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Leann H. Kilts, WEBER COUNTY RECORDER
22-Nov-19 0246 PM FEE \$40.00 DEP TH
REC FOR: STEWART TITLE INSURANCE AGENCY OF
ELECTRONICALLY RECORDED

558671

Prepared by and when recorded return to:

Karen D. Dike
Ameritas Life Insurance Corp.
5900 O Street
Lincoln, Nebraska 68510

Loan No. 3191566

Property Addresses: 185 West 12th Street, Unit A-G
141, 125 and 219 West 12th Street
125 West 12th Street
Ogden, Utah 84404

1263, 1269, 1275, 1287 Wall Avenue
1293 Wall Avenue
Ogden, Utah 84404

Assessor's Parcel Numbers: 12-236-0003
12-274-0002
12-241-0002

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT is made this 22 day of November, 2019, by Ogden Commons, LLC, a Utah limited liability company (herein called the "Assignor"), whose mailing address is 1178 W. Legacy Crossing Blvd, Suite 100, Centerville, Utah 84014, to Ameritas Life Insurance Corp., a Nebraska corporation (herein called the "Assignee"), whose mailing address is 5900 O Street, Lincoln, Nebraska 68510.

WITNESSETH:

FOR VALUE RECEIVED, Assignor hereby absolutely and unconditionally grants, transfers and assigns to Assignee the immediate and continuing right to receive and collect the rents, income and profits (collectively the "Rents") arising out of or payable from the real property ("Premises") described as follows:

**See attached Exhibit A
which is incorporated herein by this reference**

and all leases and agreements for the leasing, use or occupancy of the Premises, now heretofore or hereafter entered into, whether oral or written or whether for a definite term or month-to-month, including subleases thereof and tenancies following attornment (collectively "Leases"), together with all guarantees therefor and all renewals, replacements and extensions thereof, together with all payments derived therefrom including, but not limited to, claims for the recovery of damages done to the Premises or for the abatement of any nuisance existing thereon, claims for damages resulting from default under said Leases whether resulting from acts of insolvency or acts of bankruptcy or otherwise, and lump sum payments for the cancellation of said Leases or the waiver of any obligation or term thereof prior to the expiration date and the return of any insurance premiums or ad valorem tax payments made in advance and subsequently refunded, and all security deposits, damage deposits and other funds paid to Assignor by all lessees under the Leases, whether lump sum or in installments, all for the purpose of securing the following (herein collectively referred to as the "Indebtedness Secured Hereby"):

A. Payment of the indebtedness evidenced by that certain Promissory Note (including any extensions, replacements, modifications or renewals thereof) in the principal sum of Six Million One Hundred Thousand and No/100 Dollars (\$6,100,000.00), dated of even date herewith, executed and delivered by the Assignor and payable to the order of Assignee (the "Note"), secured by a Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing Statement (referred to herein as the "Deed of Trust") of the same date from Assignor to Assignee covering the Premises, filed for record in the Weber County Recorder's Office.

B. Payment, performance and discharge of each and every obligation, covenant and agreement of Assignor herein and in said Note, Deed of Trust and any other instrument(s) or document(s) evidencing or securing the indebtedness evidenced by the Note (collectively the "Security Documents").

C. Payment of future advances deemed necessary or desirable by Assignee to protect and preserve the Premises or the Leases or Rents, whether such advances are made pursuant to this Assignment or any other Security Document.

AND TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR AGREES:

1. **Performance of Leases.** To faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any Leases of the Premises to be performed by the landlord thereunder; to enforce or secure the performance of each and every obligation, covenant, condition and agreement of said Leases by the tenants thereunder to be performed; not to borrow against, pledge or assign any rentals due under said Leases, or anticipate the Rents thereunder or reduce the amount of the Rents and other payments thereunder; not to waive, excuse, condone or in any manner release or discharge the tenants thereunder of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases or to permit the tenant to assign or sublet its interest in the Lease unless required to do so by the terms of the Lease; not to terminate the Leases or accept a surrender thereof or a discharge of the tenant unless required to do so by the terms of the Lease; and not to consent to a subordination of the interest of the tenants thereunder to any party other than Assignee and then only if specifically required to do so by the Assignee.
2. **Subsequent Leases.** Assignor shall submit to Assignee for its approval a standard form Lease; and no new Leases or subleases will be executed or Lease extensions, amendments or modifications granted by the Assignor after the date hereof with respect to all or any portion of the Premises without prior written approval of Assignee unless they

substantially conform to the standard form Lease. Notwithstanding the foregoing, provided there does not then exist an event of default beyond any applicable cure period under the Note, Deed of Trust or any other Security Documents, Assignee's prior consent shall not be required for new Leases or subleases that are not Material Leases or for any modifications, extensions or renewals of Leases that are not Material Leases unless such new Lease or sublease or modification, extension or renewal includes a reduction in base rent and/or in tenant reimbursements in which case such new Lease or sublease or modification, extension or renewal shall remain subject to Assignee's prior written approval as provided above. For purposes of this Assignment, the term "Material Lease" shall mean (i) a lease for any space in excess of 3000 square feet., (ii) a lease with a term, including any options and extensions, of ten (10) or more years or (iii) a lease with an Affiliate of Assignor, without regard to the size of the leased premises or the duration of the lease. The term "Affiliate" shall mean any entity, individual, firm, or corporation, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Assignor.

Assignee shall complete any required review and provide its response to Assignor within five (5) business days of receiving the written request from Assignor. Provided Assignee has received all information reasonably necessary for it to conduct such a review, should Assignee fail to complete the review and communicate its determination to Assignor within this time frame, the documents shall be deemed approved as submitted. Notwithstanding the foregoing, Assignee's consent shall be required for all Lease terminations, without regard to whether the Lease is a Material Lease.

3. Protect Security. The Assignee shall have the right at Assignor's sole cost and expense, to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord thereunder, and Assignor agrees to pay all reasonable out-of-pocket costs and expenses of Assignee, including attorney's fees in a reasonable sum, in any such action or proceeding in which the Assignee in its sole discretion may appear, together with interest at the Default Rate as provided in the Note, from the date incurred or advanced until paid.
4. Representations. Assignor represents and warrants that to its current, actual, knowledge it is now the absolute owner of said Rents with full right and title to assign the same; that there are no outstanding assignments or pledges of the Leases or Rents; that there are no existing defaults under the provisions of any of the Leases on the part of any party to the Leases; that no Rents have been waived, anticipated, discounted, compromised or released, except as disclosed to Assignee in writing on the rent roll prepared by Assignor and delivered to Assignee contemporaneously herewith; and that the tenants under the Leases have no defenses, setoffs or counterclaims against Assignor.
5. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment of the Leases and Rents. Assignor shall have the right to collect (but not prior to accrual) all of the Rents, and to retain, use and enjoy the same unless and until a default shall occur, and be continuing, in the payment when due of interest or principal under the Note or until any other default shall occur, and be continuing, hereunder or under the Note, Deed of Trust or under any other Security Document.
6. Remedies.
 - (a) Upon or at any time during the continuance of a default in the payment of any Indebtedness Secured Hereby or in the performance of any obligation, covenant

or agreement contained herein or in said Note, Deed of Trust or any Security Document or if any representation or warranty herein or given by Assignor in connection with the Indebtedness Secured Hereby proves to be materially untrue, the Assignee may declare all Indebtedness Secured Hereby immediately due and payable, may revoke the privilege granted Assignor hereunder to collect the Rents, and may, at its option, with notice, either in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, collect all of the Rents payable under the Leases, enforce the payment thereof and exercise all of the rights of the Assignor under the Leases and all of the rights of the Assignee hereunder, and may enter upon, take possession of, manage and operate said Premises, or any part thereof; may cancel, enforce or modify the Leases, and fix or modify Rents, and do any acts which the Assignee deems proper to protect the security hereof with or without taking possession of said Premises, and may apply the same to the costs and expenses of operation, management and collection, including reasonable attorney's fees, to the payment of the expenses of any agent appointed by Assignee, to the payment of taxes, assessments, insurance premiums and expenditures for the upkeep of the Premises, to the performance of the landlord's obligation under the Leases and to any Indebtedness Secured Hereby all in such order as the Assignee may determine. The entering upon and taking possession of said Premises, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect notice of default under said Deed of Trust or invalidate any act done pursuant to such notice nor in any way operate to prevent the Assignee from pursuing any remedy which it now or hereafter may have under the terms or conditions of said Deed of Trust or the Note secured thereby or any other Security Document or other instrument securing the same.

- (b) Assignee shall have all other rights and remedies available at law or in equity. All rights and remedies provided herein shall be cumulative and concurrent and shall be in addition to the rights and remedies provided Assignee as Lender under the Deed of Trust. The exercise by Assignee of any one of such remedies provided Assignee under this Assignment or under the Deed of Trust shall not be deemed to be exclusive of any one of the other remedies available to Assignee and shall in no way limit or prejudice any other legal or equitable remedies available to Assignee. In the event of any inconsistency between the terms of this Assignment, the Deed of Trust or any of the Security Documents, the terms of the Deed of Trust shall control; however, this provision shall not be deemed to limit, abrogate, restrict or impair any provision contained in this Assignment or in the Security Documents which provides for more extensive or expansive obligations, requirements or restrictions by or upon Assignor or more extensive or expansive rights or remedies of Assignee, than are contained in this Assignment.

7. No Liability for Assignee. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under the Leases nor shall this Assignment operate to place responsibility for the control, care, management or repair of the Premises upon the Assignee nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Premises, or for any dangerous or defective condition of the Premises, or, to the extent allowed by law, for any negligence in the management, upkeep, repair or control of said Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger nor liable for laches or failure to collect the Rents.

8. Assignor Hold Assignee Harmless. The Assignor shall, and does hereby agree, to indemnify and to hold Assignee harmless for, from and against any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases, except to the extent incurred as a result of Assignee's gross negligence or willful misconduct. Should the Assignee incur any such liability, or in the defense of any such claims or demands, the amount thereof, including reasonable out-of-pocket costs, expenses and reasonable out-of-pocket attorney's fees, together with interest thereon at the Default Rate provided for in the Note, shall be secured hereby, shall be added to the Indebtedness Secured Hereby, and Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of Assignor to do so, the Assignee may declare all Indebtedness Secured Hereby immediately due and payable.
9. Authorization to Tenant. The tenants under the Leases are hereby irrevocably authorized and directed to recognize the claims of Assignee or any receiver appointed hereunder without investigating the reason for any action taken by the Assignee or such receiver, or the validity or the amount of indebtedness owing to the Assignee, or the existence of any default in the Note, Deed of Trust, any Security Document or under or by reason of this Assignment, or the application to be made by the Assignee or such receiver. Assignor hereby irrevocably directs and authorizes the tenants to pay to Assignee or such receiver all sums due under the Leases and consents and directs that said sums shall be paid to Assignee or such receiver in accordance with the terms of its receivership without the necessity for a judicial determination that a default has occurred hereunder or under the Deed of Trust or that Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to Assignee or such receiver, the Assignor agrees that the tenant shall have no further liability to Assignor for the same. The sole signature of the Assignee or such receiver shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of the Assignee or such receiver for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises. Checks for all or any part of the rentals collected under this Assignment shall upon notice from the Assignee or such receiver be drawn to the exclusive order of the Assignee or such receiver.
10. Assignee Attorney-In-Fact. Assignor hereby irrevocably appoints Assignee and its successors and assigns as its agent and attorney in fact, which appointment is coupled with an interest, to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Assignee may deem necessary to make this Assignment and any further assignment effective.
11. Subsequent Leases. That until the Indebtedness Secured Hereby shall have been paid in full, Assignor will deliver to the Assignee executed copies of any and all other and future Leases or subleases upon all or a part of the said Premises and agrees to make, execute and deliver unto Assignee upon demand and at any time or times, any and all assignments and other instruments sufficient to assign such Leases or subleases and the Rents thereunder to Assignee or that the Assignee may deem to be advisable for carrying out the true purposes and intent of this Assignment. From time to time on request of the Assignee, the Assignor agrees to furnish Assignee with a rent roll of the Premises disclosing current tenancies, rents payable, and such other matters as Assignee may reasonably request.

12. No Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting the Assignee a "Mortgagee in Possession".
13. Continuing Rights. The rights and powers of Assignee hereunder shall continue and remain in full force and effect until all Indebtedness Secured Hereby, including any deficiency remaining after a foreclosure sale are paid in full, and shall continue after commencement of a foreclosure action (or a trustee's sale) and after foreclosure sale and until expiration of the equity of redemption if the Assignee be the purchaser at the foreclosure sale.
14. Successors and Assigns. This Assignment and each and every covenant, agreement and provision hereof, shall be binding upon the Assignor and its successors and assigns including, without limitation, each and every record owner of the Premises or any other person having an interest therein and shall inure to the benefit of the Assignee and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to mean the heirs, executors, representatives and administrators of any natural person who is a party to this Assignment.
15. Governing Law. This Assignment is made pursuant to and shall be governed by the laws of the State of Utah.
16. Validity Clause. It is the intent of this Assignment to confer to Assignee the rights and benefits hereunder to the full extent allowable by law. The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid. Any provisions found unenforceable shall be severable from this Assignment.
17. Notices. Any notice which any party hereto may desire or may be required to give to any other party, shall be effective if made in the same manner for notices given pursuant to the Deed of Trust.
18. Attorney's Fees. Assignor agrees to pay to Assignee upon demand any reasonable and out-of-pocket collection expenses, court costs and reasonable attorneys' fees (whether or not suit is commenced) which may be incurred in the collection or enforcement of this Assignment or any part hereof or any of the Security Documents; and in the event suit is brought to enforce payment hereof, that such expenses, costs and fees be determined by a court sitting without a jury. Attorneys' fees shall include any such fees incurred in any bankruptcy, appellate or related ancillary or supplemental proceedings, whether before or after final judgment related to the enforcement or defense of this Assignment.
19. Security Deposits. The Assignor agrees on demand to transfer to the Assignee any security deposits held by Assignor under the terms of the Leases. Assignor agrees that such security deposits may be held by the Assignee without any allowance of interest thereon to Assignee, shall become the absolute property of the Assignee under any circumstances where Assignee exercises its remedies hereunder, and shall be applied in accordance with the provisions of the Leases. Until Assignee makes such demand and the deposits are paid over to Assignee, the Assignee assumes no responsibility to the tenants under the Leases for any such security deposit.
20. Perfection. This Assignment shall be deemed perfected, absolute and choate upon the recording of this Assignment.

21. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

ASSIGNOR, BY EXECUTION OF THIS ASSIGNMENT, AND ASSIGNEE BY ACCEPTANCE OF THIS ASSIGNMENT, EACH HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS ASSIGNMENT AND ANY OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY, ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY OF THE PARTIES. ASSIGNOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO HOLDER MAKING THE LOAN WHICH IS THE SUBJECT MATTER OF THIS TRANSACTION. ASSIGNOR FURTHER ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY AND VOLUNTARILY MADE AFTER FULL OPPORTUNITY TO DISCUSS SAME WITH COUNSEL OF ASSIGNOR'S CHOICE.

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date set forth below and is effective on the date first set forth above.

ASSIGNOR:

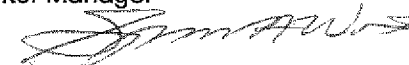
Ogden Commons, LLC,
a Utah limited liability company

By: Millcreek Partners LLC,
a Utah limited liability company
Its: Manager

By: Teton Land Company, L.L.C.,
a Utah limited liability company
Its: Manager

By: 

Gary M. Wright
Its: Manager

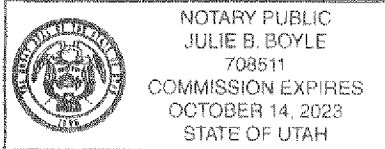
By: 

Spencer H. Wright
Its: Manager

[notary acknowledgment page follows]

STATE OF UTAH)
) ss.
COUNTY OF Davis)

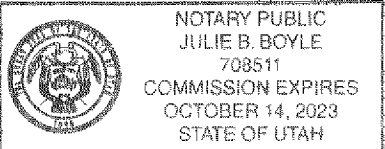
On this 21 day of November 2019, before me Julie B. Boyle, a notary public, personally appeared Gary M. Wright as a manager of Teton Land Company, L.L.C., a Utah limited liability company, the Manager of Millcreek Partners LLC, a Utah limited liability company, the Manager of Ogden Commons, LLC, a Utah limited liability company, who proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged before me that he executed the same on behalf of said limited liability company. Witness my hand and official seal.

(Seal)  Julie B. Boyle
Notary Public

My Commission Expires: 10-14-2023

STATE OF UTAH)
) ss.
COUNTY OF Davis)

On this 21 day of November 2019, before me Julie B. Boyle, a notary public, personally appeared Spencer H. Wright as a manager of Teton Land Company, L.L.C., a Utah limited liability company, the Manager of Millcreek Partners LLC, a Utah limited liability company, the Manager of Ogden Commons, LLC, a Utah limited liability company, who proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged before me that he executed the same on behalf of said limited liability company. Witness my hand and official seal.

(Seal)  Julie B. Boyle
Notary Public

My Commission Expires: 10-14-2023

EXHIBIT A

**Legal Description of Property
To Assignment of Rents and Leases**

The land referred to in this exhibit in the County of Weber, State of Utah, and is described as follows:

Parcel 1: (12-236-0003)

Lot 3, THE COMMONS AT OGDEN, according to the Official Plat thereof as recorded in the Office of the Weber County Recorder, State of Utah.

Parcel 2: (12-274-0002)

Lot 6, THE COMMONS AT OGDEN-SECOND AMENDMENT, according to the official plat thereof, on file, and of record in the office of the Weber County Recorder.

Parcel 3: (12-241-0002)

Lot 4, THE COMMONS AT OGDEN - FIRST AMENDMENT, according to the Official Plat thereof as recorded in the Office of the Weber County Recorder, State of Utah.

Parcel 4:

Benefits, if any, accruing to Parcel' s 1, 2, and 3, contained in Declaration of Easements and Conditions, recorded September 23, 2009, as Entry No. 2436058, of Official Records and Amended by First Amendment to Declaration of Easements and Covenants, recorded June 10, 2010, as Entry No. 2476752, of Official Records.