

Ent **546573** Bk **940** Pg **261**
Date: 01-Sep-2022 04:36 PM
Fee: \$40.00 ACH
Filed By: JAC
JOHN CORTES, Recorder
GRAND COUNTY CORPORATION
For: Cottonwood Title Insurance A
Recorded Electronically by Simplifile

Prepared by and after
Recording return to:

Protective Life Insurance Company
Attn: Colin House, Associate Counsel, Investments
2801 Highway 280 South
Birmingham, Alabama 35233

APN: 01-0001-0148
CT-100748-MCF

AMENDED AND RESTATED
SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

THIS AMENDED AND RESTATED SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT is entered into as of the date set forth below by and between the Lender and Tenant defined below.

Lender and Tenant previously entered into a Subordination, Attornment, and Non-Disturbance Agreement ("Agreement") recorded on August 18, 2020 as Entry No. 538616, Book 904, Page 274-281 in the offices of the Grand County Recorder. The parties hereby agree to amend and restate the Agreement in its entirety to revise and update the legal description of the real property to which the Agreement applies.

The following capitalized terms are definitions for the purposes of this Agreement:

Lender: PROTECTIVE LIFE INSURANCE COMPANY, its subsidiaries and their successors and/or assigns

Tenant: JOSIE WYATT'S, LLC, a Utah limited liability company

Landlord: HOTEL MOAB LLC, a Utah limited liability company

Lease: Agreement of Lease dated April 1, 2017, as amended, demising the premises described therein ("Leased Premises") and located on the Property.

Property: The real property described in Exhibit A attached hereto and made a part hereof, together with all buildings and improvements situated thereon.

Indenture: The Deed of Trust and Security Agreement which encumbers the Property to secure a mortgage loan made by Lender to Landlord.

WITNESSETH:

WHEREAS, Tenant is the holder of the lessee's interest in the Lease covering the Leased Premises; and

WHEREAS, Tenant and Lender desire to confirm their understanding with respect to the Lease and the Indenture.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. Subordination. The Lease and the rights of Tenant thereunder are now and at all times hereafter shall be subject and subordinate to the Indenture and to all renewals, modifications or extensions thereof, but such renewals, modifications and extensions shall nevertheless be subject and entitled to the benefits of the terms of this Agreement
2. Non-disturbance. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed; (a) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any renewals, modifications, or extensions thereof which may be effected in accordance with any option granted in the Lease, shall not be diminished or interfered with by Lender; (b) Tenant's occupancy of the Leased Premises shall not be disturbed by Lender during the term of the Lease or any such renewals, modifications, or extensions thereof; and (c) Lender will not join Tenant as a party defendant for the purpose of terminating or otherwise affecting Tenant's interest and estate under the Lease in any action or proceeding brought by Lender for the purpose of enforcing any of its rights in the event of any default under the Indenture; provided however, Lender may join Tenant as a party in any such action or proceeding If such joinder is necessary under any statute or law for the purpose of effecting the remedies available to the Lender under the Indenture, BUT ONLY for such purpose and NOT for the purpose of terminating the Lease.
3. Landlord Defaults/Cure. Notwithstanding anything in the Lease to the contrary, Tenant shall notify Lender in writing of the occurrence of any default by Landlord and shall permit Lender a period of thirty (30) days from the date of such notice (the "Cure Period") in which to cure such default prior to proceeding to exercise any of the rights or remedies of Tenant under the Lease, including: (a) termination of the Lease, (b) abatement of rental payments due thereunder, or (c) performance of Landlord's covenants or obligations which Tenant asserts to be in default provided, however, that the Cure Period granted to Lender herein: (i) shall be extended by any period of time during which Lender is diligently pursuing the cure of a default which cannot reasonably be expected to be cured within the initial thirty (30) day Cure Period, and (ii) shall not be deemed to commence until after any period of time during which Lender is pursuing acquisition of title to the Leased Premises through foreclosure or otherwise, such period to include, without limitation, any period of time (A) during which Lender's acquisition of title to the Leased Premises is stayed by any proceeding in bankruptcy, any injunction or other judicial process, and (B) after acquisition of title by Lender during which Landlord or any other party is contesting the validity of the acquisition or Lender's title to the Leased Premises, provided that in no event shall Tenant be required to forbear from executing its remedies fora period in excess of sixty (60) days.

Notwithstanding the foregoing, Tenant agrees that so long as the Indenture (including any extensions or modifications thereof) encumbers the Leased Premises, Tenant shall have no right to terminate the Lease or withhold or abate any rentals due or to become due thereunder by reason of any of the provisions of the Lease as such provisions apply to property not included within the limits of the real estate encumbered by the Indenture, provided, however, that nothing herein contained shall be construed as a waiver of Tenant's rights in personam nor remedies by way of injunctive relief against Landlord, and provided further, if Lender should succeed to the ownership of the Leased Premises by virtue of foreclosure or deed in lieu thereof or otherwise, then in such event the provisions of the Lease shall apply to Lender as owner/landlord only with respect to the land which was formerly encumbered by the Indenture.

4. Attornment If Lender shall become owner of the Leased Premises by reason of foreclosure or other proceedings brought by it, or by any other manner, or if Lender succeeds to the interests of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option granted in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, PROVIDED, HOWEVER, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has become such owner or has succeeded to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

5. Limitation of Liability. If Lender shall become owner of the Leased Premises or if Lender shall succeed to Landlord's interest in the Lease, then during the period of Lender's ownership of such interest, but not thereafter, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and during the period of Lender's ownership of Landlord's interests in the Lease, Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant would have had against the Landlord if Lender had not become such owner or had not succeeded to Landlord's interest therein; PROVIDED, HOWEVER, that notwithstanding any provision in the Lease to the contrary, Lender shall not be:

(a) liable for any act or omission of any prior landlord arising under the Lease (including the Landlord) or subject to any offsets or defenses which Tenant may have against any prior landlord arising under the Lease (including the Landlord) except acts, omissions, offsets and defenses of which Lender has previously been given notice in accordance with the terms of this Agreement; or

(b) bound by any rents or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Landlord); or

(c) bound by any amendment or modification of the Lease made without its consent

6. Right of First Refusal. So long as the Indenture {including all extensions, modifications and renewals thereof) encumbers the Property, Tenant agrees that any right of first refusal to purchase

contained in the Lease and all rights of Tenant thereunder (a) are now and at all times hereafter shall be subject and subordinate to the Indenture, and (b) that foreclosure of the Indenture by Lender or a taking of a deed in lieu of foreclosure by Lender (collectively "foreclosure") will not give rise to any rights of Tenant under any such right of first refusal and Tenant will not attempt to assert any such rights in the event of foreclosure or assert any such rights against a purchaser at foreclosure; provided, however, foreclosure will not terminate any such right of first refusal which right shall continue to be applicable after foreclosure or a purchase at foreclosure, as applicable.

7. Unlawful Use and Prohibited Activities. Tenant shall riot use or occupy or permit the use or occupancy of the Leased Premises in any manner that would be a violation of federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law.

8. Definitions.

(a) The terms "holder of a mortgage" and "Lender" or any similar term herein or in the Lease shall be deemed to include Lender and any of its successors or assigns, including anyone who shall have succeeded to ownership of the Leased Premises or to Landlord's interests by, through or under foreclosure of the Indenture, or deed in lieu of such foreclosure or otherwise.

(b) The term "Landlord" shall be deemed to include Landlord, the holder of the lessor's interest in the Lease and the fee owner of the Leased Premises and the successors and assigns of any of the foregoing.

9. Rent Assignment. The Landlord has assigned to Lender all of Landlord's right, title and interest in the Lease by an Assignment of Rents and Leases ("Rent Assignment"). If in the future there is a default by the Landlord in the performance and observance of the terms of the Indenture, the Lender may at its option under the Rent Assignment require that all rents and other payments due under the Lease be paid directly to Lender. Upon notification to that effect by the Lender, Tenant agrees to pay any payments due under the terms of the Lease to the Lender. The Rent Assignment does not diminish any obligations of the Landlord under the Lease or impose any such obligations on the Lender.

10. Modifications; Successors and Assigns. This Agreement may NOT be modified except by a written agreement signed by the parties hereto or their respective successors in interest This agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

-----Remainder of page intentionally blank-----

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth in the acknowledgements below.

LENDER:

Protective Life Insurance Company

By: Laura Y. McDonald
Name: Laura Y. McDonald
Its: Chief Mortgage & Real Estate Officer
Lender's Address:
2801 Highway 280 South
Birmingham, Alabama 35233

State of Alabama)

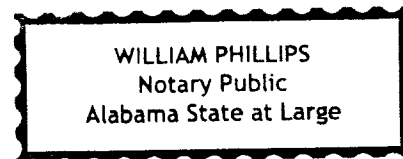
County of Jefferson)ss.

On August 30, 2022, personally appeared before me Laura Y. McDonald, who being duly sworn did say that he/she is the Chief Mortgage & Real Estate Officer of Protective Life Insurance Company, a Tennessee corporation, and the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors acknowledged to me that said corporation executed the same.

WITNESS my hand and official seal.

William Phillips

(Signature of Notary)



TENANT:

JOSIE WYATT'S, a Utah limited liability company

By: *[Signature]* manager, Josie Wyatt's LLC
Name: Jay L. Elowsky
Its: Manager of Josie Wyatt's LLC *[Signature]*

State of ~~Utah~~) Michigan

County of ~~Grand~~) ss. Montmorency

On August 10, 2022, before me, Luke M. Ellenberger (notary name), personally appeared Jay L. Elowsky whose name is subscribed to the within instrument and who acknowledged to me that he/she/they executed the same in their authorized capacity as Manager of Josie Wyatt's, a Utah limited liability company.

WITNESS my hand and official seal.

[Signature]
(Signature of Notary)

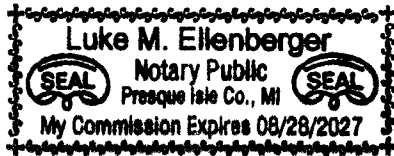


EXHIBIT A
PROPERTY DESCRIPTION

Beginning at a point on the West right-of-way of 100 West Street, said point being South 1486.60 feet; thence West 266.10 feet from the North¹/₄ corner of Section 1, Township 26 South, Range 21 East, Salt Lake Base and Meridian, also South 20°50'05" West 141.8 feet from the centerline monument located at the intersection of Walnut Lane and 100 West Street, and proceeding with said right of way thence South OD'21'00" West 457.30 feet to the north Right of way of Williams Way; thence with said right-of-way the following three courses: North 85°27'00" West 212.97 feet to a point being 1' behind the city sidewalk; thence parallel along sidewalk with a curve having a radius of 1339.66 feet, to the left with an arc length of 165.17 feet, (a chord bearing of North 82°51'44" West 165.D6 feet); thence North 86°56'37" West 56.50 feet; thence North 00°01'16" West 172.73 feet; thence with a curve having a radius of 35.0D feet, to the right with an arc length of 27.46 feet, (a chord bearing of North 22°06'52" East 26.76 feet); thence North 44°35'18" East 23.05 feet; thence with a curve having a radius of 3.00 feet, to the left with an arc length of 4.71 feet, (a chord bearing of North 00°25'21" West 4.24 feet); thence North 45°26'00" West 15.03 feet; thence North 45°04'15" East 153.04 feet; thence North 43°50'47" West 7.46 feet; thence North 45°56'17" East 26.73 feet; thence with a curve having a radius of 3.00 feet, to the left with an arc length of 4.40 feet, (a chord bearing of North 03°53'37" East 4.02 feet); thence North 41 °50'19" East 57.12 feet; thence North 00°33'24" West 17.26 feet; thence South 89°38'00" East 67.56 feet; thence North 89°33'00" East 87.80 feet; thence South 9.00 feet; thence North 89°26'00" East 103.90 feet to the point of beginning, having an area of 170,640 Sq. Ft., 3.92 Acres.

Also: a 22' Wide shared access easement, located within the northwest quarter of Section 1. T26S, R21E, SLBM, being 11' feet right and left of the following described centerline:

Beginning at a point being South 62°38'59" West 382.21 feet from the centerline monument located at the intersection of Walnut Lane and 100 West Street, and proceeding thence South 48°09'41" East 14.00 feet; thence with a curve having a radius of 25.00 feet, to the right with an arc length of 40.68 feet, (a chord bearing of South 01°32'43" East 36.34 feet); thence South 45°04'15" West 190.62 feet; thence with a curve having a radius of 24.02 feet, to the left with an arc length of 25.08 feet, (a chord bearing of South 29°30'56" West 23.96 feet); thence South D0°01'16" East 173.30 feet to the point of terminus. Including: Beginning at a point being South 56°00'10" West 395.66 feet from the centerline monument located at the intersection of Walnut Lane and 100 West Street, and proceeding thence North 45°04'15" East 87.33 feet; thence with a curve turning to the right with an arc length of 23.22 feet, with a radius of 30.00 feet, with a chord bearing of North 67°15'03" East 22.65 feet; thence North 89°25'52" East 194.76 feet to point of terminus.