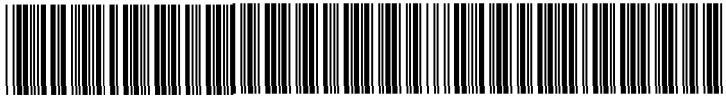




MISC 2015044361



JUN 05 2015 11:28 P 11

Fee amount: 70.00  
FB: M1-22274  
COMP: SB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
06/05/2015 11:28:23.00



2015044361

ASSIGNMENT OF RENTS AND LEASES

Cover Page

Owner: LEGACY COURT, LLC, a Nebraska limited liability company

Owner's Notice Address: 12910 Pierce Street, Suite 110, Omaha, NE 68144

Lender: PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation, together with other holders from time to time of the Note (as defined herein).

Lender's Notice Address: 2801 Highway 280 South  
Birmingham, Alabama 35223  
Attention: Investment Department

PREPARED BY, AND RECORD AND RETURN TO:  
Nancy C. Drummond, Esq.  
King Drummond & Dabbs, LLC  
4000 Eagle Point Corporate Drive  
Birmingham, AL 35242  
PH: 205-824-8247

PLIC/LegacyCourt,OmahaNE

## ASSIGNMENT OF RENTS AND LEASES

THIS INSTRUMENT is entered into as of the 5 day of June, 2015 and THE FOLLOWING meanings are hereby adopted by the undersigned for the following capitalized terms for purposes of this instrument and all capitalized terms not otherwise defined below shall have the meaning attributed to such term in the hereafter defined Indenture:

- a. "Owner" shall mean LEGACY COURT, LLC, a Nebraska limited liability company
- b. "Lender" shall mean PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation
- c. "Loan Amount" shall mean \$5,200,000.00
- d. "Owner's Notice Address" shall mean 12910 Pierce Street, Suite 110, Omaha, NE 68144
- e. "Lender's Notice Address" shall mean 2801 Highway 280 South, Birmingham, Alabama 35223, Attention: Investment Department
- f. "State" shall mean the State of Nebraska

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 the "Leases", and all said 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 Promissory Note in the Loan Amount executed by Owner dated this same date in favor of Lender and all modifications, renewals, extensions, restatements, supplements or any other modifications of same (hereinafter called the "Note"), and as additional security for the Owner's obligations under the Deed of Trust and Security Agreement and all modifications, renewals, extensions, restatements, supplements or any other modifications of same (referred to as the "Indenture") executed to further secure the Note and the Secured Debt (defined in the Indenture) and to furnish security for the performance of Owner's obligations contained herein. The Note, Indenture and all other documents further evidencing or securing the loan, and all modifications, renewals, extensions, restatements, supplements and any other modifications of the same 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 under the Note, as well as the Secured Debt, and 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 Event of Default (defined in the Indenture) has occurred or there is no default by Owner in performance of the terms, covenants or provisions of the 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 EVENT OF 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 WARRANTIES:

(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 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.

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

(b) Owner shall (i) provide executed originals of all Leases to Lender upon demand and (ii) before any Lease for any portion of the Property is executed, provide a copy of the same to Lender for its approval which approval shall not be unreasonably withheld. Provided, however, subparagraph (ii) above shall not be applicable to Leases approved by Lender in writing as of the date hereof or to any "Local Lease" defined as a lease which does not violate any restrictions in any then existing tenant leases or restrictions of record which lease shall be a bona-fide, arms-length lease entered into with an Unrelated Tenant (defined below) and shall be

prepared on a form approved by Lender for no more than 2,000 square feet of space in the Property for a rental rate of not less than the rental rate for the then current lease being replaced for a term, including all extensions, renewals and options, of no more than three (3) years with such tenant paying its own costs for utilities and interior maintenance and its pro rata share of taxes, insurance, common area maintenance and all other expenses attributable to operation of the Property. An Unrelated Tenant shall mean a tenant not directly or indirectly owned by or related to or affiliated or associated with Owner, any person or entity holding an ownership interest in Owner (whether beneficial or otherwise) or any guarantor or indemnitor of the Loan (collectively referred to as Owner) or over which Owner has any control (meaning any contractual rights to influence the business operations of such tenant other than as specified in the lease presented to Lender or lending or other relationship with tenant other than as specified in the lease presented to Lender).

(c) that all Leases 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 any sums due under the Note and the other Loan Documents 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 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 without the prior written consent of Lender, except for any Local Lease;

(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 any Lease;

(f) Owner shall not discount any future accruing Rents and Profits;

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

(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 a 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) 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 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 Event of Default has occurred under any of the Loan Documents) or Owner shall at all times contract to manage the Property through a qualified manager or management company, and Owner shall obtain the Lender's prior written consent to and approval of the said management contract and manager or management company 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 (1) 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 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 Note; 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 Note;

(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 sums due under the Note and other Loan Documents.

(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 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 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 Note 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 Note 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 performance of all obligations secured hereby and by the Loan Documents, as evidenced by a recorded satisfaction or release of the Indenture, note, 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.



## EXHIBIT A

All of that certain land, along with all improvements situated thereon and rights appurtenant thereto, located in Omaha, Douglas County, Nebraska described as follows:

Lot 1, in Legacy Replat 4, an Addition to the City of Omaha as surveyed, platted and recorded in Douglas County, Nebraska as Instrument No. 2003234708

TOGETHER WITH all those certain easements and appurtenant rights established by the following documents recorded in the office of the Register of Deeds of Douglas County, Nebraska:

1. Declaration of Covenants, Conditions, and Restrictions dated October 16, 2003 and recorded October 21, 2003 as Instrument No. 2003203737
2. Easements, Covenants and Restrictions Agreement dated October 14, 2003 and recorded October 21, 2003 as Instrument No. 2003203741, amended at 2010067574 and 2014025024