

Ent 538616 Bk 904 Pg 274-281  
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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 35223

129089-JCP  
01-0001-014B  
01-0001-0127

**SUBORDINATION, ATTORNMENT  
AND NON-DISTURBANCE AGREEMENT**

**THIS AGREEMENT** is entered into as of the date set forth below by and between the Lender and Tenant defined below.

The following capitalized terms are definitions for the purpose 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 \_\_\_n/a\_\_\_, 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**, Lender is the owner and holder of the Indenture; and

**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 for a 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 not 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.

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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: [Signature]

Name: Robert R. Bedwell, III

Title: Senior Vice President

Lender's Address: 2801 Highway 280 South  
Birmingham, AL 35223  
ATTN: Invest. Dept. [3-3ML]

STATE OF ALABAMA  
COUNTY OF JEFFERSON

On the 26<sup>th</sup> day of August, 2020, personally appeared before me Robert R. Bedwell, III, who being by me duly sworn did say that he/she is the Senior Vice President of Protective Life Insurance Company a Tennessee corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Board of Directors, and said Senior Vice President acknowledged to me that said corporation executed the same.

Melanie Carol Thomas  
NOTARY PUBLIC

My Commission Expires: 4-28-22

Residing at: Gardendale, AL 35071



TENANT:

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

By: Jay L. Elowsky

Name: [Signature]

Title: Manager of Josie Wyatt's LLC

Tenant's Address: \_\_\_\_\_

99 N. 100 West

MOAB, UTAH 84532

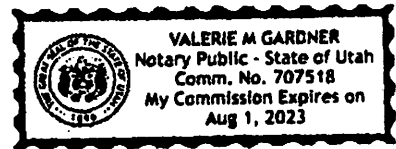
STATE OF Utah  
COUNTY OF Grand

On this 12 day of August, 2020, before me, the undersigned, a Notary Public for in and for said county and state, personally appeared Jay L. Elowsky, to me personally known, who being by me duly sworn or affirmed did say that such person is the Manager of Josie Wyatt's, LLC, a Utah limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its members, and the said Manager acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it voluntarily executed.

Valerie M. Gardner  
NOTARY PUBLIC

My Commission Expires: 8-1-2023

Residing at: Moab, Utah



**EXHIBIT "A"**

**(Legal Description of Property)**

**SNDA/HooDoo Moab – Hilton Curio Collection  
Moab, Grand County, Utah**

**EXHIBIT A  
PROPERTY DESCRIPTION**

**PARCEL 1:**

Beginning at a corner on the West right-of-way of 100 West Street, said corner bears North 169.1 feet; thence West 48.4 feet from the centerline monument at the intersection of 100 West and 100 North Streets, said point by record bears West 266.1 feet; thence South 1486.6 feet from the North quarter corner of Section 1, Township 26 South, Range 21 East, Salt Lake Meridian and proceeding thence with the West right of way of 100 West Street South 00°21' West 457.30 feet to a corner; thence North 85°27' West 147.70 feet to a corner; thence North 80°05' West 16.9 feet to a corner; thence North 87°53' West 33.5 feet to a corner; thence South 76°45' West 4.8 feet to a corner; thence North 79°06' West 9.0 feet to a corner; thence along the arc of a 1292.5 foot radius curve to the right 57.7 feet (described as 57.2 feet in some instruments of record) (said curve has a chord which bears North 80°23' West 57.7 feet) to a corner; thence North 63°01' East 54.70 feet to a corner; thence North 22°23' East 20.5 feet to a corner; thence North 00°08' West 58.7 feet to a corner; thence along a fence line South 88°43' West 244.6 feet to a corner; thence North 52°27' East 60.6 feet to a corner; thence North 08°13' East 77.4 feet to a corner; thence North 00°34' West 229.2 feet to a corner; thence along a fence line South 89°38' East 210.1 feet; thence along a fence line North 89°33' East 87.8 feet to a corner on the West line of Manzaneres; thence South 9.0 feet to the Southwest corner of Manzaneres; thence North 89°26' East 103.9 feet to the point of beginning.

LESS any portion within 100 West Street and/or Williams Way.

**PARCEL 2:**

Beginning at a point which bears South 1815.2 feet and West 480.4 feet from the North quarter corner of Section 1, Township 26 South, Range 21 East, Salt Lake Meridian and proceeding thence South 00°12' East 58.9 feet; thence South 22°19' West 20.5 feet; thence South 62°57' West 54.7 feet to the North right-of-way of Williams Way; thence with said right-of-way with a curve to the left 146.53 feet, the chord of which bears North 84°59' West 146.53 feet; thence North 88°14' West 4.2 feet; thence with curve to the right 108.3 feet, the chord of which bears North 79°55' West 108.3 feet; thence North 62°06' West 28.5 feet to the South line of Davis tract; thence with said tract South 88°06' East 26 feet; thence North 52°23' East 86.8 feet; thence North 88°43' East 244.6 feet to the point of beginning.

Tax Id No.: 01-0001-0148 and 01-0001-0127