

UNOFFICIAL COPY

Doc#. 1806108049 Fee: \$66.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/02/2018 09:12 AM Pg: 1 of 10

Prepared by and when recorded return to:
Steven J. Christophersen
Ameritas Life Insurance Corp.
5900 O Street
Lincoln, Nebraska 68510

SUBORDINATION, NON-DISTURBANCE AND ATTACHMENT AGREEMENT

17019732NC 5 of 6 CATTAN

TENANT:

Highland Park CVS, L.L.C.

LANDLORD:

SCP 2006-C23-032 LLC

MORTGAGEE:

Ameritas Life Insurance Corp.

LEGAL DESCRIPTION:

See Exhibit A

UNOFFICIAL COPY

#08751L01

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made this 28 day of February, 2018 by and between HIGHLAND PARK CVS, L.L.C., with offices at c/o CVS Pharmacy, Inc., ATTN: Property Administration Department, One CVS Drive, Mail Code 1105, Woonsocket, Rhode Island 02895 ("Tenant"), Ameritas Life Insurance Corp., a Nebraska Corporation, having its office at 5900 O Street, Lincoln Nebraska 68510 ("Mortgagee") and 4051 North Lincoln, LLC, successor in interest to SCP 2006-C23-032 LLC, having its office at, c/o Calvo Limited Partnership, 115 Castlemere Place, North Andover, Massachusetts 01845 ("Landlord")

WITNESSETH:

WHEREAS, Tenant and Landlord have entered into a certain lease dated November 15, 2006 as assigned, modified, supplemented or amended by the documents listed on Exhibit A hereto (collectively, the "Lease") covering premises located at 4051 North Lincoln, Chicago, Illinois 60618 ("Premises") and as more specifically set forth in the Lease; and

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan in the original principal amount of \$3,150,000.00 ("Loan") to Landlord evidenced by a promissory note secured by, among other security, a certain Mortgage/Deed of Trust/Deed to Secure Debt and Security Agreement ("Mortgage") on Landlord's property; and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Mortgagee has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Tenant and Landlord hereby agree and covenant as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and Tenant's interest in the Premises under the Lease, are and shall at all times be subject, subordinate, and inferior to the lien of the Loan Documents and to the lien of all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent as set forth in the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the term of the

UNOFFICIAL COPY

Lease or any such extension or renewal thereof, except as would be permitted for Landlord to do so.

3. In addition, notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of rent or additional rent, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Mortgagee will not join Tenant as a party defendant, unless required by law, in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

4. If the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it, or by deed in lieu of foreclosure, or if Mortgagee takes possession of the Premises pursuant to any provisions of the Loan Documents, then: (i) Mortgagee and Tenant shall be directly bound to each other under all the terms, covenants and conditions of the Lease for the balance of the term thereof and for any extensions or renewals thereof which may be exercised by Tenant, with the same force and effect as if Mortgagee were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Mortgagee as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Mortgagee succeeding to the interests of the Landlord under the Lease; provided, however, regarding items (i) and (ii) above, that Tenant shall have received written notice from Mortgagee that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee 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 from and after Mortgagee's succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Mortgagee for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that Mortgagee shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord), except to the extent such act or omission continues during the period of possession by Mortgagee or during a period during which Mortgagee is receiving rent from Tenant pursuant to Paragraph 5 hereof; or

- (b) subject to any defenses which Tenant might have against any prior landlord (including Landlord) prior to the date that Mortgagee first takes possession of the premises; or

- (c) bound by any fixed rent which Tenant might have paid for more than the current month; or

- (d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is in an escrow or other fund available to Mortgagee; or

- (e) bound by any amendment or modification or waiver of any provision of the Lease made without the consent of the Mortgagee, which would reduce the lease term, rents payable or square footage. Said consent shall be deemed

UNOFFICIAL COPY

given if a response by Mortgagee is not received within thirty (30) days of Landlord's request.

5. Tenant shall not be under any obligation to pay rent to Mortgagee until the Tenant shall have received written notice from Mortgagee that Mortgagee has succeeded to the interests of Landlord under the Lease or that Mortgagee has exercised its rights under the Loan Documents, and directing such payments be made to Mortgagee. Landlord by its execution of this Agreement hereby consents to such direct payments by Tenant to Mortgagee and hereby releases and discharges Tenant of, and from all liability to Landlord on account of any such payments. Upon receipt of such notice, Tenant shall make future payments due under the Lease to Mortgagee until notified otherwise in writing in accordance with the terms of the Lease and Tenant shall not be liable to Landlord to account for such payments.

6. (a) Tenant shall notify Mortgagee in writing at the address set forth herein of the occurrence of any default or event of default by Landlord under the Lease which would give Tenant the right to cancel or terminate the Lease; and Tenant will grant to Mortgagee up to 45 days or a reasonable time (not to exceed 45 days) in which to cure Landlord's default (which time shall be at least the period of time granted to the Landlord by the Lease), provided, however, that Mortgagee shall give Tenant written notice of Mortgagee's intent to cure Landlord's default within ten (10) business days of receipt of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease on account of such default until such notice to Mortgagee has been given, and Mortgagee has had the opportunity to cure any such default. Should Mortgagee fail to so notify Tenant of Mortgagee's intent to cure Landlord's default within said ten (10) business days, then Tenant shall have all available rights and remedies (including the right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Mortgagee to cure any such default or defaults.

(b) Mortgagee shall use best efforts to copy Tenant on any notice of Mortgagor's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagor.

7. This Agreement may not be modified or amended, except by a writing by all parties hereto. Upon satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

8. Whenever in this Agreement it is provided that notice be given to or served upon any of the parties, each such notice or demand shall be in writing, and any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: If given or served by the Mortgagee, by mailing the same to the Tenant and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Tenant and Landlord may from time to time designate by notice given to the Mortgagee; and if given or served by the Tenant, by mailing the same to the Mortgagee and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Mortgagee and Landlord at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Mortgagee and Landlord

UNOFFICIAL COPY

may from time to time designate by written notice given to Tenant; and if given or served by Landlord, by mailing the same to Tenant and Mortgagee by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Tenant and Mortgagee at the addresses listed on Page 1 of this Agreement, or such other addresses as the Tenant and Mortgagee may from time to time designate by written notice given to Landlord.

9. Except as provided in the Lease, Tenant hereby waives any priority it may have over Mortgagee with respect to any share of any condemnation award for a taking of all or part of the Premises, except any award for Tenant's loss of trade fixtures or improvements or installations made by Tenant; and agrees that all of any such award, except as above provided, shall be first payable to Mortgagee.

10. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Premises, or shall otherwise become liable for any obligations of Landlord under the Lease, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Premises and the Lease, and Tenant shall look exclusively to such interest of Mortgagee, if any, in the Premises and the Lease, for the payment and discharge of any obligations imposed upon Mortgagee hereunder or under the Lease. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Premises, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee.

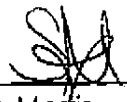
11. Notwithstanding anything herein to the contrary, Tenant shall not be deemed to be in default under any of the terms or conditions of this Agreement until Tenant has received a fully executed original copy of this Agreement.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the Lease.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

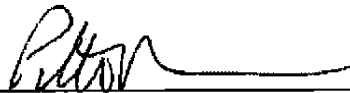
WITNESS:


Stephanie Morris

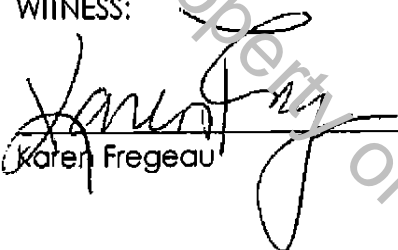
TENANT:

HIGHLAND PARK CVS, L.L.C.

By:


Peter J. Perry
Lease Administration Manager

WITNESS:



Karen Fregeau

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

SS:

On this 11 day of January, 2018, before me personally appeared Peter J. Perry, who, being by me duly sworn, did depose and say that he resides in Worcester, MA; that he is Lease Administration Manager of HIGHLAND PARK CVS, L.L.C., the limited liability company described in and which executed the above instrument and that he executed this instrument on behalf of said limited liability company and that he had authority to do so.


NOTARY PUBLIC
JANE B. McCAULEY
Notary Public
State of Rhode Island
My Commission Expires:
1-27-2021

UNOFFICIAL COPY

WITNESS:

Mary H. YolkmanAmber ManSTATE OF Nebraska)
COUNTY OF Lancaster) ss:

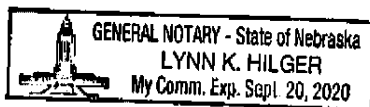
MORTGAGEE:

Ameritas Life Insurance Corp., a Nebraska Corporation

By: J.B. WeinbergName: Jon B. WeinbergTitle: Vice President

On this 30th day of January, 2018, before me personally appeared Jon B. Weinberg, who, being by me duly sworn, did depose and say that he/~~she~~ resides in Lincoln, Nebraska; that he/~~she~~ is Vice President of Ameritas Life Insurance Corp., the corporation described in and which executed the above instrument and that he/~~she~~ executed this instrument on behalf of said corporation and that he/~~she~~ had authority to do so.

Lynn K. Hilger
NOTARY PUBLIC

My commission expires: 9-30-20

UNOFFICIAL COPY

WITNESS:

Maria Barrios
Maria Barrios

Shirley M. Barrios
Shirley M. Barrios

STATE OF Florida)
COUNTY OF Collier) ss:

LANDLORD:

4051 North Lincoln, LLC
BY ITS MANAGER CALVO LIMITED PARTNERSHIP
BY ITS GENERAL PARTNER, CALVO, INC.

By: Paul Calvo

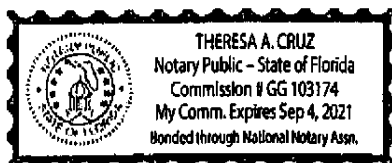
Name: PAUL CALVO

Title: PRESIDENT

On this 1 day of February, 2018, before me personally appeared Paul Calvo, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is _____ of _____ the _____ described in and which executed the above instrument and that he/she executed this instrument on behalf of said _____ and that he/she had authority to do so.

Theresa A. Cruz
NOTARY PUBLIC

My commission expires: 9-4-2021



UNOFFICIAL COPY

EXHIBIT A

DocumentSigned Date

Corporate Guaranty by CVS Health Corporation,
formerly known as CVS Corporation, a Delaware
corporation

November 15, 2006

Memorandum of Lease

November 15, 2006

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A To Subordination, Non-Disturbance and Attornment Agreement

Property Address: 4051 North Lincoln Avenue
Chicago, Illinois 60618

Assessor's Parcel Number: 14-18-328-001-0000

That part of Block 12 in William B. Ogden's Subdivision of the Southwest quarter of Section 18, Township 40 North, Range 14 East of the Third Principal Meridian, described as follows:

Commencing at the point of intersection of the Westerly line of Robey Street (also known as Damen Avenue) with the South line of Belle Plaine Avenue; thence South 225 feet along the West line of said Robey Street (also known as Damen Avenue); thence West on a line perpendicular to the Westerly line of Robey Street and parallel to said Belle Plaine Avenue to the East line of Lincoln Avenue; thence North along the East line of Lincoln Avenue to the South line of Belle Plaine Avenue; thence East on said South line of Belle Plaine Avenue to the point of beginning, being the North 225 feet of said Block measured along the Westerly line of Robey Street from a point in its intersection with the South line of Belle Plaine Avenue, all in Cook County, Illinois.

Recorded at Cook County Clerk's Office