

Inst # 1996-29134

ASSIGNMENT OF LEASES AND RENTS

Dated August 30, 1996

Executed by

**MarRay-Concourse 800, Inc.**

for the benefit of

Allmerica Financial Life Insurance and Annuity Company

Inst # 1996-29134

0177954.04

09/05/1996-29134  
08:18 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
018 NCD 51.00

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**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**

### ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS (hereinafter referred to as the "Assignment"), entered into as of the 30th day of August, 1996, by **MarRay-Concourse 800, Inc.**, an Alabama corporation (together with any and all subsequent owners of the Mortgaged Property, the "Borrower"), the assignor 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 assignee hereunder.

### ARTICLE I

#### DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Borrower: As defined in the first paragraph of this Assignment.

Borrower's License: As defined in Section 3.1 hereof.

Land: The real property or interest therein described in Exhibit A attached hereto and incorporated herein 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.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, now or hereafter in effect), including, without limitation, 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 other agreements between Borrower and such third parties and all security and other deposits or payments made in connection therewith.

Lender: The individual or entity described as Lender in the initial paragraph of this Assignment, being the same party referred to in the Mortgage as "Lender".

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).

Lessee: The lessee, tenant or other occupant under any of the Leases.

Mortgage: That certain Mortgage, Security Agreement and Fixture Filing, dated of even date herewith, executed by Borrower for the benefit of Lender, covering the Mortgaged Property.

Permitted Leases: Leases approved by Lender pursuant to Section 5.5 (Lender's Approval Required for New Leases), and Leases existing on the date hereof to the extent completely and accurately described in the Borrower's Certificate.

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.

1.2 Other Defined Terms. Any capitalized term utilized herein shall have the meaning specified in the Mortgage, unless such term is otherwise specifically defined herein.

## ARTICLE II

### ASSIGNMENT OF LEASES AND RENTS

2.1 Assignment. Borrower, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby GRANT, BARGAIN, SELL, MORTGAGE, CONFIRM, WARRANT and CONVEY, unto Lender, absolutely, the Leases and the Rents, subject only to the Permitted Exceptions and Borrower's License, TO HAVE AND TO HOLD, forever, and Borrower agrees to WARRANT and FOREVER DEFEND Lender's title to the Leases and the Rents, subject to the Permitted Exceptions and Borrower's License, against every person claiming the same or any part thereof. This is an absolute assignment, not an assignment for security only. Upon payment of the Indebtedness and the satisfaction of all the Obligations, Lender shall release and discharge this Assignment.

2.2 Evidence of Continuation of this Assignment. The certificate of Lender stating that any part of the Indebtedness or the Obligations remains unpaid and unperformed or undischarged shall be and constitute conclusive evidence of the validity, effectiveness or continuing force of this Assignment.

## ARTICLE III

### BORROWER'S LICENSE WITH RESPECT TO LEASES; AUTHORIZATION AND DIRECTION TO LESSEES

3.1 Borrower's License with Respect to Leases. Lender hereby grants to Borrower a license ("Borrower's License") under which, provided there exists no Event of Default, Borrower may collect all of the Rents upon, but not prior to, accrual, excluding, however, any Lease Termination and Modification Payments, which Lease Termination and Modification Payments shall in all events be paid to and retained by Lender and applied in accordance with Section 4.4 hereof. Borrower shall receive and hold such Rents, as well as the right and license to receive such Rents, as a trust fund to be applied, prior to their application by Borrower for any other

purpose, to the payment of the Indebtedness then due and the satisfaction and discharge of the Obligations, and Borrower hereby covenants to so apply any Rents received by it. Without limiting the foregoing, Borrower covenants that it shall apply all Rents and any other gross revenues from the Mortgaged Property received or collected during the six months prior to (and at any time subsequent to) an Event of Default only to payments due under the Note, the payment of Impositions, and reasonable operating expenses of the Mortgaged Property (excluding in all events (i) payments for services made to Borrower, any Constituent Party, any Guarantor, any Indemnitor or any Affiliate of any of the foregoing which are in excess of the payment which would have been made to third parties for such services on the basis of bona fide arm's length contracts at prevailing market rates, (ii) expenses of the Borrower, any Constituent Party, any Guarantor, any Indemnitor or any Affiliate of any of the foregoing which are not expenses of the Mortgaged Property, and (iii) legal, accounting or other fees associated with any modifications to the Loan Documents or any enforcement of the Loan Documents).

3.2 Lockbox Account. In order to more fully carry out the purposes of this Assignment, promptly upon Lender's demand therefor at any time while the Loan remains outstanding, Borrower shall establish a so-called "lockbox account" in a commercial bank satisfactory to Lender and shall direct its Lessees to pay all Rents into such account. So long as the Borrower's License shall remain in force and effect, Borrower shall be entitled to use and apply the amounts in such account which are included in and subject to the Borrower's License in accordance with the provisions of Section 3.1. Otherwise, Lender shall be entitled to exercise control over all funds in such account. In connection with the establishment of such account, Borrower shall execute such additional documents and instruments as Lender shall require pursuant to Section 5.8 hereof.

3.3 Authorization and Direction to Lessees. Borrower hereby consents to and irrevocably authorizes and directs the Lessees, upon notice from Lender of Lender's right to receive the Rents and demand therefor, to pay the Rents to Lender. Written demand by Lender delivered to any Lessee for payment of Rents by reason of the occurrence of any Event of Default claimed by Lender shall be sufficient evidence of each such Lessee's obligation and authority to make all future payments of Rents to Lender without the necessity for further consent by the Borrower, notwithstanding any notice from or claim by Borrower to the contrary. Borrower shall have no right or claim against any Lessee for the payment of any Rents to Lender hereunder, and Borrower hereby agrees to indemnify and agrees to defend and hold harmless each Lessee from and against all liability, loss, cost, damage or expense suffered or incurred by such Lessee by reason of such Lessee's compliance with any demand for payment of Rents made by Lender pursuant to this Section 3.3.

## ARTICLE IV

### Warranties, Representations and Covenants

Borrower hereby warrants and represents to and covenants and agrees with Lender as follows:

4.1 Ownership of Leases and Rents. Borrower is the owner in fee simple absolute of the Mortgaged Property, subject only to the Permitted Exceptions; Borrower holds good and unencumbered title to the Leases and Rents as lessor under each of the Leases; Borrower has all requisite right, power and authority to assign the Leases and Rents; and no other person or entity has or will have any right, title or interest in or to the Leases and Rents.

4.2 Defaults under Leases. Except as otherwise disclosed in the Borrower's Certificate, Borrower has duly and punctually performed all of the terms, covenants, conditions and warranties imposed on or made by Borrower under the Leases; no default has occurred under the terms or provisions of any of the Leases; and no event or circumstance exists which, with the lapse of time or the giving of notice or both, would constitute a default under the terms of any of the Leases.

4.3 Borrower's Performance under Leases. Except as otherwise disclosed in the Borrower's Certificate, the Leases are valid and unmodified and are in full force and effect; neither Borrower nor any predecessor lessor has previously sold, assigned, transferred, mortgaged, pledged, or subordinated the Leases or the Rents; the Rents for any periods subsequent to the date hereof have not been collected for more than one current month in advance and have not been waived, released, discounted, set off or otherwise discharged or compromised; neither Borrower nor any predecessor lessor has taken any actions or executed any instruments which could prevent Lender from, or limit Lender in, taking any actions or exercising any rights or remedies under this Assignment; Borrower has not received any funds or deposits from any Lessee for which credit has not already been made on account of accrued Rents; and Borrower is currently holding, and will continue to hold throughout the term of this Assignment, any and all security deposits under the Leases in the full amount specified in such Lease without offset or use thereof, such security deposits to be held in an account separate from Borrower's operating account; Borrower has not used and will not use the security deposit account for operating, capital or other expenses for the Mortgaged Property, except that Borrower may apply any security deposits after a default of a tenant under a Lease in accordance with Section 3.1 ("Borrower's License with Respect to Leases").

4.4 Application of Lease Termination and Modification Payments. Any Lease Termination and Modification Payments received by Lender shall be applied to the payment of



the Indebtedness in such order as Lender may determine. Any such application shall not reduce or postpone any payment otherwise required pursuant to the Note.

## ARTICLE V

### Agreements

Borrower hereby covenants and agrees with Lender as follows:

5.1 Performance. Borrower shall observe, perform and discharge all the obligations, terms, covenants, conditions and warranties of the Loan Documents and of the Leases; and Borrower shall give prompt notice to Lender of any failure on the part of Borrower to observe, perform and discharge the same.

5.2 Notification to Lessees; Security Deposits. From and after the occurrence of an Event of Default, and upon the written demand by Lender, Borrower shall pay to Lender any and all security deposits for which the lessor under the Leases shall be liable to Lessees. Upon, but only to the extent of, receipt by Lender of such security deposits, Lender shall be responsible for and liable to such Lessees with respect to such security deposits.

5.3 Enforcement. Borrower shall enforce the performance of each and every obligation, term, covenant, condition and agreement in the Leases by any Lessee to be performed; in the event of a default by any Lessee under any Lease, Lessor shall exercise its remedies in a commercially reasonable manner; Borrower shall appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Leases or the obligations, duties or liabilities of the Borrower and any Lessee, and upon Lender's request, Borrower will do so in the name and on behalf of the Lender, but at Borrower's expense. Borrower shall pay all costs and expenses of Lender, including, without limitation, attorneys' fees and disbursements, in any action or proceeding in which the Lender may appear.

5.4 Anticipation of Rents. Borrower shall: neither receive nor collect any Rents, whether in cash or by evidence of indebtedness, from any present or future Lessee for more than each current month in advance; not in any way transfer, encumber or assign future payments of Rents; not in any manner, or to any extent, release or discharge any Lessee from any obligations, covenants, conditions and agreements to be kept, observed and performed by such Lessee, including, without limitation, the obligation to pay Rents in the amount, manner and at the time and place specified in the Lease; and not incur any indebtedness to any Lessee or guarantor of any Lease which could ever be considered as an offset or deduction against the Rents.

5.5 Lender's Approval Required for New Leases. Borrower shall not enter into any Leases after the date hereof without Lender's prior written consent unless such Lease is consistent with leasing guidelines for the Mortgaged Property approved in writing by Lender.

5.6 Cancellation, Modification and Grant of Consent under Leases. Without Lender's prior written consent, Borrower shall not: (a) cancel, terminate or consent to any surrender of any Lease; (b) commence any action of ejectment or to terminate any Lease or any summary proceedings for dispossession of any Lessee; (c) exercise any right of recapture provided in any Lease; (d) modify or alter in any material way the terms of any Lease or waive any provision thereof or grant any concession in connection therewith; (e) renew or extend the term of any Lease unless pursuant to an option therefor which was originally reserved to the Lessee; (f) relocate any Lessee within or outside the Mortgaged Property; (g) consent to any modification of the permitted uses under any Lease; (h) consent to any subletting of the Mortgaged Property, nor to any assignment of any Lease by any Lessee thereunder, nor to any assignment or further subletting of any sublease; or (i) grant or withhold any consent or approval, or exercise any option, pursuant to any right reserved to the lessor under any Lease.

5.7 Subordination of Leases. Borrower shall not subordinate any Leases to any other mortgage on the Mortgaged Property.

5.8 Delivery of Leases; Further Acts and Assurances. Borrower will deliver to the Lender copies of all existing and future Leases when executed. Borrower hereby covenants and agrees to make, execute and deliver to Lender, upon demand and at any time or times, any and all assignments and other documents and instruments which Lender may deem advisable to carry out the true purpose and intent of this Assignment.

## ARTICLE VI

### EVENTS OF DEFAULT

The term "Event of Default," as used in this Assignment, shall have the same meaning as in the Mortgage.

## ARTICLE VII

### REMEDIES

7.1 Remedies. Borrower expressly acknowledges and agrees that, upon the occurrence of an Event of Default, Borrower's License is and shall be deemed to be automatically revoked, and Lender's right, title and interest in and to the Leases and Rents shall be and remain

absolute in accordance with the provisions of this Assignment. Moreover, upon or at any time after an Event of Default, Lender may exercise any or all of the following remedies:

(a) Collect Rents. Lender may demand, collect, receive, sue for, attach and levy on the Rents, in Borrower's own name and with or without taking possession of the Mortgaged Property. After deducting all necessary and proper costs and expenses of collection and operation of the Mortgaged Property, as determined by Lender in its sole and absolute discretion, and including attorneys' fees, Lender may apply the net proceeds thereof, together with any funds of Borrower deposited with Lender, to the reduction or repayment of the Indebtedness and the performance or discharge of the Obligations in such order of priority as Lender may determine in its sole, absolute discretion.

(b) Acceleration. 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 or any other action, all of which are hereby waived by Borrower for itself on behalf of all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness, including the Make Whole Amount, immediately due and payable.

(c) 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 regardless of the location of said books, records and accounts, and exercise without interference from Borrower any and all rights which Borrower may have with respect to the Mortgaged Property. Lender shall have the right, but not the obligation, 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 the Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, and to apply the remainder of such Rents to the Indebtedness in such manner as Lender may elect. All such costs, expenses, and liabilities incurred by the 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 the Lender, nor shall the 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, the Lender may invoke any legal remedies to dispossess Borrower, including without limitation actions for forcible entry and detainer, trespass to try title, and restitution.

(d) Lender may exercise any other right or remedy permitted by law or the Loan Documents.

7.2 Exculpation of Lender. The acceptance by Lender of this Assignment, with all of the rights, powers and privileges created hereby, shall not, prior to entry upon and taking possession of the Mortgaged Property by Lender, be deemed or construed to constitute Lender a "mortgagee in possession", nor thereafter shall Lender be obligated to: (a) appear in or defend any action or proceeding relating to the Leases, the Rents or the Mortgaged Property; (b) take any action hereunder or expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Lease; or (c) invest, account for or otherwise take any action with respect to any security deposits or other deposits delivered to Borrower by any Lessee and not assigned and delivered to, and actually received by, Lender. Lender shall not be liable in any way for any injury or damage to persons or property sustained by any person or entity in or about the Mortgaged Property.

7.3 Appointment of Attorney-in-Fact.

(a) Rents. Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in fact, coupled with an interest, to do any of the following after an Event of Default has occurred: (1) demand, sue for, attach, levy, recover and receive any of the Rents and any Lease Termination and Modification Payments; (2) give proper receipts, releases and acquittances therefor; and (3) apply the net proceeds, after deducting the costs of collection, to the reduction or repayment of any portion of the Indebtedness or to the cost of performance or discharge of any of the Obligations, notwithstanding the fact that such portion of the Indebtedness may not then be due and payable or such portion of the Obligations may not then be performable or dischargeable or such portion of the Indebtedness or any of the Obligations is otherwise adequately secured. Borrower hereby authorizes and directs all Lessees to deliver such payment to Lender in accordance with this Assignment and hereby ratifies and confirms all that the Lender shall do or cause to be done by virtue of the powers granted hereby.

(b) Leases. Borrower hereby constitutes and appoints Lender as Borrower's attorney-in fact, coupled with an interest to do the following after an Event of Default has occurred: subject and subordinate at any time and from time to time any Lease or part thereof to the lien, assignment and security interest of the Mortgage, this Assignment or any other mortgage, deed of trust, assignment or security agreement, or to any ground lease that applies to all or a portion of the Mortgaged Property. Borrower hereby warrants that Borrower has not at any time prior to the date hereof exercised any such right, and Borrower hereby covenants not to exercise any such right, and further covenants not to otherwise subordinate any such Lease to the lien of the Mortgage, this

Assignment or to any other mortgage, deed of trust, assignment or security agreement or to any ground lease.

The foregoing appointments in this Section 7.3 are irrevocable and continuing, and such rights, powers and privileges shall be exclusive in Lender, its successors and assigns, so long as any part of the Indebtedness or any of the Obligations remain unpaid or unperformed and undischarged.

7.4 Borrower's Indemnities. Borrower hereby agrees to indemnify and hold the Lender and its agents, representatives and employees free and harmless from and against any and all liability, loss, cost, damage or expense which Lender or its agents, representatives and employees may incur: (a) by reason of this Assignment; (b) for or arising out of any action taken by the Lender or its agents, representatives or employees hereunder unless such action constitutes gross negligence or willful misconduct; (c) by reason of or in defense of any claims and demands whatsoever which may be asserted against Lender or its agents, representatives and employees arising out of the Leases; or (d) breach of any of the terms or provisions of this Assignment. In the event that Lender or its agents, representatives or employees incurs any such liability, loss, cost, damage or expense, the amount thereof, including, without limitation, attorneys' fees, with interest thereon at the Default Rate, shall be payable by Borrower to Lender immediately, without demand, and shall be secured by the security for the payment and performance of the Indebtedness and the Obligations, including specifically, but without limitation, the lien and security interest of the Mortgage.

## ARTICLE VIII

### MISCELLANEOUS

8.1 Notices. All notices or other communications required or permitted to be given pursuant to this Assignment shall be given in accordance with the provisions of the Mortgage.

8.2 Successors and Assigns. Subject to the provisions of Section 4.21 of the Mortgage (Transfers Prohibited), all of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties hereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

8.3 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 Loan Documents shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

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

8.5 Choice of Law; Jurisdiction. This Assignment shall be governed by and enforced under 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 Assignment 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 Assignment. In any action or proceeding relating to this Assignment or any of the other Loan Documents, the Borrower hereby waives any claim that any of the foregoing courts is an inconvenient forum.

8.6 Headings. The Article and Section entitlements 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 or Sections.

8.7 Entire Agreement; Amendments in Writing. This Assignment 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 Assignment and the other Loan Documents may be amended or waived only by an instrument in writing signed by the Borrower and Lender.

8.8 Waiver of Right to Trial by Jury. LENDER AND BORROWER 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 ASSIGNMENT OR THE OTHER LOAN DOCUMENTS OR BY BORROWER IN THE PERFORMANCE OF ANY OF THE TERMS AND PROVISIONS OF THIS ASSIGNMENT OR THE OTHER LOAN DOCUMENT.

8.9 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 the 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 the Mortgage.

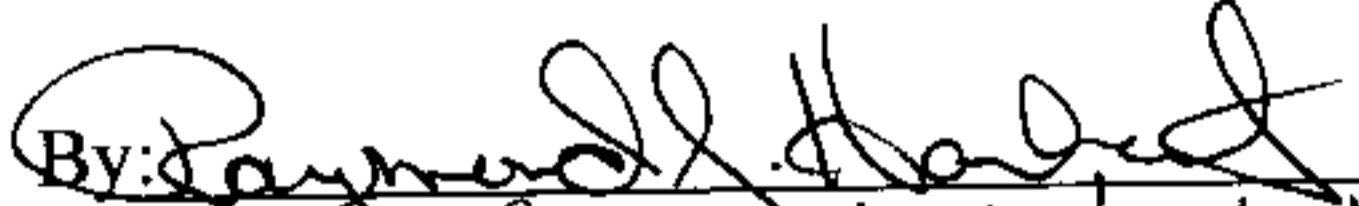
All of the foregoing personal liability and indemnification obligations shall survive, for a period of two (2) years, the foreclosure of the Mortgage or acceptance of a deed in lieu thereof, and the repayment of the Indebtedness, the satisfaction of all other Obligations and the discharge and release 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 the Mortgage and this Assignment or the right of the Lender to foreclose on the Mortgage in accordance with the provisions thereof and to exercise its other rights upon an Event of Default.

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

**BORROWER:**

**MARRAY-CONCOURSE 800, INC.**

By:   
Name: Raymond J. Harbert  
Title: President



ACKNOWLEDGMENT

STATE OF ALABAMA )  
 ) :SS  
COUNTY OF Tefferson )

I, Michael J. Bryant, a Notary Public in and for said county in said state, hereby certify that Raymond W. Herbert, 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 30<sup>th</sup> day of August, 1996.

Michael J. Bryant  
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.

Inst # 1996-29134

09/05/1996-29134  
08:18 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
DIB HCD 51.00