

ASSIGNMENT OF LEASES AND RENTS

STATE OF ALABAMA       )  
SHELBY COUNTY         )

THIS ASSIGNMENT OF LEASES AND RENTS, dated the 31<sup>st</sup> day of December, 1984, by and between RIVERCHASE CENTER ASSOCIATES, an Alabama general partnership whose sole general partners are G-B Partnership, an Alabama general partnership, whose sole general partners are Raymond D. Gotlieb and Robert L. Bohorfoush; Ingram D. Tynes; Carolyn B. Nelson; and Irby M. Cohen (herein referred to as "Mortgagor") and STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA, a corporation ("Lender").

I

Recitals

1.1 Description of Note: Mortgagor has contemporaneously herewith executed and delivered to Lender a note (the "Note") in the principal sum of Seven Million Nine Hundred Thousand and No/100 Dollars (\$7,900,000.00) payable as provided in the Note and with a final payment of all outstanding indebtedness after a period of approximately eleven (11) years. The Note contains certain prohibitions with respect to prepayment and requires a prepayment premium in amounts stated in the Note on certain prepayments (including involuntary prepayments as a result of foreclosure and otherwise). The Note provides for the accrual of a portion of the interest which is not paid currently, but is accumulated (the "Interest Balance"), which Interest Balance also bears interest on a compounded monthly basis.

1.2 Description of Other Lien Agreements: The payment of the Note is secured by this Assignment of Leases and Rents and by:

A mortgage (the "Mortgage") executed by Mortgagor pertaining to property (the "Mortgaged Premises") described therein of which the land parcel (the "Land Parcel") described in Schedule I attached hereto forms a part.

and certain other security instruments executed of even date herewith which, together with any amendments, modifications and replacements thereof and any and all other instruments now or hereafter given to secure the payment of the Note,

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are collectively referred to herein as the "Other Lien Agreements".

## II

### Granting Clauses

To secure the payment of the Note and any and all renewals, extensions, modifications and replacements thereof, and to assure performance of the agreements contained herein and in the Note and Other Lien Agreements, Mortgagor hereby assigns to Lender Mortgagor's right, title and interest in:

(a) All leases described in Schedule II attached hereto, and all other oral and written leases and other agreements for use or occupancy made or agreed to by, any person or entity (including, without limitation of the foregoing, Mortgagor and Lender under the powers granted herein) and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Land Parcel or the Improvements (as defined in the Mortgage), whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

(b) The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Mortgaged Premises;

(c) Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Mortgaged Premises;

(d) All rights, powers, privileges, options and other benefits (collectively the "Rights") of Mortgagor under the Leases, including without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Mortgagor is or may become entitled to under the Leases;

(vi) the right to exercise any option required or permitted; and

(vii) any and all guaranties (the "Guaranties") of any of the Leases, and the rights, powers, privileges and other benefits of the Mortgagor under the Guaranties;

and Mortgagor authorizes Lender:

(viii) to manage the Mortgaged Premises and let and relet the Mortgaged Premises, or any part thereof according to Lender's own discretion;

(ix) to prosecute or defend any suits in connection with the Mortgaged Premises in the name of any or all of Lender or Mortgagor as it may consider desirable;

(x) to enforce or take any other action in connection with the Leases in the name of any or all of Lender or Mortgagor;

(xi) to make such repairs to the Mortgaged Premises as Lender may deem advisable; and

(xii) to do anything in or about the Mortgaged Premises that Lender may deem advisable or that the Mortgagor has the right or power to do.

Although this instrument constitutes a present assignment of the foregoing leases, rights, interests and privileges, Mortgagor shall have the right to collect all rentals due thereunder until a default occurs under the provisions hereof or under the Note or the Other Lien Agreements.

### III

#### Covenants

3.1 Power Coupled With Interest: This Assignment of Leases and Rents confers upon Lender a power coupled with an interest and cannot be revoked by the Mortgagor.

3.2 No Other Assignment: Mortgagor warrants, represents and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the rents due or to become due thereunder, that there has been no previous and, without Lender's prior written consent as to form and substance, Mortgagor will permit no future assignment (as collateral or otherwise) of the lessor's right, title and interest in any of the Leases (other than pursuant to the Other

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Lien Agreements), that the Leases are valid and enforceable in accordance with their terms and have not been altered, modified or amended in any manner whatsoever, except as otherwise disclosed to Lender, that the lessees are not in default under the Leases and have no defenses, set-offs or counterclaims against the lessor under the Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected in advance of the time when the said rent becomes or would become due under the terms of the Leases except for security deposits.

3.3 Management: At all times until this Assignment of Leases and Rents is released or until the assignment granted hereby is exercised by Lender, and at all times thereafter during which Lender is not in actual or constructive possession of the Mortgaged Premises, Mortgagor shall cause the Mortgaged Premises to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Mortgagor shall not permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Mortgagor terminate, shall not/alter, modify, amend, change or default under the terms of any of the Leases or the Guaranties, or give any consent, concession or waiver under any of the Leases or exercise any option of the Lessor permitted by the terms of any of the Leases or the Guaranties, or accept the surrender thereof or consent to any assignment or subletting under any of the leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any and all of the Lessee or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Lender. Mortgagor shall not make any

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other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Mortgaged Premises, or subordinate any of the Leases to any mortgage or other encumbrance, or permit, consent or agree to such subordination without the prior written consent of the Lender. Mortgagor shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Lender, and in the event Lender requests that a specific action be taken, to cause such action to be promptly taken. Mortgagor shall, but only at the direction of Lender, give any consent or exercise any option or election granted to the lessor under any of the Leases. Mortgagor shall execute and deliver, at the reasonable written request of Lender, all such further assurances and assignments as Lender from time to time shall require.

3.4 Execution of Leases: Mortgagor shall not permit any Leases to be made of all or any portion of the Mortgaged Premises except as provided in the Mortgage.

3.5 Notice of Lessor's Default: Mortgagor shall cause notice to be given to Lender of any default by the lessor under any of the Leases promptly upon the occurrence of such default, but in all events in sufficient time to afford to Lender an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default. Each of the Leases shall contain a provision requiring the lessee thereunder to notify Lender of any default by lessor thereunder and granting Lender an opportunity for a reasonable time after such notice to cure such default prior to any right accruing to the lessee to terminate such lease.

3.6 Lender to be Creditor of Lessee: Lender shall be and be deemed to be the creditor of each lessee in the Leases in respect of any and all claims for Damages, assignments for

the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Mortgagor hereby assigns to Lender any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with an option to Lender to apply Damages or any money received by Lender as such creditor in reduction of the indebtedness (in the inverse order of maturity) secured by or to be paid under the Mortgage. Mortgagor hereby appoints Lender as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

#### IV

##### Defaults and Remedies

4.1 Defaults: Each of the following shall constitute a default ("Default") under this Assignment of Leases and Rents:

4.1(a) The untruth of any representation made by Mortgagor herein, the failure by Mortgagor to perform in a full and timely manner, any of Mortgagor's obligations under this Assignment of Leases and Rents or the Note or the breach of any of Mortgagor's covenants contained in this Assignment of Leases and Rents;

4.1(b) The occurrence of any default under the Note or any of the Other Lien Agreements;

4.1(c) The default by the Mortgagor at any one time in its performance of the Landlord's obligations under the outstanding leases relating to the Mortgaged Premises.

4.2 Exercise of This Assignment of Leases and Rents:

4.2(a) Lender may exercise the assignment hereby granted, in the event of any Default, and pursue its rights to collect the Rents or manage the Mortgaged Premises, or both, and otherwise exercise its rights as provided in this Assignment of Leases and Rents, without regard to the adequacy of the security and without waiving any other remedy available to Lender and without waiving such Default.

4.2(b) In the event Lender elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Mortgagor such rights, this Assignment of Leases and Rents shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Lender shall, from time to time upon the occurrence of any Default under this Assignment of Leases and Rents, have all the rights granted hereby.

4.3 Nature of Remedies: No delay or omission on the part of Lender in the exercise of any remedy for a Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment of Leases and Rents shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the Other Lien Agreements. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Mortgagor or the Mortgaged Premises, or either of them, at the sole discretion of Lender and may be exercised as often as occasion therefor shall arise.

4.4 Application of Rents: Lender shall have the power to apply the Rents and Damages, in such order as Lender may determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note or any and all renewals, extensions, modifications or replacements thereof, and also toward the payment of all advances and expenses incurred by Mortgagee under the Mortgage and all expenses for the care and management of the Mortgaged Premises, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents and servants, which expenses Lender may reasonably deem to be necessary to exercise the powers granted to the Lender hereunder. The receipt by Lender of any Rents pursuant to this Assignment of Leases and Rents following a Default and the exercise of any remedies provided for in the Note or the Other Lien Agreements shall not cure such Default or affect or prejudice the exercise of such remedies.



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4.5 Limitation of Lender's Obligations: Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment of Leases and Rents. Lender shall not be liable for uncollected rents or for any claim for damages or set-offs arising out of Lender's management of the Mortgaged Premises other than for damages arising from Lender's gross negligence. Lender shall not be liable to any lessee for the return of any security deposit made under any lease of any portion of the Mortgaged Premises unless Lender shall have received such security deposit from the lessor or such lessee. Lender shall not by reason of this Assignment of Leases and Rents or the exercise of any right granted herein be obligated to perform any obligation of the Lessor under any of the Leases, nor shall Lender be responsible for any act committed by the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Lender a mortgagee in possession of the Mortgaged Premises or any part thereof.

4.6 Reimbursement: Mortgagor shall reimburse, indemnify and hold harmless Lender for and from any and all expenses, losses, damages and liabilities which Lender may incur by reason of this Assignment of Leases and Rents, any of the Leases, or expenses, losses, damages and liabilities incurred in exercising any of the rights granted in this Assignment of Leases and Rents. Any and all amounts due to Lender under this Section 4.6 shall be immediately due and payable, shall be added to the principal amount of the Note and secured by this Assignment of Leases and Rents and the Other Lien Agreements.

4.7 Authorization to Lessees: Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that a default has occurred



under this Assignment of Leases and Rents without inquiry as to whether any such Default has occurred or whether Lender is rightfully entitled to such rent.

V

Miscellaneous

5.1 Modification of Loan Terms: If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, if the Note be renewed, modified or replaced, or if any security for the Note be released, Mortgagor and any other parties now or hereafter liable therefor or interested in the Mortgaged Premises shall be held to consent to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and of the Other Lien Agreements not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Lender.

5.2 Successors and Assigns: This Assignment of Leases and Rents shall inure to the benefit of and be binding upon the respective successors and assigns of Mortgagor and Lender and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the Mortgaged Premises.

5.3 No Merger: Notwithstanding the conveyance or transfer of title to any or all of the Mortgaged Premises to any lessee under any of the Leases, the lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment of Leases and Rents.

5.4 Notices: Whenever Lender or Mortgagor desires to give any notice to the other, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified United States mail, postage prepaid, addressed to the intended recipient at the last address theretofore specified by the addressee in a written notice given to sender. In case no other address has been so specified, notices hereunder shall be delivered or mailed to the following addresses:

Lender: 440 Lincoln Street  
Worcester, Massachusetts 01605  
Attention: Real Estate Investments

Mortgagor: c/o Metropolitan Properties, Inc.  
No. 2 Metroplex Drive  
Birmingham, Alabama 35209

Any notice given in the manner specified herein shall be deemed to have been given on the day it is personally delivered or two business days after it is deposited in the United States mail.

5.5 Exculpation: Except as otherwise provided in the Note and the Guaranty Agreement of even date herewith and subject to the terms thereof, each of which provides for individual liability of the partners of Mortgagor, individually and in their capacity as partners, Lender agrees for itself and its successors and assigns that neither Lender or any of its successors or assigns will at any time bring any action, suit or proceeding against Mortgagor, Raymond D. Gotlieb, Robert L. Bohorfoush, Ingram D. Tynes, Carolyn B. Nelson, and Irby M. Cohen, to recover a money judgment for any sum due hereunder, except an action to foreclose the Mortgage, and Lender waives its right to a deficiency judgment against Mortgagor, Raymond D. Gotlieb, Robert L. Bohorfoush, Ingram D. Tynes, Carolyn B. Nelson, and Irby M. Cohen, in any foreclosure proceeding for the collection of the indebtedness, and agrees to look solely to all security granted to Lender for any deficiency; provided, however, Mortgagor, and any successor in title, shall be subject to personal liability to the extent that (i) payments in the nature of security for the performance of lessee's obligations under any lease of all or any part of the Mortgaged Premises are held, at the time of any default hereunder, or the rents, issues and profits of the

Mortgaged Premises are received or collected by such party in advance other than for each current month in advance, (ii) rents, issues and profits of the Mortgaged Premises are received or collected after any default herein and are not properly applied to the loan or to the normal operating expenses of the Mortgaged Premises, (iii) there shall be any material misrepresentation made herein or in the Other Lien Agreements or in the loan commitment referred to herein, or (iv) any condemnation or casualty insurance proceeds shall be misapplied. Nothing in this clause shall be deemed to be a release or impairment of the indebtedness or of the lien upon the Mortgaged Premises or shall preclude Lender from foreclosing the Mortgage in case of any default or from enforcing any of its rights except as stated in this clause, or shall prejudice the rights of the holder of the Note secured hereby as to any of the conditions of the Note, this Assignment of Leases and Rents and the Other Lien Agreements.

5.6 Governing Law: This Assignment of Leases and Rents shall be governed by and construed in accordance with the laws of the State of Alabama.

5.7 Severability: If any term, restriction or covenant of this Assignment of Leases and Rents is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by Law.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed for and in its name by its duly authorized general partners on this 31st day of December, 1984.

RIVERCHASE CENTER ASSOCIATES, an  
Alabama General Partnership

BY: G-B PARTNERSHIP

By: Raymond D. Gottlieb  
Raymond D. Gottlieb  
General Partner

By: Robert L. Bohorfoush  
Robert L. Bohorfoush  
General Partners

Constituting all its General Partners

BY: Ingram D. Tynes  
Ingram D. Tynes

BY: Carolyn E. Nelson  
Carolyn E. Nelson

BY: Irby M. Cohen  
Irby M. Cohen

CONSTITUTING ALL ITS GENERAL PARTNERS

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned Notary Public in and for said County in said State, hereby certify that Raymond D. Gottlieb and Robert L. Bohorfoush, whose names as general partners of G-B Partnership, an Alabama general partnership acting in its capacity as general partner of Riverchase Center Associates, an Alabama general partnership, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacities as such general partners of G-B Partnership acting in its capacity as general partner of Riverchase Center Associates, executed the same voluntarily for the aforesaid purposes on the day the same bears date.

Given under my hand and official seal this 31st day of December, 1984.

[Signature]  
Notary Public

[Notarial Seal]

My Commission Expires: 10/9/86

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned Notary Public in and for said County in said State, hereby certify that Ingram D. Tynes, Carolyn B. Nelson, and Irby M. Cohen, whose names as general partners of Riverchase Center Associates, an Alabama general partnership, are signed to the foregoing instrument and who are known to me to be such general partners, acknowledged that they, being informed of the contents of the instrument, executed the same voluntarily as such general partners on the day the same bears date.

Given under my hand and official seal this 31st day of December, 1984.

[Signature]  
Notary Public

My Commission Expires: 10/8/86

[Notarial Seal]

instrument was prepared by J. Fred Powell, Attorney,  
600 Bank for Savings Building, Birmingham, Alabama 35203.

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# Schedule I

## LEGAL DESCRIPTION:

A parcel of land situated in the Northeast Quarter of the Southwest Quarter and the Northwest Quarter of the Southeast Quarter of Section 19, Township 19, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Southeast corner of the Southeast Quarter of the Northeast Quarter of said Section 19; thence run West and along the South boundary of said Southeast/Northeast, a distance of 2723.44 feet; thence run Southerly and at right angles to said South boundary a distance of 84.39 feet to the point of beginning, said point of beginning lying on the South right-of-way of Parkway Office Circle; thence run Easterly and along said right-of-way (curving to the right and having a radius of 420.00 feet) a chord distance of 152.58 feet to the point of tangency of said curve; thence run Southeasterly along said right-of-way a distance of 229.05 feet; thence continue Southeasterly and along said right-of-way (curving to the left and having a radius of 930.00 feet) a chord distance of 310.16 feet to the point of tangency of said curve; thence run Easterly and along said right-of-way a distance of 218.73 feet; thence run Southeasterly along said right-of-way (curving to the right and having a radius of 570.00 feet) a chord distance of 198.98 feet to the Northeast corner of this described property; thence with an interior angle of 76 degrees 52 minutes 12 seconds run Southwesterly a distance of 604.89 feet to the North right-of-way of Riverchase Office Road; thence run Northwesterly and along said right-of-way (curving to the left and having a radius of 300 feet) chord distance of 29.99 feet to the point of tangency of said curve; thence run Westerly and along said right-of-way a distance of 104.38 feet; thence run Northwesterly and along said right-of-way (curving to the right and having a radius of 370.00 feet) a chord distance of 170.34 feet to the point of tangency of said curve; thence run Northwesterly and along said right-of-way a distance of 95.64 feet; thence run Westerly and along said right-of-way (curving to the left and having a radius of 530.00 feet) a chord distance of 471.95 feet to the point of tangency of said curve; thence run Southwesterly and along said right-of-way a distance of 10.94 feet; thence run Northwesterly and along said right-of-way (curving to the right and having a radius of 25.00 feet) a chord distance of 35.35 feet to the point of tangency of said curve; said point of tangency lying on the East right-of-way of Riverchase Parkway East; thence run Northwesterly and along said East right-of-way a distance of 30.19 feet; thence run Northwesterly and along said right-of-way (curving to the left and having a radius of 661.41 feet) a chord distance of 189.16 feet to a point being the Southwest corner of this described parcel; thence run Northeasterly a distance of 532.82 feet to the point of beginning.

Situated in Shelby County, Alabama.

According to survey of David B. Herndon, Reg. No. 14105, dated December 26, 1984.

SCHEDULE II  
 TO ASSIGNMENT OF LEASES  
 FROM  
 RIVERCHASE CENTER ASSOCIATES  
 TO  
 STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA  
 EXISTING LEASES

<u>Tenant</u>	<u>Area</u>	<u>Term</u>
Modern Machinery	5,533 sq.ft.	5 years
American Liberty Insurance	17,171 sq.ft.	5 years
Marketing Specialists	6,567 sq.ft.	5 years
AT&T	8,989 sq.ft.	5 years

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STATE OF ALA. SHELBY CO.  
 I CERTIFY THIS  
 INSTRUMENT WAS FILED

1984 DEC 31 AM 11: 27

*Thomas A. Henderson, Jr.*  
 JUDGE OF PROBATE

*Rec. 3750*  
*Ind. 100*  
*3850*



