

39.10

This document prepared by:
Buchanan Ingersoll
Professional Corporation
600 Grant Street, USX Tower
Pittsburgh, PA 15219
Nathaniel C. Hunter, Esquire

ASSIGNMENT OF LEASES AND RENTS

Made as of the 6th day of December, 1990, by ROSC
ASSOCIATES JOINT VENTURE (hereinafter the "Assignor"), an Alabama
general partnership to PITTSBURGH NATIONAL BANK ("Assignee"), a
national banking association;

FOR VALUE RECEIVED, and intending to be legally bound,
Assignor hereby grants, sells, assigns, transfers, sets over and
delivers unto Assignee all right, title and interest of Assignor
in and to all Leases (as hereinafter defined) covering all or any
part of those certain premises located in the City of Hoover,
Shelby County, Alabama, as more particularly described in Exhibit
A attached hereto and made a part hereof, and/or covering all or
any part of the improvements now or hereafter located thereon
(hereinafter collectively called the "Premises"), together with
all the Rents (hereinafter defined) due and to become due to
Assignor, and together with all rights of Assignor to amend,
modify, terminate, extend and/or renew the Leases and/or to waive
the Rents and/or the terms of the Leases.

TO HAVE AND TO HOLD the same unto Assignee, its successors
and assigns, for the purpose of securing the performance and
discharge by Assignor of the Obligations (as hereinafter
defined).

Assignor hereby covenants, promises and agrees as follows:

Mike A.

1. As used in this Assignment, the following terms shall have the meanings indicated, unless the context otherwise requires:

(a) "Leases" shall mean (i) all present and future leases and subleases covering all or any portion of the Premises, (ii) all agreements for use or occupancy of any portion of the Premises, (iii) all modifications, supplements, extensions and renewals of any such Lease and any and all further Leases (including rights in respect of lessees and sublessees holding over and tenancies following attornment) of all or any part of the Premises, and (iv) any and all guaranties of the performance of any lessee or sublessee under any Lease.

(b) "Obligations" shall mean (i) the prompt and punctual payment of all principal and interest and other sums coming due under that certain Mortgage Note, of even date herewith, given by Assignor to Assignee in the principal amount of \$2,900,000, as the same may be amended, supplemented, renewed, increased or replaced from time to time (the "Note") and (ii) the prompt and punctual payment and performance of all obligations, liabilities, covenants and sums now or hereafter to be paid or performed by Assignor under that certain Mortgage and Security Agreement, of even date herewith, by Assignor to Assignee (the "Mortgage") and under all other agreements, instruments and documents given to Assignee to evidence, secure or otherwise support the indebtedness evidenced by the Note (all such agreements,

BOOK 323 PAGE 247

instruments and documents, including the Note and this Assignment, being hereinafter referred to as the "Loan Documents").

(c) "Rents" shall include all of the rents, income, receipts, revenues, security deposits, issues and profits now due or which may hereafter become due under any Lease and all other rents, income, receipts, revenues, issues and profits now due or which may hereafter become due with respect to the Premises, or any part thereof, or the use, occupancy or operation of the same; and the proceeds of all such Rents, both cash and noncash, including but not limited to any minimum rents, additional rents, percentage rents, parking, maintenance, insurance proceeds, tax contributions, any damages following default by a lessee or sublessee under any Lease, any penalties or premiums payable by tenant under any Lease and the proceeds of any policy of insurance covering loss of rents resulting from destruction or damage to any portion of the Premises.

2. The parties intend that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Assignee the right to collect the Rents and to apply them in payment of the principal and interest and all other sums payable on the Obligations. However, Assignee hereby grants to Assignor a license, subject to the provisions set forth below, to collect the Rents as they become due for its own account so long as there is no Event of Default

under the Mortgage and so long as there is no default by Assignor in performance of the terms, covenants or provisions of the other Loan Documents. Nothing contained herein, nor any collection of Rents by Assignee or by a receiver shall be construed to make Assignee a "mortgagee-in-possession" of the Premises so long as Assignee has not itself entered into actual possession of the Premises.

3. Upon the occurrence of an Event of Default as defined in the Mortgage or any default under the terms and conditions of any of the other Loan Documents, this Assignment shall constitute an irrevocable direction to and full authority to each lessee and sublessee under any Leases to pay all Rents to Assignee without proof of the default relied upon. Assignor hereby irrevocably authorizes each lessee, sublessee, guarantor, person and entity to rely upon and comply with any notice or demand by Assignee for the payment to Assignee of any Rents due or to become due.

4. Assignor warrants as to each Lease:.

(a) that the terms of each Lease have been fully disclosed to and approved by Assignee, and each Lease is in full force and effect;

(b) that no Lease or any interest therein has been previously assigned or pledged;

(c) that no lessee or sublessee under any Lease has any defense, setoff or counter-claim against Assignor; and

(d) that no Rents have been collected more than one (1) month in advance.

All the foregoing warranties shall be deemed to be continuously reaffirmed until all Obligations shall have been paid in full.

5. Assignor agrees with respect to each Lease:

(a) If the Lease provides for a security deposit paid by the lessee or sublessee, this Assignment transfers to the Assignee, to the extent permitted by law, all of Assignor's right, title and interest in and to the security deposit; provided that Assignor shall have the right to retain said security deposit so long as Assignor is not in default under the Loan Documents; and provided further that Assignee shall have no obligation to the lessee or sublessee with respect to such security deposit unless and until Assignee comes into actual possession and control of said deposit.

(b) Except as otherwise may be permitted by the Mortgage, Assignor shall not terminate any Lease (except pursuant to the terms of the Lease upon a default by the lessee or sublessee), or modify or amend any Lease or any of the terms thereof, or grant any concessions in connection therewith or accept a surrender thereof, without the prior written consent of Assignee.

(c) Assignor shall not collect any Rents more than one (1) month in advance.

(d) Assignor shall not discount any future accruing Rents.

(e) Assignor shall not consent to any assignment of any Lease, or any subletting thereunder, whether or not in accordance with its terms, without the prior written consent of Assignee.

(f) Assignor shall not execute any further pledge or assignment of its interest in any of the Leases or Rents or suffer or permit any such assignment to occur by operation of law.

(g) Assignor shall faithfully perform and discharge all obligations of the lessor under the Leases, and shall give prompt written notice to Assignee of any notice of Assignor's default received from any lessee or sublessee or any other person and furnish Assignee with a complete copy of said notice. Assignor shall appear in and defend, at no cost to Assignee, any action or proceeding arising under or in any manner connected with any Lease. If requested by Assignee, Assignor shall enforce each Lease and all remedies available to Assignor against the lessee or sublessee in the case of default under the Lease by the lessee or sublessee.

(h) Except as otherwise may be permitted by the Mortgage, Assignor shall not enter into any Lease without Assignee's written consent. The approval procedure for the Leases is more particularly set forth in the Mortgage. Assignor shall promptly provide to Assignee a true and correct copy of each executed Lease.

(i) Assignor shall deliver to Assignee, promptly upon request, duly executed estoppel certificates from any one or more lessees or sublessees as required by Assignee attesting to such facts regarding the Leases as Assignee may reasonably require,

including but not limited to attestations that each Lease covered thereby is in full force and effect, that the lessee or sublessee is in occupancy and paying rent on a current basis with no rental offsets or claims, that no rental has been paid more than one (1) month in advance, and that there are no actions, whether voluntary or otherwise, pending against the lessee or sublessee, as the case may be, under the bankruptcy or insolvency laws of the United States or any state thereof.

(j) Nothing contained herein shall be construed to impose any liability or obligation on Assignee under or with respect to any Lease. Assignor shall indemnify and hold Assignee harmless from and against any and all liabilities, losses, damages, cost and expense which Assignee may incur under any Lease or by reason of this Agreement, and from and against any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations to be performed or discharged by Assignee under any Lease or this Assignment. Should Assignee incur any liability, loss, damage, cost or expense under or by reason of any Lease or under or by reason of this Assignment, Assignor shall immediately upon demand reimburse Assignee for the amount thereof together with all costs and expenses and reasonable attorneys' fees incurred by Assignee. All of the foregoing sums shall bear interest until paid at the Default Rate set forth in the Note. Any Rents collected by Assignee may be applied by Assignee in its discretion in satisfaction of any such liability, loss, damage, cost or expense.

6. Assignor hereby grants to Assignee the following rights:

(a) Assignee shall be deemed to be the creditor of each lessee or sublessee, as the case may be, in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee (without obligation on the part of Assignee, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein).

(b) Assignee shall have the right to assign Assignee's right, title and interest in the Leases to any subsequent holder of the Mortgage or any replacement or renewal thereof or any participating interest therein or to any person acquiring title to all or any part of the Premises through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Assignee.

(c) Assignee shall have the right (but not the obligation), upon any failure of Assignor to perform any of its agreements hereunder, to take any action as Assignee may deem necessary or appropriate to protect its security, including but not limited to appearing in any action or proceeding and performing any obligations of the lessor under any Lease, and Assignor agrees to pay, on demand, all costs and expenses (including without limitation reasonable attorney's fees) incurred by Assignee in connection therewith, together with interest thereon at the Default Rate set forth in the Note.

BOOK 323 PAGE 253

(d) Upon an Event of Default as aforesaid or upon any default by Assignor under any of the other Loan Documents, and without notice to or consent of Assignor, Assignee shall have the following rights (none of which shall be construed to be obligations of Assignee):

(i) Assignee shall have the right to apply any of the Rents to pay installments due for personal property rented or purchased on credit, insurance premiums on personal property, or other charges relating to personal property on the Premises, provided however that this Assignment shall not make Assignee responsible for the control, care, management or repair of the Premises or any personal property or for the carrying out of any of the terms or provisions of the Leases.

(ii) Assignee shall have the right to apply the Rents and any sums recovered by Assignee pursuant hereto to outstanding Obligations, and to all other charges for taxes, insurance, improvements, maintenance and other items relating to the Premises, all in such order as Assignee shall in its discretion determine and whether or not the same be then due.

(iii) Assignee shall have the right to execute new Leases.

(iv) Assignee shall have the right to cancel or alter any existing Leases.

(v) Assignee shall have the authority, as Assignor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of Assignor and to bind Assignor on all papers and documents relating to the operation, leasing and maintenance of the Premises.

All of the foregoing rights and remedies of Assignee are cumulative, and Assignee shall also have upon the occurrence of any such default or Event of Default all other rights and remedies provided under the other Loan Documents and any other agreement between Assignor and Assignee, or otherwise available at law or in equity or by statute.

7. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Mortgage or in any other document executed in connection with this transaction. Failure of the Assignee to avail itself of any terms, covenants or conditions of this Assignment for any period of time or for any reason shall not constitute a waiver thereof.

8. Assignee may take or release other security, may release any party primarily or secondarily liable for any Obligations secured hereby, may grant extensions, renewals or indulgences with respect to such Obligations, may amend, modify or cancel all or any of the terms of the Obligations, and may apply any other security therefor held by Assignee to the satisfaction of such Obligations without prejudice to any of Assignee's rights

hereunder or under the other Loan Documents. The rights of Assignee to collect the Obligations and to enforce any other security therefor held by Assignee may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action by Assignee hereunder. The failure of Assignee to avail itself of any of the terms, covenants and conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this Assignment or any of the terms, covenants or conditions hereof, at any time or times that Assignee shall deem fit.

9. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof not permitted hereby shall be invalid without the written consent of Assignee.

10. Upon payment to Assignee of the full amount of all Obligations, this Assignment shall be void and of no further effect.

11. The terms and conditions of this Agreement shall be binding upon Assignor, its successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns.

12. Notices required or permitted to be given hereunder shall be deemed to have been given when sent in accordance with the terms of the Mortgage.

13. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.

14. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

WITNESS the due execution hereof as of the day and year first above written.

ATTEST:

ROSC ASSOCIATES JOINT VENTURE,
an Alabama general partnership

By: RC Properties Limited
Partnership, General
Partner

By: RC Land Company,
General Partner

By: Lynda H. Yohn
Title: Assistant Secretary

[SEAL]

By: Darlene Clarke
Title: Vice-President

By: Riverchase Office Park,
Ltd., General Partner

By: Metropolitan
Contractors, Inc.,
General Partner

By: Margaret M. Robinson
Title:

[SEAL]

By: Samuel J. Helled
Title: President

BOOK 323 PAGE 257

STATE OF Delaware)

COUNTY OF New Castle)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Dadene Clark, whose name as Vice-President, of RC Land Company, acting in its capacity as General Partner of RC Properties Limited Partnership, acting in its capacity as General Partner of ROSC ASSOCIATES JOINT VENTURE, an Alabama general partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as General Partner of said limited partnership as General Partner of said general partnership on the day the same bears date.

Given under my hand and official seal this 6th day of ~~November~~, 1990.
December

[Signature]
Notary Public

My Commission Expires: April 16, 1994

NOTARY PUBLIC
MY COMMISSION EXPIRES: APRIL 16, 1994

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Raymond G. Grieb, whose name as President, of Metropolitan Contractors, Inc., acting in its capacity as General Partner of Riverchase Office Park, Ltd., acting in its capacity as General Partner of ROSC ASSOCIATES JOINT VENTURE, an Alabama general partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as General Partner of said limited partnership as General Partner of said general partnership on the day the same bears date.

Given under my hand and official seal this 11th day of ~~November~~, 1990.
December

[Signature]
Notary Public

My Commission Expires: 10/3/91

EXHIBIT A

Legal Description of the Premises:

Lot 1-B, according to a Resurvey of Lot 1 of Riverchase Office Park Phase II, as recorded in Map Book 14, Page 99, being a resurvey of Lot 1 of Riverchase Office Park Phase II, as recorded in Map Book 14, Page 77, in the Probate Office of Shelby County, Alabama, being more particularly described as follows:

From the Southeast corner of the NE 1/4 of SE 1/4 of Section 19, Township 19 South, Range 2 West, run in a Northerly direction along the East line of said Section for a distance of 283.46 feet; thence turn an angle to the left of 90 degrees and run in a Westerly direction for a distance of 729.70 feet; thence turn an angle to the left of 40 degrees 23 minutes 12 seconds and run in a Southwesterly direction for a distance of 262.29 feet; thence turn an angle to the right of 30 degrees 38 minutes 09 seconds and run in a Westerly direction for a distance of 303.59 feet; thence turn an angle to the right of 92 degrees 43 minutes 07 seconds and run in a Northerly direction for a distance of 328.01 feet to the Northwest corner of the Gaskill Property being the point of beginning; thence turn an angle to the left of 38 degrees 19 minutes 10 seconds and run in a Northwesterly direction 184.03 feet; thence turn an angle right of 72 degrees 04 minutes 15 seconds and run Northeasterly 422.65 feet to a point on a curved Southwest right of way line of Parkway Office Circle being concave in a Northeasterly direction and having a radius of 780.0 feet; thence turn an angle to the right of 82 degrees 30 minutes 50 seconds to the chord of said curve and run in a Southeasterly direction along the arc of said curve for a distance of 33.39 feet to the end of said curve; thence run in a Southeasterly direction along a line tangent to the end of said curve for a distance of 177.95 feet to a point of beginning of a second curve, said second curve being concave in a Southwesterly direction and having a radius of 310.0 feet and a central angle of 64 degrees 06 minutes; thence run along the arc of said curve for a distance of 346.81 feet to the end of curve; thence run in a Southeasterly direction along a line tangent to the end of said curve for a distance of 72.16 feet to the most Northerly corner of the Gaskill property; thence turn an angle to the right of 84 degrees 11 minutes 48 seconds and run in a Southwesterly direction for a distance of 495.17 feet to the point of beginning.

According to the survey of Johnny L. Riddlesperger Al. Reg. No. 14284 last revised November 14, 1990.

Together with all right, title and interest in and to the easements, rights, and restrictions contained in that certain Declaration of Reciprocal Access, Utilities, Drainage and Parking Easement as recorded in Real Book 323, Page 94, in the Probate Office of Shelby County, Alabama.

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

90 DEC 20 PM 2:50

JUDGE OF PROBATE

1. Deed Tax	—	\$	—
2. Mtg. Tax	—	\$	—
3. Recording Fee	—	\$	33.00
4. Indexing Fee	—	\$	3.00
5. No Tax Fee	—	\$	—
6. Certified Fee	—	\$	1.00
Total	—	\$	39.00

