

Prepared by:

Richard C. Fruechtenicht, Esq.
Protective Life Insurance Company
2801 Highway 280 South
Birmingham, Alabama 35223

ASSIGNMENT OF RENTS AND LEASES

THE FOLLOWING meanings are hereby adopted by the undersigned for the following capitalized terms for purposes of this instrument:

- a. "Owner" shall mean **MORNING SUN VILLAS, L.L.C.**, an Alabama limited liability company.
- b. "Lender" shall mean **PROTECTIVE LIFE INSURANCE COMPANY**.
- c. "Loan Amount" shall mean \$10,356,000.00.
- d. "Owner's Notice Address" shall mean c/o Equity Resources, Inc., 1950 Stonegate Drive, Suite 250, Birmingham, Alabama 35242.
- e. "Lender's Notice Address" shall mean 2801 Highway 280 South, Birmingham, Alabama 35223, Attention: Investment Department.
- f. "State" shall mean the State of Alabama.

1. BY THIS ASSIGNMENT, the Owner, for value received, hereby assigns to the Lender all of Owner's right, title, privileges and interest which Owner has and may have in the leases, operating agreements, management agreements, concession agreements, licenses, and all similar agreements, and all rents, royalties, issues, profits, security deposits, income and other benefits now existing or hereafter made and affecting the real property and the improvements thereon described in Exhibit A attached hereto and incorporated herein by reference (collectively referred to as the "Property"), together with all extensions, renewals, modifications or replacements of said leases and agreements, and together with any and all guarantees of the obligations of the lessees and other obligors thereunder, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. All said leases and all other said agreements described in this Paragraph, together with any and all guarantees, modifications, extensions and renewals thereof are hereinafter referred to severally as a "Lease" or collectively as "Leases" and all said

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rents, royalties, issues, profits, security deposits, income and other benefits described in this Paragraph are hereinafter collectively and severally referred to as the "Rents and Profits."

2. OWNER'S PURPOSE in making this assignment is to induce Lender to make the loan in the Loan Amount to Owner by relinquishing to Lender its right to collect and enjoy the Rents and Profits at any time accrued or accruing by virtue of the Leases as additional security for the outstanding indebtedness to Lender as evidenced by the notes in favor of Lender (hereinafter called the "Obligation" or "Notes") dated this same date in the Loan Amount executed by Owner, and as additional security for the Owner's obligations under the Amended and Restated Mortgage and Security Agreement (referred to as the "Indenture") executed to further secure the Obligation and to furnish security for the performance of Owner's obligations contained herein. The Obligation and other said loan documents and all other documents executed in connection with this loan are referred to as the "Loan Documents".

3. THE PARTIES INTEND that this Assignment shall be a present, absolute and unconditional assignment and shall, immediately upon execution, give Lender the right to collect the Rents and Profits and to apply them in payment of the principal and interest and all other sums payable on Owner's Obligation, as well as all other sums payable under the Loan Documents. However, Lender hereby grants to Owner a license to collect, subject to the provisions set forth below and in the Loan Documents, the Rents and Profits as they respectively become due and to enforce the Leases, so long as there is no default by Owner in performance of the terms, covenants or provisions of the Obligation, the Loan Documents or this Assignment. Nothing contained herein, nor any collection of Rents and Profits by Lender or by a receiver, shall be construed to make Lender a "mortgagee-in-possession" of the Property so long as Lender has not itself entered into actual possession of the Property.

4. UPON THE OCCURRENCE OF ANY DEFAULT under the terms and conditions of this Assignment or any of the Loan Documents, this Assignment shall constitute a direction to and full authority to any and all obligors under the Leases and any guarantor of the Leases to pay all Rents and Profits to Lender without proof of the default relied upon. Owner hereby irrevocably authorizes any and all obligors under the Leases and any guarantor to rely upon and comply with any notice or demand by Lender for the payment to Lender of any Rents and Profits due or to become due. Any and all obligors under the Leases and any guarantor shall have no right or duty to inquire whether a default has actually occurred and Owner shall have no claim against any obligor under the Leases or any guarantor for any Rents and Profits paid by such obligor, Lessee or such guarantor to Lender pursuant to Lender's demand or notice.

5. OWNER WARRANTS:

(a) that no default exists or will exist on the part of Owner under any Lease;

(b) that no rent or other payment has been or will be collected under any Lease for more than one (1) month in advance of the date on which it is due under the terms of any Lease;

(c) that neither the Leases nor any interest therein has been previously or will be assigned or pledged by Owner;

(d) that no concession of more than one month's rent has been or will be granted to any lessee in the form of a waiver, release, reduction, discount or other alteration of rent or other payment due or to become due without Lender's prior consent.

All the foregoing warranties shall be deemed to be reaffirmed on and as of the time of each Lease executed by Owner on the Property.

6. OWNER AGREES:

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

(b) before any change in Owner's form apartment lease a copy of the same shall be submitted to Lender for its approval which shall not be unreasonably withheld. Owner shall provide executed originals and/or copies of all Leases to Lender upon demand;

(c) that all Leases shall be and remain subject and subordinate to the lien of the Loan Documents;

(d) Except in the ordinary and prudent course of operating an apartment project, Owner shall not terminate a Lease or modify or amend any Lease or any of the terms thereof or grant any concessions in connection therewith or accept a surrender thereof;

(e) Owner shall not collect any Rents and Profits more than one (1) month in advance of the date on which they become due under the terms of the Lease;

(f) Owner shall not discount any future accruing Rents and Profits in excess of one month's rent under any Lease;

(g) Except in the ordinary and prudent course of operating an apartment project, Owner shall not consent to an assignment of a Lease, or subletting thereunder;

(h) Owner shall not execute any further assignment of any of the Rents and Profits or any interest therein or suffer or permit any such assignment to occur by operation of law;

(i) Owner shall not request, consent to, agree to, or accept a subordination of the Leases to any mortgage or other encumbrance, or any other lease, now or hereafter affecting the Property or any part thereof, or suffer or permit conversion of any Lease to a sublease;

(j) Owner shall faithfully perform and discharge its obligations under the Leases and shall not default thereunder, and shall give prompt written notice to Lender of any notice of Owner's default received from any obligor under a Lease or any other person and furnish Lender with a complete copy of said notice; Owner shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with a Lease; and if requested by Lender, Owner shall enforce the Lease and all remedies available to Owner against any obligor under a Lease in the case of default under the Lease by any obligor under a Lease;

(k) The Property shall at all times be managed by Owner (so long as no default exists under any of the Loan Documents) or Owner shall at all times contract to manage the Property through a qualified management company and Owner shall obtain the Lender's prior written consent to and approval of the said management contract and management company before execution of and employing the same, respectively (other than individual resident managers). The said management contract and all of the management, leasing, or other fees under such management contract shall be subordinate to the lien of the Loan Documents; and

(l) Nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to the Leases; Owner shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages which Lender may incur under the Leases or by reason of this Assignment, and Owner shall immediately upon demand reimburse Lender for the amount thereof together with all costs and expenses and attorneys' fees incurred by Lender; all of the foregoing sums shall bear interest until paid at the rate set forth in the Obligation; and any Rents and Profits collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

7. OWNER HEREBY GRANTS TO LENDER THE FOLLOWING RIGHTS:

(a) Lender shall be deemed to be the creditor of any obligor under the Leases 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 obligor (without obligation on the part of Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein);

(b) Lender shall have the right to assign Owner's right, title and interest in the Leases to any subsequent holder of the Indenture or any participating interest therein or to any person

acquiring title to all or any part of the Property through foreclosure or otherwise, and any subsequent assignee shall have all the rights and powers herein provided to Lender;

(c) Lender shall have the right (but not the obligation), upon any failure of Owner to perform any of its agreements hereunder, to take any action as Lender 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 Leases, and Owner agrees to pay, on demand, all costs and expenses (including without limitation Lender's attorneys' fees) incurred by Lender in connection therewith, together with interest thereon at the After-Maturity Rate set forth in the Obligation;

(d) upon default by Owner under any Lease, the Lender shall have the right, but not the obligation, to cure the same, upon failure of Owner to cure, and Lender shall have the right to add all costs necessary to cure such defaults, including Lender's attorney's fees, to the Obligation.

(e) upon any default by Owner under this Assignment or under the Loan Documents, and without notice to or consent of Owner, Lender shall have the following rights (none of which shall be construed to be obligations of the Lender):

(i) Lender shall have the right under this Assignment to use and possess, without rental or charge, all personal property of the Owner located on the Property and used in the operation or occupancy thereof. Lender shall have the right to apply any of the Rents and Profits 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 Property. However, this Assignment shall not make Lender responsible for the control, care, management or repair of the Property or any personal property or for the carrying out of any of the terms or provisions of the Leases;

(ii) Lender shall have the right to apply the Rents and Profits and any sums recovered by Lender hereunder to Owner's outstanding indebtedness to Lender secured hereby or by any of the Loan Documents, as well as to charges for taxes, insurance, improvements, maintenance and other items relating to the operation of the Property;

(iii) Lender shall have the right to take possession of the Property, manage and operate the Property and Owner's business thereon, and to take possession of and use all books of account and financial records of Owner and its property managers or representatives relating to the Property;

(iv) Lender shall have the right to execute new Leases of any part of the Property, including Leases that extend beyond the term of the Indenture;

(v) Lender shall have the right to cancel or alter any existing Lease; and

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

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

8. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Loan Documents. Failure of the Lender 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.

9. Notwithstanding any future modification of the terms of the Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Lender in accordance with the terms of this Assignment.

10. This Assignment shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto (including without limitation, in the case of Lender, any third parties now or hereafter acquiring any interest in the Obligation or any part thereof, whether by virtue of assignment, participation or otherwise). The words "Owner", "Lender", "obligor under the Lease", and "guarantor", wherever used herein, shall include the persons and entities named herein or in the Leases or any guaranty and designated as such and their respective heirs, legal representatives, successors and assigns, provided that any action taken by the named Lender or any successor designated as such by an instrument recorded in the appropriate office of the county in which the Property is located referring to this Assignment shall be sufficient for all purposes notwithstanding that Lender may have theretofore assigned or participated any interest in the Obligation to a third party. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine, or neuter gender, as may fit the case.

11. Any change, amendment, modification, abridgement, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Lender.

12. Upon payment to Lender of the full amount of all indebtedness and obligations secured hereby and by the Loan Documents, as evidenced by a recorded satisfaction or release of the Indenture, notes, and guarantees, this Assignment shall be void and of no further effect.

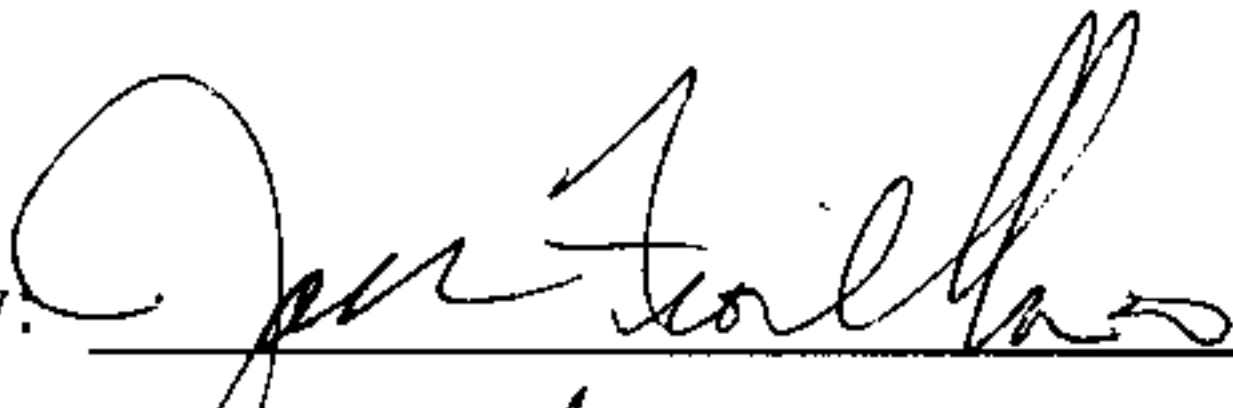
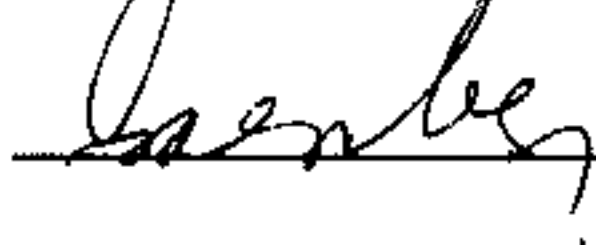
13. All notices given hereunder shall be given in the manner set forth in the Indenture.
14. If any provision hereof is determined to be illegal or unenforceable for any reason, the remaining provisions hereof shall not be affected thereby.
15. This Assignment shall be governed by and construed in accordance with the laws of the State.
16. This Assignment shall terminate upon the satisfaction of the Indenture by Lender.
17. After consultation with counsel and recognizing that any dispute hereunder will be commercial in nature and complex, and in order to minimize the costs and time involved in any dispute resolution process, the undersigned knowingly, voluntarily, and intentionally waive any right to a trial by jury with respect to any litigation based upon this transaction or this instrument, or arising out of, under, or in connection with any of the other Loan Documents executed in connection with this transaction, or respecting any course of conduct, course of dealing, statement (whether verbal or written) or action of any party and acknowledge that this provision is a material inducement for entering into this loan transaction by all parties.

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IN WITNESS WHEREOF, this instrument has been executed by the undersigned intending the same to be under seal on this 11th day of January, 2001.

"OWNER:"

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

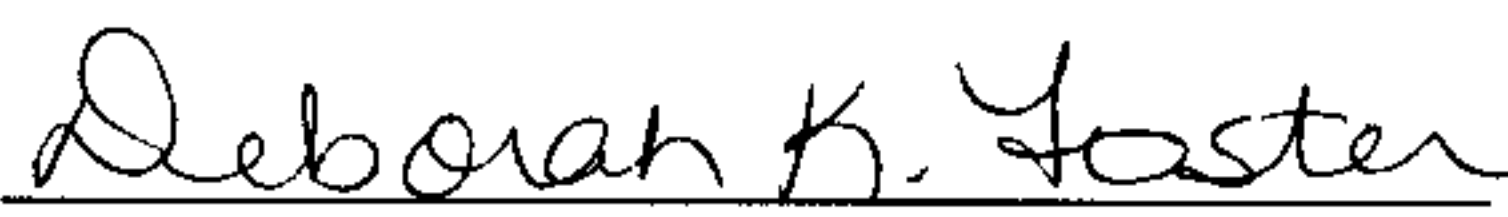
By: 
Its: 

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Deborah K. Foster, a Notary Public in and for said County in said State, hereby certify that **Jack Fiorella III** whose name as Sole Manager of Morning Sun Villas, L.L.C., an Alabama limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he as such Sole Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal of office this 11th day of January, 2001.


Notary Public

My Commission Expires: 5/26/02

[NOTARIAL SEAL]

EXHIBIT "A"

A parcel of land situated in the East half of the Northeast quarter of Section 1, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at a capped iron pipe found at the Northeast corner of said Section and run thence in a Southerly direction along the East line thereof for a distance of 436.03 feet to a point located in a curve to the right in the Northwesterly right of way line of Meadow Ridge Road, said curve being concave to the Northwest, having a radius of 1598.48 feet, a central angle of 4°10'47" and a chord which forms an interior or counterclockwise angle of 120°10'53" with the preceding course; thence turn an angle to the right and run in a Southwesterly direction with said proposed right of way line and along the arc of said curve for a distance of 116.61 feet to the end of said curve; thence continue to run with said proposed right of way line in a Southwesterly direction along a line tangent to said curve for a distance of 337.88 feet to the beginning of a curve to the left, said curve being concave to the Southeast, having a radius of 827.77 feet and subtending a central angle of 33°45'00"; thence continue to run with said proposed right of way line in a Southwesterly direction along the arc of said curve for a distance of 487.60 feet to a point of reverse curvature located at the beginning of a curve to the right; said curve being concave to the Northwest, having a radius of 966.13 feet, and subtending a central angle of 10°15'00"; thence continue to run with said proposed right of way line in a Southwesterly direction along the arc of said curve for a distance of 307.73 feet to the end of said curve; thence turn an angle to the right of 67°07'30", as measured from the chord of said curve and, leaving said proposed right of way line, run in a Northwesterly direction for a distance of 101.95 feet; thence turn an angle to the left of 90°00' and run in a Southwesterly direction for a distance of 10.00 feet; thence turn an angle to the right of 90°00' and run in a Northwesterly direction for a distance of 20.00 feet; thence turn an angle to the right of 90°00' and run in a Northeasterly direction for a distance of 10.00 feet; thence turn an angle to the left of 90°00' and run in a Northwesterly direction for a distance of 294.00 feet to a point located in the West line of the Northeast quarter of the Northeast quarter of the aforesaid Section 1; thence turn an angle to the right of 75°38'01" and run in a Northerly direction along said West line of said quarter-quarter section for a distance of 973.33 feet; thence turn an angle to the right of 65°23'12" and run in a Northeasterly direction for a distance of 362.69 feet; thence turn an angle to the left of 65°23'12" and run in a Northerly direction for a distance of 50.00 feet; thence turn an angle to the right of 92°17'02" and run in an Easterly direction along the North line of said quarter - quarter section for a distance of 997.59 feet to the point of beginning.

PARCEL II:

Together with the right accruing to the subject property of the following:

1. Storm sewer and drainage easement between Daniel U.S. Properties, Ltd., and Daniel Properties XV dated 8-1-86, recorded in Real Record 86, page 349, in the Probate Office of Shelby County, Alabama.
2. Sewer line easement and connection agreement between Daniel U.S. Properties, Ltd., and Daniel Properties XV dated 9-23-85, recorded in Real Record 43, page 611, in the Probate Office of Shelby County, Alabama, as modified by that certain First Modification to Sewer Line Easement and connection agreement dated 8-14-86, recorded in Real Record 86, page 355, aforesaid records, as further modified by that certain quitclaim deed with reservation of rights dated 1-31-94, recorded in Instrument 1994-03407, aforesaid records.
3. Quitclaim deed with reservation of rights dated 1-31-94, recorded in Instrument 1994-03407, in the Probate Office of Shelby County, Alabama.

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