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E# 3018432 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

When Recorded Return To:

Ameritas Life Insurance Corp.  
5900 "O" Street  
Lincoln, NE 68510-2252  
Attn: Mortgage Loans

558671

**SUBORDINATION, NONDISTURBANCE  
AND ATTORNMENT AGREEMENT**

12-236-0003

12-274-0002 and 12-541-0002

Property Address: Ogden Commons  
185 West 12<sup>th</sup> Street, Ogden, Utah 84404

**THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT** ("Agreement"), is made and entered into as of the 22 day of November, 2019, by and among **Prime Midwest Plus, LLC**, a Delaware limited liability company ("Tenant"); **Ogden Commons, LLC**, a Utah limited liability company ("Landlord") and Ameritas Life Insurance Corp., a Nebraska corporation ("Lender").

**WHEREAS**, Tenant is the current tenant under that certain Lease dated **March 16, 2016** as amended by Notice of Delivery of Premises and Completion of Improvements dated August 9, 2016; First Amendment to Lease Agreement dated May 9, 2016 and Assignment and Assumption Agreement dated February 1, 2018 (the "Lease") with Landlord relating to certain premises (the "Demised Premises") located within a building located on the Property (defined below) and more specifically described in the Lease. The Lease including all amendments thereto, is described on **Exhibit A**;

**WHEREAS**, Landlord desires that Lender provide Landlord a loan, the repayment of which loan will be secured by, among other things, a Mortgage or Deed of Trust executed by Landlord in favor of Lender ("Security Instrument") and recorded against the real property and improvements described therein and on **Exhibit B** attached hereto and by this reference incorporated herein (the "Property");

**WHEREAS**, In connection with making of the aforescribed loan Lender requires that Tenant subordinate the Lease and its interest therein to the lien of the Security Instrument and Tenant desires to subordinate Lease upon the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the parties hereto do hereby acknowledge and agree as follows:

1. Definitions. The below terms have the following meanings for purposes of this Agreement:

(a) "Foreclosure Event" means (i) foreclosure under the Security Instrument; (ii) any other exercise by Lender of rights and remedies (whether under the Security Instrument or under applicable law, including bankruptcy law) as holder of the Promissory Note and/or the Security Instrument, as a result of which Successor Landlord becomes owner of the Property; or (iii) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower's interest in the Property in lieu of any of the foregoing.

(b) "Successor Landlord" means any party that becomes owner of the Property as the result of a Foreclosure Event.

(c) Initially capitalized terms used in this Agreement and not expressly defined herein have the meanings given them in the Security Instrument.

2. Subordination. Tenant agrees and does hereby subordinate the Lease and all of its rights and interests therein to the lien, security interest and terms of the Security Instrument, the indebtedness secured thereby, and all other documents relating to such indebtedness, and to all renewals, extensions or modifications thereof, including without limitation amendments which increase the amount of such indebtedness.

3. No Exercise of Security Interest Remedies Against Tenant. So long as the Lease is in full force and effect and Tenant is not then in material default under the Lease after the expiration of any applicable notice and cure periods, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Security Instrument unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

4. Nondisturbance. If the Lease is in full force and effect and Tenant is not in material default under the Lease after the expiration of any applicable notice and cure periods at the time, if ever, that a Successor Landlord acquires title to the Property, such Successor Landlord shall not terminate Tenant's rights and interests in and to the Lease nor terminate or disturb Tenant's use, possession or enjoyment of the Demised Premises, except in accordance with the terms of the Lease and this Agreement.

5. Attornment. If the Lease is in full force and effect and Tenant is not in material default under the Lease after the expiration of any applicable notice and cure periods at the time, if ever, that a Successor Landlord acquires title to the Property, Tenant shall recognize and attorn to such Successor Landlord under and upon all the terms, covenants and conditions of the Lease for the balance of the term thereof (including extensions), with the same force and effect as if Successor Landlord were Original Landlord under the Lease. This attornment is to be effective and self-operative, without the execution of any further instruments; provided that Tenant shall promptly execute and deliver any instrument Lender or Successor Landlord shall reasonably request to evidence such attornment. Notwithstanding the foregoing or anything to the contrary contained elsewhere herein, in no event shall Lender or Successor Landlord be (a) liable for any

damages for defaults of Landlord under this Agreement or under the Lease, (b) bound by any payment of any rent or additional rent which Tenant might have paid to Landlord more than thirty (30) days in advance, except in the form of security or impounds as required under the Lease but only to the extent the same are actually received by Lender or Successor Landlord, or (c) except for any amendment or modification expressly contemplated pursuant to the Lease, bound by any amendment or modification of any term of the Lease made without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

6. No Representations. Tenant acknowledges that Landlord has not made any representations to Tenant regarding the condition of the Premises other than those set out in the Lease.

7. Direct Payment of Rents. Tenant acknowledges that Landlord has assigned the Lease to Lender and agrees that pursuant to such assignment, Tenant will, upon receipt of written notice from Lender (the "Rent Payment Notice"), pay all rents and other charges due and payable under said Lease directly to Lender or Lender's agent pursuant to the Rent Payment Notice. Landlord hereby expressly and irrevocably directs and authorizes Tenant to comply with any Rent Payment Notice, notwithstanding any contrary instruction, direction or assertion of Landlord, and Landlord releases Tenant from all claims, damages, losses, liabilities, obligations, penalties, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses in connection with Tenant's compliance with any Rent Payment Notice. Until such notice is given by Lender to Tenant, Tenant shall pay all rent and installments of rents to Landlord in accordance with the provisions of the Lease.

8. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns and any Successor Landlord, and its successors and assigns, their respective heirs, personal representatives, nominees, successors and assigns.

9. Notice of Default & Right to Cure. Tenant hereby agrees to provide to Lender or Lender's representative at the following address a copy of the any notice of default or breach of the Lease by the Landlord (the "Landlord Default Notice"):

Ameritas Life Insurance Corp.  
5900 "O" Street  
Lincoln, NE 68510-2252  
Attn: Mortgage Loans

Tenant further agrees that Lender shall have the right, but not the obligation, to cure any such default or breach for a thirty (30) day period following Lender's receipt of the Landlord Default Notice before Tenant can terminate the Lease based on such default.

10. Amendments. This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the parties hereto.

11. Counterparts. This Agreement may be executed in multiple counterparts, and any set collectively bearing the original signatures of all parties shall constitute a single document.

30 IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of this day of OCT NOV 20 19.

*rw*

**"Lender"**

Ameritas Life Insurance Corp.,  
a Nebraska corporation

By: *Anthony M. Spurlock*  
Name: Anthony M. Spurlock  
Its: Second Vice President

STATE OF OHIO            )  
  ) ss.  
COUNTY OF HAMILTON    )

This instrument was acknowledged before me on October 30, 2019, by Anthony M. Spurlock as Second Vice President of Ameritas Life Insurance Corp., a Nebraska corporation.

*Justin Lincoln*  
(Signature of notarial officer)

(Seal, if any)

Notary Public  
Title (and Rank)

My Commission Expires: 9/12/2024



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

**"Tenant"**

Prime Midwest Plus, LLC, a Delaware limited liability company

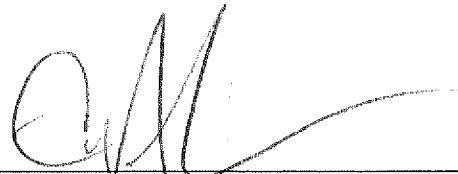
By:   
Name: Scott Wittman  
Its: Real Estate Director

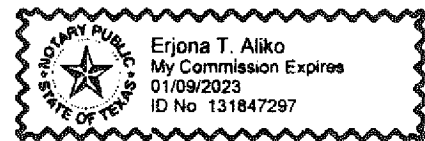
STATE OF TEXAS )  
 )  
COUNTY OF FORT BEND )

ss:

On November 11, 2019, before me, Erjona T. Aliko (here insert name of the officer), Notary Public, personally appeared Scott Wittman as the Real Estate Director of Prime Communications, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public



"Landlord"

Ogden Commons, LLC, a Utah limited liability company

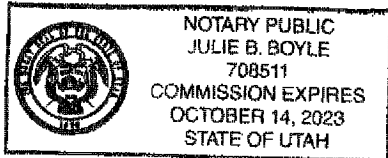
By: [Signature]  
Name: Spencer H. Wright  
Its: MANAGER

STATE OF Utah )  
COUNTY OF Davis )

ss:

On November 18, 2019 before me, Julie B. Boyle (here insert name of the officer), Notary Public, personally appeared Spencer H. Wright, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
WITNESS my hand and official seal.

[Signature]  
Notary Public



**EXHIBIT A**

**To Subordination, Nondisturbance and Attornment Agreement**

**Description of Lease, Including All Amendments and Effective Dates**

1. Notice of Delivery of Premises and Completion of Improvements dated August 9, 2016
2. First Amendment to Lease Agreement dated May 9, 2016
3. Assignment and Assumption Agreement dated February 1, 2018

**EXHIBIT "A"  
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.