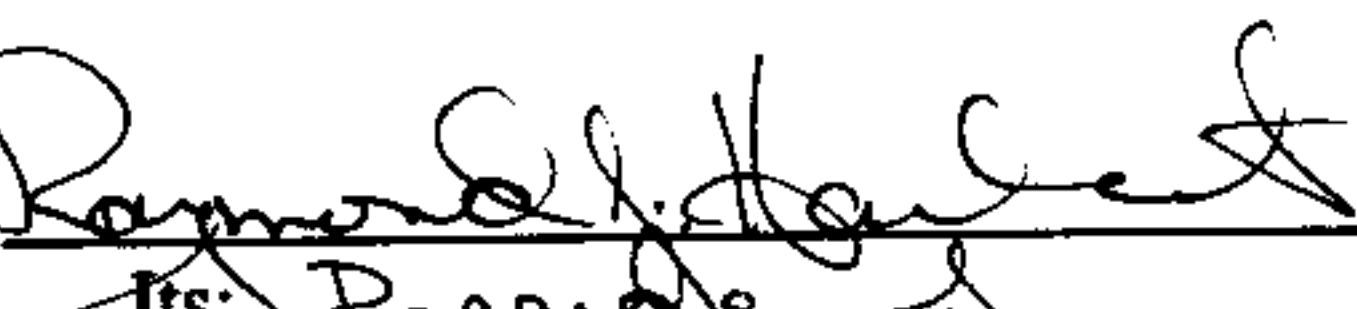
**BORROWER:**

**HARBERT PROPERTIES CORPORATION**

By:   
Its: PRESIDENT

**PURCHASER:**

MARRAY-CONCOURSE 100, INC.

By:   
Its: PRESIDENT

**LENDER:**

**NATIONWIDE LIFE INSURANCE COMPANY**

By:   
Its: VICE PRESIDENT

STATE OF ALABAMA

COUNTY OF Jefferson

I, Kimberly R. Hill, a notary public in and for said county in said state, hereby certify that Bennett J. Earles, whose name as President of **HARBERT PROPERTIES CORPORATION**, an Alabama 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 such instrument, he, 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 23 day of December, 1994.

Kimberly R. Hill  
Notary Public

MY COMMISSION EXPIRES APRIL 14, 1997

My Commission Expires: \_\_\_\_\_

[ Notarial Seal ]

STATE OF ALABAMA

COUNTY OF SHELBY

I, William W. Brooke, a notary public in and for said county in said state, hereby certify that RAYMOND J. HARBERT, whose name as PRESIDENT of MARRAN - CONCOURSE 100, INC., an ALABAMA corporation, is signed to the foregoing instrument and who is known to me acknowledged before me this day that being informed of the contents of the instrument, he, 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 23<sup>rd</sup> day of December, 1994.

Wm. W. Brooke  
Notary Public

My Commission Expires: 2/25/97

[ Notarial Seal ]



STATE OF OHIO

COUNTY OF FRANKLIN

I, MICHAEL T. STEVENS, a notary public in and for said county in said state, hereby certify that Robert H. McNAUGHTEN, whose name as VICE PRESIDENT of NATIONWIDE LIFE INSURANCE COMPANY, a ~~Nebraska~~<sup>Ohio</sup> 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 such instrument, he, 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 27 day of DECEMBER, 1994.

Michael T. Stevens  
Notary Public

[ Notarial Seal ]

My Commission Expires: \_\_\_\_\_



MICHAEL T. STEVENS  
Notary Public, State of Ohio  
My Commission Expires 01-06-95

## EXHIBIT A

Lot 1-A, according to a Resurvey of an Amendment to The Concourse at Riverchase, as recorded in Map Book 14 page 120 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

Together with ingress and egress over and across that certain road described in Declaration of Easement recorded in Book ~~32~~ Page ~~32~~.

CONSENT OF HARBERT INTERNATIONAL, INC.

Dated as December 23, 1994

The undersigned, Harbert International, Inc., a Delaware corporation ("Harbert"), hereby consents to the Assumption Agreement dated as of December 23, 1994 (the "Assumption Agreement"), among Nationwide Life Insurance Company ("Lender"), Harbert Properties Corporation and MarRay-Concourse 100, Inc. Harbert hereby confirms and agrees that, notwithstanding the Assumption Agreement, the Guaranty of Lease dated March 6, 1991 by Harbert in favor of Lender, the Guaranty Agreement dated March 6, 1991 between Harbert and Lender, and the Lease Agreement dated January 12, 1989 (as amended) between Harbert and Harbert Properties Corporation are hereby confirmed and ratified in all respects.

HARBERT INTERNATIONAL, INC.

By: Charles D Miller  
Its: TREASURER

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