

Mail to:  
Ameritas Life Insurance Corp  
5900 "O" Street  
Lincoln, NE 68510-2252



\*W3018431\*

E# 3018431 PG 1 OF 8  
Leann H. Kilts, WEBER COUNTY RECORDER  
22-Nov-19 0246 PM FEE \$40.00 DEP KL  
REC FOR: STEWART TITLE INSURANCE AGENCY OF  
ELECTRONICALLY RECORDED

658671

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

12-236-0003, 12-274-0002, 12-341-0002

THIS AGREEMENT (the "Agreement") is made as of this 22 day of November 2019, by and between **Ameritas Life Insurance Corp.**, a Nebraska corporation ("Lender"), **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a national banking association ("Tenant"), and **Ogden Commons, LLC**, a Utah limited liability company (collectively, "Landlord" and "Borrower").

RECITALS

- A. Landlord is the owner of those certain premises described on Exhibit 1 annexed hereto and made a part hereof and commonly known as 125 West 12<sup>th</sup> Street, Ogden, Utah 84404 (together with the improvements located thereon, the "Property");
- B. Under the terms of a certain Ground Lease as amended by the agreements described on Exhibit 2 annexed hereto and made a part hereof (the "Lease"), Landlord, or a predecessor in interest, leased to Tenant, or a predecessor in interest, all or a portion of the Property, as more particularly described in the Lease;
- C. Lender has made a mortgage loan to Landlord or is about to make a mortgage loan to Landlord secured by a mortgage or deed of trust encumbering the Property, which includes an assignment of Landlord's interest in the Lease (the "Mortgage").
- D. The Mortgage constitutes a lien upon the Property;
- E. Tenant desires to be assured of Tenant's rights under the terms of its Lease and is willing to enter into this Agreement to induce Lender to recognize Tenant's rights under the Lease; and
- F. Lender is willing to enter into this Agreement on the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Tenant and Landlord hereby agree as follows:

- 1. Provided Lender complies with the provisions of Paragraph 2 hereof, the Lease is and shall be subject and subordinate in all respects to the lien imposed by the Mortgage (the term Mortgage shall include any amendment, renewal, modification, replacement or extension hereafter made), and all advances made or to be made thereunder and all amounts secured thereby.
- 2. In the event of the foreclosure of the Mortgage or a sale of the Property under a power of sale in the Mortgage, or the acquisition of a deed to the Property in lieu of foreclosure by Lender prior to the expiration of the Lease, including any extensions and renewals of the Lease, provided Tenant is not in default beyond the expiration of any applicable notice or grace period under any of the

terms, covenants and conditions of the Lease on its part to be observed and performed, Lender does hereby agree as follows:

- (a) Tenant's occupancy of the Premises shall not be disturbed by Lender;
- (b) The Lease shall continue in full force and effect and Lender shall not interfere with Tenant's rights and privileges thereunder and will thereby establish direct privity of estate and contract as between Lender and Tenant with the same force and effect and relative priority in time and right as though the Lease were originally made directly from Lender to Tenant (but subject to the provisions of this Agreement); and
- (c) Lender shall not join Tenant as a party defendant in any action for the purpose of terminating Tenant's interest under the Lease due to any default by Landlord or its successors under the Mortgage; provided, however, Lender shall not in any way or to any extent be liable to Tenant:
  - (i) For any past act or omission to act or default on the part of the original or any prior landlord under the Lease and Tenant shall have no right to assert any damages arising therefrom against Lender except for damages, offsets, defenses, claims or counterclaims expressly provided for under the Lease; and provided, however, that such absence of liability or unavailability of claims for damages, offsets, defenses, claims or counterclaims shall not be deemed to permit the repetition or continuation of any such act or omission (or the continuation of a condition from a past act or omission) not otherwise permitted under the Lease;
  - (ii) For any prepayment of rent or deposit, rental security or any other sums deposited with the original or any prior landlord (unless paid pursuant to the express terms of the Lease), and not delivered to Lender;
  - (iii) For any modification or amendment to the Lease hereafter made without Lender's consent which results in a material reduction of any rent or other charges payable by Tenant under the Lease or which materially increases the obligations of Landlord under the Lease unless such modification or amendment is entered into by Landlord and Tenant to evidence the exercise of any expansion, renewal or termination options expressly set forth in the Lease.

3. Provided that the conditions and agreements set forth herein, including non-disturbance, are complied with, in the event of the foreclosure of the Mortgage or a judicial sale of the Property, or the acquisition of a deed to the Property in lieu of foreclosure by Lender prior to the expiration date of the Lease, including any extensions and renewals of the Lease, Tenant hereby covenants and agrees to make full and complete attornment to Lender for the balance of the term of the Lease, including any extensions and renewals thereof (to the extent elected by Tenant from time to time), upon the same terms, covenants and conditions as therein provided, so as to establish direct privity of estate and contract as between Lender and Tenant with the same force and effect and relative priority in time and right as though the Lease were originally made directly from Lender to Tenant (but subject to the provisions of this Agreement), and Tenant will thereafter make all rent payments directly to Lender. Notwithstanding the foregoing, Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of Landlord under

the Lease. Landlord hereby irrevocably authorizes and directs Tenant to make all rent payments directly to Lender upon receipt of such notice from Lender.

4. It is understood and agreed that until Lender shall become the owner of the Property, Lender shall not have any responsibility as owner of the Property or as landlord under the Lease. Tenant hereby acknowledges and agrees that in the event Lender or its affiliate, successor, designee or assignee shall become the owner of the Property, that any liability or obligation of the landlord under the Lease shall be limited to the landlord's interest in the Property and no recourse shall be had to any other assets of Lender or its affiliate, successor, designee or assignee. Subject to the foregoing limitation as to landlord's interest in the Property, during such time as Lender or its affiliate, successor, designee or assignee shall be the owner of the Property, Tenant may exercise any right or remedy provided in the Lease or by law in the event of any failure to perform any obligation of the landlord under the Lease.

5. Tenant agrees to use its reasonable efforts to send a copy of any notice or statement under the Lease to Lender (at Lender's address as given herein or the last address of Lender furnished to Tenant in writing as described in paragraph 6) at the same time as such notice or statement is sent to the Landlord under the Lease, whenever any such notice or statement alleges a default by, or failure on the part of, the Landlord to perform its duties under the Lease. Notwithstanding anything contained herein to the contrary, failure to send such notice shall not impair the validity of Tenant's notice to Landlord.

6. Tenant hereby agrees that, from and after the date hereof, in the event of any act or omission by the Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, Tenant will not exercise any such right (a) until it has given written notice of such act or omission, by registered or certified mail, return receipt requested, addressed to Lender, at Lender's address as given herein or at the last address of Lender furnished to Tenant in writing (by registered or certified mail addressed to Tenant at Tenant's address as given herein or the last address of Tenant furnished to Lender by written notice in the manner above specified), and (b) if the default by Landlord is of a nature which can be cured by Lender, and if Lender is proceeding with diligence to cure such default, until expiration of thirty (30) days beyond the receipt of written notice from Tenant (provided that Tenant has not been materially deprived of the effective use and occupancy of the Premises for the normal operation of Tenant's business).

7. Except as expressly permitted in the Lease, Tenant will not make any prepayment of rent for a period in excess of one (1) month.

8. The terms, covenants and conditions hereof shall inure to the benefit of and be binding upon the respective parties hereto, and their respective successors and assigns. For the purposes hereof, any purchaser at a sale foreclosing the Mortgage or at a sale conducted under a power of sale in the Mortgage or otherwise acquiring the Property (for the purposes hereof, acquisition of title to the Property by deed in lieu of mortgage foreclosure, shall be deemed a purchase at a sale) shall be deemed a successor to Lender.

9. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute the same Agreement. This Agreement shall not be binding on or enforceable against any party hereto unless executed by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered in their respective names and behalf, by its officers duly authorized, the date and year first written above.

LENDER:

**Ameritas Life Insurance Corp.**

Address:

5900 "O" Street  
Lincoln, Nebraska 68510-2252  
Attention: Mortgage Loans

By: Anthony M. Spald

Title: 2nd VP

Attest: \_\_\_\_\_

TENANT:

**JPMorgan Chase Bank, National Association**

Address:

Attn: Lease Administration  
1111 Polaris Parkway, Ste 2H  
Mail Code: OH1-0241  
Columbus, OH 43240

By: Krista Mannion  
Krista Mannion

Title: Vice President

LANDLORD:

**Ogden Commons, LLC**

Address:

~~1572 North Woodland Park Drive~~  
~~Suite 505~~  
~~Layton, Utah 84041~~  
1178 LEGACY CROSSING, BLD  
CENTERVILLE, VT 84014

By: [Signature]

Title: MANAGER

Attest: \_\_\_\_\_

After recording, return to:

JPMorgan Chase Bank, National Association  
1111 Polaris Parkway, Suite 2H  
Mail Code OH1-0241  
Columbus, OH 43240  
Attn: Lease Administration

LENDER'S NOTARY

STATE OF Ohio )

) SS

COUNTY OF Hamilton )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Anthony M. Spudack, Second Vice President of American Life Insurance Corp., personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such Second Vice President appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation/association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21 day of November, 2019.

Justin Lincoln

Notary Public

My Commission Expires: 9-12-2024



JUSTIN LINCOLN  
Notary Public, State of Ohio  
My Commission Expires 09-12-2024

TENANT'S NOTARY

STATE OF OHIO \_\_\_\_\_ )

) SS

COUNTY OF DELAWARE \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Krista Mannion** of JPMorgan Chase Bank, National Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such she appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation/association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5<sup>th</sup> day of November, 2019.

Lisa Ransom

Notary Public

My Commission Expires: 1/8/2021



LISA RANSOM  
NOTARY PUBLIC  
FOR THE  
STATE OF OHIO  
My Commission Expires  
January 8, 2021

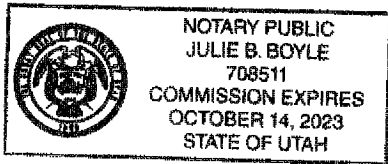
LANDLORD'S NOTARY

STATE OF Utah )  
 ) SS

COUNTY OF Davis )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Spencer H. Wright, Manager of Ogden Commons LLC, personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation/association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6 day of November, 2019.



Julie B. Boyle  
Notary Public

My Commission Expires: 10-14-2023

**EXHIBIT "1"**  
**LEGAL DESCRIPTION**

File No.: 558671

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.

EXHIBIT 2  
Description of Lease and Amendments

Ground Lease, dated June 3, 2010, between OGDEN COMMONS, LLC, a Utah limited liability company, as Landlord and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association, as Tenant.

Memorandum of Lease and Right of First Refusal , dated June 3, 2010 and recorded July 2, 2010, between OGDEN COMMONS, LLC, a Utah limited liability company, as Landlord and JPMORGAN CHASE BANK NATIONAL ASSOCIATION, a national banking association, as Tenant.

First Amendment to Memorandum of Lease and Right of First Refusal, dated September 30, 2010 and recorded March 3, 2011, between OGDEN COMMONS, LLC, a Utah limited liability company, as Landlord and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association, as Tenant.

Rent Commencement Date Letter, dated November 30, 2010, between OGDEN COMMONS, LLC, a Utah limited liability company, as Landlord and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association, as Tenant.