

8777950

WHEN RECORDED, RETURN TO:

Bruce A. Kolbezen, Esq.  
Sherman & Howard L.L.C.  
90 South Cascade, Suite 1500  
Colorado Springs, CO 80903

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LEGACY LAND TITLE  
BY: LDT, DEPUTY - WI 10 P.

ASSIGNMENT OF RENTS AND LEASES

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

- 22-27-201-001  
22-27-201-002  
22-27-201-003  
22-27-201-004  
22-27-201-005  
22-27-201-006  
22-27-201-007  
22-27-201-008
- (a) "Owner" shall mean HILLSIDE PLAZA, LTD., a California limited partnership.
  - (b) "Lender" shall mean PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation.
  - (c) "Loan Amount" shall mean \$4,000,000.00.
  - (d) "Owner's Notice Address" shall mean 1055 California Street, Apt. 10, San Francisco, CA 94108, with copies to Warren H. Clark, 1055 California Street, Apt. 10, San Francisco, CA 94108 and Heller Ehrman White & McAuliffe, 333 Bush Street, Suite 3100, San Francisco, CA 94104, Attn: William R. Mackey.
  - (e) "Lender's Notice Address" shall mean 2801 Highway 280 South, Birmingham, Alabama 35223, Attention: Investment Department.
  - (f) "State" shall mean the State of Utah.

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, 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 1, together with any and all guarantees, modifications, extensions and renewals thereof are hereinafter collectively and severally referred to as the "Lease."

2. OWNER'S PURPOSE in making this Assignment is to induce the Lender to make the loan in the Loan Amount to the Owner by relinquishing to Lender its right to collect and enjoy the rents, royalties, issues, profits, income and other benefits at any time accruing by virtue of the Lease (hereinafter called "Rents and Profits") as additional security for the outstanding indebtedness to Lender as evidenced by the note in favor of Lender (hereinafter called the "Obligation") dated this same date in the Loan Amount executed by Owner, and as additional security for the Owner's obligations under the Deed of Trust, Security Agreement and Fixture Filing Financing Statement (referred to as the "Indenture") dated this same date and executed to further secure the Obligation and to furnish security for the performance of Owner's obligations contained herein. The Obligation, such other loan documents and all other documents executed in connection with this loan, but expressly excluding any environmental indemnity agreement, 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 Lease, 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 AN EVENT OF DEFAULT, as hereinafter defined, 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 Lease and any guarantor of the Lease 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 Lease 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 Lease 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 Lease 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 AND COVENANTS:

(a) that the Lease is valid and enforceable in accordance with its terms and has not been altered, modified or amended;

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

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

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

(e) that no concession 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; and

(f) that the Lease is arms-length and bona-fide and that Owner has neither any ownership interest (beneficial or otherwise) in any tenant nor control over any tenant ("control" meaning no contracted right to influence the business operations of the tenant other than as specified in the Lease presented to Lender) nor any lending or other relationship with any tenant except as specified in the Lease presented to Lender.

All of 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 the 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 the Lease with respect to such security deposit unless and until Lender comes into actual possession and control of said deposit;

(b) before any Lease except a Pre-Approved Lease, defined below, is executed on the Property (other than Leases approved in writing as of this date) 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; "Pre-Approved Lease" shall mean a lease of premises within the Property which does not include any of the premises under any of the Anchor Tenant Leases (as defined in Paragraph 11 of the Note) and in respect to which all of the following requirements and conditions have been satisfied: (i) the demised premises under the lease contains not more than 3,000 square feet; (ii) the minimum rent actually due and payable under the lease, net of triple net charges, is not less than \$12.00 per square foot per year; (iii) the term of the Lease does not exceed three (3) years; (iv) the lease is on a lease form, containing terms and conditions, as has been previously approved by Lender in writing; (iv) the intended use by the tenant under the lease is in compliance with Laws, as defined in the Indenture, private covenants, conditions and restrictions affecting the Property, including without limitation the Anchor Tenant Leases; and (v) within ten (10) days of the execution of such lease, Owner provides the fully executed original or duplicate original thereof to Lender.

(c) that the Lease shall remain in full force and effect despite any merger of the interest of Owner and any obligor under the Lease, and Owner shall not transfer or convey fee title to the leased premises to any obligor under the Lease without the prior written consent of Lender, and where such consent is given or where under applicable law the requirement for such consent is not enforceable, Owner shall require the said obligor under the Lease, in writing, to assume and agree to pay the Obligation in accordance with the terms, covenants and conditions of the Loan Documents; provided, however, that, in no event shall any such transfer or conveyance operate to release or relieve Owner of any liability to Lender unless Lender specifically agrees otherwise in writing;

(d) Owner shall not terminate the Lease, except for default by tenant and in the ordinary course of Owner's business, or modify or amend the 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 Lender;

(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;

(g) Owner shall not consent to assignment of the Lease, or subletting thereunder, whether or not in accordance with its terms without the prior written consent of Lender;

(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 Lease 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 Lease, and shall give prompt written notice to Lender of any notice of Owner's default received from any obligor under the 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 the Lease; and if requested by Lender, Owner shall enforce the Lease and all remedies available to Owner against any obligor under the Lease in the case of default under the Lease by any Obligor under the Lease;

(k) Owner shall give Lender written notice immediately upon entering into any lease or other agreement respecting any part of the Property, and shall promptly provide to Lender a true and correct copy of the executed lease or other agreement; each such lease or agreement shall be deemed included in this Assignment automatically as though originally listed herein, and the term "Lease" as used herein shall include such lease or agreement;

(l) 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 manager, and Owner shall obtain the Lender's prior written consent to and approval of the said management contract and manager before execution of and employing the same, respectively. 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;

(m) Owner shall deliver to Lender, promptly upon request, a duly executed estoppel certificate from any obligor under the Lease as required by Lender attesting that the Lease is in full force and effect with no defaults thereunder on the part of any party, that no rental has been paid more than one month in advance, and that said obligor under the Lease claims no defense or offset against the full and timely performance of its obligations under the Lease; and

(n) Nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to the Lease; Owner shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liabilities, losses and damages, including without limitation, reasonable attorneys' fees and costs, which Lender may incur under the Lease 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 After-Maturity 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 Lease 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 Lender's right, title and interest in the Lease 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 Lease, 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 to the Obligation all costs necessary to cure such defaults, including Lender's attorneys' fees, together with interest thereon at the After-Maturity Rate set forth in the Obligation;

(e) upon the occurrence of an "Event of Default," as defined in the Indenture, and after notice and opportunity to cure if and to the extent provided in the Indenture, and without further 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 Lease;

(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 the 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, with or without the appointment of a receiver. Lender will be entitled to the appointment of a receiver as a matter of right, whether or not a non-judicial foreclosure has been initiated, without regard to the solvency or insolvency of the Owner and, if allowed by law, without regard to the value of the Property, and such receiver may be appointed by any court of competent jurisdiction upon ex parte application, without bond and without notice (notice hereby being expressly waived). It is the Owner's express agreement pursuant to Rule 66, Utah Rules of Civil Procedure, or any successor rule or statute, that Lender shall have the rights to and appointment of a receiver as provided herein.

(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 to the extent permitted under the 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 an Event of 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 and 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 Lease 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 release of the Indenture, 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.

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IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal on this 1st day of August, 2003.

OWNER:

HILLSIDE PLAZA, LTD., a California limited partnership

By: Warren H. Clark  
Warren H. Clark, general partner

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN FRANCISCO )

On August 1, 2003, before me, MARGARET RODGERS ZAHN, personally appeared Warren H. Clark, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Margaret Rodgers Zahn (Seal)



**EXHIBIT A**

**Parcel 1:**

***Beginning at a point on the East line of 2300 East Street, said point being South 0 deg. 14'40" West 40.01 feet and South 89 deg. 51'30" East 33.00 feet from the North quarter corner of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 89 deg. 51'30" East 830.752 feet; thence South 39 deg. 30'00" East 116.859 feet; thence South 39 deg. 10'00" West 243.69 feet; thence South 45 deg. 11'35" West 720.00 feet; thence South 66 deg. 22'30" West 102.47 feet; thence North 89 deg. 45'20" West 150.00 feet to the East line of 2300 East Street; thence North 0 deg. 14'40" East 828.99 feet to the point of beginning.***

Protective Life  
Hillside Plaza  
Salt Lake City, UT

**BK 8864 PG 3443**