3028

THIS INSTRUMENT PREPARED BY:

Nancy C. Osborne
Lewis Martin Burnett & Dunkle
1900 SouthTrust Tower
Birmingham, Alabama 35203

PLEASE RETURN TO:

Nancy C. Osborne
Lewis Martin Burnett & Dunkle
1900 SouthTrust Tower
Birmingham, Alabama 35203

STATE OF ALABAMA)
:
SHELBY COUNTY)

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is made as of the 21st day of April, 1987, by Junior Lender (described below) to and for the benefit of Senior Lender (described below).

Identification of Parties and Instruments:

Junior Lender:	Vera J. Anderson 1969 Southwood Road, Vestavia B'ham., AL. 35216
Senior Lender:	Protective Life Insurance Company 2801 Highway 280 South Birmingham, Alabama 35223
Borrower:	Valleydale Village Properties, an Alabama general partnership
Junior Note:	All promissory notes, leases, and other evidences of indebtedness, held by any Junior Lender, whenever executed, and including without limitation any future advances thereunder.
Junior Mortgage:	All mortgages, vendor's liens, leases, assignments of rents, and other documents or instruments held by Junior Lender relating to the Property (defined below) described in Exhibit A attached hereto, regardless of when executed and when filed for record.
Senior Note:	(a) $930,000 as amended dated October 3, 1979. (b) $500,000 dated April 27, 1987.
Senior Mortgage - Date and Information	(a) Mortgage and Security Agreement dated

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Land [redacted] [redacted] [redacted]

October 3, 1979, recorded in Book 396, Page 912 of the Probate Office of Shelby County, Alabama, as amended.

(b) Mortgage and Security Agreement dated April 27, 1987, recorded in Book 127, Page 491, of the Probate Office of Shelby County, Alabama.

1. **Recitals.**

1.1 Borrower has executed and delivered the Junior Note made payable to the order of Junior Lender. The Junior Note is secured by the Junior Mortgage, made by Borrower in favor of Junior Lender and encumbering the real estate legally described in Exhibit A attached hereto and by this reference made a part hereof (the "Property") (the Junior Note, Junior Mortgage and any other documents and instruments in connection therewith are hereinafter collectively referred to as the "Junior Loan Documents").

1.2 Borrower has executed and delivered the Senior Note made payable to the order of Senior Lender. The Senior Note is secured by the Senior Mortgage encumbering the Property, and by an Assignment of Leases and Rents of even date therewith (the Senior Note, Senior Mortgage, Assignment of Rents and Leases and any other documents and instruments in connection therewith are hereinafter collectively referred to as the "Senior Loan Documents").

1.3 Without the execution and delivery of this Agreement, the granting of the Junior Loan Documents constitutes a default under the Senior Loan Documents, and Senior Lender will consent to the Junior Loan Documents only upon execution and delivery of this Agreement by Junior Lender.

2. **Subordination by Junior Lender.** Junior Lender, to induce Senior Lender to consent to the Junior Loan Documents and for other good and valuable consideration, hereby agrees that until the Senior Loan Documents have been paid and satisfied in full:

2.1 Instruments and Payments. Any and all of the Junior Loan Documents and all indebtedness, liabilities, obligations, liens and security interests evidenced thereby or otherwise existing or hereafter arising of Borrower to Junior Lender are in all respects subject and subordinate to any and all of the Senior Loan Documents and all indebtedness, liabilities and obligations evidenced thereby including without limitation prepayments and indemnifications contained therein.

2.2 Future Advances. The Junior Loan Documents and the lien created thereby shall be subject and subordinate to any and all advances, in whatever amounts and whenever made, with interest thereon, made by Senior Lender to Borrower and secured by the Senior Loan Documents above the original indebtedness secured by the Senior Loan Documents.

2.3 Leases. The Junior Loan Documents and the lien created thereby shall be subject and subordinate to any and all existing and future leases upon all or any part of the Property.

2.4 Modification of Documents. The Junior Loan Documents and every amendment, modification, renewal and extension of the Junior Loan Documents shall be subject and subordinate to every amendment, modification, renewal and extension of the Senior Loan Documents.

2.5 Rents and Profits. The Junior Loan Documents and the lien created thereby shall be subject and subordinate to Senior Lender's interest in the rents, issues and profits from the Property and such rents, issues and profits, if collected through a receiver or by the Junior Lender shall be applied first to the obligations secured by the Senior Loan Documents, and then to charges and expenses incurred with the ownership, operation and maintenance of the Property.

2.6 Insurance Proceeds and Condemnation Awards. Any and all payments of insurance proceeds and condemnation, eminent domain or similar awards to be paid to or for the benefit of Junior Lender under the terms of any of the Junior Loan Documents shall be subject and subordinate to any and all such payments to be paid to or for the benefit of Senior Lender under the terms of any of the Senior Loan Documents.

3. Default by Borrower under Junior Loan Documents.

3.1 Notice to Senior Lender and Right to Cure. Junior Lender shall not, without giving Senior Lender thirty day's prior written notice and an opportunity to cure (within 30 days after receipt by Senior Lender of such notice) the default of Borrower specified in such notice, take any action of any kind (including, without limitation, the initiation of any proceeding seeking or contemplating foreclosure or a collection of rents or the appointment of a receiver or of a trustee in bankruptcy) to enforce any right or remedy against Borrower. Nothing in the foregoing is intended to impose on Senior Lender any obligation whatsoever to cure the noticed default or to take any other action with respect thereto, or to impede Junior Lender's exercise of any other right or remedy in respect of such default so long as such exercise does not involve the Property or any interest therein.

3.2 Effect of Default on Senior Loan Documents. Senior Lender and Junior Lender, and Borrower by its acknowledgment of this Agreement, agree that it shall be an "Event of Default" (as defined in the Senior Loan Documents) without notice or further time to cure thereunder, if any default contemplated by Section 2(a) above shall not be cured by Borrower within the 30-day period provided therein.

4. Covenants of Junior Lender.

4.1 Amendments to Junior Loan Documents. Junior Lender shall not amend or modify any of the Junior Loan Documents without the prior written consent of Senior Lender.

4.2 Junior Payments made after Default. In the event Junior Lender receives any payment from Borrower under the Junior Loan Documents after an "Event of Default" (as defined in the Senior Loan Documents) has occurred, Junior Lender shall hold such payments in trust for Senior Lender and immediately pay such amounts to Senior Lender upon notification by Senior Lender of an Event of Default.

4.3 Insurance Proceeds and Condemnation Awards. Junior Lender shall assign and release to Senior Lender all of Junior Lender's right, title, interest or claim, if any, in and to insurance proceeds and all awards or compensation made for any taking, by condemnation or otherwise and Junior Lender shall, upon the request and at the direction of Senior Lender, endorse in favor of Senior Lender any and all checks payable to Junior Lender which represent insurance proceeds or condemnation awards relating to the Property. Junior Lender hereby appoints Senior Lender as its attorney-in-fact in its place and stead to settle all insurance claims or condemnation proceedings relating to the Property and to receive all payments and endorse all checks with regard thereto to the full extent of all amounts secured by the Senior Loan Documents.

4.4 Commencement of Bankruptcy Proceedings. Junior Lender shall not commence, or join with any other creditor in commencing, any bankruptcy, reorganization, or insolvency proceedings with respect to Borrower (or Borrower's beneficiary or any party comprising Borrower or its beneficiary), without first obtaining Senior Lender's prior written consent.

4.5 Execution of Additional Documents. Junior Lender shall execute such further documents and instruments and take such further actions as Senior Lender may request from time to time to carry out the intent of this Agreement; provided, however, the failure or refusal of Junior Lender to execute any such document shall not in any manner render any of the provisions of Section 4.6(iv) hereof ineffective.

4.6 Waiver of Notices, Defenses, etc. Junior Lender waives: (i) notice of acceptance by Senior Lender of this Agreement; (ii) notice of the non-payment of all or any of the Senior Payments; (iii) all diligence by Senior Lender in collection or protection of or realization upon the Senior Loan Documents; (iv) any protest, defense, claim or objection to or in any way relating to any amendment, modification, renewal or extension of the terms and provisions of any of the Senior Loan Documents, including, without limitation, any increase in or extension of time for the Senior Payments evidenced or secured thereby; and (v) notice of assignment by Senior Lender of any or all of the Senior Loan Documents, or any interest therein, and notwithstanding any such assignment, the Senior Loan Documents shall be and remain Senior Loan Documents for the purposes of this Agreement.

4.7 Payments of Taxes, etc. Junior Lender shall not acquire by subrogation or otherwise any lien upon the estate right or interest in the Property, arising with respect to payment of real estate taxes, assessments, or other governmental charges, which is or may be prior in right to the Senior Loan Documents, unless within thirty (30) days after receipt by Senior Lender of written notice from Junior Lender of such intention to pay such assessments, Senior Lender fails or refuses to purchase or acquire by subrogation such prior lien.

5. **Payments Following Bankruptcy.** In the event of any dissolution, winding up, liquidation, readjustment, reorganization or other similar proceedings relating to Borrower (or Borrower's beneficiary or any party comprising Borrower or its beneficiary), whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment for the benefit of creditors, or any other marshalling of its assets and liabilities, or any sale of all or substantially all of its assets, or otherwise, the indebtedness and all other liabilities under the Senior Loan Documents shall first be paid in full before Junior Lender shall be entitled to receive and to retain any payments under the Senior Loan Documents.

6. **Deed in Lieu of Foreclosure.** Upon the occurrence of a default under the Senior Loan Documents, Senior Lender may, at its sole discretion, without notice to Junior Lender: (i) with or without releasing and extinguishing the Senior Mortgage or the liens or security interests created by the Senior Loan Documents, cause title in and to all or any portion of the Property (or any interest of any kind therein, including, without limitation, a beneficial interest in a land trust) to be transferred, assigned or conveyed to nominee for Senior Lender, subject to the lien of the Junior Loan Documents; and/or (ii) take possession of the Property and take all actions necessary to operate and maintain the property, including without limitation, the right to complete construction of any improvements located on the Property and the right to lease or sell all or any portion of the Property or any interest in the Property, without Senior Lender having any obligation to commence a foreclosure proceeding or have a receiver appointed. Junior Lender hereby waives the right to assert any and all claims and defenses against Senior Lender relating to or arising from any action taken by Lender pursuant to the preceding sentence, including without limitation, the right to assert that the Senior Mortgage was merged into any deed or instrument of conveyance to a nominee for Senior Lender. Junior Lender hereby waives any right to have a receiver appointed in connection with any foreclosure action filed by Senior Lender against the Property.

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7. **Notices.** Any notices which may be given hereunder shall be deemed given if personally delivered or upon depositing the same in the United States mail certified or registered mail, return receipt requested, properly addressed to the respective address set forth on the first page of this Agreement.

8. **Governing Law, Partial Invalidity and Captions.** This Agreement shall be construed in accordance with and governed by the laws of the State in which the Property is located. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The captions herein are for purposes of convenience only.

9. **Binding Effect.** This Agreement shall be binding upon Junior Lender and its heirs, legatees, legal representatives, successors and assigns, including any owner or

holder of any of the Junior Loan Documents, and shall inure to the benefit of Senior Lender and its successors and assigns, including any subsequent owner or holder of any of the Senior Loan Documents.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Junior Lender under seal as of the day and year first above written.

"JUNIOR LENDER:"

Vera J. Anderson

Vera J. Anderson

STATE OF ALABAMA)
:
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that **Vera J. Anderson,** whose name 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, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 21st day of April, 1987.

Ben N Perlman

Notary Public

My Commission Expires: 7-26-90

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EXHIBIT A

Lots 1 and 2, according to the Survey of Valleydale Village as recorded in Map Book 8, page 141 in the Probate Office of Shelby County, Alabama, more particularly described as follows:

Part of the NW/4 of the NW/4 and also a part of the SW/4 of the NW/4 of Section 15, Township 19 South, Range 2 West, and being more particularly described as follows: Commence at the Northeast corner of the SW/4 of the NW/4 of Section 15, Township 19 South, Range 2 West, thence run west along the North line of said 1/4-1/4 section a distance of 26.25 feet to the point of beginning of the property described herein; thence continue along the last described course, and along said 1/4-1/4 line, a distance of 336.75 feet; thence turn right 89 degrees 14' 15" and run north a distance of 360.00 feet; thence turn left 89 degrees 14' 15" and run west a distance of 608.74 feet; thence turn left 131 degrees 35' and run southeasterly a distance of 440.25 feet; thence turn right 90 degrees 00' and run southwesterly a distance of 80.00 feet; thence turn left 90 degrees 00' and run southeasterly a distance of 295.81 feet; thence turn left 84 degrees 56' 12" and run northeasterly a distance of 125.94 feet; thence turn right 84 degrees 39' 30" and run southeasterly a distance of 144.84 feet to the Northwesterly right of way line of Valleydale Road; said right of way line being in a curve to the left (having a radius of 2833.72 feet and an interior angle of 3 degrees 30' 14") thence turn left 84 degrees 29' 02" to the tangent of said curve and run northeasterly along said right of way line an arc distance of 173.30 feet; thence from the tangent of said curve turn left 90 degrees 0' and run northwesterly along said right of way line a distance of 10.00 feet; thence turn right 90 degrees 00' and run northeasterly along said right of way line a distance of 252.60 feet to the point of beginning, together with all of Borrower's right, title, and interest as Grantee under those certain Easements recorded at Book 330, page 491, Real 53, page 310, Real 63, page 26 and Real 63, page 23, in the Probate Office of Shelby County, Alabama.

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

1987 APR 28 PM 4: 03

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

1. Recording Fee $17.50
2. Indexing Fee 1.00
TOTAL 18.50