

COOLING AGREEMENT

MADE this 19th day of June, 1979,

BY AND BETWEEN

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES ("Equitable"), a New York corporation, having its principal place of business at 1285 Avenue of the Americas, New York, New York 10019, party of the first part,

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THREE RIVERS CAPITAL, INC. ("Three Rivers"), a Georgia corporation, and GATEWAY CAPITAL, INC., ("Gateway") a Georgia corporation with offices at Suite 213, 66 Luckie Street, Atlanta, Georgia 30303, parties of the second part.

WITNESSETH:

WHEREAS, Three Rivers and Gateway are each owners of certain portions of a 26 story building (the "Building") situate at 320 Fort Duquesne Boulevard in the Second Ward of the City of Pittsburgh, Allegheny County, Pennsylvania;

WHEREAS, Equitable owns other property adjacent to the Building, on which Equitable maintains a refrigeration plant consisting of certain machinery and equipment (the "Plant") providing chilled water to the Building, the Pittsburgh Hilton Hotel and other buildings in the area known as Gateway Center;

WHEREAS, Three Rivers and Gateway have each requested Equitable to continue to furnish chilled water from the Plant for the purpose of providing air conditioning for the Building; and

WHEREAS, Equitable is willing to comply with such request, upon the terms and subject to the conditions herein set forth.

NOW, THEREFORE, the parties hereto, each intending to be legally bound, covenant and agree, as follows:

ARTICLE 1.

Section 1.1. The following terms shall have the meanings ascribed to them unless the context otherwise requires:

- (a) "Base Year" shall be deemed to mean the calendar year 1977.
- (b) "Btu" means British Thermal Unit.
- (c) "Delivery Point" means the orifice of the Btu meter referred to in Section 2.4 hereof.
- (d) "Non-Cumulative" means that if the annual minimum number of Therms of chilled water shall not be taken in the Base Year or in any Operating Year, the number of Therms which may be taken for the minimum charge in the first or any subsequent Operating Year, as the case may be, shall not be increased by reason thereof.
- (e) "Operating Expenses" shall be deemed to mean and include (but not by way of limitation) property taxes on the Plant equitably apportioned out of the total tax bill, and all direct and allocable expenses incurred or paid by or on behalf of Equitable in respect of the operation, maintenance and repair of the Plant which, in accordance with accepted principles of sound accounting practice, are properly chargeable to such operation, maintenance and repair (but excluding any costs that are properly classified as capital costs). In the event of any dispute between the parties hereto as to the propriety of including any amount of expense in determining such operating costs, such dispute shall be determined by the firm of Haskins and Sells or such other firm of independent public accountants of recognized responsibility as may be agreed upon between the parties. Such determination shall be conclusive upon the parties and the expenses involved therein shall be borne equally by the parties.
- (f) "Operating Year" shall be deemed to mean the calendar year 1977 and any calendar year thereafter. If because of the termination of this Agreement for reasons other than the default of either party thereto, the last Operating Year is less than a full Calendar Year, then for purposes of comparing the last Operating Year with the Base Year, (i) the Base Year shall be deemed to consist of the same respective months as the last Operating Year, and (ii) the minimum annual number of Therms (i.e., 110,000) shall be reduced proportionately. For purposes of the determination of the length of the last Operating Year, any fraction of a month less than one-half shall be disregarded and any fraction of a month of one-half or more shall be considered a full month.
- (g) "Point of Return" means the point in the return line where the temperature of the return water is measured by the Btu meter referred to in Section 2.4 hereof.
- (h) "Therm" means 100,000 Btu's.

ARTICLE 2.

Section 2.1. Equitable will furnish to Three Rivers and Gateway and Three Rivers and Gateway will take from Equitable all requirements for chilled water to air condition the Building 24 hours a day (except as herein otherwise provided); that is, Equitable will pump chilled water from the Plant to the mechanical equipment room in the Building and such water will be returned by Three Rivers and Gateway to the Point of Return after the extraction by Three Rivers and Gateway of cooling effect therefrom, all subject to and upon the terms and conditions hereinafter set forth.

Section 2.2. Three Rivers and Gateway will pay Equitable for the cooling effect provided by chilled water, as follows:

(a) Except as hereinafter provided Equitable will furnish chilled water hereunder at the rate of \$.70 per Therm payable upon receipt of statements therefor; and

(b) For the first 110,000 Therms, or portion thereof, Non-Cumulative, in any year beginning on the date hereof or on any anniversary of such date, a minimum charge of \$77,000.00 per annum, payable in equal monthly installments of \$6,416.67 on the first day of each and every calendar month for the then current month, the charge for any fractional calendar year at the commencement or termination of this Agreement to be pro-rated; and

(c) For each Therm in excess of 110,000 Therms in any such year, Non-Cumulative, the sum of seventy cents (\$.70) per Therm, such sum to be paid annually upon receipt of a statement therefor; and

(d) Such additional amounts as may become due pursuant to the provisions of Section 3.1 hereof.

Section 2.3. The chilled water will be delivered to the Building at the place specified in Section 2.1 hereof at a pressure adequate to produce through the Building's primary chilled water system a flow, under maximum load conditions, of 1400 gallons per minute of chilled water, provided, however, that the pressure loss in the primary chilled water system of the Building, i.e., the pressure differential, is not in excess of 60 feet of water, as measured by a meter in the mechanical equipment room in the Building. Three Rivers and Gateway will install and maintain such meter at their own cost and expense. Equitable will use every reasonable effort to maintain the temperature of the chilled water supplied to the Building at or about 42° Fahrenheit at the Delivery Point.

Section 2.4. Three Rivers and Gateway will at their own cost and expense install, maintain and operate in the mechanical equipment room in the Building, throttling and by-pass controls of such type and kind as to limit the demand for chilled water in proportion to the load, and agrees that at no time will the demand exceed 700 tons of cooling effect. The measurement of the cooling effect extracted by Three Rivers and Gateway from the chilled water, in terms of Therms, will be by means of a Btu meter installed, maintained and operated by Equitable in the Plant at Equitable's own cost and

expense, except as provided in Section 3.1 hereof. The Btu meter will measure, indicate and record, both the rate of flow of chilled water supplied to the Building and the temperature differential between the water at the Delivery Point and the Point of Return and will integrate and total the product of flow and temperature differential in terms of Therms.

Section 2.5. Equitable shall not be liable or responsible for any loss in pressure or rate of flow due to the failure of Three Rivers and Gateway to maintain connecting piping in the Building for the chilled water between the exterior surface of the exterior wall of the Building and said mechanical equipment room, nor due to the failure of Three Rivers and Gateway to properly service, repair or replace such piping.

### ARTICLE 3.

Section 3.1. In the event that the Operating Expenses per Therm of cooling effect produced in any Operating Year exceed the Operating Expenses per Therm of cooling effect produced during the Base Year due to increases in labor rates, utility rates, or taxes, or due to the need for additional labor units because of operating practices beyond the control of Equitable and which are generally accepted in the Pittsburgh area for one or more of the types of buildings served by the Plant, or any of such causes, then Three Rivers and Gateway will pay to Equitable within 10 days after receipt of bills therefor, and in addition to the sums herein elsewhere agreed to be paid, such excess per Therm of chilled water multiplied by the greater of 110,000 or the number of Therms of chilled water delivered to the Building during such Operating Year.

Section 3.2. In the event that Equitable is subjected to any sales, service, utility or similar tax (other than an income or property tax) on the chilled water furnished pursuant to this Agreement, or is required to collect any such tax from Three Rivers and Gateway then Three Rivers and Gateway will upon demand pay such tax or reimburse Equitable for such tax.

Section 3.3. Where anything is herein provided to be done at the cost or expense of Three Rivers and Gateway such cost or expense shall, except as herein otherwise provided, be payable upon receipt of a statement therefor.

Section 3.4 In the event that any sum herein agreed to be paid by Three Rivers and Gateway to Equitable shall not be paid when due, Equitable shall have the right, at its election, if said sum is not paid within 20 days after written notice to Three Rivers and Gateway to discontinue furnishing chilled water hereunder, without being liable to Three Rivers or Gateway or either of them for any damages by reason thereof. Such right shall be in addition to and not in exclusion of any and all other rights of Equitable hereunder.

Section 3.5. Should the record of any meter be interrupted at any time for any reason, the number of Therms of chilled water consumed for such period of interruption shall be computed on the basis of the nearest previous date or dates having the closest mean temperature or temperatures to the mean temperature or temperatures on the date or dates of such period of interruption. Three Rivers and Gateway shall have the right, upon notice to Equitable and during business hours, without unduly interfering with the business and operation of the Plant, to inspect and observe all machinery, equipment and meters and to read all meters, regulators and other measuring devices.

Section 3.6. The Plant will be shut down once annually, and more often as may be necessary, for inspection, cleaning, normal maintenance and necessary repairs, and during such period chilled water will not be available to the Building from the Plant. Except in cases of emergency, Equitable will give Three Rivers and Gateway 10 days' notice of any such shutdown, and such shutdown shall, insofar as reasonably practicable, be at a time mutually acceptable to the parties. No reduction shall be made, by reason of any such shutdown, in the sums herein agreed to be paid by Three Rivers and Gateway.

Section 3.7. In order that Equitable may at all times have the necessary information to schedule the operation of the Plant, Three Rivers and Gateway will, not less than 10 days prior to the beginning of each calendar quarterly period furnish to Equitable an estimate of the Building's day-to-day requirements of chilled water for such period, and Three Rivers and Gateway will give Equitable at least 48 hours' prior notice of any change in such day-to-day estimate of requirements.

Section 3.8. Equitable will use every reasonable effort at all times to provide a regular and uninterrupted supply of chilled water as provided in this Agreement, but Equitable shall not be liable for any interruption, irregularity or failure of such supply from any cause beyond Equitable's control, including without limitation, the illegality or impossibility of performance by Equitable of any of Equitable's obligations hereunder. It is not the intent of the parties hereto to confer any benefit or right on third parties.

Section 3.9. Equitable's engineering personnel shall have the right to enter the mechanical equipment room of the Building in case of emergency or at any other reasonable times for the purpose of checking on leaks and on the use of chilled water and to read meters, regulators and measuring devices. Dehumidifying coils which are subject to freezing shall be valved off in winter so as to prevent the loss of chilled water from broken coils.

Section 3.10. Except in the event of emergencies, Equitable will not cease operation of the Plant with respect to furnishing requirements of chilled water to the Building unless such service is assumed by a public utility authorized to do business in Pennsylvania, or unless this Agreement is assigned by Equitable pursuant to the provisions of Section 3.11 hereof.

Section 3.11. This Agreement shall not be assigned or transferred by either party hereto without, in each case, the prior written consent of the other party and any such assignment without such consent shall be void, however, any assignment at any time by Three Rivers to Gateway or Gateway to Three Rivers shall not be deemed to constitute an assignment for the purposes of this Section 3.11, if the assignee shall assume the undertakings of the assignor hereunder and notice of such assignment and assumption shall be given to Equitable. The assignment or transfer of this Agreement to a person, firm or corporation to whom Equitable shall lease or transfer the premises upon which the Plant is located shall not be deemed a violation of this covenant, provided, however, that Equitable shall include in any deed or lease to the said part of the said premises so conveyed or leased, if the grantee or lessee is other than a public utility, a covenant running with the land to the effect that the owner or lessee thereof, as the case may be, will be bound to comply with the provisions, covenants and agreements of this Agreement to be performed by Equitable. Any assignment or transfer permitted hereby shall release the party so assigning or transferring from the performance of any of such party's obligations and undertakings hereunder from and after the effective date of such assignment or transfer.

Section 3.12. This Agreement is subject to the continued right of Equitable to draw water from the Allegheny River through the existing conduit in sufficient quantities to operate the Plant at a load sufficient to supply chilled water to the Building as herein provided and in required amounts to the Pittsburgh Hilton Hotel and Buildings 1, 2, 3 and 4, Gateway Center, and in the event that such right is terminated, Equitable shall be under no obligation to render further service under this Agreement.

Section 3.13. Equitable, Three Rivers and Gateway recognize that the Plant will render service not only to the Building but also to other tenants and properties in Gateway Center. Notwithstanding the provisions of Section 3.12 hereof, Equitable will nevertheless endeavor to meet all of the Building's requirements pursuant to the terms of this Agreement and will treat all persons entitled to such service equally and without discrimination against one and in favor of the other.

ARTICLE 4.

Section 4.1. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns and is not intended for the public benefit or the benefit of any other party. Accordingly, the enforcement of rights and remedies hereunder shall be vested solely and exclusively in the parties hereto and their respective successors and assigns, and heirs, personal representatives and assigns, as the case may be.

Section 4.2. All notices, demands and other communications which may or are required to be given to or made by either party to the other in connection with this Agreement shall be in writing, shall be given either by personal delivery or by certified or registered United States mail, return receipt requested, and shall be deemed to have been given or made when personally delivered or when deposited in the United States mail as aforesaid, postage prepaid, addressed to the respective parties as follows:

If to Equitable:

The Equitable Life Assurance Society  
of the United States  
1285 Avenue of the Americas (32nd Floor)  
New York, New York 10019

Attention: Management Department, Servicing Division

with a copy to:

The Equitable Life Assurance  
Society of the United States  
Gateway Center Management Office  
3 Gateway Center  
Pittsburgh, Pennsylvania 15222

Attention: General Manager, Gateway Center

If to Three Rivers and Gateway:

Suite 213  
66 Luckie Street  
Atlanta, Georgia 30303

or to such other address and to the attention of such other person as the parties hereto from time to time may specify by notice to the other.

Section 4.3. This Agreement may be amended, renewed, extended or cancelled only by a written agreement executed on behalf of each of the parties hereto in the same manner in which this Agreement is executed and neither party shall at any time

in any way assert or contend that any amendment, extension or cancellation of this Agreement (or of any part or parts hereof, including this Section 4.3) has been made other than as aforesaid.

Section 4.4. This Agreement constitutes and contains the entire and only agreement between and among the parties relating to the subject matter hereof and supersedes and cancels any and all pre-existing agreements and understandings between the parties relating to the subject matter hereof. No prior and contemporaneous negotiations between or among the parties leading up to the execution hereof shall be used by any party to construe the terms or affect the validity of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied on by any party.

Section 4.5. No waiver of any provision of this Agreement nor consent to any departure herefrom shall in any event be effective except by a written instrument executed in the same manner in which this Agreement is executed so waiving or consenting, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 4.6. If any provision of this Agreement, or application thereof to any party hereto or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are and shall be deemed to be severable.

Section 4.7. This Agreement shall be deemed to be an agreement made under the laws of the Commonwealth of Pennsylvania, and for all purposes shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of Pennsylvania.

Section 4.8. No provision hereof shall be deemed to constitute any party hereto a partnership, association, joint venture or other entity with any other party hereto, nor constitute any party the agent of another party hereto, nor in any manner limit any party in carrying on their respective separate businesses or activities, nor impose upon any party any liability or obligation except as herein expressly provided.




Section 4.9. This Agreement shall for all purposes constitute a covenant running with the land and shall be binding upon Equitable, Gateway & Three Rivers and Investments and their respective successors and assigns and upon each subsequent owner of any portion of or interest in the Building and their respective heirs, personal representatives and assigns, or successors and assigns, as the case may be.

WITNESS the due execution hereof.

EQUITABLE:  
THE EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE UNITED STATES


By: T. J. Fitzgerald  
T. J. Fitzgerald Vice President

Attest:  
  
Helen G. Patrick  
Helen G. Patrick  
Assistant Secretary  
[Corporate Seal]

Attest:

THREE RIVERS:  
THREE RIVERS CAPITAL, INC.

By: [Signature]  
President

[Signature]  
Secretary  
  
[Corporate Seal]

GATEWAY:  
GATEWAY CAPITAL, INC.

By: [Signature]  
President

[Signature]  
Secretary

  
[Corporate Seal]

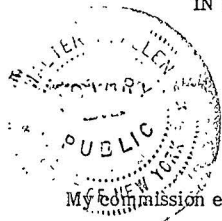
STATE OF NEW YORK )

COUNTY OF NEW YORK )

ss:

On this, the 19<sup>th</sup> day of June, 1979, before me, a Notary Public the undersigned officer, personally appeared T. J. Fitzgerald, who acknowledged himself to be Vice President of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Walter F. Allan  
Notary Public

[Notarial Seal]

WALTER F. ALLAN  
Notary Public, State of New York  
Qualified in Kings Co. No. 24-5053000  
Cert. Filed in New York County  
Commission Expires March 30, 1980

My commission expires:

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF ALLEGHENY )

ss:

On this, the 21<sup>st</sup> day of June, 1979, before me, a Notary Public the undersigned officer, personally appeared Robert S. Beauchamp who acknowledged himself to be the President of Three Rivers Capital, Inc., a Georgia corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Walda J. Vickery  
Notary Public

[Notarial Seal]

My commission expires:

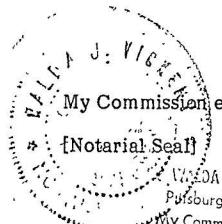
COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF ALLEGHENY )

ss:

On this, the 14<sup>th</sup> day of June, 1979, before me, the undersigned officer, personally appeared Robert S. Beauchamp who acknowledged himself to be the President of Gateway Capital, Inc., a Georgia corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Walda J. Vickery  
Notary Public

My Commission expires:

[Notarial Seal]

WALDA J. VICKERY, Notary Public  
Pittsburgh, Allegheny County, Pa.  
My Commission Expires Oct. 14, 1982

JUN 22 1979

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COOLING AGREEMENT

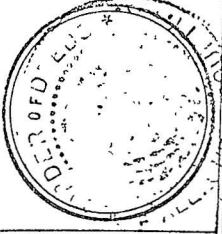
THE EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE UNITED STATES

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*1600*  
*1600*  
THREE RIVERS CAPITAL, INC.  
and  
GATEWAY CAPITAL, INC.

MAIL TO:  
~~George L. Gass~~  
57th Floor, U.S. Steel Building  
Pittsburgh, PA 15219  
*Alan P. Kest*  
*P.O. Box 2009*  
*Pittsburgh, PA. 15230*

X

STATE OF PENNSYLVANIA } S.S.  
 COUNTY OF ALLEGHENY }  
 RECORDED IN THE OFFICE FOR THE RECORDING OF  
 DEEDS, ETC. IN AND FOR THE SAID COUNTY, ON THIS 22nd DAY  
 OF June A.D., 19 79 IN Deed  
 BOOK VOL. 6122 PAGE 862 WITNESS MY HAND AND SEAL  
 OF SAID OFFICE, THE DAY AND YEAR AFORESAID.  
*John J. Geller* RECORDER



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