

STATE OF ALABAMA)

SHELBY COUNTY)

12/23/1998-51184

08:47 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
007 CRH 23.50

COLLATERAL ASSIGNMENT OF CONTRACT DOCUMENTS

This Assignment is made this 18 day of December, 1998, by and between **MORNING SUN VILLAS, L.L.C.**, an Alabama limited liability company (the "Borrower") and **COMPASS BANK**, an Alabama banking corporation (the "Lender").

WITNESSETH:

WHEREAS, Borrower and Lender have entered into a loan of even date herewith pertaining to the acquisition and operation of an apartment complex on certain premises situated in Shelby County, Alabama (the "Loan Agreement"); and

WHEREAS, the commitment letter for the loan, dated December 18, 1998, provides for the assignment by the Borrower of those certain contracts more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Contract Documents") as additional security for the obligations under the Loan, Note and Loan Documents described therein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, and in order to induce Lender to make the Loan, and as additional security for the Loan, the Borrower hereby grants, transfers, and assigns to Lender, its successors and assigns, all the right, title and interest of Borrower in and to the Contract Documents and in the plans and specifications, together with any changes, additions, extensions, revisions, modifications, or guarantees of performance for obligations to Borrower under the Contract Documents for the purpose of providing additional security (a) for the payment of all sums now or at any time hereafter due Lender in connection with the Loan, together with any renewals or extensions thereof and any future advances made thereunder; and (b) for the performance and discharge of each obligation, covenant and agreement of Borrower contained herein or contained in the Note evidencing the Loan and the related mortgage.

1. Borrower represents and warrants as follows:

(a) There is no other assignment of any of its rights under the Contract Documents to any other person, and Borrower's interest therein is not subject to any claim, set-off, lien or encumbrance of any kind or nature.

(b) Borrower has ~~neither~~ done or omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions herein.

(c) Under any of the Contract Documents and knows of no default on the part of any other party to any of the Contract Documents, and the Contract Documents are assignable without the consent of the other parties thereto.

(d) Borrower is not prohibited under any agreement with any other person or by any judgment or decree from the execution and delivery of this assignment or the performance of each and every covenant of Borrower contained herein.

(e) No action has been brought which would in any way interfere with the right of Borrower to execute this assignment and perform all of Borrower's obligations herein contained.

2. Borrower agrees and covenants with the Lender that so long as it is indebted to Lender:

(a) It will (1) fulfill, perform, and observe each and every condition and covenant of Borrower contained in the Contract Documents; (2) give prompt notice to Lender of any claim of default under the Contract Documents given to Borrower or given by Borrower, together with a complete copy of any such claim; (3) at the sole cost of Borrower, enforce the performance and observance of each and every covenant and the condition of the Contract Documents to be performed or observed by any other party to the Contract Documents; and (4) appear in and defend any action growing out of, or in any manner connected with the Contract Documents or the obligations or liabilities of Borrower or any guarantor thereunder.

(b) The Borrower will not (i) modify the terms of the Contract Documents unless required so to do by the terms of the Contract Documents; or (ii) waive or release any person from the observance or performance of any obligation to be performed under the terms of the Contract Documents or liability on account of any warranty given by them, without the prior written consent of the Lender which shall not be unreasonably withheld.

(c) The rights assigned hereunder include all of the Borrower's right and title (i) to modify the Contract Documents; (ii) to terminate the Contract Documents; (iii) and to waive, or release the performance or observance of any obligation or condition of the Contract Documents; provided, however, these rights shall not be exercised by Lender unless the Borrower is in default hereunder.

3. Upon the occurrence of any one of the following events (individually an "Event of Default"):

(i) the failure by Borrower to perform or observe any covenant of Borrower contained in this Assignment, after the giving of a thirty (30) day notice to cure; or

(ii) should an event of default occur pursuant to any of the Loan Documents relating to the Loan including the failure to make any payment when and as due under the Promissory Note delivered in evidence of the Loan; or

(iii) should the Borrower fail to perform promptly any undertaking of the Borrower set forth in any of the Contract Documents; or

(iv) should any event occur under any agreement made by the Borrower with any third person whereby that person might declare immediately due and payable any indebtedness owing by the Borrower to such third person;

then thereupon Lender may:

(a) declare the total indebtedness due by the Borrower to the Lender and secured by this Assignment immediately due and payable;

(b) proceed to enter upon, take possession and operate the premises covered by the Mortgage without becoming a mortgagee-in-possession;

(c) proceed to perform any and all obligations of Borrower contained under the Contract Documents, in its sole discretion, and exercise any and all rights of Borrower therein contained as fully as Borrower itself could, and this without regard to the adequacy of any security for the indebtedness hereby secured and with or without the bringing of any legal action or the causing of any receiver to be appointed by a court;

(d) take possession of all plans, surveys and architectural or engineering drawings or sketches reasonably required by the Lender in the exercise of its rights and remedies hereunder;

(e) do all other acts which Lender may deem necessary or proper to protect its security. Borrower does hereby specifically authorize Lender in Borrower's name or in Lender's name, to sue for or otherwise collect and receive issues and profits, including those past due and unpaid, and apply the same against all costs and expenses of the operation of the Project or the performance of Borrower's obligations of the Contract Documents, including reasonable attorneys' fees. Any amount remaining after such application shall be applied next to interest and then to principal;

4. Lender shall not be obligated to perform or discharge any obligation of the Borrower under any of the Contract Documents, and the Borrower agrees to indemnify and hold the Lender harmless against any and all liability, loss or damage which the Lender may incur

under any of the Contract Documents or under or by reason of this assignment and of and from all claims and demands whatsoever which may be asserted against it by reason of an act of the Lender under any of the terms of this assignment or under the Contract Documents.

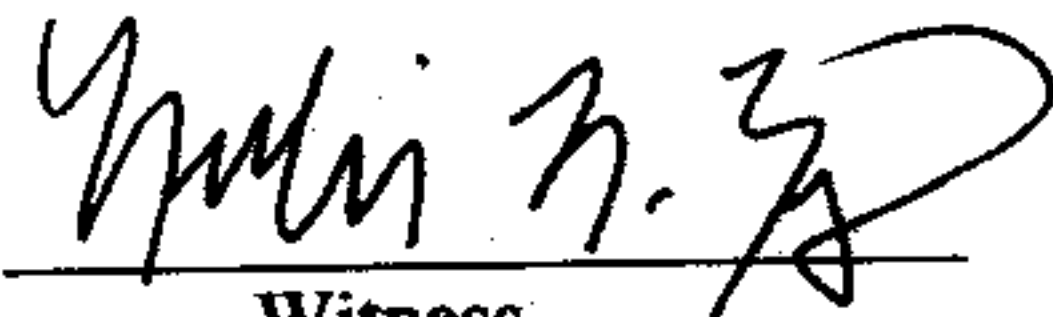
5. Lender shall be provided the remedies contained in this Assignment in addition to and not in substitution for the rights and remedies which would otherwise be vested in the Lender in any of the other Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by the Lender. The remedies herein provided or otherwise available to the Lender shall be cumulative any may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall the use of any of the remedies hereby provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided for or otherwise available to the Lender until all sums due it by reason of this Assignment have been paid to it in full and all obligations incurred by it in connection with the construction or operation of the contemplated improvements on the Premises have been fully discharged without loss or damage to the Lender.

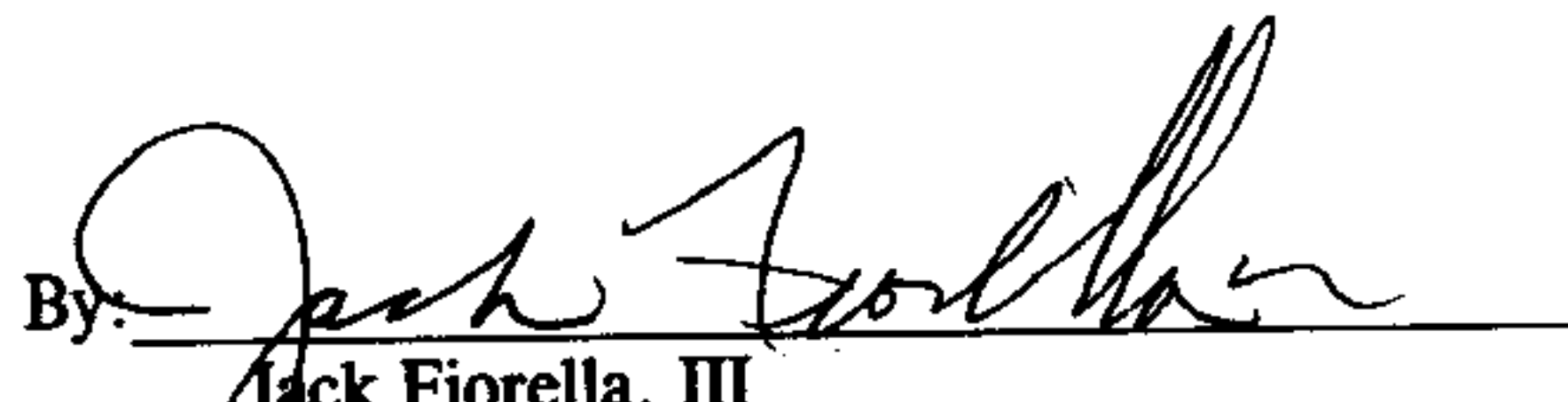
6. This Assignment shall be construed in accordance with and governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties have caused this Assignment of Contract Documents to be executed on the day and year first above written.

BORROWER:

MORNING SUN VILLAS, L.L.C., an Alabama
limited liability company


Witness

By: 
Jack Fiorella, III
Its: Member

LENDER:

COMPASS BANK, an Alabama banking
corporation

By: 

Its: VICE PRESIDENT

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a notary public in and for said county in said state, hereby certify that Jack Fiorella, III, whose name as Member 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 such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand this the 12th day of December, 1998.


Notary Public

My Commission Expires: 10-27-2001

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Bentley Utt, whose name as REAL ESTATE OFFICER of COMPASS BANK, an Alabama banking corporation, is signed to the foregoing COLLATERAL ASSIGNMENT OF CONTRACT DOCUMENTS and who is known to me, acknowledged before me on this day that, being informed of the contents of the COLLATERAL ASSIGNMENT OF CONTRACT DOCUMENTS, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 15th day of December, 1998.


Notary Public

My Commission Expires: 10-27-2001

EXHIBIT "A"

CONTRACT DOCUMENTS

1. Management Agreement dated 17, 1998, by and between Morning Sun Villas, L.L.C. and E.R. Management, Inc.
2. Protective Live Insurance Company Commitment Letter dated December 3, 1998, as amended December 18, 1998.

Inst # 1998-51184

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