

Inst # 1996-29133

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

by

MarRay-Concourse 800, Inc. ("Borrower" or "Debtor")

for the benefit of

Allmerica Financial Life Insurance and Annuity Company ("Lender" or "Secured Party")

August 30 1996

Inst # 1996-29133

09/05/1996-29133
08:18 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
038 NCD 4601.00

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I -- DEFINITIONS	1
1.1 Definitions	1
ARTICLE II -- GRANT	1
2.1 Grant	1
ARTICLE III -- REPRESENTATIONS AND WARRANTIES	2
3.1 Representations in Borrower's Certificate and Environmental Compliance and Indemnification Agreement are True and Correct	2
ARTICLE IV -- BORROWER'S COVENANTS	2
4.1 Payment and Performance	2
4.2 Compliance with Legal Requirements and Environmental Compliance and Indemnification Agreement	2
4.3 Payment of Impositions	2
4.4 Maintenance of First Lien Status of Mortgage	2
4.5 Maintenance of Property in Good Repair, Waste; Alterations and Additions.	2
4.6 Borrower's Maintenance of Insurance; Waiver of Subrogation	3
4.7 Lender's Right to Inspect Mortgaged Property	5
4.8 Provision of Financial Statements and Rent Rolls; Inspection of Books and Records	5
4.9 Payment for Labor and Materials	6
4.10 Further Assurances; Corrections; Recording of Loan Documents; Payment of Stamp Taxes	6
4.11 Payment of Taxes on Mortgage	6
4.12 Estoppel Certificate	6
4.13 Lender's Expenses and Attorneys' Fees	7
4.14 Change of Address	7
4.15 Management of Mortgaged Property; Leasing Agents	7
4.16 Borrower to be Maintained as a Single- Purpose Entity	7
4.17 Improper Use of Mortgaged Property	8

4.18	Replacement of Fixtures and Personalty	8
4.19	Change in Zoning; Grant of Easements	9
4.20	Borrower's Defense of Lender	9
4.21	Transfers	9
4.22	Notice of Claims and Litigation	10
4.23	Real Estate Tax Service	10
4.24	[ERISA Provision] INTENTIONALLY OMITTED	10
4.25	Default Rate Applicable to Unpaid Amounts	10
ARTICLE V -- RESERVE FOR IMPOSITIONS AND INSURANCE PREMIUMS		10
5.1	Reserve Fund for Impositions and Insurance Premiums	10
ARTICLE VI -- INSURANCE AND CONDEMNATION PROCEEDS		11
6.1	Notice of Damage or Destruction	11
6.2	Adjustment of Insurance Claims	11
6.3	Application of Insurance Proceeds	11
6.4	Conditions Applicable if Restoration Permitted	11
6.5	Condemnation Proceeds Payable to Lender	12
6.6	Application of Condemnation Proceeds	12
ARTICLE VII -- SECURITY AGREEMENT		12
7.1	Security Interest	12
7.2	Financing Statements	13
7.3	Fixture Filing	13
ARTICLE VIII -- EVENTS OF DEFAULT		13
8.1	Payment Defaults	13
8.2	Covenant Defaults	13
8.3	False Representations, Warranties and Statements	13
8.4	Default Under Other Liens	14
8.5	Insolvency; Bankruptcy	14
8.6	Dissolution	14
8.7	Further Involuntary Encumbrances	14
8.8	Transfer of Mortgaged Property or Beneficial Interest in Borrower	14
8.9	Failure to Pay Impositions or Insurance Premiums	14
8.10	Guarantor's or Indemnitor's Default	14

ARTICLE IX -- REMEDIES	15
9.1 Lender's Remedies Upon Default	15
9.2 Possession After Foreclosure	18
9.3 Application of Foreclosure and Other Proceeds	18
9.4 Miscellaneous Matters Relating to Exercise of Remedies	19
ARTICLE X -- MISCELLANEOUS	20
10.1 Borrower's Right to Contest Certain Matters	20
10.2 Exculpation	21
10.3 Payment After Acceleration	22
10.4 Notices	22
10.5 Covenants Running with the Land; Bind and Inure	22
10.6 Waiver; Severability	22
10.7 Counterparts	23
10.8 Applicable Law; Jurisdiction	23
10.9 Usury	23
10.10 Partial Payments	23
10.11 Change of Security	24
10.12 Headings for Convenience Only	24
10.13 Representation by Lender	24
10.14 Lender's Right to Assign and Participate Interests	24
10.15 Entire Agreement; Amendments in Writing	24
10.16 Waiver of Right to Trial by Jury	24

ATTACHMENT

Exhibit A - Land Description

Exhibit B - Permitted Exceptions

Exhibit C - Definitions

This instrument was prepared by the attorney referenced below in consultation with counsel admitted to practice in the state in which the Mortgaged Property is located, and when recorded, should be returned to:

James W. Harris, Esq.
Morris, Manning & Martin, L.L.P.
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326-1044
(404) 233-7000

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

This MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (as the same may from time to time be modified or amended, this "Mortgage") is made as of August 30, 1996, by **MarRay-Concourse 800, Inc.**, an Alabama corporation, having its principal office at One Riverchase Parkway South, Birmingham, AL 35244 (together with any and all subsequent owners of the Mortgaged Property, the "Borrower"), the mortgagor hereunder, to **Allmerica Financial Life Insurance and Annuity Company**, a Delaware corporation, having an address c/o Allmerica Asset Management, Inc. - Mortgages at 440 Lincoln Street, Worcester, Massachusetts 01653 (together with any and all subsequent holder or holders, from time to time, of the Note, the "Lender"), the mortgagee hereunder.

ARTICLE I **DEFINITIONS**

1.1. Definitions. All capitalized terms not otherwise defined in the body of this Mortgage shall have the meanings given to them in the Index of Definitions attached hereto as Exhibit C and incorporated herein by reference.

ARTICLE II **GRANT**

2.1. Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower has GRANTED, BARGAINED, SOLD, MORTGAGED, CONFIRMED, WARRANTED and CONVEYED, and does hereby GRANT, BARGAIN, SELL, MORTGAGE, CONFIRM, WARRANT and CONVEY, unto Lender, with MORTGAGE COVENANTS, the real property or interest therein described in Exhibit A and the improvements thereon, and all of the other Mortgaged Property (as defined in Exhibit C), subject, however, to the Permitted Exceptions described in Exhibit B, upon the terms and conditions of this Mortgage, with Power of Sale and right of entry as provided below, TO

HAVE AND TO HOLD the Mortgaged Property unto Lender, forever, and Borrower does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Lender against every person whomever claiming the same; provided, however, that, if Borrower shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date the same are to be performed and discharged, then the liens, security interests, estates, and rights granted by this Mortgage and the other Loan Documents shall terminate, in accordance with the provisions hereof, otherwise they shall remain in full force and effect.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1. Representations in Borrower's Certificate and Environmental Compliance and Indemnification Agreement are True and Correct. Borrower represents, warrants, agrees and confirms that, as of the date hereof, the representations and warranties set forth in the Borrower's Certificate, in the Environmental Compliance and Indemnification Agreement and in all the other Loan Documents are true, accurate and complete in all material respects. To the best of Borrower's knowledge, there are no facts or circumstances existing which would make any of such representations or warranties untrue, incomplete or misleading in any material respect.

ARTICLE IV BORROWER'S COVENANTS

Borrower covenants and agrees with Lender as follows:

4.1. Payment and Performance. Borrower will pay the Indebtedness and perform and discharge the Obligations on or before the time for performance specified in the Loan Documents.

4.2. Compliance with Legal Requirements and Environmental Compliance and Indemnification Agreement. Subject to Section 10.1 (Borrower's Right to Contest Certain Matters) Borrower will promptly and faithfully comply with, conform to, and obey all Legal Requirements applicable to it or the Mortgaged Property.

4.3. Payment of Impositions. Subject to Section 5.1 (Reserve Fund for Impositions and Insurance Premiums) and Section 10.1 (Borrower's Right to Contest Certain Matters), Borrower will pay and discharge the Impositions not later than five (5) days prior to the due date thereof, and Borrower shall deliver to Lender a written receipt evidencing the payment of each Imposition no later than five (5) days prior to the due date thereof.

4.4. Maintenance of First Lien Status of Mortgage. Borrower will protect the first lien and security interest status of this Mortgage and the other Loan Documents.

4.5. Maintenance of Property in Good Repair; Waste; Alterations and Additions. Borrower will keep the Mortgaged Property in first-class order and condition and will make all

repairs, replacements, renewals, and improvements thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep the same in such order and condition. Borrower will use reasonable efforts to prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage, as herein contemplated. Borrower will not commit, permit or suffer any waste of the Mortgaged Property. Borrower will not, without Lender's prior written consent, make or permit to be made any alterations or additions to the Mortgaged Property (a) having a cost in excess of \$50,000, (b) involving material modification to the roof, systems or structural elements of the Improvements, or (c) involving the demolition of any material portion of the Improvements, except to the extent required to comply with (i) Section 4.2 (Compliance with Legal Requirements) or this Section 4.5 (in either of which events Borrower will notify Lender in writing promptly upon the commencement of the work and the completion thereof), or (ii) Permitted Leases. All alterations or additions shall be completed in a good and workmanlike manner and in compliance with all Legal Requirements and other obligations by which Borrower or the Mortgaged Property is bound. No alterations or additions shall be made which adversely affect the value or utility of the Mortgaged Property.

4.6. Borrower's Maintenance of Insurance; Waiver of Subrogation. Borrower will obtain and maintain the following insurance upon and relating to the Mortgaged Property:

(a) owner's (and, during any period of construction by a third party, contractor's) policy of comprehensive general public liability insurance (including automobile coverage) on an occurrence basis, with a combined single limit of not less than \$3,000,000.00 or such higher amount as Lender may reasonably require;

(b) all-risk insurance in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed-amount endorsement and sufficient at all times to prevent Borrower from becoming a coinsurer, with no deduction for depreciation and having a deductible amount no greater than \$10,000.00;

(c) all-risk insurance in an amount not less than the full replacement cost of the Personalty, with annual agreed-amount endorsement and sufficient at all times to prevent Borrower from becoming a coinsurer, with no deduction for depreciation and having a deductible amount no greater than \$10,000.00;

(d) business interruption or rental loss insurance in an amount not less than the greater of (A) twelve (12) months of pro forma rents or (B) the aggregate of the annual Scheduled Monthly Payments under the Note, the annual debt service on any subordinate mortgage or other financing permitted by Lender, the annual ground rents (if all or any portion of the Mortgaged Property is subject to a ground lease permitted by Lender), and the normal annual amount of operating expenses of the Mortgaged Property (including, without limitation, Impositions), based on the last full calendar year of operations for the Mortgaged Property;

(e) if the Mortgaged Property is now or hereafter becomes situated in a "flood hazard area," a flood insurance policy, in such amount as is required by Lender;

(f) worker's compensation insurance for Borrower and any general contractor or agent performing any construction work or other services on or with respect to the Mortgaged Property, in such amount as is required by Lender;

(g) if any alcoholic beverages are sold, distributed, furnished or served at or from the Mortgaged Property, insurance for "dram shop" liability or otherwise relating to the sale, distribution, furnishing or service of alcoholic beverages;

(h) broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery and equipment located in, on or about the Mortgaged Property and insurance against loss of occupancy or use arising from any breakdown thereof in such amounts as Lender requires;

(i) earthquake insurance, if Lender requests such coverage, in such amount as is required by Lender; and

(j) such other insurance, if any, as Lender may reasonably require from time to time.

Each insurance policy obtained by Borrower shall provide by way of endorsements, riders or otherwise that: (a) with respect to liability insurance and environmental remediation insurance, Lender shall be named as an additional insured; with respect to the other insurance required hereunder (other than worker's compensation insurance), Lender shall be named under a standard noncontributory mortgagee clause providing, among other things, for such amounts to be payable to Lender as a mortgagee and loss payee and not as a coinsured; (b) the coverage of Lender shall not be terminated, reduced, or modified in any manner regardless of any breach or violation by Borrower of any warranties, declarations, conditions or terms in such policy; (c) no such insurance policy shall be cancelled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent unless such insurer shall have first given Lender thirty (30) days' prior written notice thereof; and (d) Lender may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration, or reissuance, and such payments shall be accepted by the insurer to prevent the same; however, Lender shall not be liable for the failure to make such payment or obtain such insurance, or for the amount, coverage or type of insurance obtained, the form or legal sufficiency of any such insurance contract, or the solvency of any such insurance company.

Borrower shall furnish to Lender the original of each initial policy simultaneously with the execution of this Mortgage and the original of each renewal policy not less than thirty (30) days' prior to the expiration of the initial policy or each immediately preceding renewal policy, together with receipts or other evidence that the premiums thereon have been paid for an additional one (1) year period. All insurance policies required under this Mortgage shall be with a company or companies (i) authorized to do business in the state in which the Mortgaged Property is located, (ii) with an overall rating of A or higher, according to the standards set by A.M. Best Company (or a similar rating by an equivalent rating company satisfactory to Lender),

and (iii) in which any single risk insured against pursuant to this Mortgage does not exceed 5% of the insurer's policyholders' surplus.

Borrower waives any and all right to claim, recover, or obtain subrogation against Lender or its officers, directors, employees, agents, attorneys, or representatives for loss or damage to Borrower, the Mortgaged Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of the Loan Documents.

4.7. Lender's Right to Inspect Mortgaged Property. Borrower will permit Lender, and its agents, upon reasonable advance notice to Borrower from time to time and subject to Borrower's reasonable security requirements, to inspect the Mortgaged Property (including the interior of any Improvements), take photographs thereof, and conduct tests and take samples therefrom in connection with its evaluation of the condition of the Mortgaged Property, its compliance with the provisions hereof and the status of the Mortgaged Property under applicable Environmental Laws.

4.8. Provision of Financial Statements and Rent Rolls; Inspection of Books and Records. Borrower will maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property and will furnish to Lender:

(a) on or before ninety (90) days after the end of each calendar year a financial statement for the Borrower and the Mortgaged Property, prepared in accordance with generally accepted accounting principles, consistently applied, on an accrual basis, certified by the Chief Financial Officer of Borrower as being true and correct in all material respects (and, if requested by Lender, audited and certified by an independent certified public accountant), including an income statement, statement of cash flow and balance sheet for the Mortgaged Property in such reasonable detail as Lender may request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year;

(b) within thirty (30) days after the end of each calendar quarter, a rent roll in the same format as the rent roll attached to the Borrower's Certificate, and, if requested by Lender, a cash flow statement detailing expenditures (including operating and capital expenses) certified by the Chief Financial Officer of Borrower as being true and correct;

(c) upon request by Lender, federal income tax returns for Borrower; and

(d) upon request of Lender, such interim income statements, balance sheets, cash flow statements, copies of vendor's contracts and other financial and credit information as Lender may reasonably request with respect to the Mortgaged Property and Borrower, certified by the Chief Financial Officer of Borrower as being true and correct in all material respects and accurately presenting the subject matter thereof.

Borrower shall permit Lender and its agents, upon notice, to audit, examine, make and take away copies or extracts of Borrower's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Lender and/or

Lender's agents for such purpose at the address specified herein for Borrower or at such other location as Lender may approve, such approval not to be unreasonably withheld. Borrower will cooperate with Lender in any such audit or examination. Without derogating from the foregoing, in the event Borrower fails to deliver any statement, rent roll or information required to be delivered hereunder, Lender or its agents may exercise its rights under this paragraph in order to prepare such a statement or rent roll or obtain such information, and Borrower shall pay all costs and expenses associated therewith.

Upon foreclosure or acceptance of a deed in lieu thereof, Borrower will turn over any or all such books and records to Lender as Lender may request.

4.9. Payment for Labor and Materials. Subject to Section 10.1 (Borrower's Right to Contest Certain Matters) Borrower will promptly pay when due all bills and costs for labor and materials, utilities, services or other obligations incurred by or on behalf of Borrower in connection with the Mortgaged Property.

4.10. Further Assurances; Corrections; Recording of Loan Documents; Payment of Stamp Taxes. From time to time, at the request of Lender, Borrower will (i) promptly correct any defect, error, or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; (ii) execute and deliver such further instruments and perform such further acts and provide such further assurances, all as may be reasonably necessary, desirable, or proper, in Lender's opinion, to carry out more effectively the purposes of this Mortgage and the Loan Documents and to confirm the liens and security interests of this Mortgage and the Loan Documents on any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property; (iii) execute, acknowledge, deliver, procure, file, and/or record the Loan Documents (as requested by Lender) and, if necessary, desirable or proper, replacements thereof, and any other document or instrument deemed advisable by Lender to protect the liens and security interests herein granted against the rights or interests of third persons; and (iv) pay all documentary stamp taxes, fees and other costs connected with any of the foregoing.

4.11. Payment of Taxes on Mortgage. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Borrower will pay all such taxes and shall deposit in the reserve fund established pursuant to Section 5.1 (Reserve Fund for Impositions and Insurance Premiums) in such amount as Lender shall thereafter require in order to assure payment of such tax from time to time; provided, however, that if such law makes it unlawful for Borrower to pay such tax, then (i) Borrower shall not pay nor be obligated to pay such tax, and (ii) Lender shall have the option to accelerate the Indebtedness in full by giving at least one hundred twenty (120) days notice to Borrower, and no Make Whole Amount shall be payable thereon.

4.12. Estoppel Certificate. Upon ten (10) days written request of Lender or Lender's representative, Borrower will furnish to Lender a written certificate, in form satisfactory to

Lender, confirming the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or, if there are any such claimed offsets or defenses, specifying them, and certifying that there does not exist an event or circumstance which constitutes, or which upon due notice or lapse of time or both would constitute an Event of Default, or, if such an event or circumstance exists, specifying the nature thereof.

4.13. Lender's Expenses and Attorneys' Fees. Borrower will pay on demand all out-of-pocket costs and expenses including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Lender in connection with the closing of the Loan, any proposed extension, modification or amendment to any of the Loan Documents, the review of any matter for which Lender's consent, approval or waiver is required or requested thereunder, the making of any advance under the Note, and any suit to which Lender is a party involving or on account of this Mortgage or the Mortgaged Property and those attorneys' fees and expenses incurred or incident to the enforcement or collection of the Indebtedness or the Obligations or the exercise of any right or remedy under any Loan Document.

4.14. Change of Address. Borrower shall give written notice to Lender of any change of address of Borrower, any Constituent Party, Guarantor and Indemnitor at least ten (10) days prior to the effective date of such change of address.

4.15. Management of Mortgaged Property; Leasing Agents. The manager of the Mortgaged Property shall have demonstrated management experience and shall be subject to the approval of Lender. Any exclusive leasing agent for the Mortgaged Property, if other than Borrower or such property manager approved by Lender, shall have demonstrated leasing experience and shall be subject to the approval of Lender. Lender hereby approves as of the date hereof the manager and exclusive leasing agent listed in the Borrower's Certificate. Lender may at any time rescind its prior approval of any manager or leasing agent if Lender is no longer satisfied with such manager or leasing agent, in which event Borrower shall, subject to Lender's approval, engage a substitute manager or leasing agent. All agreements to pay leasing commissions for leases and all management agreements shall provide that the obligation to pay commissions and management fees shall (i) be subject and subordinate to the Mortgage, and (ii) not be enforceable against Lender.

4.16. Borrower to be Maintained as a Single-Purpose Entity.

(a) Borrower will preserve and keep in full force and effect its existence, rights, franchises, and trade names, all of which shall be maintained separate and apart from its Affiliates;

(b) Borrower represents that it does not own, and agrees that it will not own, any asset or property other than the Mortgaged Property;

(c) Borrower will not engage in any business other than the ownership, management and operation of the Mortgaged Property;

(d) Borrower will not enter into any contract or agreement with any Constituent Party, Indemnitor or Guarantor, or any Affiliate of any of them, except upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with third parties;

(e) Borrower has not incurred and will not incur any indebtedness (including guaranteeing any obligation), other than (i) the Indebtedness, and (ii) trade and operational debt incurred in the ordinary course of business with such trade creditors and in such amounts as are normal and reasonable under the circumstances. Borrower does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity;

(f) Borrower has not made and will not make any loans or advances to any third party (including any Constituent Party, Indemnitor or Guarantor or any Affiliate of any of them) except for intercompany loans between MarRay Corporation and Borrower in the ordinary course of their business, as previously disclosed to Lender;

(g) Unless contested under § 10.1, Borrower will pay its debts from its assets as the same shall become due. Borrower will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(h) Borrower will be, and at all times will hold itself out as, a legal entity separate and distinct from any other entity. Borrower has done or caused to be done and will do all things necessary to preserve its existence, and Borrower will not, nor will Borrower permit any Constituent Party, Indemnitor or Guarantor to, amend or modify its partnership certificate, partnership agreement, articles of incorporation and bylaws, or trust or other organizational documents in a manner which would adversely affect the Borrower's existence as a single-purpose entity;

(i) Borrower will maintain books and records and bank accounts separate from those of any Affiliates. Borrower may file a consolidated tax return with MarRay Corporation and its Affiliates; and

(j) Borrower will not commingle any of the funds or other assets of Borrower with those of any Affiliate of any of them, or those of any other person.

4.17. Improper Use of Mortgaged Property. Borrower will not use or knowingly allow the use, maintenance, operation, or occupancy of the Mortgaged Property in any manner which (i) violates any Legal Requirement, (ii) constitutes a public or private nuisance, or (iii) makes void, voidable, or cancellable any insurance or violates any Lease then in force with respect thereto. Borrower will not allow the uses of the Mortgaged Property to change from the uses occurring as of the date of this Mortgage, as described in the Borrower's Certificate.

4.18. Replacement of Fixtures and Personalty. Borrower will not, without the prior written consent of Lender, remove or negligently permit to be removed any material Fixture or Personalty from the Land or Improvements unless the item is removed temporarily for

maintenance and repair or, if removed permanently, is replaced by an article of equal utility and value, and is owned by Borrower, free and clear of any lien or security interest.

4.19. Change in Zoning; Grant of Easements. Borrower will not seek or acquiesce in a zoning reclassification of all or any portion of the Mortgaged Property or grant or consent to any easement, dedication, plat, or restriction affecting the Mortgaged Property, without Lender's prior written consent.

4.20. Borrower's Defense of Lender. At its own cost and expense, Borrower will defend with counsel approved by Lender, and will hold Lender harmless from, any action, proceeding, or claim affecting or relating in any way to the Mortgaged Property or the Loan Documents, including, without limitation, any such action, proceeding or claim arising from injury, death or property damage on or to the Mortgaged Property, and all costs and expenses incurred by Lender in such an event (including all court costs and fees of attorneys and experts) shall be borne by Borrower. If at any time Borrower defaults under or otherwise fails to perform under any of the Obligations, Lender may, but shall not be obligated to perform or attempt to perform any such Obligations. Any payment made or expense incurred in the performance or attempted performance of any of the Obligations shall be and become a part of the Indebtedness, and Borrower shall pay to Lender all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment or performance by Lender shall constitute a waiver of such default. Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Lender may make an advance or which Lender may pay.

4.21. Transfers. Without Lender's prior written consent, which Lender may withhold in its sole and absolute discretion, Borrower shall not make or allow a Transfer, or enter into any agreement to make or allow, a Transfer other than one which is expressly conditioned upon obtaining Lender's consent thereto. Without derogating from the foregoing, Borrower agrees that Lender may condition its decision to grant or withhold consent to a Transfer on such terms and conditions as Lender may require in its sole and absolute discretion, including without limitation (i) no default existing hereunder or under any of the Loan Documents; (ii) consideration in Lender's sole and absolute discretion of the creditworthiness, management ability and experience, reputation and integrity of the party to whom such Transfer is proposed to be made and its principals and Affiliates; (iii) consideration in Lender's sole and absolute discretion of whether the security or credit for repayment of the Indebtedness and the performance and discharge of the Obligations will be impaired by the proposed Transfer; (iv) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Loan Documents, including the provision of additional security; (v) payment to Lender of a transfer fee of not less than 1% of the outstanding principal balance under the Note; (vi) payment of Lender's attorneys' fees, title premiums, and other costs and expenses in connection with the proposed Transfer; (vii) the assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Transfer will be made (without the release of Borrower); (viii) the execution of documentation satisfactory in form and substance to Lender; (ix) endorsements to any existing mortgagee title insurance policies insuring Lender's interests in the Mortgaged Property; and (x) if at any time a rating has been assigned to this

Mortgage or to securities backed by this Mortgage, satisfaction of such conditions and requirements of any Rating Agency.

4.22. Notice of Claims and Litigation. Borrower shall promptly (and in any event within fifteen (15) days after Borrower's own receipt of notice) notify Lender in writing of any pending or threatened suits or proceedings at law or in equity or before or by any Governmental Authority which (i) if adversely determined, would materially affect the financial condition of Borrower, any Guarantor or Indemnitor, or the Mortgaged Property, or (ii) involve the validity or enforceability of the Loan Documents or the priority of the lien of the Mortgage against the Mortgaged Property. Borrower shall also notify Lender in writing as soon as it has knowledge of any default with respect to any order, writ, injunction, decree or demand of any Governmental Authority affecting Borrower or the Mortgaged Property, where such default could materially affect or impair Borrower's financial condition or the Mortgaged Property. Borrower covenants that it shall promptly (and in any event within fifteen (15) days after delivery or receipt of communications regarding the same) notify Lender in writing of any actual litigation affecting Borrower or the Mortgaged Property involving claims in excess of \$25,000, any litigation threatened in a writing received by Borrower involving claims in excess of \$25,000, and the existence of any mechanics' liens.

4.23. Real Estate Tax Service. Lender may, at Borrower's expense, contract with third parties who will provide, from time to time, information regarding the status of the payment of real estate taxes applicable to the Mortgaged Property.

4.24. [ERISA Provision] INTENTIONALLY OMITTED

4.25. Default Rate Applicable to Unpaid Amounts. All sums paid or incurred by Lender in connection with the exercise of any rights, remedies or privileges created by or reserved to Lender under this Mortgage, or in connection with the enforcement of any of the provisions hereof or Lender's rights hereunder (including, without limitation, Lender's reasonable attorneys' fees and expenses) shall be immediately due and payable by Borrower to Lender, and until paid shall be added to and become a part of the Indebtedness, with interest thereon at the Default Rate from the date of payment by Lender until paid, and the same may be collected as part of the Indebtedness in any suit hereon.

ARTICLE V RESERVE FOR IMPOSITIONS AND INSURANCE PREMIUMS

5.1. Reserve Fund for Impositions and Insurance Premiums. Borrower shall create a reserve fund for the payment of all Impositions and Insurance Premiums by paying to Lender, on the first day of each calendar month, a sum sufficient, as estimated by Lender in its sole and absolute discretion, to pay, at least 30 days before the same become due, all Impositions that will next become due on the Mortgaged Property and all Insurance Premiums that will next become due and payable. All such sums shall be held by Lender without interest to Borrower, unless interest is required by applicable law, for the purposes, so long as no Event of Default exists hereunder, of paying such Impositions and Insurance Premiums. Any excess reserve shall be

credited by Lender against subsequent reserve payments required hereunder, and any deficiency shall be paid by Borrower to Lender upon demand, but in no event later than five (5) days before the date when such Impositions and Insurance Premiums shall become delinquent. In the event there exists a deficiency in such fund or reserve at any time when Impositions or Insurance Premiums are due and payable, Lender may, but shall not be obligated to, advance the amount of such deficiency on behalf of Borrower and such amounts so advanced shall become a part of the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of such advance through and including the date of repayment. Transfer of legal title to the Mortgaged Property shall automatically transfer to the holder of legal title to the Mortgaged Property the interest of Borrower in all sums deposited with Lender under the provisions of this Section 5.1.

ARTICLE VI

INSURANCE AND CONDEMNATION PROCEEDS

6.1. Notice of Damage or Destruction. Borrower will give Lender prompt notice of any damage to or destruction of the Mortgaged Property.

6.2. Adjustment of Insurance Claims. In case of loss covered by policies of insurance, Lender (or, after foreclosure, the purchaser at the foreclosure sale) is hereby authorized, at Lender's (or such purchaser's) option, either (i) to settle and adjust any claim under such policies without the consent of Borrower, or (ii) to allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided that, in either case, Borrower may adjust losses aggregating not in excess of \$10,000.00 if such adjustment is carried out in a competent and timely manner, and provided that, in either case, Lender shall and is hereby irrevocably authorized by Borrower to collect any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be part of the Indebtedness and shall be reimbursed to Lender upon demand and shall bear interest at the Default Rate.

6.3. Application of Insurance Proceeds. The proceeds of insurance resulting from any insured casualty shall, at the sole and absolute option of Lender, either (i) be applied to the payment of the Indebtedness in accordance with the provisions of Section 9.3 (Application of Foreclosure and Other Proceeds), or (ii) be applied to reimburse Borrower for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property, as provided for in Section 6.4 (Conditions Applicable if Restoration Permitted), or (iii) be applied in part pursuant to clause (i) above and in part pursuant to clause (ii) above. Any such application to the Indebtedness shall not reduce or postpone any payments otherwise required pursuant to the Note.

6.4. Conditions Applicable if Restoration Permitted. In the event that proceeds of insurance shall be made available to Borrower for the restoring, repairing, replacing or rebuilding ("Restoration") of the Mortgaged Property, Borrower shall restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable Legal Requirements and plans and specifications approved in advance by Lender.

Further, such proceeds shall be disbursed from time to time, but no more often than once per calendar month in increments of at least \$25,000 (except for the final advance), upon Lender being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the Restoration, (ii) funds (or, at Lender's option, evidence satisfactory to Lender of the availability of such funds), which shall be sufficient in addition to the proceeds of insurance to complete the proposed Restoration, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidence of cost, payment and performance as Lender may require and approve including, without limitation, inspection reports from its representatives who may be retained by Lender, at Borrower's expense, for the purpose of verifying the process of the Restoration. No payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be used to pay costs prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the judgment of Lender to pay for the cost of completing the Restoration free and clear of all liens. Any surplus which may remain out of insurance proceeds held by Lender after payment of such costs of Restoration, shall be applied to the payment of the Indebtedness in accordance with the provisions of Section 9.3 (Application of Foreclosure and other Proceeds). Any such application to the Indebtedness shall not reduce or postpone any payment otherwise required pursuant to the Note.

6.5. Condemnation Proceeds Payable to Lender. Lender shall be entitled to receive any and all sums which may be awarded and become payable to Borrower for condemnation of the Mortgaged Property for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Borrower for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Lender, and Borrower shall, upon request of Lender, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary, proper or desirable from time to time to enable Lender to collect any such sums. Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such sums.

6.6. Application of Condemnation Proceeds. Any sums received by Lender as a result of condemnation shall be applied to the Indebtedness in accordance with the provisions of Section 9.3 (Application of Foreclosure and Other Proceeds). Any such application to the Indebtedness shall not reduce or postpone any payments otherwise required pursuant to the Note.

ARTICLE VII SECURITY AGREEMENT

7.1. Security Interest. This Mortgage is a security agreement on personal property within the meaning of the Code, and shall constitute a first and prior security interest under the Code with respect to the Personalty, Fixtures, Contracts, Permits, Leases and Rents. To this end,

Borrower has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and does hereby GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest in all of Borrower's right, title and interest, in, to, under and with respect to the Personalty, Fixtures, Contracts, Permits, Leases, and Rents to secure the payment of the Indebtedness and performance and discharge of the Obligations.

7.2. Financing Statements. Borrower hereby agrees with Lender to execute and deliver to Lender, in form and substance satisfactory to Lender, such financing statements and such further assurances as Lender may, from time to time, consider advisable to create, perfect, and preserve Lender's security interest granted herein. Lender may cause such statements and assurances to be recorded and filed, at Borrower's expense, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest, and Borrower hereby grants to Lender an irrevocable power of attorney (coupled with an interest) to exercise in Borrower's name and stead any such statements and assurances.

7.3. Fixture Filing. This Mortgage shall constitute a "fixture filing" for the purposes of the Code. Information concerning the security interest granted herein may be obtained from the parties at the address of the parties set forth herein. For purposes of the security interest granted herein, the address of debtor (Borrower) and the address of the secured party (Lender) are set forth in the first paragraph of this Mortgage.

ARTICLE VIII EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

8.1. Payment Defaults. Failure of the Borrower to pay any amount due under the Note, this Mortgage or any of the other Loan Documents, in full, within five (5) days after the due date thereof, or failure of the Borrower to pay the full amount due under the Note upon Stated Maturity, acceleration or when the Indebtedness shall otherwise become due and payable.

8.2. Covenant Defaults. Except as to defaults otherwise provided for in this Article VIII, default by Borrower in the due observance or performance of any of the covenants or agreements contained in this Mortgage or in any of the other Loan Documents, and the continuation of such default for more than 30 days after notice thereof from Lender, provided that, if such default cannot be cured with the exercise of diligent efforts within such 30 days, such 30 day period shall be extended for such period of time, not exceeding an additional 30 days, as shall be required for Borrower, in the exercise of diligent efforts, to cure the default.

8.3. False Representations, Warranties and Statements. If any representation, warranty, or statement made in, under, or pursuant to this Mortgage, the Borrower's Certificate, the Environmental Compliance and Indemnification Agreement, any other Loan Document or any affidavit, certificate or other instrument executed or delivered at any time in connection with the Loan or the Indebtedness is false or misleading in any material respect as of the date thereof.

8.4. Default Under Other Liens. If Borrower shall default or commit an event of default under or pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property (without implying Lender's consent thereto).

8.5. Insolvency; Bankruptcy. If (i) Borrower executes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they come due; (ii) Borrower fails to pay its debts generally as they come due; (iii) any levy against the Mortgaged Property of any execution, attachment, sequestration or other writ is not vacated within sixty days after the levy; (iv) the appointment of a receiver, trustee or custodian of Borrower or of the Mortgaged Property is not discharged within sixty days after the appointment; (v) Borrower files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit of, any Debtor Relief Law; (vi) Borrower files a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of, the rights or powers of Lender granted in any Loan Document; or (vii) there is filed any petition, case, proceeding or other action against Borrower as a debtor under any Debtor Relief Law or seeking an appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Property, or of any significant portion of Borrower's other property, and either Borrower admits or fails to contest diligently the material allegations thereof or the petition, case, proceeding or other action is not permanently dismissed or discharged within 60 days following the date of filing.

8.6. Dissolution. If Borrower shall dissolve, terminate or liquidate, or merge with or be consolidated into any other entity.

8.7. Further Involuntary Encumbrances. If any lien or encumbrance is involuntarily placed on the Mortgaged Property and is not discharged within 30 days after the date it attaches to the Mortgaged Property.

8.8. Transfer of Mortgaged Property or Beneficial Interest in Borrower. If a Transfer occurs without the prior written consent of Lender, other than an involuntary lien or encumbrance which shall be governed by Section 8.7 (Further Involuntary Encumbrances).

8.9. Failure to Pay Impositions or Insurance Premiums. If Borrower fails to pay any and all Impositions or Insurance Premiums by the times they are required to be paid hereunder.

8.10. Guarantor's or Indemnitor's Default. The occurrence of any event referred to in Sections 8.5 (Insolvency, Bankruptcy) and 8.6 (Dissolution) hereof with respect to any Guarantor, Indemnitor or any other person or entity obligated in any manner to pay or perform any of the Indebtedness or Obligations, respectively (as if such Guarantor, Indemnitor or other person or entity were the "Borrower" in such Sections), or default by any Guarantor or Indemnitor, beyond the applicable grace period, in the performance of any covenant or agreement of such Guarantor or Indemnitor contained in any of the Loan Documents.

ARTICLE IX REMEDIES

9.1. Lender's Remedies Upon Default. Upon the occurrence of an Event of Default, Lender may, at Lender's option, by itself or otherwise, do any one or more of the following:

(a) Right to Perform Borrower's Covenants. Lender may, but shall not be obligated to, perform or attempt to perform any of Borrower's covenants or cure or attempt to cure any default under any of the Loan Documents. Any payment made or expense incurred in the performance or attempted performance of any such covenant or agreement shall be and become a part of the Indebtedness, and Borrower shall pay to Lender all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment or performance by Lender shall constitute a waiver of any Event of Default. Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for which Lender may make an advance or may pay.

(b) Right of Entry. Lender may enter upon the Mortgaged Property, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto, and exercise without interference from Borrower any and all rights which Borrower has with respect to the Mortgaged Property. Lender shall have the right to rent the Mortgaged Property for the account of Borrower, for any term, including beyond the discharge or foreclosure of this Mortgage, and to deduct from such Rents all costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property and apply the remainder of such Rents to the Indebtedness in such manner as Lender may elect. All such costs, expenses, and liabilities incurred by Lender, if not paid out of Rents, shall constitute a part of the Indebtedness and shall bear interest from the date of expenditure until paid at the Default Rate. Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Mortgaged Property, or from any other act or omission of the Lender in managing the Mortgaged Property, unless such loss is caused by the willful misconduct of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder.

If necessary to possess the Mortgaged Property, Lender may invoke any legal remedies to dispossess Borrower, including actions for forcible entry and detainer, trespass to try title, and restitution.

(c) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice (except for notices expressly provided for in any Loan Document) or any other action, all of which are hereby waived by Borrower for itself and on behalf of all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness, including the applicable Make Whole Amount, immediately due and payable.

(d) Lender's Judicial Remedies. Lender may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in accordance with the terms hereof, and of the Note and the other Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction.

(e) Lender's Right to Appointment of Receiver. Lender shall be entitled, without notice to Borrower, to the appointment of a receiver(s) of the Mortgaged Property and of the Rents, and Borrower hereby irrevocably consents to the appointment of a receiver(s). Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(f) Foreclosure -- Power of Sale. Lender may institute a proceeding or proceedings, judicial or private, by advertisement or otherwise, for the complete or partial foreclosure of this Mortgage or the complete or partial sale of the Mortgaged Property under the power of sale contained herein or under any applicable provision of law. Lender may sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Borrower therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable law; and, in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Property. Borrower hereby waives, for itself and on behalf of any Guarantor or Indemnitor, any right to direct the order in which the Mortgaged Property or any parcel that is a part thereof is sold.

Subject to the provisions or other requirements of law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of this Section 9.1(f), whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(i) Lender may conduct any number of sales from time to time. The power of sale set forth herein shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Lender's opinion, until the Indebtedness shall have been paid in full;

(ii) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice;

(iii) After each sale, Lender or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Borrower in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Lender is hereby appointed the true and

lawful attorney-in-fact of Borrower, which appointment is coupled with an interest and irrevocable, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Lender may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof;

(iv) Any purchaser of any property or rights sold shall not be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale;

(v) Any sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Borrower to the fullest extent permitted by applicable law;

(vi) Upon any such sale or sales, Lender may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Indebtedness the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid; and

(vii) Upon any such sale, it shall not be necessary for Lender or any public officer acting under execution or order of court to have present or constructive possession of the Mortgaged Property.

(g) Lender's Uniform Commercial Code Remedies. The Lender may exercise its rights of enforcement with respect to Personalty, Fixtures, Contracts, Permits, Leases and Rents under the Code; and, in conjunction with, in addition to or in substitution for the rights and remedies under the Code:

(h) Other Rights. Lender (i) may surrender the insurance policies maintained pursuant to Section 4.6 (Maintenance of Insurance; Waiver of Subrogation), and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 9.3 (Application of Foreclosure and Other Proceeds), and, in connection therewith, Borrower hereby irrevocably appoints Lender as agent and attorney-in-fact for Borrower, coupled with an interest, to collect such premiums; (ii) may apply the reserve for Impositions and Insurance Premiums, if any, required by this Mortgage and any letters of credit, certificates of deposit, escrows or reserves for tenant improvements or other expenses, and any other funds or deposits maintained pursuant to the Loan Documents toward payment of the Indebtedness in accordance with Section 9.3 (Application of Foreclosure and Other Proceeds);

and (iii) shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

Notwithstanding the provisions of Section 9.1(f) Lender may institute an action to foreclose this Mortgage as to the amount so declared due and payable, and thereupon, the Mortgaged Property shall be sold according to law to satisfy and pay the same together with all costs, expenses and allowances thereof, including, without limitation, a reasonable fee for Lender's attorneys, at all trial and appellate levels. The Mortgaged Property may be sold in one parcel, several parcels or groups of parcels, and Lender shall be entitled to bid at the sale, and, if Lender is the highest bidder for the Mortgaged Property or any part or parts thereof, Lender shall be entitled to purchase the same.

If an Event of Default should occur, Lender shall have the right to sell the Mortgaged Property at public outcry, in front of the Court House door of the county wherein the Mortgaged Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Lender or any person conducting said sale for Lender, is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased in the name and on behalf of Borrower, and the certificate of Lender appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises.

9.2. Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said property subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a rental rate of 150% of the fair market rental rate per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcibly or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

9.3. Application of Foreclosure and Other Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article IX, and the proceeds from the surrender of any insurance policies pursuant hereto, and any Rents collected by Lender from the Mortgaged Property, and the reserve for Impositions and Insurance Premiums, if any, required by the provisions of this Mortgage or condemnation awards and other sums received pursuant to Section 9.1 (Lender's Remedies Upon Default) hereof, and proceeds from insurance or condemnation which Lender elects to apply to the Indebtedness, shall be applied by Lender to the Indebtedness in the following order and priority: (i) first to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums, and to the payment of all expenses,

liabilities and advances made or incurred by Lender hereunder, together with interest thereon at the Default Rate; (ii) next, to such portions of the Indebtedness and in such amounts as Lender may determine; (iii) next, to the extent permitted by law, to be set aside by Lender as adequate security in its judgment for the payment of sums which thereafter shall be required to be paid by Lender arising out of any obligations or liability with respect to which Borrower has agreed to indemnify or reimburse Lender, but which sums are contingent or not yet due and payable or liquidated; (iv) next to those persons legally entitled thereto as holders of any inferior liens covering the Mortgaged Property, if any, or otherwise, in order of the priority of such inferior liens (Lender shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (v) finally, to the Borrower. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

9.4. Miscellaneous Matters Relating to Exercise of Remedies.

(a) In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(b) All rights, remedies, and recourses of Lender granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Borrower, the Mortgaged Property, or any one or more of them, or any other person, at the sole and absolute discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Mortgaged Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Borrower prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised thereafter at Lender's option.

(c) Any statements of fact or other recitals made in any deed, bill of sale, or other instrument evidencing a foreclosure, and any statement made by Lender as to nonpayment of the Indebtedness, or as to the occurrence of any Event of Default, or as to Lender having declared all or any part of the Indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to any other act or thing having been duly done by Borrower or Lender, shall be

taken as prima facie evidence of the truth of the facts so stated and recited. Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale.

(d) Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests created by this Mortgage or the other Loan Documents or affecting the obligations of Borrower or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents.

(e) Borrower hereby waives, to the maximum extent permitted by law, any right of redemption arising in connection with any foreclosure of this Mortgage.

ARTICLE X MISCELLANEOUS

10.1. Borrower's Right to Contest Certain Matters. Notwithstanding the provisions of Sections 4.2 (Compliance with Legal Requirements), Sections 4.3 (Payment of Impositions) or 4.9 (Payment for Labor and Materials), Borrower shall not be in default for failure to pay or discharge any Imposition or mechanic's or materialman's lien asserted against the Mortgaged Property or to comply with any Legal Requirement if, and so long as: (i) Borrower shall have notified Lender of same within five (5) days of obtaining knowledge thereof; (ii) Borrower shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property, to satisfy the same; (iii) if requested by Lender, and to the extent not otherwise provided for in the reserve fund established pursuant to Article V, Borrower shall have furnished to Lender a cash deposit, or an indemnity bond satisfactory to Lender with a surety satisfactory to Lender, in such amount as Lender deems advisable to prevent Lender from incurring any loss, cost, expense or damage as a result of any such contest, and to assure payment and performance of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Imposition or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith, or comply with the applicable Legal Requirement, as the case may be; (v) the failure to pay the Imposition or mechanic's or materialman's lien claim or to comply with any Legal Requirements shall not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (vi) notwithstanding the foregoing, Borrower shall immediately upon request of Lender pay any such Imposition or claim or comply with the applicable Legal Requirement, as the case may be notwithstanding such contest, if in the opinion of Lender the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed (and if Borrower shall fail so to do, Lender may, but shall not be required to, pay, perform or cause to be discharged or bonded against any such Imposition, claim, lien or Legal Requirement, and Borrower shall reimburse Lender its cost

thereof on demand, together with interest thereon at the Default Rate). Lender may pay over any such cash deposit made pursuant to clause (iii) above or part thereof to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

10.2. Exculpation. Except as provided in the Indemnification Agreement, or in any other separate guaranty, indemnity or agreement, and except as set forth below, neither Borrower, nor any partner of Borrower, nor any partner, officer, director, shareholder, legal representative, heir or estate of any such partner shall have any personal liability for (i) the payment of any sum of money which is or may be payable hereunder or under the Loan Documents, including, but not limited to, the repayment of the Indebtedness, or (ii) the performance or discharge of any covenants or undertakings of Borrower hereunder or under any of the Loan Documents, and, in the enforcement of any of its rights hereunder, Lender shall proceed solely against any collateral given as security for payment of the Note or for payment or performance under the Loan Documents and shall not seek any deficiency judgment.

Notwithstanding the foregoing, the Borrower agrees that Borrower shall be personally liable for and shall indemnify, defend and hold harmless Lender from and against, any and all liabilities, claims, losses, deficiencies, judgments, damages, costs and expenses of every kind and nature arising out of or in connection with any of the following:

(a) The commission of fraud by Borrower or any Constituent Party, or any material misrepresentation made to Lender by or on behalf of Borrower during or prior to the time that the Indebtedness remains outstanding, including, without limitation, in connection with the application for the Loan, or any modification, amendment or extension thereof, or in the Borrower's Closing Certificate or any of the other Loan Documents.

(b) Breach of any covenant, agreement or indemnity of Borrower set forth in the Environmental Compliance and Indemnification Agreement.

(c) Application of Rents, including Lease Modification and Termination Payments, or tenant security deposits, or acceptance of Rents in advance, in violation of any covenant of Borrower set forth in the Loan Documents, including without limitation, failure to transfer any security deposits to Lender immediately upon an Event of Default.

(d) Application of Rents and any other gross revenues from the Mortgaged Property received or collected at any time subsequent to, a default to anything other than Impositions, payments due under the Note, and reasonable operating expenses of the Mortgaged Property.

(e) Failure to pay Impositions, or to maintain insurance in accordance with the provisions of this Mortgage, or to fund any reserve fund required therefor pursuant to the Loan Documents, or the misapplication of proceeds of insurance or condemnation in violation of the provisions of this Mortgage.

All of the foregoing personal liability and indemnification obligations shall survive, for a period of two (2) years, the foreclosure of this Mortgage or acceptance of a deed in lieu thereof, and the repayment of the Indebtedness, the satisfaction of all other Obligations and the discharge and release of the Loan Documents.

Nothing contained in this Section shall impair the validity of the indebtedness evidenced by the Note or in any way affect or impair the lien of this Mortgage or the right of Lender to foreclose this Mortgage in accordance with its provisions and to exercise Lender's other rights upon an Event of Default.

10.3. Payment After Acceleration. If, following the occurrence of an Event of Default, and an acceleration of the Indebtedness or any part thereof but prior to a foreclosure sale of the Mortgaged Property, Borrower shall tender to Lender the payment of an amount which is intended to be sufficient to satisfy the entire Indebtedness or the part thereof which has been accelerated, Borrower shall include within such payment the applicable Make Whole Amount, which is and shall be a part of the Indebtedness.

10.4. Notices. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to Federal Express or another independent, nationally or locally recognized, third party commercial delivery service for same day or next day delivery. Notices shall be effective upon the earlier to occur of (a) the date received, or (b) one business day after delivery to Federal Express or such other delivery service, postage prepaid. For purposes of notice, the addresses of the parties shall be as set forth in this Mortgage; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of ten (10) days' notice to the other party in the manner set forth herein.

10.5. Covenants Running with the Land; Bind and Inure. All Obligations contained in this Mortgage and the other Loan Documents are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Mortgaged Property. Subject to the provisions of Section 4.21 (Transfers) hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

10.6. Waiver; Severability. Any failure by Lender to insist, or any election by Lender not to insist, upon strict performance by Borrower or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Lender shall have the right at any time or times thereafter to insist upon strict performance by Borrower or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for

any reason and to any extent, be held to be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

10.7. Counterparts. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument.

10.8. Applicable Law; Jurisdiction. This Mortgage shall be governed by and construed according to the laws of the state in which the Mortgaged Property is located. Without limiting the Lender's right to bring an action or proceeding in any other court or in any other jurisdiction, any action or proceeding in connection with this Mortgage, the Note or any of the other Loan Documents may be brought in a court of record of the State of Alabama, or of the United States District Court for the Northern District of Alabama, the Borrower hereby consenting to the jurisdiction thereof over its person. Service of process may be made upon the Borrower by mailing a copy of the summons and any complaint to the Borrower, by certified or registered mail, return receipt requested, at the address to be used for the giving of notice to the Borrower under this Mortgage. In any action or proceeding relating to this Mortgage or any of the other Loan Documents, the Borrower hereby waives any claim that any of the foregoing courts is an inconvenient forum.

10.9. Usury. In the event the interest (including without limitation, at the Default Rate) or other payments required to be made under this Mortgage, the Note or any of the other Loan Documents or otherwise, shall at any time exceed the limit permitted by applicable laws (including without limitation, usury laws) (the "Legal Limits"), all such sums paid by Borrower or any Guarantor(s) or Indemnitor(s) for the period in question that exceed the Legal Limits, automatically and without further documentation or action by Borrower, any Guarantor(s) or Indemnitor(s) or Lender, shall be applied to the outstanding principal balance of the Note and to all accrued interest thereon that is permitted under applicable law, as a prepayment without obligation to pay any Make-Whole Amount. If and to the extent that such application of excess sums to principal and permitted interest is also prohibited by applicable law, or if there would remain a portion of the excess sum after it is applied to principal and permitted interest, such excess sum or portion thereof shall be returned to Borrower. The provisions of this paragraph shall govern notwithstanding anything to the contrary in any of the Loan Documents.

10.10. Partial Payments. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable.

10.11. Change of Security. Any part of the Mortgaged Property may be released, regardless of consideration, by Lender from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Mortgage, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is fully paid and the Obligations are fully performed and discharged.

10.12. Headings for Convenience Only. The headings of the Articles, Sections, and Subsections hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

10.13. Representation by Lender. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Lender pursuant to the Loan Documents, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same.

10.14. Lender's Right to Assign and Participate Interests. Lender may, at any time, sell, transfer, assign, or grant participations in, the Note, this Mortgage and the Loan Documents, and Lender may forward to each assignee or participant, and each prospective assignee or participant, all documents and information which Lender now has or may hereafter acquire relating to the Indebtedness or Obligations and to Borrower, any Constituent Party, any Indemnitor and any Guarantor, and the Mortgaged Property.

10.15. Entire Agreement: Amendments in Writing. This Mortgage and the other Loan Documents embody the final, entire Agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. The provisions of this Mortgage and the Loan Documents may be amended or waived only by an instrument in writing signed by the Borrower and Lender.

10.16. Waiver of Right to Trial by Jury. BORROWER AND LENDER EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS

OR BY BORROWER IN THE PERFORMANCE OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

The additional provisions set forth in the Rider are incorporated herein by reference.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed for and in its name by its duly authorized general partners on this, the 30th day of August, 1996.

BORROWER/DEBTOR:

MarRay-Concourse 800, Inc.

By: Raymond J. Hant

Title: President

Hereunto Duly Authorized

ACKNOWLEDGMENT

STATE OF ALABAMA)
):SS
COUNTY OF Jefferson)

I, Michael S. Brandt, a Notary Public in and for said county in said state, hereby certify that Raymond J. Harbert, whose name as President of **MarRay-Concourse 800, Inc.**, 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 the instrument, s/he, in the capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears date.

Given under my hand and official seal this 30th day of August, 1996.

Michael S. Brandt
Notary Public
My commission expires: 3-26-98

[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 3-A, according to an Amendment to a Resurvey of an Amendment to The Concourse at Riverchase as recorded in Map Book 18, Page 13 in the Office of the Judge of Probate of Shelby County, Alabama.

Together with rights of ingress and egress described in the Declaration of Easement recorded in Real Book 332, Page 637.

EXHIBIT "B"

PERMITTED EXCEPTIONS

Those items listed as exceptions 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 on Schedule B, Part II of that certain Title Commitment issued by First American Title Insurance Company dated August 23, 1996, Agent's File No. DO 667 in regard to the property described on Exhibit "A" hereto.

EXHIBIT "C"
Definitions

The following capitalized terms shall have the meanings set forth below:

Affiliate: Any person or entity directly or indirectly controlling, controlled by or under common control with, or having a direct or indirect ownership interest in, another person or entity.

Assignment of Leases: The Assignment of Leases and Rents of even date executed by Borrower for the benefit of Lender.

Borrower: As defined in the initial paragraph of this Mortgage.

Borrower's Certificate: The Borrower's Closing Certificate of even date executed by Borrower for the benefit of Lender setting forth certain representations and warranties of the Borrower.

Chief Financial Officer: The officer, partner or other individual with primary authority for financial matters of Borrower.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

Constituent Party: Each corporation, shareholder, partnership, partner, trustee, beneficiary, joint venture, joint venturer or other entity which directly or indirectly (through another such corporation, shareholder, partnership, partner, trustee, beneficiary, joint venture, joint venturer or entity, or a series of the same) owns a beneficial interest in Borrower.

Contracts: All of the following, whether now or hereafter existing, relating to the operation, maintenance, or ownership of the Mortgaged Property: (i) all contracts and rights (except Leases), including but not limited to management agreements, maintenance agreements and service contracts and all deposits and rights to payment and reimbursement thereunder; (ii) all warranties and guarantees; and (iii) contracts for the purchase of the Mortgaged Property, including all deposits and letters of credit provided by the purchasers thereunder, together with all payments, income, and profits arising from sale of the Mortgaged Property or from such contracts.

Debtor Relief Laws: Title 11 of the United States Code or any other applicable federal or state law, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Default Rate: As defined in the Note.

Employee Benefit Plan: An employee benefit plan as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as now or hereafter amended.

Environmental Compliance and Indemnification Agreement: That certain Environmental Compliance and Indemnification Agreement of even date executed in connection with the Loan for the benefit of Lender.

Event of Default: As defined in Article VIII.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in, or used in connection with the Improvements, the Land or Personalty, together with all appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices, or authorities for any governmental unit now or hereafter existing.

Guarantor (individually and/or collectively, as the context may require): As defined in the Guaranty.

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Lender guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both.

Hazardous Materials: As defined in the Environmental Compliance and Indemnification Agreement.

Impositions: (i) All real estate and personal property taxes, charges, assessments, and levies and any interest, costs, or penalties with respect thereto, of any kind and nature whatsoever which at any time may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof; (ii) any sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property; (iii) utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property; and (v) ground rents under any ground lease permitted by Lender. In the event Lender, its successors or assigns, acquires title to the Mortgaged Property through foreclosure or deed in lieu thereof, Impositions shall include all of the above, prorated from the date of accrual to the date of foreclosure or acceptance of a deed in lieu thereof.

Improvements: All buildings, parking areas, structures and other improvements, and any and all additions or appurtenances thereto, now or hereafter located on the Land.

Indebtedness: (i) The principal of, interest on, or other sums evidenced by or due under the Note or advanced under or secured by the Loan Documents; and (ii) any other amounts,

payments, or Insurance Premiums payable under the Note, this Mortgage or the other Loan Documents.

Indemnification Agreement: The Indemnification and Guaranty Agreement of even date executed by the persons named therein indemnifying Lender against loss or damage resulting from certain matters.

Indemnitor (individually and/or collectively, as the context may require): As defined in the Indemnification Agreement.

Insurance Premiums: All premiums required to be paid in order to keep in force and effect all of the policies of insurance required to be maintained under this Mortgage.

Land: The real property or interest therein described in Exhibit A attached to this Mortgage and incorporated into this Mortgage by this reference, together with all right, title, interest, and privileges of Borrower in and to (a) all rights, easements, air rights, reciprocal operating agreements, covenants, conditions and restrictions and similar title matters appurtenant to or used in connection with such real property or the Improvements; (b) all streets, rights-of-way, licenses, vehicle parking rights and other rights appurtenant to or used in connection with such real property or the Improvements; (c) any strips or gores of real property between such real property and abutting or adjacent properties; (d) all water and water rights, mineral rights, timber and crops; and (e) appurtenances, reversions and remainders in, to or relating to such real property.

Lease Termination and Modification Payments: Any payments or damages paid or required to be paid by any Lessee arising out of (i) any modification to a Lease (including, without limitation, modifications reducing the term, the demised premises or the rent due); (ii) Lessee's conduct under any Lease; (iii) the exercise by any Lessee of any right to terminate, modify the demised premises under, or modify the term of, any Lease; (iv) bankruptcy of Lessee; or (v) any cancellation, expiration or termination of any Lease (whether by virtue of a default, consensual agreement or otherwise).

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect), including any renewals, extensions, amendments and supplements, which grant to third parties a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.

Legal Requirements: (i) All present and future laws, statutes, decisional law, rules, regulations, ordinances and permits of any Governmental Authority applicable to Borrower, any Guarantor, any Indemnitor, or the Mortgaged Property; (ii) all covenants, conditions, and restrictions contained in any deeds or other instruments which relate to the Mortgaged Property; (iii) Borrower's, any Constituent Party's, Guarantor's or Indemnitor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust, or other form of business association agreement; (iv) all of Borrower's obligations under all

Leases, Contracts and Permits and all conditions thereof binding upon Borrower or the Mortgaged Property.

Lender: As defined in the initial paragraph of this Mortgage.

Loan: As defined in the definition of Note.

Loan Documents: The Note, this Mortgage, the Assignment, the Borrower's Certificate, the Environmental Compliance and Indemnification Agreement, the Guaranty, if any, the Indemnification Agreement, the Escrow Agreement, if any, and any and all other documents now or hereafter executed by the Borrower, any Constituent Party or any Guarantor or Indemnitor, or any other person or party in connection with the payment of the Indebtedness or the performance of the Obligations.

Make Whole Amount: As defined in the Note.

Mortgaged Property: The Land, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Borrower now owned or hereafter acquired in and to the same, together with all other security and collateral of any nature now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Note: That certain Promissory Note of even date incorporated herein by reference, executed by Borrower and payable to the order of Lender in the principal amount of Three Million and 00/100 Dollars (\$3,000,000) (the "Loan"), interest and principal being payable as therein specified, maturing on September 1, 2006, and secured by, among other things, this Mortgage; and any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, modification, rearrangement, substitution or replacement therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor, Indemnitor or any other person or party to the Loan Documents as set forth in the Loan Documents, or the Leases, and any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted or is entitled to a possessory interest in the Land.

Permits: Permits, licenses, certificates and approvals issued by Governmental Authorities or otherwise necessary for the Borrower or the Improvements to comply with all Legal Requirements.

Permitted Exceptions: The matters listed on Exhibit B attached to this Mortgage which are incorporated into this Mortgage by this reference and the liens and security interests created by the Loan Documents.

Permitted Leases: As defined in the Assignment of Leases.

Personalty: All of the right, title, and interest of Borrower in and to (i) furniture, furnishings, equipment, machinery and goods; (ii) general intangibles, money, insurance proceeds, accounts, deposits held in escrow under any and all Leases, contract and subcontract rights, trademarks, tradenames and inventory; (iii) all refundable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any Governmental Authority, corporation or provider of utility services; (iv) any awards, settlements, or compensation made by any Governmental Authority relating to the Mortgaged Property, including without limitation awards, proceeds and settlement amounts on account of condemnation or eminent domain; (v) tenant security deposits; (vi) other types of deposits and other benefits paid or payable by parties to Contracts other than Borrower; and (vii) all other personal property of any kind or character as defined in and subject to the provisions of the Code; any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or needed for the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof. "Personalty" shall mean all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Prohibited Transaction: A transaction prohibited under Section 406 of the Employee Retirement Income Security Act of 1974, as now or hereafter amended.

Rating Agencies: Duff & Phelps Credit Rating Co., Moody's Investors Services, Standard & Poor's Corporation, and Fitch Investors' Service, Inc.

Rents: All of the rents, revenues, income, proceeds, reimbursements, common area maintenance charges, profits, security and other types of deposits and other benefits paid or payable by parties to Leases other than Borrower, for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property, whether due now or hereafter, including, without limitation, any Lease Termination and Modification Payments.

Scheduled Monthly Payment: As defined in the Note.

Transfer: Any sale, purchase option, lease, exchange, assignment, conveyance, transfer, trade, mortgage, deed of trust, pledge, lien, security interest, encumbrance, charge, conditional sale or other title retention agreement or other transfer or disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the direct or indirect beneficial ownership interest in Borrower or any Constituent Party but excluding the following: (a) sales or transfers of items of Personalty which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a similar utility and a value equal to or greater than the replaced items when new and which are not subject to any lien, lease or title retention agreement; (b) the Permitted Leases; and (c) the Permitted Exceptions.

RIDER

1. If T.V. Alabama, Inc. has not notified Borrower on or before September 30, 2005, of the intention of T.V. Alabama, Inc. to renew its lease, Borrower will escrow with Lender \$15,000 per month beginning October 1, 2005, said amount to be returned to Borrower if the T.V. Alabama, Inc. lease is subsequently renewed, or to reimburse Borrower for tenant improvement expense incurred for a new tenant under a lease for the former T.V. Alabama, Inc. premises, both of which must be acceptable to Lender. If there is an Event of Default, Lender shall have the right to apply said amount in escrow to reduce the balance of the Loan.

2. Anything to the contrary contained in Section 6.3 notwithstanding, provided that all of the following conditions have been met, then Lender agrees that the proceeds of insurance resulting from any insured casualty shall be applied for the purposes described in part (ii) of said Section 6.3, in accordance with the terms and conditions of Section 6.4: (a) the amount of such proceeds does not exceed ten percent (10%) of the outstanding principal balance of the Note; (b) no Event of Default then shall exist, and no event or condition then shall have occurred and exist which, if not cured within any applicable period of time and following any required notice, would become an Event of Default; (c) such proceeds are sufficient in amount to complete the Restoration as determined by Lender in its sole but reasonable discretion; (d) business interruption or rental loss insurance as required under Section 4.6(d) is in full force and effect; and (e) the value of the Mortgaged Property following the Restoration, in Lender's sole but reasonable judgement and (if required by Lender) based on an appraisal procured by Lender at Borrower's expense, will not be less than the value of the Mortgaged Property prior to the casualty which gave rise to such proceeds.

Inst # 1996-29133

09/05/1996-29133
08:18 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
038 MCD 4601.00

0178909.04